# Overview

The EU integration process has clearly been a catalyst for improvements in the legislative framework on gender equality in the new Member States and Candidate Countries. However, these 2004 monitoring reports reveal that this legal change has not been translated into a meaningful impact on the daily lives of men and women. In particular, the reports highlight the following:

- The level of *implementation of legislative measures* remains very low. As a result, the seriousness of gender equality policies at the national level is put into question;
- While the commitment to *gender mainstreaming* is repeatedly affirmed at the EU level, articulated policies were not carried out in the Member States examined. Consequently, it is very difficult to assess to what extent gender mainstreaming strategies have been successfully implemented at the national level in the absence of on-going gender impact assessments;
- *Women's employment rate* has registered a slight improvement in the new Member States and Candidate Countries examined in this report since 2002;
- *The gender pay gap* remains very high, with no indication of policies in place to address this;
- Women remain significantly under-represented in *decision-making positions*, particularly in political decision-making and parliamentary representation;
- The lack of clear political commitments and consistent policy-oriented strategies in the field of *violence against women* and *trafficking in women* persist.

## Legislative overview: updates since 2002

The *Acquis Communautaire* has essentially been satisfactorily transposed in all the countries assessed and most national laws relating to equal treatment between men and women have undergone significant change. For example:

- In **Hungary**, the Act on equal treatment and the promotion of equal opportunities entered into force in 2004;
- The 1999 Law on Equal Opportunities for Women and Men in **Lithuania** was amended several times between 2002 and 2004;
- **Estonia** adopted a Gender Equality Law in 2004;
- In 2004, **Romania** amended the 2002 Act on Equal Opportunities.

In some cases, the legislative model of regulating sex-based discrimination unfortunately mixes up the establishment of a general anti-discrimination legislation with a specific legal framework on equal opportunities for women and men, as in the case of **Romania.** The problem arising from such a model is that of a difficult and heavy legal process available to potential victims of sex-based discrimination cases who might find themselves trapped within the confusing tasks of the national bodies set up based on two different legal frameworks.

## Labor law reform

Important legal changes have also been made to the labor codes in the countries examined.

- In the last two years, two groups of amendments were integrated into the Labor Code of **Bulgaria**.
- The 2003 Labor Code in **Romania** also integrated important legal norms in relation to sex based discrimination within the labor market.
- In the **Czech Republic,** the labor law has been enriched since 2002 by many provisions concerning equal treatment for women and men.
- In **Poland,** however, the 2003 amendments to the labor law concerning the social security system did not include aspects important from the perspective of equal treatment for women and men in employment. Therefore, the risk of lowering the standards of protection against sex-based discrimination persists.
- A new Labor law was adopted by the Parliament in **Turkey** on 22 May 2003, introducing regulations on the principles of employment for pregnant and breastfeeding workers.

The ***principle of equal pay between women and men*** has been well integrated throughout the national legal frameworks of the new Member States and Candidate Countries. However, even if there has been progress in assuring the better enforcement of mechanisms designed to combat pay discrimination, the gender pay gap remains almost unmodified compared with 2002.

- In some countries such as **Poland** and **Romania,** there is still no general job classification system. Therefore, it is still problematic in these countries to assess to what extent there is a *de facto* equal pay framework at the national level.
- On the other hand, the 2004 Law on the protection against discrimination in **Bulgaria** explicitly proclaimed the principle of equal pay and set out the obligation of the employers to ensure equal remuneration for the same work or for the work of equal value. It is important to note that the principle of equal

pay in Bulgaria applies not only to labor remuneration, but to all payments and compensations concerning the labor relations.

In addition to the widespread existence of the gender pay gap, the lack of gender disaggregated statistics in the field of employment and the marked gender segregation of the labor market reveal the practical limitations of mechanisms designed to ensure the transposition of the principle of equal pay between women and men. In terms of case law, the lack of relevant cases brought to the national courts on equal pay should be noted, in contrast with the reality of relevant case law at the level of the European Court of Justice.

In most of the new Member States and Candidate Countries, the national legislation includes legal provisions on the prohibition of ***direct* and *indirect discrimination.*** The legal changes in this regard were also occasioned in the new Member States and Candidate Countries by the necessity of transposing the Directive 2002/73/EC[1] into the national legislations.

- Since 2002, 'indirect discrimination based on sex' has been prohibited in **Lithuania,** where a definition of the concept was also introduced into the national legal framework.
- **Hungary** integrated the concepts of 'direct' and 'indirect' discrimination in greater detail in the national legal framework through the 2003 Act on equal treatment and the promotion of equal opportunities.
- Through the 2004 Law on the protection against discrimination, **Bulgaria** brought its national legislation in line with the EU standards concerning direct and indirect discrimination.

