

Gender+ equality policies as Europeanisation of old and new member states?

An ongoing process

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1 Introduction

Gender equality and anti-discrimination are important issues for the European and the international community. As much as they are normatively desirable, it is apparent that gender equality and no discrimination are difficult to achieve. Due to difficulties in determining and understanding gender+ equality and discrimination, there is large variance among countries in the treatment of these issues.

This paper is based on research done within the QUING-project, focusing on the quality of gender+ equality policies. Within the project four main issues are defined as being part of gender+ equality: general gender equality, non-employment, intimate citizenship and gender-based violence. This paper will focus on the issue of general gender equality, mainly concentrating on anti-discrimination legislation. Anti-Discrimination is understood as an important part of European legislation resulting in many changes on the national level.

The process of Europeanisation in the case of anti-discrimination legislation is analysed comparatively in two countries, the Czech Republic and Germany, one new and one old EU member state, one from Eastern one from Western Europe. After 1989 and the transformation of the Central and Eastern European countries (CEECs) it can be expected that there is a difference in the process of the introduction of gender equality and anti-discrimination between the CEECs and the Western European countries because of their different history and their different political systems. That is why they are treated as two most different cases in this paper.

Both the Europeanisation and the adoption of gender+ equality policies are dynamic processes. One reason why the adoption and implementation of gender+ equality policies are so problematic is the fact that changes in this field usually have to do with power. One group, usually the male group was and is dominant in certain areas; to achieve equality they have to give up certain rights or share cherished positions and privileges which is often seen as difficult. Endeavours for gender equality and anti-discrimination are also linked with culture, traditions and manners and they concern – more than other processes – every single person. This makes these processes so cumbersome and lengthy.

This paper looks at efforts to reach gender+ equality as a process of Europeanisation in new and old member states. It will discuss the following three questions:

1. In what way does the EU offer a window of opportunity for putting gender equality on the domestic political agenda?
2. How do domestic institutional and civil society actors react to EU norms on gender and other inequalities?
3. To what extent does it make sense to make country clusters while looking at gender+ equality policies, and should those clusters perpetuate the East-West divide?

First the paper offers a brief overview of the understanding of Europeanisation and summarises how it applies to the two cases. Furthermore, differences and similarities between old and new member countries are being outlined. Moreover, the EU as a window of opportunity for Germany and the Czech Republic is discussed. In the end, links are made to the existing Europeanisation literature and conclusions are drawn about the use of country clusters.

2 Europeanisation

2.1 Europeanisation: A complex process

The initial research projects in the field of Europeanisation focused mainly on the old¹ EU member states and looked at Europeanisation as part of European integration². The European Commission usually also only focused on the aspect whether Community legislation has been correctly transposed into the national legislation of the member states because it is the easiest to measure (From and Stava 1993, p. 59). However, the adaptation of legislation is only a small part of the actual diverse process of Europeanisation. In the cases chosen in this paper, it will be referred to the process of transposition of European legislation as a process of Europeanisation.

As Europeanisation can concern legal norms, economic structures, administrative organisations, political institutions, social patterns and cultural values it depends on the legal transposition as well as on the practical implementation of these laws and regulations. The implementation affects the administrations, organisations and personnel. Comparative Europeanisation research offers explanations for national adaptation to EU legislation and for the differences in convergence in the EU member states.

As Radaelli points out, Europeanisation consists of processes of construction, diffusion and institutionalisation of formal and informal rules, procedures, policy paradigms, styles. This understanding of Europeanisation also includes “ways of doing things’ and shared beliefs and norms which are first defined and consolidated in the EU policy process and then incorporated in the logic of domestic discourse, political structures and public policies” (Radaelli 2004, p. 3). The process of incorporating European legislation in national political structures and policies will be shown by looking at the cases of the Czech Republic and Germany.

The Europeanisation process is influenced by many factors: “One of the difficulties the governments face in the Europeanisation process is that political time management is constrained by the transposition deadline. Sometimes the governments have to choose between electoral misfortune and transposition delay” (Amiya-Nakada 2007, p. 1). This shows that transposition processes can often take a long time as political actors have to juggle between the domestic and the European level; this becomes also apparent in the two cases of this paper. The Czech Republic finally managed to pass the new legislation shortly before the dissolution of the government in 2009; in Germany the adoption of the legislation had to be postponed twice because of up-coming elections.

To sum up it can be said that Europeanisation is a complex process, which is not taking place in a uniform way in every country on every issue. The effect and meaning of Europeanisation differs from country to country as countries are different concerning their traditions, policies and institutions. This fact creates different adaptational pressures and different responses across the states. Risse, Cowles and Caporaso (2001, p. 1ff) pointed this out for the old EU member states, but it is also true for the new member states.

The basic thesis of this paper is that Europeanisation is likely to generate different responses not only among the fifteen old member states but also among the

¹ The 15 member states which belonged to the European Union already before 2004.

² For a literature review on Europeanisation of the old EU member states see: Héritier 2005.

twelve new member states which acceded in 2004 and 2007. Furthermore, the argument is analysed that responses will be different in old and new member states.

2.2 Gender and Europeanisation

Currently, there is not so much literature on gender and Europeanisation. However, gender+ equality is a good focal point to discuss Europeanisation processes since they become very visible.

In their 2001 essay, Caporaso and Jupille follow a model developed by Risse et al. (2001) and examine the effects of Europeanisation on gender equality policy structures in the cases of the United Kingdom and France. They find that institutional and policy developments have significant impact on the domestic structures of the EU member states in the area of gender equality (Caporaso et al. 2001, p. 42). The misfit between the UK and EU policies was higher than between France and the EU. Therefore adaptational pressure was higher on the United Kingdom than in France; also the existence of mediating institutions like the Equal Opportunities Commission in the UK facilitated domestic structural change. The absence of facilitating institutions in the French case can be seen as the main reason for France's resistance to implement the EU equal treatment policies (Caporaso et al. 2001, p. 228). That is why greater change in the UK than in France was apparent. Caporaso's and Jupille's work provides a good starting point to analyse Europeanisation in the area of gender equality because they demonstrate the different results of the European impact in two old EU-member states, caused by different realities in the countries.

