Gender, the Acquis and Beyond

This paper examines EU gender law and policy through the prism of accession. Using evidence drawn primarily from the 2004 enlargement it considers how candidate countries and new entrants to the EU experience EU gender law and policy and considers what impact the turn to mainstreaming has had on pre- and post-entry expectations and requirements. Accession can be seen to have a dual character, both as a formal legal act and as a process of social and political adjustment to new political structures and realities. This chapter considers the impact of both aspects of accession on new entrant states. Accession also impacts on existing Member States and alters the make-up of the EU polity. Therefore this chapter also considers the impact of the 2004 enlargement on EU gender law and policy.

The focus on accession is justified in a number of ways. First, though accession is an ‘exceptional’ process and each accession is different, membership of the EU is assumed, at a formal legal level, to be largely homogeneous. Thus while there may be limits to what we can learn from, say, the experience of the 2004 ‘new entrants’ – the accession process was a specific response to the political and economic exigencies of the time – the ‘EU’ to which they acceded is assumed, up to a point, to impose similar duties and benefits on all its members. Thus the view from accession countries, who currently form two-fifths of the Membership (a figure set to rise), is in itself a valid perspective on the EU.

Secondly, viewing the impacts and duties of EU Membership ‘through the eyes of a newcomer’ may help to illuminate the ways in which EU laws and policies shape Member State behaviour. Existing member states have adjusted gradually over time to the current array of laws which make up the acquis communautaire and have influenced its form to varying degrees so that in some cases very little adjustment has been required. The 2004 entrants, by contrast, had very little time to ensure that this pre-existing body of European law was transposed into national law. In addition, the policy-making processes of the EU demand particular forms of engagement by states,

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1 I am grateful to Jo Shaw and Michael Dougan for their insightful comments and to Sammie Currie for her research assistance. Responsibility for any errors remains with me, of course.

2 The principle of differentiation employed in negotiations means that each applicant is treated separately on its own merits – this was the basis for the bilateral dimension of the negotiations leading up to the 2004 enlargement.
which in turn may shape national institutions and policy-making processes. This ‘Europeanisation’ may be difficult to identify clearly in existing Member States but, in the case of new Member States, may be more clearly traced to pre and post-accession engagement with the EU.

Finally, the particular experiences of 10 of the existing 25 Member States in adopting and adapting to the gender laws and policies of the EU are a key consideration in a study of ‘gender and the future of the European Union’. As the European Commission has noted, the 2004 accession “brings a wealth of experience and achievements from which the existing Member States can also learn.” It also brings the possibility of change in existing gender policy: “[t]his process of mutual amalgamation…can be expected to refocus gender equality in Europe and to provide a fresh and promising impetus towards a gender equal society.”

In the next section the principal features of the accession process are outlined. The following section considers the impact of the requirement to implement the acquis on gender law and policy in candidate countries, both pre and post accession. Then the impact in terms of the development of capacities is considered. The issue of gender mainstreaming in the accession process is then considered, and finally brief consideration is given to the impact of the enlargement on future EU gender law and policy.

The Accession Process

In June 1993 a promise was made by the leaders of the EU Member States that “the countries in Central and Eastern Europe that so desire shall become members as soon as they are able to assume the obligations of membership by satisfying the economic and political conditions.” The accompanying “Copenhagen criteria” required of prospective members:

- Stability of institutions guaranteeing democracy, the rule of law, human rights and respect for, and protection of, minorities;
- The existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union.
- The ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union.

As Wim Kok pointed out, the first of these, the ‘political’ criterion, was regarded as a precondition for the opening of negotiations, while the others had to be fulfilled by the time of accession. In particular the third criterion, on the obligations of

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4 Ibid.
6 Conclusion of the Copenhagen Summit
membership, “implies that the new members should take over the policies and rules of the EU (the *acquis*) and implement and enforce them effectively.”

