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6 ‘Making a sow’s ear from a silk purse’

Gender democracy in Hungary¹

Róza Vajda

Introduction

This chapter analyses the quality of gender democracy in Hungary by tracing the transposition of the Goods and Services Directive (2004/113/EC, henceforward ‘the Directive’). The Directive was incorporated into Hungarian legislation quickly and quietly, basically unnoticed by the public or concerned women’s organisations. This lack of attention is understandable for at least two reasons. Given that it was already severely diluted at the EU level prior to its final passage (Galligan and Clavero, this volume; Caracciolo di Torella 2005), there was not much at stake involved in its adoption, especially since gender equality legislation was already in place in Hungary. Nonetheless, the absence of a social and political discourse on the Directive, and the lack of involvement of women’s NGOs and gender experts during the transposition procedure represent a striking, though not surprising, feature of the national political process. Yet, even though the adoption of the Directive did not have much significance in terms of improving the framework of gender equality policies, the story of its transposition into domestic law throws light on the workings of Hungarian (gender) democracy and reveals sceptical attitudes among decision-makers towards the EU.

Gender equality and democratisation

The idea of gender justice has never been a driving force for political reform in Hungary (Acsády 1999: 59). Even so, gender equality has been institutionalised to some extent, both by the previous post-socialist regime and in the new democracy, especially while Hungary was awaiting accession to the European Union.

The state socialist policy concerning women’s emancipation was framed at first by the economic needs of the post-war era, then by the ideological requisites underpinning the system, and after the regime was consolidated, by both a compromised and populist ideological system and varying economic constraints. Gender equality was a stated goal, pursued through highly questionable means, and seen as a socialist norm rather than a human rights principle. The prescription of full employment, the dogma of equality and the promise of a workers’ state were employed in the creation of political legitimacy and mythology, but

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not in promoting specific social goals. Yet, despite all their vacuity and hypocrisy, these concepts did result in some genuinely positive developments, like the involvement of women in education and the labour market. At the same time, gender inequality continued, owing to the fact that in targeting the ‘socialist worker’ only, attempts to socially engineer gender relations did not extend to influencing household relations. Furthermore, apart from the Alliance of Hungarian Women that officially represented women’s concerns to the regime, there was no space for civil society, and for women’s self-organisation and activism. As for political participation, politics was managed by a group of ‘good male comrades’ who incorporated a few carefully chosen women to the national parliament to create the impression of a fair representation.

In 1989 and 1990 a ‘soft transition’ or ‘velvet revolution’ took place, whereby the single-party system was overturned and replaced by a plural political system. In the early 1990s democratic institutions started to develop, and a market economy with its hallmark of massive privatisation rapidly supplanted the socialist economic system. However, after initial enthusiasm, expectations were increasingly disappointed. Gender equality, too, was a marginalised issue, even though with the regime change women as a group lost their previous social standing. The women’s employment situation deteriorated more rapidly than that of men during the years of economic and political transition (Szabo 2003: 11–13), as well as during the economic crisis post-2008 (Szikra 2013). However, the political elite remained indifferent to legislating for equality between women and men (Fodor 2013: 4), and the proliferation of women’s non-governmental organisations that came with the liberation of the civil sphere in the early 1990s did not lead to the profusion of progressive ideas; nor did it lead to the creation of a broad civic alliance to enforce women’s rights. Hence, it was mainly owing to Hungary’s preparations for accession to the European Union in 2004 that the basic norms and rules of gender equality finally gained ground. As a result of ensuing lawmaking, legal guarantees for the equality of men and women in employment were established: the prohibition of discrimination was reinforced in the Labour Code and several social Acts, becoming more specific with the introduction of the Equal Treatment Act (ETA) in 2003 (Act CXXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities).

However, discrimination and inequalities persist due to problems in law enforcement that, besides inadequate institutional mechanisms, arise from an adherence to anti-equality gender stereotypes. The ideological vacuum left behind by state socialism was readily filled by neoconservative thinking on gender relations and family life, cutting across party lines and infiltrating into society. As the small but vibrant feminist movement had declined with the advent of state socialism (Acsády 1999: 62), there was a paucity of ideological and social resources available to develop a progressive stance on gender relations in the post-socialist period. Yet the exigencies of contemporary life have somewhat altered, if not attitudes, then practical behaviour regarding gender relations. The impact of EU norms, mediated through legislation and tender regulations, definitely plays a crucial role in this transformative process (Fodor 2013: 4).