As part of the transposition of the *Acquis Communautaire,* the *principle of shifting the burden of proof in sex based discrimination cases* had to be adequately introduced within the national legal frameworks of the future Member States.

- The 2004 Act on Gender Equality introduced the principle of shifting the burden of proof into the **Estonian** national legal framework;
- **Romania, Bulgaria and the Czech Republic** also transposed the principle of shifting the burden of proof in sex based discrimination cases into their national legal frameworks;

[1] Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending 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 *Official Journal L 269 , 05/10/2002 P. 0015 – 0020* http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_269/l_26920021005en00150020.pdf.

- In **Hungary** the principle of shifting the burden of proof is contained into the national legislation, but comparing to the EU standards the injured party has to prove that he/she suffered a disadvantage;
- In **Poland** the regulations in the field are assessed as even stronger than the minimum requirements set out at the EU level;
- **Lithuania** amended in 2004 the Law on Equal Opportunities for Women and Men by introducing the concept of shifting the burden of proof.

## Institutional Mechanisms on Gender Equality

The legal provisions of Directive 2002/73/EC stipulate for setting independent body or bodies at the national level that contribute to the "*promotion, analysis, monitoring and support of the equal treatment of all persons without discrimination on the grounds of sex.*"[2] The Directive also establishes the minimum requirements for the independent body or bodies designed to promote the principle of equal treatment as focusing on: pursuing claims on behalf of the victims of discrimination through an administrative or judicial procedure, conducting independent surveys concerning discrimination, publishing independent reports and making recommendations on any issues relating discrimination. The national institutions dealing with gender equality in the new Member States and Candidate Countries are placed at the governmental and legislative level. There is one notable exception, namely **Bulgaria,** where there is no specific national body dealing with gender equality at the governmental or parliamentary level.

A general assessment of the national institutions in charge with gender equality within the new Member States and Candidate Countries indicates that these structures do not have ***the level of independence and decision-making,*** nor the necessary infrastructure and financial capacity to give a fresh impetus to transposing gender equality standards into practice.

However, an important exception is represented by the Equal Opportunities Ombudsperson in **Lithuania,** which is assessed as being an independent and strong institution with appropriate authority. In **Poland,** although there is an institutional mechanism on gender equality represented by the Governmental Plenipotentiary for Equal Status of Women and Men, the Plenipotentiary does not have any power to make decisions.

- Through the 2004 Gender Equality Act a Gender Equality Ombudsperson appointed by the Minister of Social Affairs was set up in **Estonia**. A Department of Gender Equality is also set up within the Ministry of Social Affairs.

[2] Directive 2002/73/EC, Article 1.7 (8a).

- In **Slovakia,** the Department on Equality and Anti-Discrimination functions as a section of the Ministry of Employment, Social Affairs and Family. The Department has however no competence to take binding decisions and all decisions are made by the highest levels of the Ministry of Employment, Social Affairs and Family.
- In 2001 a Governmental Council for Equal Opportunities for Women and Men was set up in the **Czech Republic** as a permanent advisory body of the Government in the area of equal opportunities for women and men, and as such can only make recommendations in the mentioned field. The Secretariat of the Governmental Council is assured by the Unit for Equality between Men and Women that has been established as the lowest organizational unit of the Ministry of Labor and Social Affairs.
- In **Turkey,** the Law on the Directorate General on the Status of Women established at the Governmental level was approved by the Parliament on 27 October 2004.

At the parliamentary level, most the new Member States and Candidate Countries have established mechanisms dealing with equal treatment for women and men and equal opportunities. Exceptions are represented by **Bulgaria,** where there is no national institutional mechanism for gender equality, and **Poland,** where the monitoring notes only the institutional mechanisms on gender equality created at the governmental level.

In relation to the minimum requirements provided for by Directive 2002/73/EC, only very few of the national institutions responsible for gender equality within the Member States and Candidate Countries ***pursue claims on behalf of the victims of discrimination through administrative and judicial procedures.***

- In **Lithuania,** the Ombudsperson investigates individual complaints on gender discrimination and sexual harassment.
- The National Agency for Equal Opportunities between Women and Men in **Romania** may receive notifications and complaints on behalf of the persons who consider themselves discriminated against in sex based discrimination situations. However, the National Agency will only carry out a consultative notification to assess the opportunity of sanctioning the discriminatory act referred. Furthermore, the National Agency shall submit the consultative notification to the National Council for Combating Discrimination that has the right to apply a sanction.