The Luxembourg European Council in 1997 established the European Conference “to bring together the Member States of the EU and the European States aspiring to accede to it and sharing its values and internal and external objectives.” The Conference was a political forum designed to foster broader and deeper co-operation on foreign and security policy, justice and home affairs, economic matters and regional cooperation and other common concerns. The Luxembourg Council also agreed to launch the accession process and established the form it would take, particularly the pre-accession elements of Accession partnerships and increases in pre-accession aid. Securing the adoption and application of the *acquis* was established as a central focus both of the Accession Partnerships and of pre-accession aid programmes. It was also to form a central element of the Commission’s reports on the progress of the applicant countries. The Luxembourg Council also established clearly that “[i]ncorporation of the acquis into legislation is necessary, but is not in itself sufficient; it will also be necessary to ensure that it is actually applied.” Hence the European Commission had a key role to play in monitoring the progress of candidate countries, ensuring that all three criteria were met in full, including the development of a capacity and willingness to apply the *acquis*.

**The Gender Acquis**

a) Implementing the Equal Opportunities Acquis

Gender issues were considered in the accession process primarily, but not exclusively, in the context of the third Copenhagen criterion, concerning readiness for membership. In effect this entailed a requirement to transpose into national law the ‘equal opportunities’ *acquis* – EC law on the elimination of sex discrimination in employment, requiring legislation on equal treatment in employment and occupation, social security, occupational social security schemes, parental leave, and protection of pregnant women, women who have recently given birth and women who are breastfeeding. Sexual harassment in employment, the protection of part-time employees and the burden of proof in discrimination proceedings are also included. Directive 2000/78/EC adds *inter alia* a prohibition on sexual orientation discrimination in employment. The equal opportunities *acquis* did not remain static during preparations for the 2004 enlargement but was subject to legislative amendment and to further development through interpretation by the European Court of Justice.

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8 *Ibid.* Maresceau gives an account of how the third Copenhagen criterion evolved into an obligation to align domestic laws and policies with the *acquis* as part of a pre-accession strategy and as a condition of membership: Maresceau M. (2003) “Pre-accession” in Cremona (ed.), supra note 5, p. 9 at pp.21-23.
9 Luxembourg European Council, Presidency Conclusions, DOC/97/24, paras. 4-9.
10 *Ibid,* paras. 16-29
11 *Ibid,* paras. 20 and 25 respectively.
13 This falls within the ‘anti-discrimination’ part of the *acquis*, rather than the section on ‘equality of treatment between men and women’.
14 See e.g. Directive 2002/73, not included in the negotiations for the 2004 enlargement but concluded during the negotiation period, so that new Member States must meet the same date for implementation
The position of the equal opportunities *acquis* in the accession process had not been without challenge. As Bretherton reports, in the early stage of the development of pre-accession strategies for Central and Eastern European Countries, arguments were sometimes made that some parts of the *acquis*, including in the social policy field the areas of equal opportunities between men and women and safety at work, should be ignored in the accession process to facilitate accession. This argument did not succeed so that transposition and implementation of the equal opportunities *acquis* was a pre-accession requirement.

Gender issues also arose in the section of the *acquis* on employment, under which candidate countries were required to work with the Commission on the development of employment policies, with a view to ensuring the ability of candidate countries to implement the Employment Strategy after accession. Since 1999 National Action Plans for employment have been subject to gender mainstreaming obligations and there is evidence that the Commission carried this through into its work with the candidate countries.

More generally candidate countries were ‘requested’ “to effectively enforce the *acquis* through judicial and administrative systems similar to the ones of the Member States’. Funding was made available in a number of instances for projects directly relating to the effective implementation of the gender *acquis*. For instance in 1999, Slovenia received 2000.000 Euros to support the office for women’s policy and women’s networks, and the Czech Republic 700.000 Euros for improvement of the public institutional mechanism for enforcing and monitoring equal treatment for women.

Gender was, therefore, present in the *acquis*, Though it is hard to attribute any single motive to the EU, its position could be justified in a variety of ways: by reference to considerations of *utility* (the economic need to ensure sufficient convergence in conditions of competition between ‘new’ and ‘old’ Member States); by reference to *values* (the need to signal clearly to applicant countries what being an EU member entails); or by reference to *rights* (that residents of new Member States deserve the same equality protections as residents of existing Member States).