Yet, different Europeanisation mechanisms are valid for EU member states and recent candidate countries. The Czech Republic, which transposed the EU legislation in bulk prior to its accession in 2004 and experienced these mechanisms differently to Germany, which continues to transpose EU legislation during its membership. For example, Caporaso and Jupille work with mediating institutions in the countries. No mediating institutions dealing with gender equality existed in the Czech Republic when the EU accession process started. This was similar to the situation in France. So that is why it can be expected that transposition took longer in the Czech Republic than in Germany. Only after accession this situation changed and the European mechanisms at work in the Czech Republic are now similar to those in the old EU member states. Unlike in the Czech Republic, in Germany institutions already existed like gender focal points, a specific Ministry for this issue and other institutions so it can be expected that the process was faster.

Furthermore, Caporaso and Jupille analyse adaptational pressure of the EU in the sense of proceedings and judgements of the European Court of Justice (ECJ). This adaptational pressure becomes also apparent in the case of Germany and gender+ equality. Several infringement procedures were started. However, the adaptational pressure on the EU candidate countries was also very high: they had to fulfil certain requirements and conditions on which depended the acceptance or refusal of their EU application. Even though this conditional pressure no longer existed after accession, the Czech Republic has since also experienced the adaptational pressure of the ECJ. The Czech Republic has been reprimanded by the ECJ and legal procedures had been started for not-transposing legislation on time (s. also later).

In *Gendering Europeanisation* Liebert (2003a) uses the framework of comparative Europeanisation to analyse the change of gender equality policies and

politics in the case studies of six old EU member states³. She points out in the introductory essay the different structures of adoption and compliance and identifies the relevant “domestic bottlenecks through which EC equality norms need to pass”. She includes: “gender regimes, court activity, public pressure, dominant frames, and policy advocacy coalitions” (Liebert 2003b, p. 260). The dominant frames used in the political debates on the passing of the Anti-Discrimination legislation in both countries are also discussed in this paper. The emphasis on a more pluralistic approach make this a useful theoretical framework for the analysis of new and old member states since Europeanisation is a very complex process – in general as well as in the area of gender+ equality policies.

2.3 Candidate Country Europeanisation

Europeanisation can “range over history, culture, politics, society, and economics” (Featherstone 2003, p. 3) and it has become a dominating theme of integration studies (Pridham 2006, p. 7). The transformation process of the CEECs can also be seen as a Europeanisation process because of its geographical and historical context. It is not only about democratisation and marketisation but also about a certain type of political economy and social systemic change which meets the EU requirements (Agh 1998, p. 49). Therefore with the Eastern EU enlargement in 2004 the focus of Europeanisation has broadened since it became apparent that Europeanisation not only affects EU member states, but also the surrounding countries, especially the candidate countries.

The candidate countries are affected by the same mechanisms as the EU member states (Grabbe 2003, p. 304) as well as by different mechanisms because of the pressure of conditionality and the pre-accession strategy.

For the new member states Europeanisation has another important consequence: Having built-up their independent state system systems the CEECs again gave up some of the rights of their new statehood after accession to the EU and pooled their power with other states. Europeanisation shrinks the area of relevant political regulations that can be autonomously decided by a government, i.e. less and less decisions can be taken without having to consider the supranational political ideals, goals and norms of the European Union. The national governments are increasingly bound to collective decisions and restrictions which can be traced back to the collective decision procedures of the EU (Bach 2000, p. 1). A government only adopts the EU rules if the benefits of the EU rewards are higher than the costs of the domestic adoption of rules (ibid., p. 12). This can be seen as an external incentives model. This is based on the assumption that rule adoption is costly otherwise it would have taken place anyhow (Schimmelfennig et al. 2005, p. 10, p. 16).

For the CEECs the benefit of EU accession lowered the domestic adoption costs during the pre-accession process. The adoption of the *acquis communautaire* as a whole was an accession condition. Von Wahl points out (2008) that the “EU accession process pushes all applicant countries into the direction of a hybrid regime, i.e., a regulatory and supranational non-state regime combining a market-driven core with social concerns” (p. 20). This includes also the transposition of the legislation in the area of gender equality. Only because the accession to the EU was desired the “costs” for the

³ The following six countries are discussed: France, Germany, Italy, Spain, Sweden and the United Kingdom.

development of gender+ equality could be seen as not so high. The Czech Republic is one example for a candidate country from the accession round in 2004 which became a full EU-member state and had to give up again some of its rights in a relatively short period after independence.

2.4 Europeanisation of old and new EU member states

There are not many works comparing Europeanisation in old and new EU member states. The research done by Falkner and Treib (2008) is an example for the few attempts to work comparatively between old and new member states. They developed a scheme to evaluate typical process patterns of compliance in the old and new member states. In their research project the authors define compliance as “the transposition, enforcement and application of EU legislation” in the specific countries (ibid., p. 295). They focus solely on three EU directives in the area of social policies, the Employment Equality Directive 200/78/EC, the Amended Equal Treatment Directive 2002/73/EC and the Amended Working Directive 2003/77/EC. Furthermore, they only concentrate on four of the new member states, the Czech Republic, Hungary, Slovakia and Slovenia, and the old EU-member states.

The authors discern four “worlds of compliance”: the “world of law observance”⁴ (the best form of compliance), the “world of domestic politics”⁵, the “world of dead letters”⁶ and the “world of transposition neglect”⁷ (the worst world of compliance). They identify Germany as belonging to the “world of domestic politics”. The Czech Republic has been categorised in the world below, the “world of dead letters”. The label “world of domestic politics” means that domestic concerns frequently prevail if there is a conflict of interest; if there is a manifest clash between EU requirements and domestic interest politics, non-compliance is the likely outcome (ibid., p. 297). Being classified as belonging to the “world of dead letters” means that there is lack of litigation from below, a lack of support by civil society actors, weak equal treatment bodies, shortcomings in the judiciary; these shortcomings lead to the fact that a lot of the transposed legislation has remained as “dead letters” (ibid., p. 304ff). The specific classifications of the Czech Republic and Germany according to the worlds will be again referred to later on.