The monitoring reports highlighted the following problems with the existence and functioning of the national mechanisms on gender equality placed at the governmental level:

- There is a lack of financial means to support the transposition and practical implementation of the gender equality mandate of these institutions. Therefore, even if the mandate and specific tasks are well defined at the normative level, their concrete capacities in fulfilling these tasks lag behind *de facto*;
- Most of the national bodies in charge of gender equality do not meet the minimum standards established through the legal provisions of Directive 2002/73/EEC, especially in terms of pursuing claims on behalf of the victims of discrimination through administrative and judicial procedures;
- With the notable exception of **Lithuania,** the level of independence and decision-making of the national institutions in charge with gender equality is very low, or even nonexistent;
- The lack of trained staff and their national representation represent common problems.

## Policies and programs on gender equality

In relation to the ***national strategies on gender equality and equal opportunities for women and men,*** it has to be observed that in several cases there is no articulated strategy in this field. For example, **Hungary, Slovakia, Poland and Bulgaria** have no comprehensive gender equality strategy. In **Bulgaria,** the 2004–2010 Employment Strategy and the 2004 National Action Plan for Employment provide for equal opportunities and equal treatment for women and men, by enforcing the gender mainstreaming principles.

In other countries, there are specific national plans on equal opportunities for women and men.

- In the **Czech Republic,** the national gender equality strategy is represented by a document entitled 'Priorities and Procedures of the Czech Government in Promoting the Equality of Men and Women,' divided into seven areas. A lack of clarity in this document means that many key aspects of gender equality are left out;
- In **Lithuania,** a National Program of Equal Opportunities for Women and Men was approved in June 2003.

***Gender mainstreaming*** appears not to have been given much attention within the national strategies aimed at advancing gender equality in the new Member States and Candidate Countries. In this way, a gender mainstreaming strategy has not been valued as an effective tool for monitoring and improving women's status.

- The **Romanian** National Plan of Equal Opportunities for Women and Men is one of the very few governmental documents that uses the concept of gender mainstreaming; however, there is only a simple reference to the concept;
- In the **Czech Republic** a 2001 Governmental Resolution includes the application of the gender mainstreaming among the Governmental tasks. Unfortunately, some ministries see gender mainstreaming as a part of the human resources agenda only and consider the task fulfilled when non-discriminatory conditions for employment of women and men are ensured;
- In **Poland** there is no comprehensive gender mainstreaming strategy;
- For **Hungary** there is no strategic policy document introducing gender mainstreaming. However, the concept is mentioned in the 2003 Report of the Governmental Office for Equal Opportunities and in the National Development Plan preparing the national policy machinery for spending structural funds, although no specific tools and instruments for implementation are mentioned. In the 2004 Report of the same Governmental Office, the requirement of gender mainstreaming is emphasized as being a vital strategy to be used towards the achievement of gender equality.

The monitoring reports reveal that in general there are no specific policies and programs dedicated to the ***gender pay gap.*** There are only two exceptions:

- In **Lithuania,** research on the causes and factors that generate wage differentials was commissioned by the Ministry of Social Protection and Labor in 2004. Based on the research conclusions, the Ministry is preparing recommendations to all social partners on the assessment of jobs when setting remunerations;
- In **Poland,** the gender pay gap is considered inevitable and with the exception of the amendments to the labor law no coordinated efforts have been undertaken in order to ensure equal pay for women and men.

In terms of ***awareness raising campaigns*** conducted at the governmental level, few gender equality initiatives are to be found.

- In the **Czech Republic,** the national strategy on gender equality provides that the Government shall emphasize the principle of equality of women and men and constantly inform about measures designed to support it in connection with the competence of each ministry. However, most ministries consider this task fulfilled when any text appears on their website in relation to gender equality. An awareness campaign was conducted in 2003 on domestic violence, but no specific campaigns were undertaken in the field of gender equality;
- In **Poland** and **Romania** most of the campaigns on gender discrimination are initiated and developed by non-governmental organizations and informal groups;

- In **Lithuania,** a 2002 non-governmental initiative has lead to the creation of a portal on gender equality;
- In **Slovakia,** public access to gender equality information is declared as rather low and complicated. No public campaigns on gender equality or the prohibition of sex-based discrimination were initiated by the government. All campaigns aimed at raising awareness on the gender pay gap, work and family life reconciliation or sexual harassment were organized by non-governmental organizations with no state support.
- In **Hungary** the website of the Equal Opportunities Office has no specific section on gender equality and there are no campaigns promoting the adopted legal norms on gender equality.

### Research and statistics in the field of gender equality

- In **Poland,** women earn 83 percent of men's salary. The gender pay gap is also visible within the group of women parliamentarians;
- The Statistical Office in **Slovakia** has issued several researches on demographic statistics and statistics on employment, unemployment and the pay gap structure. However, the monitoring report indicates that there is a significant number of areas where gender disaggregated statistics are missing;
- Research in **Estonia** shows that as of September 2004 the parental benefit was paid in 98.3 percent of the cases to the mother. According to the same research, women spend twice as much time doing housework than men, while men have longer working days at their paid job;
- No gender disaggregated data is currently available in **Bulgaria.** No data is available on the specific needs of working parents, gender dimension of health and safety in the workplace, or on family patterns.