18 The picture is uneven, however: Poland is said to have received practically no funds for implementation of women’s policy, though this may relate to internal factors. See also WIDE information sheet “Gender equality and EU accession: the situation in Poland” November 2003, available at http://www.eurosur.org/wide

19 For a general discussion see Sjursen H. and Smith K.E. (200?) “Justifying EU Foreign Policy: The Logics Underpinning EU Enlargement” in Christiansen T. and Tonra B. (eds.) *Rethinking EU Foreign Policy* Manchester, Manchester University Press. I return to this point below, at

20 The equal opportunities *acquis* applies territorially, without reference to citizenship.
Whatever the reasons, its inclusion was a decisive influence on law-makers in candidate countries who, sooner or later, passed legislation designed to give effect to these obligations in national law. The impetus created by the inclusion of the gender *acquis* in the pre-accession requirements existed regardless of whether, in the final analysis, the Commission was strict or lenient in reaching decisions to close negations on particular chapters of the *acquis* and allow the state in question to proceed towards membership.\(^{21}\) Moreover, this impetus may be enhanced by the measures adopted by the Commission to monitor progress, such as the system of producing annual progress reports on the preparations of individual candidate countries:

> “The Progress Reports concentrate mainly on what has concretely been achieved for the transposition of the *acquis* in the candidate country and what progress has been made in building up administrative and judicial capacity to implement and apply the *acquis*…The systematic reporting….puts enormous pressure on the candidates.”\(^{22}\)

The Commission was willing at times to highlight gaps in protection, at least at the formal level, and in some cases suggested that further attention to implementation was required. In the case of Estonia, for example, the Commission declared in its *Comprehensive Monitoring Report*\(^ {23}\) that there were gaps in protection in relation to equal treatment, due to significant delays in the adoption of the draft legislation needed to give effect to gender norms and to establish the necessary institutional framework for ensuring effective implementation of those norms. Similarly the Commission concluded there was a need for Estonia to transpose and implement the anti-discrimination *acquis*, while in relation to the European Social Fund, including EQUAL, there was an urgent need “to strengthen the administrative capacity for management, implementation, monitoring, audit and control at both national and regional level.”\(^ {24}\)

In February 2004, nearly all candidate countries were judged by the European Commission to have made *substantial progress* in the adoption of the equal opportunities *acquis*.\(^ {25}\) While EC law was not the only driver here, the speed with which change was achieved and the nature of that change seems clearly to have been fuelled by the pre-accession process.

The presence of gender in the *acquis* also served to stimulate dialogue and debate within candidate countries about gender equality policies, for instance, when legislation was required. Often the new legislation was clearly identified in public discourse as a step required by the EU if membership negotiations were to be successful: thus there was a clear identification of certain non-discrimination laws (such as those relating to paid labour) with the EU. This may of course have been

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\(^{21}\) See further below.

\(^{22}\) Maresceau, *supra* note 8, at p. 32.

\(^{23}\) CEC *Comprehensive monitoring report on Estonia’s preparations for membership*. Estonia is used here as an example – it is by no means the only state to have experienced criticism in this area.

\(^{24}\) *Ibid*.

double-edged: those who welcomed better protection from gender-based discrimination may have felt favourably disposed towards the EU as the catalyst for developments in this sphere, whereas those who opposed legislative protections in this sphere may have resented the EU’s apparent interference in this area of domestic law, and these attitudes may spill over into future enforcement activity.26

But while the context of accession may have stimulated debate, the conditions laid down for accession also circumscribed the terms of that debate: candidate countries were not expected to debate the acquis; merely to implement it as it stood.27

Finally, the presence of gender in the acquis was important because it created roles and opportunities for civil society groups concerned with gender equality to participate in public life by advancing debates about gender equality, by seeking to ensure that policies are based on accurate representations of the situations of woman and men and the issues which concern them, by seeking to draw attention to shortfalls in national laws and policies, by raising public awareness of new legal protections and social policies and in some cases by playing a role in enforcement work. Though not the only influence on NGO development in transitional states28, clearly the orientation of a candidate country towards the EU and the specific features of EU law and policy created new or additional opportunities.