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1 With the consolidation of the multiparty system from 1990, women almost
2 disappeared from political life, and their participation in top-level decision-
3 making was, and remains, minimal. For example, women MPs have comprised
4 less than 10 per cent of parliamentarians ever since regime change (Várnagy
5 2013: 6, 11; Fodor 2013: 7–8), and there is only 1 woman in the 10-person
6 Cabinet of Prime Minister Viktor Orbán (FIDESZ) after the 2014 elections.
7 What is more, since the political participation of women is largely determined
8 by the intricacies of party politics, the presence of female politicians does not
9 guarantee that they will represent women's interests or effect an increase in
10 women's power.

11 Institutional mechanisms ensuring the representation of women's interests in
12 policymaking remain unstable and ineffective. A Department for Policy on
13 Women in the Ministry of Labour was created in 1994 by the Hungarian Social-
14 ist Party (MSZP) and Alliance of Free Democrats (SZDSZ) coalition govern-
15 ment. This office was charged with forming and implementing gender equality
16 policy. In 1996, it was renamed the Department for Equal Opportunities. On
17 acceding to power after the 1998 elections, the coalition led by the conservative
18 FIDESZ-Hungarian Civic Alliance Party under Prime Minister Viktor Orbán
19 reorganised it as the Office for Women's Issues in the Ministry of Social and
20 Family Affairs (Berger and Dorsch 2010). The return of the MSZP to power
21 from 2002 to 2010 led to the creation of a dedicated Department for Equal
22 Opportunity with a Minister for Equal Opportunities. However, the department
23 struggled with insufficient financial support and frequent changes of institutional
24 affiliation, competence, direction and staff (Krizsán and Pap 2005: 10). In 2010,
25 it developed a two-year action plan to give effect to the National Strategy for the
26 Promotion of Social Equality between Women and Men (2010–2020). This
27 national strategy was designed to implement the EU Roadmap for Equality
28 between Women and Men (2006–2010) (Fodor 2013: 6).

29 On returning to office in 2010, the FIDESZ-led government subsumed the
30 Division of Equal Opportunity under the Ministry of Human Resources, cutting
31 its status, budget and staff. Since the ending of the first two-year action plan on
32 gender equality in 2011, there have been no further initiatives of this kind, while
33 the strategy itself was in the process of being reformulated in 2014. The consult-
34 ative Gender Equality Council, established by government in 2006 and renewed
35 in 2009, was intended as a forum whereby representatives from government
36 ministries, women's civil society organisations and gender experts could engage
37 in dialogue on equal opportunities policies (Berger and Dorsch 2010). However,
38 its working was intermittent, it had not met since 2010 and was disbanded in
39 2013 (Szikra 2013: 10). In a final erosion of the administrative gender equality
40 structure, the Minister of State for Social Inclusion, previously in the Ministry of
41 Public Administration and Justice and with the brief of equal opportunities in
42 general, was not reinstated following Orbán's 2014 electoral victory.

43 As for civil society, the influence of social partners and the NGO sector was,
44 and is still, minimal on EU rule adoption as well as on domestic policy (Sis-
45 senich 2007: 77–106). Resources are scarce and EU project funding ensures, at

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best, intermittent operations, and promotes rivalry rather than cooperation between civic groups. Besides material difficulties, organisations struggle with serious problems related to legitimacy, representation, transparency and accountability. Nonetheless, a handful of NGOs dealing with gender equality issues have formed alliances to exercise pressure on the government. For example, the umbrella organisation Hungarian Women’s Alliance for Interest Promotion was established specifically for the purpose of joining the European Women’s Lobby (EWL) in 2003. Likewise, the women’s section of the National Alliance of Hungarian Trade Unions has been relatively effective in introducing issues of gender equality in the political agenda and enforcing women’s interests.

In sum, as a result of a lack of political will, the rise of conservative politics, institutional dysfunctions and cultural impediments, there is still a large gap between the *de jure* and the *de facto* equality of women and men. It is not just because of the general conservatism of dominant gender roles and attitudes that gender equality has not been understood and adopted. The immaturity of democratic institutions and the ingrained public sympathy towards authoritarianism are also responsible for this state of affairs. Beyond ideological barriers and conceptual uncertainties, a serious deficiency of Hungarian democracy – the lack of accountability – affects gender politics especially severely. As the mechanisms to implement the principle of gender equality and the concept of what this idea should actually embrace are being worked out simultaneously, there is a great deal of hesitancy in formulating equality objectives. As a result, in addition to the general problems of democratic control, this policy area copes with relative disadvantages compared with other fields, with respect to both collective deliberation and keeping a check on responsible persons and institutions (Görgényi 2013).