However, if different issues are analysed in detail the conclusion is that the “worlds of compliance” do not apply universally, neither for countries nor issues. Already when comparing gender equality policies within the EU large differences become apparent in the details. For example, a member state might be compliant with EU law in gender violence due to strong feminist mobilisation, but then be non-compliant in equal treatment at work due to domestic hindrances like the party in government or the interaction between state and civil society (Forest and Lombardo 2009, p. 4).

In the Czech Republic, this can be seen by looking at the Anti-Discrimination bill and the same-sex partnership bill. The Anti-Discrimination bill was rejected again by parliament in 2007, whereas the same-sex partnership bill passed in that year and became a law. This shows that one country can be part of the four different “worlds” already alone in the area of gender+ equality. Therefore, this categorisation is too broad

⁴ Denmark, Finland and Sweden belong to this group.

⁵ Austria, Belgium, Germany, the Netherlands, Spain and the UK belong to this group.

⁶ Czech Republic, Hungary, Ireland, Italy, Slovakia and Slovenia belong to this group.

⁷ France, Greece, Luxembourg and Portugal belong to this group.

to develop much meaning for the quality of political action. That is why this paper supports the argument that rigid country clusters for Europeanisation are not useful in the area of gender+ equality policies.

2.5 Political opportunity structures of Europeanisation in the area of gender+ equality

The so-called Political Opportunity Structures (POS) facilitate or hinder the impact of Europeanisation and are therefore important also in the area of gender+ equality policies. The POS were originally defined in research on social movements to recognize the possibilities of the movement to influence the existing political system. Among them are “specific configurations of resources, institutional arrangements and historical precedents for social mobilization, which facilitate the development of protest movements in some instances and constrain them in others” (Kitschelt 1986, p. 58). These POS not only affect social movements but also affect other areas, for example the political arena. The majority of the studies agree that “fixed or permanent institutional features combine with more short-term, volatile or conjectural factors to produce an overall particular opportunity structure” (Arzheimer et al. 2006, p. 422).

Since the implementation of the EU guidelines and EU projects is dependent on the respective national policies, the domestic institutional structures in the Czech Republic and Germany are explored in the following part. In this way this paper ties in with the Europeanisation literature which emphasises the importance of domestic structures. It also tries to describe the role of structure and agency within the Europeanisation process by identifying the interactive play of domestic and EU spheres of activity (Featherstone 2003, p. 13). It will be shown how the role of agency is taken up by political actors and NGOs.

One issue where the interaction of civil society actors and state actors and existing Agency and Opportunity Structures and the effect of Europeanisation become apparent is the anti-discrimination legislation. That is why it is useful to compare its discussion and final implementation in an old and a new member state. The few comparative papers which analyse the differences and similarities between old and new member states do not include this point. The Czech Republic as a relatively new member state and Germany as one of the founding members are being discussed to show the possible different effects of Europeanisation. In the case of both the Czech Republic and Germany certain provisions already existed, but not everything was covered by existing legislation and there was no comprehensive law.

3 Old and New EU Member States

3.1 Differences

The differences between old and new member states can be generally summarised along the following lines. Because of the following differences, Germany and the Czech Republic can be classified as two most different cases:

1. The length of membership: Germany was one of the founding members of the now European Union; the Czech Republic has only been a member since 2004. It could be expected that the implementation of the Anti-Discrimination legislation should be faster in Germany and slower in the Czech Republic as (Western) Germany is an EU-member state since the beginning and the Czech Republic is now an EU member state for only five years. Contrary to the Czech

Republic Germany was already used to similar processes and helped shape huge parts of the existing acquis.

2. The mode of accession: For Germany, no conditionality and no pre-accession process existed. For the Czech Republic there was a lengthy pre-accession process characterised by a degree of uncertainty. There was an asymmetrical relationship where the EU had the upper-hand (Grabbe 2003, p. 303).
3. The *acquis communautaire*: the member states, among them Germany, helped shape the *acquis communautaire* whereas the candidate countries like the Czech Republic had to adopt legislation they had not been involved in shaping. This is also true for the Anti-Discrimination legislation. The request for a comprehensive Anti-Discrimination legislation came from the EU-level; it was developed during a time when the Czech Republic could not yet take part in the process of shaping legislation.
4. The political system and history: the CEECs underwent a process of transformation and transition after 1989, from socialist to democratic system, from planned to market economy. The EU integration was part of a broader dynamic of state and nation-building, domestic transformation, and Western integration. Western Germany developed democratically since 1949 (and this system was then also adopted by the GDR at re-unification).
5. The tradition and culture of gender equality: in Germany most of the achievements of gender+ equality policies are due to strong lobbying from, for example, the women's movement, and therefore bottom-up; in the Czech Republic, in the socialist era, gender equality was enforced top-down. Both women and men were working and it was assumed that gender equality was completely achieved like this. However, the division in the household, that women were responsible for it, was not contested. No strong women's movement or civil society existed after 1989. The belief was wide-spread that socialism had already created gender equality. However, in Czechoslovakia one could experience "state paternalism" (Siklova 2005, p. 349f) whereas in Western Germany you experienced private paternalism. The state paternalism mainly disappeared after the transformation in the Czech Republic (Siklova 2005, p. 351).
6. The attitude towards the EU: Germany is a country which is mainly positive towards the EU; the Czech Republic, even though it was eager to join the EU, is known as an EU-sceptic country.

3.2 Similarities

However, some similarities concerning the process of Europeanisation can be found among the two countries analysed in this paper. Koldinska suggests that many problems are the same for old and new member states "The only difference lies in the origin of these problems and the reason why they arose and persist" (Koldinska 2008, p. 121). This "only" difference makes it important to follow different approaches. She emphasises that the enlarged EU undoubtedly requires new impulses and approaches to the issue of gender equality (Koldinska 2008, p. 122).