In some instances this activity was transnational. For instance the transnational KARAT Coalition, created around the Beijing Conference, is engaged (in its ‘Gender Equality and Economic Justice’ project) in training women from Central and Eastern Europe on ‘economic literacy’, in activism within their national states with the government and the media, in drawing attention to inadequacies in state policies, in dissemination of information about the EU and gender equality, and in lobbying the EU to persuade its representatives and institutions to pressurise candidate countries to take steps to address gender inequalities.29 Greenberg’s study of this activity points to a range of different dynamics within this process: for instance, she concludes that norms and standards that would not carry much weight with national governments ‘gain legitimacy when touted as EU standards’, while the efforts of East European NGOs to educate Western European allies (notably the European’s Women’s Lobby) about the situation of Eastern European Women has been unexpectedly successful in empowering both groups to play a more prominent role in the accession process.30

b) Shortfalls in Implementing the Equal Opportunities Acquis

28 See for example SEELINE (South Eastern European Women’s Legal Initiative) (2003) National Machineries Country Reports (Zagreb, B.a.B.e), which emphasises other common influences on states, namely CEDAW, the Beijing Platform for Action and the creation of the International Criminal Court.
30 Ibid, at p. ??
Despite these effects, the commitment of the EU institutions to securing the equal opportunities *acquis* in the candidate countries has been questioned from time to time. Probably the earliest and most sustained line of criticism is that the review process for ensuring that the *acquis* has been complied with lacks rigour. In the Commission’s reports on the progress of candidate countries, for instance, it is typically concluded that national legislation largely succeeds in implementing EU anti-discrimination laws:

“the entire policy area is dealt with in a few brief sentences, similar for each applicant country, and there is no reference to problem areas such as Poland’s ‘protective’ women’s policy. Rather more space is devoted to the failure of CEE governments to insist upon the EU’s preferred labelling for cigarette packets.”

“A look at the Annual Progress Reports reveals that no systematic analysis of legal and *de facto* progress of candidate countries in the field of equal opportunities and treatment of women and men has taken place. Statements on the situation of women are scarce, remain very general, and do not allow for year-to-year or country-to-country comparisons of progress. Criteria and indicators for assessing progress are not explained. Moreover, information in the Annual Reports on gender equality in candidate countries is frequently incomplete or obsolete.”

Of course, this criticism can be made more generally of the 2004 enlargement, a particular challenge to the EU due to its sheer size and political symbolism. Accusations of a lack of rigour in scrutinising the measures adopted in candidate countries to give effect to the gender *acquis* have to be seen in this context: the political pressure to ensure the enlargement project was ‘successful’, together with the tight timetable pursued, probably left the Commission with little room to manoeuvre and the criticism made extends to many other areas.

The procedures adopted within candidate countries may have exacerbated the problem. Heather Grabbe notes that, in relation to the 2004 enlargement, all candidate countries utilised some sort of ‘fast-track’ procedure for getting ‘EU’ legislation through parliament, resulting in many areas in a “lack of awareness of the details of the legislation being passed on the part of parliamentarians.”

Nevertheless, a report prepared for the European Parliament in 2003 on the capacity of candidate countries to implement gender laws highlighted wide variation and many gaps in protection.

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31 Ibid.
33 Maresceau describes as ‘astonishing’ the ease with which the Commission was willing to close the environment chapters of the negotiations “[k]nowing the enormous distance between the EC environment law standards and those of the candidate countries”: Maresceau, *supra* note 8, at p. 23. Similar observations have been made about e.g. Health and Safety
34 Grabbe, *supra* note 27, at p. ?? (4)
Post-accession

Transition to membership of the EU will not, in itself, address weaknesses in the transposition of the gender acquis or its enforcement in new member states: indeed, compared to the pre-accession period the influence of the EU may be weakened by accession:

Karen Smith comments:

“Conditional membership is a ‘consumable power resource’ – once it has been used up, once the applicants have joined the EU, it could be difficult to exercise leverage over them. The carrot has been offered and consumed.”