‘It is not about discrimination’: the implementation of the Goods and Services Directive

Paradoxically, the main motivation behind adopting the Goods and Services Directive in a timely fashion was to roll back the norm of gender equality. While, as a result of the massive lobbying of the insurance sector and other influential interest groups at the EU level, the Directive already conveys a truncated sense of this principle, its transposition in the Hungarian legal order further confined and, indeed, inverted its original intention.

A ‘technical challenge’: overview of the legislative process

Procedurally speaking, a remarkable feature of the entire political process whereby the Goods and Services Directive was adopted by Hungary is the complete lack of civil society involvement. This problem goes back, again, to a deficient and inconsistent regulative framework. Despite constitutional guarantees (Article 36 of 1989), cooperation between the government and social organisations is insufficient, and, indeed, the government is not obliged to consult

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1 interested social organisations in the course of legislative processes. In this
2 context, the fact that women's organisations are systematically excluded from
3 deliberations is not an exception to the rule but reflects the normal course of
4 government–civil society relations. Nonetheless, this lacuna is detrimental to the
5 enforcement of women's rights and interests, as well as in terms of participatory
6 democracy and the principle of equality.

7 From a substantive point of view, an important fact regarding the transposi-
8 tion of the Directive is that the intention behind implementation was to reform
9 the financial and insurance sectors, as opposed to extending and improving equal
10 opportunities policies. Thus during the pre-proposal phase the problem of gender
11 inequality already been dismissed, while during the parliamentary phase, when it
12 surfaced, it was deliberately misinterpreted.

13 Since comprehensive equal treatment legislation establishing gender equality
14 norms in the public sphere has been in place in Hungary since 2003, 2004/113/
15 EC was considered to apply only to some private relationships already provided
16 for through the Equal Treatment Act 2003. The transposition, then, was viewed
17 as being more directly relevant to insurance practices. Thus, the importance of
18 the Directive was further narrowed down to a single provision: paragraph 2 of
19 Article 5 – often referred to as the 'opt-out clause' – which stated that gender
20 differentiation in insurance practices does not necessarily constitute a violation
21 of anti-discrimination legislation. Given that this reductive interpretation of the
22 Directive, which reflected the interests of the insurance sector and was widely
23 supported by state bureaucrats, remained unchallenged, it was adopted to form
24 the basis of the national standpoint governing any ensuing legal changes. Not
25 surprisingly, the national organisation of insurance companies (Association of
26 Hungarian Insurance Companies, AHIC-MABISZ) actively supported the trans-
27 position of Article 5, contributing to draft proposals on its transposition into
28 domestic law.

29 Since it was determined at an early stage that the transposition did not require
30 any legal changes beyond adopting the opt-out clause, the national standpoint
31 was confined to this aspect of the legislation. According to the official approach
32 presented in an unofficial summary of the transposition, 'gender-based distinc-
33 tions, manifested in the rates of insurance products, have no bearing on the issue
34 of equal opportunities, since the models forming the basis of rates are grounded
35 in statistical facts (experiential values) originating in the past' (Division of EU
36 Law 2009). By way of reassuring insurance companies, the legislator adds that
37 'the publishing of demographic data does not lead to distortions of the market or
38 the deterioration of competitiveness' (Division of EU Law 2009) – a view that
39 was not popular in the insurance sector. Our respondent at AHIC-MABISZ
40 argued that it was not only unreasonable to pick one element from actuarial sta-
41 tistics, but the rule was also unfair to business interests: 'As an economist, I
42 think it is incorrect, since competition is recognised in all other kinds of enter-
43 prise. The way of determining fees qualifies as a trade secret, thus its publication
44 impairs market interests' (Interview 9). Apart from this disagreement, the offi-
45 cial standpoint fully corresponded with the position adopted by the insurance

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trade, as conveyed by the publications of AHIC and oral communications with the head of the organisation.

According to this view, there is a legitimate need for gender-based distinctions for professional reasons in certain areas such as life insurance (including health and accident insurance), travel insurance (including health risks, in particular those related to pregnancy) and, to a lesser extent, car insurance. Furthermore, such distinctions do not qualify as discrimination but as ‘professional differentiation’, since they are not about contrasting male vs female interests but are about registering ‘objective differences’ between men and women in incurring risks. Our AHIC interviewee maintained that failure to employ this principle would cause serious damage to the insurance profession or even destroy it completely (Interview 9). In distinguishing social security from private insurance, he insisted that the transference of risks on to non-concerned others would be unfair, constituting a violation of consumers’ interests. At the same time, the epistemological problem implied in the arbitrariness of defining risk groups, i.e. social categories as the basis of statistical analysis, is left unexamined.