Concerning compliance, Falkner and Treib (2008) argue that the four new member states from 2004 analysed⁸ are not so very different from the old member

⁸ Czech Republic, Hungary, Slovakia and Slovenia.

states. They tried to find out whether new member states were significantly decreasing their compliance efforts after accession in order to take ‘revenge’ for the strong pressure of the accession process. This assumption was not confirmed for example in the case of the group of the “world of dead letters” where with the Czech Republic and three other new member states also two old member states are situated (ibid., p. 293). They also emphasise that according to the official data⁹ by the European Commission the transposition track record is not worse for new member states: “The Czech Republic, for example, improved its transposition rate from 89.99 per cent in August 2004 to 99.63 per cent in August 2006.” (ibid, p. 164). However, official transposition records do not show how complete or correct the measures are which were communicated to the Commission (ibid., p.164f).

4 In what way does the EU offer a window of opportunity for putting Gender+ Equality on the domestic political agenda?

Gender+ equality policies are extensively shaped by international and supra-national actors like the EU and the UN. Equality and gender equality are issues of great importance on the EU level as can be seen by actions and legislation developed in the past years. The legislation passed on the level of the European Commission opened a window of opportunity for similar legislation in the member states. Furthermore, the EU offered a window of opportunity because it was requesting a more comprehensive legislation than which was already existing in the member states.

An example for this is the Anti-Discrimination legislation which has been mainly put on the agenda of the countries because of the EU. The EU passed two directives in 2000 and 2002 which mainly started the process on the national level in several countries, including Germany and the Czech Republic. This created a window of opportunity to pass legislation in this area.

In every state, gender equality policies are part of social policy, an area in which member states tend to stay independent. Supranational instruments requiring policy changes in this field are not welcome. Gender+ equality is a highly contested issue since policy change may entail important political and economic consequences as well as ideological discord. That is the reason why Van der Vleuten (2005, p. 464) states that the implementation record of EU gender equality policies varies strongly between states and across time, alternating stubborn resistance and compliance. This will be shown by looking at the Czech Republic and Germany; both countries encountered many hindrances while trying to pass Anti-Discrimination legislation.

To sum up, the window of opportunity was opened by the EU but it is always threatening to close because of domestic political opportunity structures; however, it was opened again by actors named in 5.

4.1 Germany

Germany, even though belonging to the founding members and being generally a euro-positive country, was slow in the transposition of EU-legislation on gender equality. One quarter of the ECJ’s rulings in the area of gender equality concerned issues presented by German courts (Kodre and Müller 2003, p. 84). Germany was also late with the strategy for the European Year of Equal Opportunities in 2007 (Schroedter

⁹ Official data on the average of national measures implementing directives in every field, not only social policy.

2007, p. 136) even though Germany had the EU-presidency in the same year, from 01.01.2007 – 30.06. 2007.

According to Falkner and Treib's (2008) classification Germany belongs to the "world of domestic politics", the biggest group, together with Austria, Belgium, the Netherlands, Spain and UK. This means that "administrations work usually dutifully, but successful transposition of EU law is typically a matter of conflict and compromise, and depends on the fit with the political preferences of government parties and other powerful players in the domestic arena" (Falkner et al, 2008, p. 13). Also, the anti-discrimination legislation shows these signs of conflict and compromise until it finally got passed.

In the 1990s the former German Democratic Republic (GDR) was united with Western Germany. Therefore, Germany became bigger by the transformation process after 1989. This may have also influenced changes in the area of gender equality. Originally, West-Germany was a mixture, part of European and part of traditional West German gender regime. The traditional and predominant West German gender regime relied on the male breadwinner model, where the woman/wife is the housekeeper and family caregiver even though during the 2nd world war many women and widows had to care and support their families on their own. The GDR had a different gender regime than the west; it was common for women to work. As Miethe (2008) states in her chapter: "From a European point of view, it becomes apparent that many positions that were termed 'East German' in the German East-West discussion – for example, the compatibility of family and career or the responsibility of the state to address women's issues – are not specifically 'Eastern' at all, but are held in other Western European countries, such as Sweden, as well" (p. 129). In the Europeanisation process of gender equality, even though slow, a European influence on the German gender regime and shift in debates can be diagnosed (Urbanek et al. 2008, p. 8.f).

The EU created a window of opportunity for gender equality changes in the country since institutional bodies were relatively weak. Pressure from the EU and other international bodies has helped to weaken the traditional Western German gender regime and formed a hybrid model where progressive and conservative policies co-exist (Urbanek et al. (2008), p. 89).

4.2 Czech Republic

Czechoslovakia separated in 1993; and the two states, Slovakia and the Czech Republic were formed. So whereas Germany got bigger in the transition process, Czechoslovakia got smaller. The Beijing Platform for Action in 1995 was the reason, why first institutions dealing with gender equality were created in many countries, also in the Czech Republic. Furthermore, other changes in national legislation were necessary because of the accession process to the EU. Sexual harassment became recognised as a serious issue only because of this process. In the "Agenda 2000 - Commission Opinion on the Czech Republic's Application for Membership of the European Union" it was noted that "concerning equal opportunity, the basic provisions of EC non discrimination law between women and men are covered" (European Commission 1997, p. 86). Yet, it was pointed out in the Accession Partnership of the EU with the Czech Republic in 1998 that "complete alignment of the Community legislation in the field of equal treatment for women and men (and health and safety acquis)" was still necessary (Official Journal of the European Communities 2002, p. L 44/25). The Czech Republic acceded to the EU in May 2004.