However membership does expose the new Member States to the enforcement powers of the European Commission and to the authority of the Court of Justice, both of whom may be enlisted as allies by national interest groups seeking to enhance respect for the gender acquis. Whether this is done merely by pursuing individual remedies through national courts, or by encouraging the Commission to pursue enforcement action and/or to ‘name and shame’ a state, or by explicitly engaging in a litigation strategy to highlight the inadequacies of national laws and procedures, the pressure on new Member States to achieve conformity with the acquis did not dissipate entirely when membership was achieved, though it might have assumed new forms.

This points to the future importance of wider features of the EU legal environment, particularly the dominant characteristic of the EU as a ‘community of law’, to our understanding of the gender acquis and the obligations it imposes. While some laggardly behaviour on the part of states may be tolerated, on the whole there is an expectation of compliance with and respect for the spirit and the letter of the law and an expectation that government bodies and courts will give effect to the gender acquis, even if some nudging may be required. Though there may be variations between Member States in the ease with which compliance is secured and the methods by which activists choose to operate, overall there is a shared understanding that the law will be respected and, where appropriate, that it can be relied on to redress individual wrongs. However there are signs that this understanding of the centrality of law and legal processes to the EU project is less well embedded in the new Member States than in the 15 ‘old’ Member States: in March 2004 Eurobarometer published findings which demonstrated that citizens of the 2004 entrants placed far less trust in their country’s legal system, and less significance on the European Court of Justice, than citizens of the existing Member States.


39 Smith, supra note 36.

It should also be noted that the ability of individuals and groups to secure rights stemming from the gender *acquis* depends crucially on the wider legal environment within a particular state: on matters such as access to legal aid, and the rules of procedure of the courts, as well as the willingness of national judges to develop interpretations of rules which give effect to EU law. This should come as no surprise: leaving aside the speed with which accession negotiations took place in respect of the 2004 enlargement and the enormity of the task in some states, there is in many ‘old’ Member States a considerable gap between formal legal compliance and the ability of individuals and groups to secure their rights.\(^{41}\) However, it also raises the question of what internal capacity exists in new member states to pursue the effective transposition and enforcement of EU gender equality law.

### The development of capacities

Many of the 2004 entrant states have been found to have a limited internal capacity to ensure effective implementation of EU laws and policies. However, engagement with the European Union both pre and post accession has had some impact on capacities in relation to gender law and policy, in a variety of ways.

Preparation for membership requires, regardless of the formal requirements for ‘admission’, a substantial orientation or re-orientation of many aspects of public life in the candidate countries. It is expected that new Member States will, on accession, ‘plug-in’ to the existing political, economic and administrative activities of the institutions and the Union.\(^{42}\) The re-orientation which this requires has been described as a ‘paradox’: the ‘need to do what is not required’.\(^{43}\) Thus, while the formal requirements for Membership focus on the adoption of the *acquis* and the Copenhagen criteria outlined above, in reality the preparation efforts extend into many other aspects of public life.\(^{44}\) Candidate countries are expected to adopt ‘shadow’ policies in many areas, achieving an increasing level of conformity to EU policies prior to accession.

Thus, in relation to the process of adoption of the *acquis*, it has been noted that this requires more than simply the alignment of legislation:

> “candidate countries as well as Member States experience approximation as not just a matter of legislative formulation but also of introducing new legislation and amending existing rules. It involves permanent training and retraining at various levels, including at administrative, judicial, university etc. levels.”\(^{45}\)

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\(^{45}\) Maresceau, *supra* note 8, at. p. 23.
In fact it has been noted that has been noted that transposition of the gender *acquis*:

has contributed decisively to the creation of institutional bodies and legal mechanisms for the support of gender equality objectives (equality legislation on issues of equal pay, parental leave, health and non-discrimination in the workplace, labour codes and creation of government offices on equal opportunities).^{46}

However, Heather Grabbe has argued that the EU’s capacity in this respect is weakened by the fact that it has no ‘institutional templates’ to offer.^{47} Indeed, Pierre Mirel, Director of DG Enlargement, confirmed to the Committee on Women’s Rights and Equal Opportunities of the European Parliament that enforcement was dependent on national measures: “We can not go beyond that and will not dictate how directives should be implemented.”^{48} This mirrors the existing diversity between Member States.