After years of delay and red tape, the Directive was adopted in conjunction with three other directives related to insurance activities and the provision of financial services (2005/68/EC, 2005/60/EC and 2006/70/EC) as part of the legislative program of 2007. Officially, the aim of the new regulation was to fulfil the obligations concerning legal harmonisation by ensuring non-discrimination in insurance practices. In reality, it was all about allowing for exceptions from this rule. The legislative process started by drafting the modification of Act LX of 2003 on Insurance Institutions and the Insurance Business, and culminated when the compound legislation on financial services, presented to the parliament by the Ministry of Financial Affairs, was passed. The most important aspect of the legal changes was the introduction of references to a modified section (§30/A.) of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities – the one establishing the possibility of derogating from the equal treatment principle – into several acts regulating insurance practices and the provision of financial services. In addition, as required by the Directive, the new legislation established the rules of accountability and transparency, prescribed the mechanisms of supervision and named the responsible bodies.²

Hence, the implementation of the Directive was assumed to represent a technical exercise, consisting of minor adjustments to the rules and practices related to the provision of financial services in order to comply with new standards, while the significance of the Directive in extending the relevance of gender equality beyond employment and its potential to proactively contribute to gender equality was ignored.

Hot potato: the trajectory of the Directive

Despite the relatively generous transposition deadline of three years, the actual legislative process took place late in the day and the necessary legislative adjustments were made literally at the last minute. The new compound legislation on

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1 financial services entered into force on 1 December 2007. Ironically, it was the
2 insurance sector that urged the adoption of this gender equality law, out of anxiety
3 that Hungary would otherwise lose the opt-out opportunity provided by Article 5
4 of the Directive, specifying the conditions for applying gender-based distinctions
5 in insurance practices. The head of the AHIC claimed that there was not any
6 opposition to this ambition from government, or even any controversy about the
7 matter (Interview 9). Thus, there seemed to be no doubt that the insurance lobby
8 would succeed in enforcing its interests by having the opt-out clause, already intro-
9 duced in other member states, transposed into Hungarian law. Apparently, the only
10 issue at stake during transposition was whether, given the time wasted, the entire
11 process would be accomplished by the prescribed deadline, so that insurance com-
12 panies would be able to benefit in the future from legalising a form of gender dis-
13 tinction that arguably is not considered discrimination.³

14 Hesitancy as to which ministry should take responsibility for managing nego-
15 tiations and the legislative process related to the transposition of the Directive
16 was due to discrepancies in interpreting relevant national regulations. Uncertain-
17 ties concerning institutional responsibility, in general, go back to the division of
18 coordinating and legislative tasks in processes of legal harmonisation. In terms
19 of institutional structure, the Ministry of Justice and Law Enforcement, where
20 the Legal Harmonization Office operated within the Department of EU Law,
21 bore primary responsibility for any legal harmonisation issues. At the same time,
22 the ministry in charge of particular implementation processes is appointed as
23 lead legislative body, depending on the given subject matter. Nonetheless, the
24 division of responsibilities is not so clear-cut: coordination duties may be re-
25 legated to the ministry having professional competence in the given policy field.
26 The nature of this particular Directive – i.e. its relevance for equal treatment
27 legislation as well as for professional matters related to the provision of financial
28 services – increased the confusion. After wasting more than two years in interde-
29 partmental wrangling over ownership of the Directive, the Ministry of Financial
30 Affairs was appointed to take charge of the transposition process, since the pro-
31 jected legislative changes concerned the financial sector. This decision was con-
32 sidered unusual by the head of the Insurance Regulation Office at the Department
33 of Financial Services in the ministry, who was of the view that, in the normal
34 course, the Ministry of Justice and Police or the Ministry of Social Affairs and
35 Labour should have assumed this duty (Interview 6).

36 Thus although it was initially expected that the Ministry of Financial Affairs
37 would act in an advisory capacity to the other two ministries, it eventually
38 became entangled in a complicated procedure that was partly beyond its field of
39 expertise. Its resolution of the transposition difficulties involved last-minute con-
40 sultation with stakeholders other than insurance companies. After conducting
41 internal negotiations with other institutions concerned with the four directives
42 that were going to be implemented together, the legal department prepared the
43 draft modifications to be submitted to parliament.