As mentioned above, the Czech Republic has been grouped in the area of social policies as belonging to the “world of dead letters”¹⁰ (Falkner and Treib 2008, p. 30) together with other new and old member states that “may transpose EU directives in a compliant manner, depending on the prevalent political constellation among domestic actors, but then there is non-compliance at the later stage of monitoring and enforcement” (Treib and Falkner 2008, p. 172). For example, shortcomings in the court systems, the labour inspections and in civil society systems are factors hindering legislation becoming effective in practice. Even the Czech EU-Presidency, 01.01 2009 – 30.06. 2009, was over-shadowed by the breakdown of the Czech government in the middle of the term and brought no progress in several areas, also in the question of gender+ equality.

The EU Eastern enlargement process brought about discussions on gender equality on the political level; NGOs could use it as a tool to demand changes in this area. “However, the knowledge and views of the EU and of Czech officials and politicians about the significance of gender equality politics resulted in the issue being discussed and evaluated formally, rather than substantially, in the pre-accession process” (Haskova and Krizkova 2008, p. 161).

5 How do domestic institutional and civil society actors react to EU norms on gender and other inequalities?

5.1 German General Equal Treatment Act (2006)¹¹

5.1.1 Gender Equality Machinery¹²

The Federal Ministry of Youth, Families and Health included Women from 1986 onwards into its official name and set up a special Department for Women’s Politics in 1987 (BMFSFJ 2007). In 1991, the Conference of Equality and Women’s Ministers and Senators of the Länder (GFMK) was established. Feminists within the Social Democratic and the Green Party pushed the institutionalisation of gender equality issues. These so called state feminists are and can be important allies of the women’s movement. Since 1994 the Ministry is called the Federal Ministry of Family, Senior Citizens, Women and Youth (Bundesministerium für Familie, Senioren, Frauen und Jugend BMFSFJ).

In May 2000 the Interministerial Working Group (IMA) on Gender Mainstreaming that coordinated and provided for a common gender mainstreaming strategy of the Federal Government was set up and located at the BMFSFJ until its dissolution in 2006. In 2003, the GenderCompetenceCenter, an application-oriented research institution at the Humboldt-University of Berlin, financed by the Federal Ministry for Family, Senior Citizens, Women and Youth, was set up and is the only remaining instrument to implement gender mainstreaming in public administration since the dissolution of the IMA. At the moment, its funding is only secure until summer 2010.

After the adoption of the General Equal Treatment Act a new institution had to be installed to deal with cases of discrimination. Therefore the anti-discrimination office

¹⁰ With Ireland, Italy, Hungary, Slovakia and Slovenia.

¹¹ For a comprehensive description see: <http://baer.rewi.hu-berlin.de/wissen/antidiskriminierungsrecht/antidiskriminierungsgesetzgebung/>.

¹² This part is mainly based on Urbanek et al. 2008, p. 8.f.

was founded in 2006 which is independent but located at the BMFSFJ. In February 2007, Dr. Martina Köppen was assigned as its director. So far the ADS has not a good track record; too little achieved with too much money. It is expected that after the elections in September 2009 the head of the ADS will be changed.

5.1.2 Politicians

The first bill for a General Equal Treatment Act was introduced by the Green party (Die Grünen) on 09. October 1986; it was not discussed conclusively. The Green party was for the first time part of the government coalition from 1998 – 2005; during this period important steps towards the adoption of the law were taken. In 1998, the next bill was introduced; but only after the EC directives¹³ were passed on EU-level activism really started in Germany. It was even written down in the coalition agreement of the SPD (Social Democratic party of Germany) and the Green party, that a law against discrimination and to encourage equal treatment will be passed. This bill, introduced in 1998, was not sent to the German Bundestag in view of the up-coming elections.

In 2002 in the new coalition agreement of the SPD and the Green party it was again written down that they will send the anti-discrimination law to the Bundestag and thereby transpose the EU directives. However, there was huge opposition against this bill in 2005 by politicians from the Christian Democrats (CDU) and even Social Democrats like Peer Steinbrück, Minister President of North-Rhine Westphalia. The faction of Christian Democrats and the Christian Socialists (CDU/CSU) even submitted a petition to withdraw the Anti-Discrimination bill in March 2005. They followed the argument that the existing national legislation is sufficient and therefore such legislation is not necessary.

In July 2005 the Bundesrat decided to call for the Conciliation Committee. However, because of the pre-emptive elections on 18th September 2005 there was no decision of the committee. In December 2005 the faction of the Greens introduced again the anti-discrimination bill.

In December 2006, the Green European Parliamentarians Schroedter, Özdemir and Breyer sent a motion to the European Commission on the question whether the anti-discrimination act is consistent with the EU directives which the EU is investigating.

5.1.3 Civil Society

Civil society, especially the women's movement, has a long tradition in Germany, at least in the Western part. Lobbying for the Anti-Discrimination law took place, by the women's movement and also other organisations since the bill covers several grounds for discrimination like disability or ethnicity. One example for this is the big campaign in North Rhine Westfalia in 2004 "Life without racism – the Anti-Discrimination Act now" (Leben ohne Rassismus - Antidiskriminierungsgesetz jetzt!), by the Union ver.di, the Lesbian and Gay Liberation Front and the Association of Lesbians and Gays (Lesben- & Schwulenverband). However, there was also huge opposition by organisations like the Federal Association of Employers and several players of the media.

¹³ Directive 2000/43/EC (Antiracism-Directive); Directive 2000/78/EC (Frame-Directive); Directive 2002/73/EC (Gender-Directive II)

When the organisations were not satisfied with the transposed legislation they used the European Commission as a tool to put pressure on the national government. In a letter from the djf (German association of female lawyers) in June 2007 to the commission the insufficient transposition of the EC-anti-discrimination directives in Germany was pointed out (Wagner and Raasch 2007). They used the frames of international obligation, discrimination of women and strict equal treatment in their letter (Urbanek 2009, p.

5.1.4 European Commission

The actions of the domestic institutional and civil society actors are important. However, their actions have been shaped by the ongoings on the European level:

In July 2004 the European Commission started infringement procedures against Germany at the European Court of Justice because of non-transposition of the anti-racism directive 2000/43/EC.

In February 2005 the European Commission filed an action against Germany at the European Court of Justice because of non-transposition of the frame directive 2000/78/EC.