Shadowing of EU policy was also encouraged by the opening up of various ‘internal’ funding streams to participation by groups from the candidate countries prior to accession: for example, eight candidate countries participated in 2002 in the Commission’s gender equality program 2001-5. Post-accession, successful participation in the Structural Funds will require States to demonstrate that the gender impacts of the proposed actions are fully addressed.^{49} Gender requirements also exist in many other funding streams.

Candidate countries also participated, prior to accession, in areas of Community policy operating under the Open Method of Co-ordination – notably the European Employment Strategy^{50} and the Social Inclusion dimension of the Social Policy Agenda.^{51} In both cases candidate countries participated, with the European Commission, in developing a national plan for policy co-ordination in line with EU guidelines. The aim in each case was to prepare the candidate countries for full participation from the date of accession, and objectives included the development of fuller understanding of the socio-economic situation in the accession country, the development of suitable statistical and other information systems which would

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^{46} Bretherton??

^{47} Grabbe, *supra* note 27, at p. (10).


^{50} See above, text at note 16.

provide the necessary information on which policies would be based\textsuperscript{52}, the
development of a national strategy in each of the fields, familiarisation of the
candidate country with the broad objectives and working mechanisms of the policy
area concerned and the identification of policy priorities for each candidate country.
In terms of developing capacity for future active engagement with Community gender
policy, these areas are particularly significant because of the ever-increasing
importance of these areas to gender policy within the Community.

These various examples point to the significance of EU membership as an influence
on the development and the shape of national capacities in relation to gender on a
very wide range of issues. This influence extends beyond the capacities of
government to include capacity within the non-governmental sector. However, further
development of NGO capacity may be required if EU governance initiatives are to be
effective in new Member States. Commenting on Polish experience, WIDE has
argued that the Commission assumption that NGOs would play a prominent role in
ensuring that EU employment and social policy were implemented in the accession
countries may have been ill-founded: "While this method of addressing gender justice
may be effective in the existing member states, many of the accession countries that
are characterised by relatively young democracies may have difficulty achieving
this."\textsuperscript{53} WIDE also reports, in relation to the Czech Republic, that the lack of gender
sensitivity on the part of the Czech agencies charged with distribution of EU funds
meant that women’s NGOs had experienced difficulties gaining access to these
resources.\textsuperscript{54}

As noted above the transition to membership opens up a transnational dimension to
this capacity-building: NGOs in the ‘old’ states may be able to assist in the
development of capacities in ‘new’ member states while, to remain credible as EU-
wide interest groups, existing NGOs such as the EWL and WIDE must take account
of concerns arising in the new Member States.

**Beyond the Acquis – Gender Mainstreaming and the Accession Process**

A major criticism of the 2004 accession was that ‘readiness’ was conceived to involve
gender only or primarily in respect of the equal opportunities **acquis** (a discrete area
within the employment and social policy Chapter), rather than as a cross-cutting issue
running through all areas of preparation. More precisely it was argued that the EU’s
gender mainstreaming commitment was not carried through into the accession
process: “the EU’s approach to gender equality is guided by the principle of equal
treatment of women and men and heavily focussed on employment and labour market
policies.”\textsuperscript{55}

Mainstreaming gender equality into the pre-accession strategy was an agreed ‘action’
in the **Social Policy Agenda** of 2000, mirroring the incorporation of gender policy

\textsuperscript{52} For discussion of these see e.g. Atkinson A.B., Marlier E. and Nolan B. (2004) “Indicators and

\textsuperscript{53} WIDE “Gender equality and EU accession: the situation in Poland”, *supra* note 32.