## Recommendations to national governments

Following a comparative analysis of the monitoring reports issued as part of the "Bringing the EU Home" project, the following recommendations are made to governments of the new Member States and Candidate Countries with a view to improving and implementing in practice the comprehensive EU legal framework on gender equality:

1. Implementation of the legislative measures on gender equality
   - Following the minimum standards provided for in the relevant EU Directives, independent bodies designed to promote, analyze, monitor and support the equal treatment for women and men without discrimination on the grounds of sex must be established at the national level. These bodies must be guaranteed the necessary level of independence and autonomy as well as the necessary financial and human resources;
   - National strategies on gender equality must be adopted and monitoring mechanisms that would annually assess the fulfillment of the objectives prescribed by the national strategies on gender equality must be established.
2. Gender mainstreaming
   - As an essential element of good governance and a long-term strategy aimed at redressing existing inequalities between women and men, gender mainstreaming policies must be adopted as a governmental policy;
   - Gender responsive budgeting must be agreed and adopted at the national level as a tool for determining the effect of government revenue and expenditure policies on women and men.
3. Equal treatment for women and men in employment
   - The legal provisions on equal treatment for women and men in employment must be enforced by adopting monitoring mechanisms at the national level designed to assess the extent to which the employers' obligations in this regard are met;
   - Concrete and specific strategies dedicated to the *de facto* reconciliation of family and professional life must be put in place. National governments should identify and commit appropriate financial resources towards developing policy-oriented actions aimed at creating affordable child care facilities in preference of higher child benefits. Through such concrete financial measures, the targets for childcare provisions agreed at the Barcelona Council in 2002, designed to provide by 2010 childcare to at least 90% of children between the ages of three and mandatory school age, and to at least 33% of children less than three years age must be met.
   - Instead of cuts in public services where women are concentrated, there should be market reforms enabling the expansion of sectors where female employment is predominant.

4. Equal pay
   - As long as gender segregation by activity sector and relatively low wages in female-dominated sectors represent two of the main causes of the gender pay gap, it is urgently required that national governments develop policy actions sustained by adequate financial means in order to meet the obligations derived from the equal pay legal framework;
   - In order to ensure that the equal pay principle is implemented in practice, employers' must be required through the National Employment Action Plans to analyze the pay system and wages from the perspective of gender equality, in cooperation with the trade union or other staff representatives, and to draw up actions plans based on the results;
   - National mechanisms aimed at regularly monitoring the implementation of the equal pay principle must be put in place, based on assessing the tasks given to employers and various public institutions charged with the implementation of the equal pay principle through the existing national legal framework.
5. Women's representation in decision-making positions
   - National governments must adopt specific and concrete legal measures in order to guarantee the full participation of women in decision-making by identifying and removing existing obstacles at the national level in relation to women's participation in economic, social and political decision-making processes;
   - National governments must secure the financial means necessary to develop quantitative and qualitative studies on the participation of women and men in the decision-making process, with a focus on the advantages for democracy of a better balance between women and men in the decision-making process.
6. Violence against women
   - National governments must adopt national plans of action addressing violence against women, containing specific and concrete requirements on: the concrete tasks assigned to various public institutions with relevant activity in the field of violence against women, the monitoring system for fulfilling these tasks, and an indication of the financial commitment needed to sustain national plans of action in the field;
   - Both at the EU level and at the national governments' level, financial resources must be secured in order to systematically collect data on violence against women and initiate policy oriented actions based on the information gathered;

- The national governments must establish violence against women as a priority and financially support public campaigns on this issue.

## Recommendations to the European Commission and other EU institutions

The following policy recommendations are made to EU institutions, in particular the European Commission:

- The European Commission should put forward proposals to the Council of Ministers to adopt legally binding instruments to address gender equality in decision-making;
- The European Commission should put forward proposals to the Council of Ministers to adopt legally binding instruments addressing all forms of violence against women;
- The European Commission should take the lead in systematically collecting data on violence against women and developing corresponding policy-oriented action to be followed both at EU and national levels.
- The European Commission should strengthen its role in monitoring the transposition and implementation of legislation in the new Member States and Candidate Countries. In parallel, the European Parliament should also have a monitoring role of national governments and the European Commission;
- The annual report on equality between women and men of the European Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions should be connected with the national reports of the Member States, articulated in the same structure as the Commission's Report. Special emphasis should be given to the national reports on increasing the availability of child-care facilities. Member States should include specific information about the necessary financial resources for increasing the provision of child-care facilities;
- The European Council should transmit a clear and explicit political message that Member States need to strengthen national mechanisms for gender equality.

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