In April 2005 the ECJ assessed breach of contract of the Federal Republic of Germany (FRG) because of non-transposition of directive 2000/43/EC. It had had to be transposed until 19.07.2003.

In February 2006 the ECJ assessed Germany in breach of contract because of non-transposition of the frame directive 2000/78/EC. The deadline had been 02.11.2003.

5.1.5 Outcome

In Germany the process to pass an Anti-Discrimination law took place mainly between 1998 and 2006. The process was extremely difficult; Germany was one of the last old member states, together with Luxembourg, to transpose the legislation.

In June 2006 the Bundestag has approved the General Equal Treatment Act. 443 MPs voted with Yes, 111MPs with No and 17 abstained. In July 2006 the Bundesrat approved the General Equal Treatment Act despite reservations. In August 2006 the Federal President signed the General Equal Treatment Act (GETA; Allgemeines Gleichstellungsgesetz) and it was published in the Bundesgesetzblatt and in force one day later. Six years after the first respective EU guidelines were issued, the General Equal Treatment Act entered into force in Germany. As has been shown above, different actors contributed to the lengthy process of the bill becoming the General Equal Treatment Act. One argument for the final adoption of the Gender Equal Treatment Act was the fact that in this way financial punishment by the EU could be avoided.

The process took so long because there was not a good fit between the EU-legislation and the national legislation: This was partly due to the fact, that the antidiscrimination directives were framed under Anglo-Dutch influences which meant they did not agree with the political system in Germany or Austria (Amiya-Nakada 2007, p. 5). Furthermore, there existed no tradition in this kind of comprehensive legislation. This meant “that the transposition of the directives had to break new ground in the system of German laws” (ibid., p. 5).

Furthermore, the criticism of this law was enormous and exceptional within Europe (Rudolf and Mahlmann 2007, p. 7).

5.2 Czech Anti-Discrimination Act (2009)

5.2.1 Gender Equality Machinery

The gender equality machinery was mainly developed during the pre-accession process. In this part only the institutions are outlined that are important for the issue of Anti-Discrimination.

The first institutions dealing specifically with gender equality have been in place since 1998. This followed after an interpellation by MP Hana Orgonikova (ČSSD) in April 1997 to Prime Minister Vaclav Klaus (ODS); the interpellation concerned the government's activities in relation to the National Report on the Implementation of the Beijing Platform for Action which was due in 1998. This was a turning point since beforehand no institutions existed. However, in 1998 the state had not yet provided any specific funds for the implementation of the policy of equal opportunities despite the introduction of specific institutions. Till today the government still has only provided limited personnel and financial resources for the practical implementation of gender policies.

In 1998 the Ministry of Labour and Social Affairs was given formal responsibility for the cross-government coordination of equal opportunity issues and equal treatment for men and women (Government decree No. 6/98). As a consequence, a Unit for Equal Opportunities was established at the Ministry of Labour and Social Affairs. It was set up as a specialised unit of three people to co-ordinate issues relating to equal opportunities between men and women across administration and to work with NGOs in this field. Originally, the Unit was supposed to align Czech legislation with that of the European Union in the area of equal treatment of men and women. That is why the Unit was placed within the Department for European Integration and International Relations of the Ministry of Labour and Social Affairs, which means at the bottom of the organisational structure. Today, the Unit's agenda not only covers legislative matters but also includes among its other activities the publishing of relevant documents and handbooks, organising of seminars and trainings for selected civil servants from other Ministries, and subcontracting surveys concerning gender issues. The most important tool that the Unit has at its disposal are the government Reports or Priorities. During the compilation of the report, the Unit proposes concrete measures to individual ministries. However, the individual measures are subject to the approval of the ministries and can be modified by them. The Reports are based on information from the ministries, which is not checked. The Unit cannot set tasks for other ministries. It also cannot control them effectively.

In 2002, the Czech Republic was admonished that "whilst excellent progress has been made on transposition of the *acquis* in the Czech Republic, the development of effective implementation and enforcement measures has been slow" (Commission of the European Communities 2002, p. 19). In the same year the Government Council for Equal Opportunities was created to help shape gender equality policies. It is an inter-ministerial consultative and advisory body with a mandate to promote European gender equality policy, but does not have its own budget. It includes ministers, representatives of academia and NGOs and is an advisory body concerning equal opportunities issues. It can only develop recommendations and has no competence to take decisions. The

Council and the Unit for Equal Opportunities together are responsible for supervising all governmental decisions regarding gender equality. Concerning gender equality this is the only official institution by which NGOs can influence the policies. Yet, it is not obligatory for the government to take up the suggestions of this Council, therefore it is not a very powerful institution.

Vladimir Špidla (ČSSD), now EU Commissioner for Employment, Social Affairs and Equal Opportunities, was Minister of Labour and Social Affairs from 1998-2001. During this time it was decided to introduce Gender Focal Points and to implement a twining project on gender mainstreaming at the ministry. Since 2002, Gender Focal Points exist in each ministry (Government decree No. 456 from 9 May 2001). 50 percent of their working time is supposed to be for gender mainstreaming activities. This is difficult to achieve because of the strong hierarchical organisation of the ministries. It was up to the ministries to decide where to place the Gender Focal Points. Most of the Gender Focal Points are placed within the Human Resources Departments at desk officer level. One of the most important tasks of the Gender Focal Points is the elaboration of ministerial Priorities in the area of equal treatment of men and women. The quality of the documents differs substantially.

The Ombudsman, the public defender of rights, exists as an institution since 1999, but he only deals with maladministration of authorities; he had no specific authority in the area of gender equality. Yet, he has been given additional competences in the area of anti-discrimination with the approval of the Anti-Discrimination Bill.

There is one Minister without portfolio since 2007 who works on Human Rights, Minorities and Equal Opportunities; she mainly focuses on minorities and not on gender equality.