\textsuperscript{54} WIDE “Gender equality and EU accession: the situation in the Czech Republic” November 2003,
available at [http://www.eurosur.org/wide](http://www.eurosur.org/wide)

\textsuperscript{55} Steinhilber, *supra* note 32.
inside the Community within this social policy process. The Commission’s Work Programme on the Framework Strategy on Gender Equality for 2001, which details the on-going activities and new initiatives of each Commission Directorate-General and Service, shows that DG Enlargement was focussing on implementation of the *acquis* in candidate countries, and on introducing gender impact assessment and monitoring to Community-financed projects in those states. Support to women’s NGOs and the development of research and statistics on violence against women were also under development. There is also evidence that candidate countries were exposed to Community gender policy in their shadowing of European Employment Strategy and the Social Exclusion agenda. However, beyond this there is little evidence that gender mainstreaming has been carried through effectively into the accession process, and a notable lack of evidence outside the third Copenhagen criterion.

The European Women’s Lobby (EWL) has been the EU’s most vocal critic: in 2001 it stated the case for taking a much wider view of the role of gender in the accession process and laid out six recommendations for action. These recommendations were based on the premise that gender equality is a core value of the EU, “a fundamental and integral part of economic, social, and democratic development.” This theme was also picked up by Kinga Lohmann of the Karat Coalition, who made a clear link between gender equality issues and citizenship of the enlarged EU: “The vision of many women of Central and Eastern Europe is for all people to be equal in Europe. They do not want to be seen as part of ‘another Europe’, not as second-class citizens from accession countries, and third-class citizens from non-accession countries.”

Women in the candidate countries are identified in these critiques as facing both similar gender equality problems to women in the Member States (e.g. occupational segregation, low pay, and ineffective laws to combat domestic violence), and distinct problems stemming from their situation in transitional states (e.g. weakening of position in the labour market, declining representation in national parliaments, and reduction in childcare facilities). The conclusion of the EWL was that the situation of women in the candidate countries needed to be addressed as a horizontal issue, not merely in respect of the *acquis*.

The EWL’s six recommendations for action reflected this analysis of the problem: they were

- reinforcing gender equality mainstreaming in the accession process
- ensuring the implementation of the gender *acquis*
- combating violence against women
- strengthening women’s position in the economy

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58 See text below, at note 50 et infra.
- promoting women in decision-making
- reinforcing the role of women’s NGOs in the accession process

However, there is no evidence that these efforts by the EWL, Karat and others to widen the scope of accession-related efforts on gender equality had any impact on the approach of the Commission to the monitoring of progress in candidate countries.

Bretherton suggests a pragmatic reason for the EU’s narrow focus: that since the adoption of the acquis had to be monitored in any case, dialogue on this subject was regarded within the Commission as the most effective and useful way of influencing policy and stimulating debate about gender equality in candidate countries.61 There were possibly also legal constraints: mainstreaming has been pursued within the EU largely through ‘soft’ measures so that the imposition of gender requirements as (hard) pre-entry conditions beyond the scope of the acquis may have been hard to justify, since post-accession the EU institutions would lack competence to pursue ‘gender’ conditions developed in relating to other aspects of the accession process.62

In the final analysis, whether the EU’s performance on gender in the accession process can be judged as adequate will be informed by the issue of justification raised earlier; in other words, it depends what is assumed to be the objective(s) of the accession process. The critiques offered by the EWL and by Kinga Lohmann focus on value-based and rights-based justifications; however political and time pressures may suggest that the Commission and the Member States were motivated more by considerations of utility.63 While there are tensions between these positions it is hard to escape the conclusion that from any of the three perspectives there remains a deficit in the new Member States and that demonstrable progress may be critical to the success of the 2004 enlargement.