The latest institutional development in the Czech Republic in the area of gender+ equality policies is the establishment of the Council for Equal Opportunities of Men and Women in Politics in September 2009. The members of this Council, an advisory body of the Minister without portfolio, were recruited from the main political parties (one man and one woman for each of the political parties), academia and civil society. The task of this body is to work together with the Ministry of Interior and prepare legislation which enable higher participation of women in politics.

5.2.2 Politicians

The Czech Republic is considered an EU-sceptic country, especially because of the ODS (Občanská demokratická strana/Civic Democratic Party) and President Vaclav Klaus. However, the ODS-party has been softening its hard stance towards the EU since November 2008 and became more Pro-European by supporting the adoption of the Lisbon treaty. This led to the split of the ODS and the leaving of the founding father and honorary chairman Vaclav Klaus who initiated the formation of a new Euro-sceptic party, the Party of Free Citizens, which took part in the 2009 election for the European Parliament and got approximately 0.7% of the votes.¹⁴

There are individual political actors which have been influential in the area of gender+ equality politics, especially Vladimir Špidla and Anna Čurdova (ČSSD, Czech social democratic party). The support in gender+ equality policies varies from issue to

¹⁴ I am grateful to Petra Rakusanova Guasti for this comment.

issue. The Christian Democrats (KDU-ČSL) supported the issue of domestic violence, but oppose the issue of same-sex registered partnership. The ODS was against an anti-discrimination law, but Members of the Parliament still supported the law on same-sex registered partnership.

There were very few politicians, male or female, who supported the anti-discrimination bill. Anna Čurdová, member of the Social Democratic Party and also former Chairwoman of the Council for Equal Opportunities for Men and Women was active and supportive in this field.

The ODS was usually against such a law and lobbied very much against it. There existed more opponents than supporters for this law.

In January 2005, the Government presented the Antidiscrimination Bill to the Chamber of Deputies. The Chamber of Deputies passed this bill in December 2005. The Senate rejected the bill as unnecessary, and therefore it was debated by the Chamber of Deputies again in 2006. The bill defines the term “discrimination”, the legal means that can be used to fight discrimination, and in what areas this protection is provided. The bill appoints the Public Defender of Rights (Ombudsman) as the institution which should systematically specialize in protection against discrimination. Apart from provision of legal aid in individual cases, the ombudsman should also conduct independent research and issue recommendations and opinions. The anti-discrimination bill was voted down by the Czech Senate on 24 January 2006 and then, on 23 May 2006, found insufficient support in the House of Representatives where an absolute majority was needed.

The Green Party focused on gender equality and anti-discrimination during their election campaign in 2006; the party was founded in 1990 and in 2007 for the first time part of the coalition government. They were, as a rather small party, responsible for putting the Anti-Discrimination Bill as one of the priorities of the Czech government of 2007.

The bill was introduced again in June 2007¹⁵ by the government. In June 2007, the Anti-Discrimination Bill was finally approved by the government and then finally accepted by both chambers of the parliament in 2008. The president, however, vetoed the bill in May 2008. He stated that the existing legislation was already sufficient and that the quality of the bill was poor. At that time the Czech Republic was the only state of the 27 EU member states which had not yet adopted sufficient legislation in this area. Therefore, the process had to begin to overrule the veto. The next parliamentary meeting concerning the acceptance of the Anti-Discrimination bill took place on 21 October 2008. The main frame for passing this legislation was that it was required by the European Union and that otherwise there would be financial repercussions.

5.2.3 Civil Society

In the 40 years of socialist regime no active civil society could develop in the Czech Republic. This had to be built up again slowly, but continuously. However, during the process of passing the Anti-Discrimination bill several NGOs were active and also involved in discussing and lobbying on the bill. For example, the first draft of the anti-discrimination bill was widely distributed in 2005. There was a special seminar, NGOs were asked to contribute. Members of NGOs were consulted as external experts. The second time, there were no consultations since there was no new drafting. Another

¹⁵ To follow this process: see <http://www.psp.cz/sqw/historie.sqw?o=5&t=253>.

example for activities is the roundtable on anti-discrimination organised by the Czech Women's Lobby in 2009 during the Czech EU-Presidency. They wanted to raise awareness on how important the passing of this law is for the country.

However, also lots of opposition took place; for example, the CEP (Center for Economics and Politics), a pro-market Think Tank, made a conference and a book to lobby against the anti-discrimination bill.

5.2.4 European Commission

The domestic institutional and civil society actors are important. Their actions have been shaped by the ongoings on the European level:

Out of the ten directives¹⁶ of EU-legislation addressing equal treatment (mostly of men and women), the Czech Republic was in breach of nine¹⁷. Since December 2005 proceedings had been initiated against the Czech Republic, as the only one among the new member states, concerning the transposition of the Race Directive 43/2000/EC. The European Commission on 27 June 2007 sent a formal request to the Czech Republic¹⁸ to fully implement EU rules banning discrimination on the grounds of race or ethnic origin (2000/43/EC). The Czech Republic was meant to have harmonised its national law with the Council Directive 2000/43/EC¹⁹ on accession to the European Union (i.e. as of 1 May 2004). In July 2005 the European Commission issued a reasoned opinion, in which it called on the Czech Republic to adopt the legislation required to achieve full harmonization with the racial equality directive.

Concerning the Framework directive 78/2000/EC proceedings had been initiated against the Czech Republic, again as the only one of the new Member States in December 2005.

The European Court of Justice ruled on 4th December 2008 that the Czech Republic did not adopt Directives 86/378 and 96/97 (on the implementation of the principle of equal treatment for men and women in occupational social security schemes).

¹⁶ The candidate countries had to adopt the existing nine directives in the following areas:

- Goods and services
- Equal pay (1975)
- Equal treatment relating to employment, vocational training, promotion and general working conditions (1976/207) – modified by directive 2002/73
- Social security systems (1978 and 1986)
- Equal treatment for self-employed workers and their spouses (1986)
- Pregnancy and motherhood (1992)
- Parental leave (1996)
- Burden of proof in cases of sex discrimination (1998).

The tenth directive concerning gender equality (amendment of the Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions) had to be implemented in all EU member states only until 5 October 2005, which meant for the candidate countries that they could transpose it into national legislation after accession.

¹⁷ Havelkova (2007).

¹⁸ The other 13 countries concerned are Estonia, France, Greece, Ireland, Italy, Latvia, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, United Kingdom.

¹⁹ The directive is implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; it places the obligation on EU Member States to appoint or set up a body competent to provide protection from discrimination.

5.2.5 Outcome

From 1995 onwards anti-discriminatory provisions were slowly put into legislation. A comprehensive anti-discrimination bill was first introduced in spring 2003 in the Czech Republic (Europäische Kommission 2004, p. 53). The process to pass anti-discrimination legislation was therefore started in 2003, before accession, and finished in 2009; this means the process was in the end even faster than in Germany where it lasted over eight years.

The main reason for its introduction was the necessity according to EU-legislation. The Antidiscrimination Bill implements the European Community directives on non-discrimination in a uniform manner.

Since 1st January 2007 a new Labour Code was in practice. This Code refers all discrimination issues to the new Anti-Discrimination Law which was at that time not yet approved. Since the acceptance of the new Labour Code there existed a gap in the area of anti-discrimination legislation.

On 17th June 2009, the Anti-Discrimination Bill got finally approved. The veto of the president got overturned by the lower house of parliament one year, one month and one day after it got issued.

Discussions in parliament on gender equality were usually connected to EU-legislation, often with heavy opposition by the parliamentarians. On the political level there existed not much support for this bill; the only argument for passing it was that it is an EU-obligation which has to be transposed; otherwise the Czech Republic will be fined.

6 Does it make sense to make country clusters and should those clusters perpetuate the East-West divide?

Comprehensive anti-discrimination legislation is an initiative coming from the side of the EU. After the Nordic enlargement in 1995, the same years as the Beijing platform for Action, gender+ equality became more prominent on the EU-level. This also broadens the focus of gender equality towards several inequalities to maybe eventually intersectionality²⁰. Since the comprehensive Anti-discrimination Act is an initiative by the EU its transposition can be seen as a case of Europeanisation regarding Germany; since the Czech Republic also managed to pass the bill this can be seen as a successful case of Europeanisation. In both countries similar processes and actors were important in passing this legislation:

1. In both countries the Green party was responsible for introducing the anti-discrimination bill and pushing it.
2. In both countries the conservative parties stated that the existing legislation was already sufficient and that there was no need for a new law.
3. Both countries refer to EU in their frames in the debates and use it as a reason for the transposition of this legislation. In both countries the law was a compromise and it is being lobbied to introduce changes.

²⁰ This approach emerged in response to the inability of various singular analyses of structural inequality to recognise the complex interrelation between forms of oppression.

4. In both countries the process took a long time: from 1986/1998 until 2006 in Germany, from 1995 until 2009 in the Czech Republic. This shows that norms in the area of gender+ equality are not necessarily inherent norms, neither in old nor in new member states. There were several steps to be taken and players involved where the bill has been vetoed or dismissed. In Germany it failed originally at several steps in the adoption process; in the Czech Republic the bill failed at every hurdle, even the last one, the signing by the president before it finally got passed in June 2009.
5. NGOs lobbied for the bill in both countries. Yet, there was also opposition from the civil society in both countries.
6. In both countries infringement procedures were started by the European Commission and the ECJ. Therefore the urgency of passing this legislation increased. However, in Germany there was never a two years' lack of Anti-Discrimination legislation like in the Czech Republic between 2007 and 2009.

Therefore, the process of Europeanisation was very similar in both countries concerning the issue of Anti-Discrimination. Despite the different history and experience with gender+ equality the Czech Republic was even faster in passing this legislation than Germany. Since the process was so similar in both countries it does not make sense to make East-West clusters, at least not for this issue. This confirms the argument made by Liebert (2003) that rigid country clusters do not make much sense for gender equality policies.

7 Conclusion

To conclude, the comparison of Germany and the Czech Republic, an old and a new EU member state, focusing on the introduction of Anti-Discrimination legislation shows that similar processes were at place for the transposition of gender+ equality policies. Influential Agency Factors like political actors and NGOs were crucial in shaping gender+ equality policies and to facilitate their implementation. Therefore this analysis shows that for the purpose of comparative research, it does not make sense to divide the countries according to the east and west axis or to form rigid country clusters. Processes can take a long time in both old and new member states. This shows again that Europe is striving for unity in diversity.

A very influential fact in both cases was the pressure by the ECJ. However, also domestic actors were involved, both on the national and on the European level. Furthermore, even though the Czech Republic was grouped in a lower world of compliance than Germany in transposing legislation concerning social policies it was in the end faster in the process of transposition of EU-legislation in the area of Anti-discrimination.

The Czech Republic and Germany both face elections, Germany on 27 September 2009 and the Czech Republic in spring 2010. It will be interesting to follow the effects of the elections on the process of Europeanisation and gender+ equality policies, especially anti-discrimination.

The special quality of bridging the gap between the old and the candidate countries/new member states is a process of transformation which made Europeanisation possible. Yet, the impact of the transformation and the developing

relevant domestic structures vary from country to country. In general, Europeanisation is different across countries and issues.

Separation in East and West is no longer a useful concept; in order to recognise and evaluate European developments to divide according to issues. Different issues have different demands for the individual countries. Europeanisation consists of exchange and equalisation as well as the clarification of points and discussions; it is not a melting pot of all differences to form one uniform policy but instead more of a mixed salad bowl where every different ingredient contributes to the flavour.

Furthermore, it is important to point out that also the conflicts on the European level are not necessarily occurring because of an over-hasty Eastern-enlargement, but because of different interpretations of what it means to belong to Europe (Müller 2008, p. 138). The constitution for the EU did not fail because of Warsaw or Prague but because of French nationalism. This shows that there is no unified world of compliance but varieties exist among issues and countries. The EU-member states have to try incessantly to find compromises to continue the process of Europeanisation.

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