The impact of enlargement on EU gender law and policy

The turn in EU gender law and policy towards gender mainstreaming is well-documented64 and generally treated as non-controversial. Discussion tends to focus on whether, as a policy, it has been effectively implemented in various activities or spheres.65 Effective participation in many EU activities, programmes and funding

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61 Supra, note 15.
62 Domestic violence is a pertinent example where to impose conditions on candidate countries would have exceeded the competence of the EU in relation to existing states. Member States will become subject to a gender mainstreaming duty from October 2005 but only within the existing scope of the Equal Treatment Directive (employment, vocational training and social security): Directive 2002/73, supra note 14, Article 1.
63 Supra, at note 19.
streams is not possible unless due concern is given to the gender dimensions of those activities. While the principle of respect for gender mainstreaming in Art. 3(2) of the EC Treaty may fall short of justiciability, discussion tends to focus on effectiveness of implementation, rather on whether gender mainstreaming is an appropriate policy for the EU.

However the commitment to gender mainstreaming may not be accepted without question across the enlarged EU. Blagojevic has drawn attention to the critical importance of social, cultural and historical context in the context of gender politics in the candidate countries. Whereas the current acquis and the values embraced by this body of EC law were introduced gradually and through fights and negotiations in the existing Member States, that is, by the positive value of ‘conquest’, the situation in candidate countries is very different – an imposed gender equality is associated with communism, and hence its perceived reimposition may be resisted. Thus whilst feminists in the ‘old’ Member States may be keen to argue that ‘the personal is political’, activists in the new Member States, particularly older women, may be striving to remove state influence from what they have relatively recently reclaimed as ‘private’ matters. Greenberg has identified suspicion and hostility towards the very issue of gender equality as a hangover from the past which has left “a legacy of cynicism and outright disdain for talk of gender equality.”

This suspicion may be heightened by the realisation that much current activity on gender in the EU takes place within the framework of the European Employment Strategy and/or the Social Policy Agenda, both increasingly directed towards the Lisbon Strategy designed to make the EU “the most competitive and dynamic knowledge-based economy capable of sustainable economic growth with more and better jobs and greater social cohesion.” The focus within these areas on employability, on returning women who are mothers to the workforce, and on the ‘skilling-up’ of EU workers to better fulfil the economic needs of society, may contain unfortunate echoes of the rhetoric of ‘model workers’ from the past.

This theme has been taken up by the Committee on Women’s Rights and Equal Opportunities of the European Parliament, whose Chairperson Anna Karamanou, addressing the Women’s Council in Copenhagen in 2002, delivered a warning that gender issues might prove critical to the success of the EU’s enlargement goals: enlargement, she suggested, might serve to enhance mainstreaming if the opportunity was taken to focus on gender issues and the visibility of women; however, enlargement might turn sour, she suggested, if “resistance to change and the ‘marketisation’ of women in transitional societies gain ground in reshaping gender relations bearing the risk of a tremendous backlash against the EU.”

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68 “Gender Equality in the EU Candidate Countries” European Parliament, Statement by Anna Karamanou, MEP, Chairperson of the Committee on Women’s Rights and Equal Opportunities to the Copenhagen Women’s Council, 15 September, 2002.
Conclusion

The 2004 enlargement created important spaces for the pursuit of gender politics in candidate countries. Besides producing a rash of law-making and institutions – building in direct response to the obligation to implement the equal opportunities acquis, preparations for accession also fuelled capacity-building in candidate countries. However there remain significant shortfalls both in the transposition of law and in the capacity for effective enforcement which remain to be addressed post-accession. EU membership, besides creating a new set of tools for securing, over time, respect for the acquis, also empowers a range of actors who can utilise EU membership and EU laws and policies to secure change. National equality bodies, NGOs and other activists can also rely on some support from transnational bodies such as the EWL, WIDE and the European institutions themselves. However, effective participation in the EU requires the further development in the new Member States of a wide range of capacities in relation to gender concerns in both governmental and non-governmental spheres. Moreover, the commitment of these states to gender mainstreaming cannot be assumed: the 2004 accession and future accessions may also prove to be a source of resistance to mainstreaming from groups who do not accept the underlying premises implicit in the gender mainstreaming project.