44 The same course of events is interpreted quite differently by the head of the
45 gender equality department of the government (Office of the Social Equality of

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Women and Men), who complained about having been only formally involved in negotiations concerning the implementation of the Directive, without any chance to influence the outcomes (Interview 1). Invited to the first three or four meetings but ‘forgotten’ afterwards, representatives of this government body were not present when decisions on the merits of the case were taken, which, owing to time wasting, happened very late in the pre-proposal stage. Thus, their aspirations – consisting of pushing a more comprehensive understanding of the Directive that did not reduce it solely to insurance practices – were disregarded and they were prevented from expressing their disagreement with other stakeholders, particularly the insurance sector. This situation did not catch the staff by surprise as it was used to ‘swimming against the tide’ in the government structure, including the very ministry the department belonged to. In their view – which is also in line with the assumption shared by some women’s NGOs and gender experts – the fact that the Ministry of Financial Affairs, notorious in blocking gender equality strategies, had gained an upper hand during negotiations, ensured that equal opportunities between women and men would not be respected in the deliberative process (Interviews 1 and 12). In any case, the resolution of the problem of institutional competence could have taken another course, more favourable from a gender equality perspective, had equality agencies been in a better position to influence the interpretation of the goals and stakes of the implementation procedure.

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Cutting it short: deliberation by parliamentary committees

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As already noted, the implementation of the Directive did not stir any political or public debates, which was due partly to its reduced relevance, and partly to institutional mechanisms resulting in the exclusion of gender equality agents from the political process. In fact, legal harmonisation itself was conceived as a procedure of codification, which concerned only lawyers engaged in identifying and redrafting corresponding sections in Hungarian law. The assumption that the Directive was smoothly adopted in Hungary – by simply complementing the existing legislation regulating the provision of financial services with reference to one new paragraph of the Equal Treatment Act – is supported by the few available records listed in the documentation references. Summary minutes of the meetings of the three parliamentary committees – Committee of the Budget, Financial Affairs and the Audit Office, Committee of Human Rights, Minorities and Civil and Religious Affairs, and Committee of Economics and Informatics – dealing with the bill on the modification of selected Acts concerning financial services with the intent of legal harmonisation (T/3807) show that all the recommendations submitted were simply ‘accepted’ by each committee, without any discussion or debate.

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Nevertheless, at the very last minute a dispute did erupt. The issue in question was probably the only one during implementation that concerned substantial, as opposed to procedural, matters: the question of deadlines and its implications for legal consistency. It concerned the new provision (Section (2) of paragraph

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1 §30/A.) to be introduced in the equal treatment legislation, identifying the con-
2 ditions overruling the suspension of the non-discrimination rule. Member states
3 had to enforce this provision containing the absolute prohibition of gender-based
4 differentiation in calculating insurance fees and benefits in cases of pregnancy or
5 maternity, no later than two years after the deadline of adopting the rest of the
6 Directive. In Hungary, as a result of a compromise, Section 2 was to be applied
7 for contracts made after 21 December 2008, meaning that insurance companies
8 had one year to make the necessary arrangements to adjust the system to the
9 standards prescribed by the Directive.

10 However, these standards did not represent anything new in Hungary, since the
11 legal protection of certain categories of people especially vulnerable to discrimina-
12 tion – including pregnant women and mothers of young children – was already
13 guaranteed by the Equal Treatment Act of 2003. Therefore, in allowing insurance
14 companies to suspend the prohibition of discrimination concerning pregnancy and
15 maternity, the one-year delay in introducing Section 2 was prone to create legal
16 uncertainty. This concern was voiced by an invited speaker representing the Equal
17 Treatment Authority at a joint committee meeting attended by members of the
18 three aforementioned parliamentary committees, and representatives of the Minis-
19 try of Labour and Social Affairs and the Ministry of Financial Affairs in December
20 2007, where the bill was last discussed before submitting it for plenary voting.⁴
21 The intervention of the ETA representative was quickly dismissed by the other
22 guest speaker, a department head of the Ministry of Financial Affairs, as missing
23 the point and being based on misapprehensions. After a brief and superficial dis-
24 cussion, the legislative proposal was adopted by ten votes to nine in the committee
25 hearing and sent to parliament for plenary consideration (T/3807).

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28 ***Count but little: a note on the enforcement of the modified legislation***

29 The Goods and Services Directive was adopted quasi-automatically in Hungary,
30 according to the minimum conditions, with relevance to all types of insurance
31 products but nothing beyond this, as the Equal Treatment Act (CXXV of 2003)
32 already had provisions covering access to goods and services (Lehoczky 2009:
33 77). The truncated and indeed inverted significance that the Directive acquired in
34 the Hungarian context is well illustrated by a press release from AHIC-MABISZ
35 welcoming the transposition of the opt-out clause in 2004/113/EC: 'The opt-out
36 opportunity, allowed by the Directive concerning gender discrimination, has
37 been introduced in the Hungarian legal system'. (AHIC-MABISZ 2009: 9). The
38 brochure also advised on the exception constituted by pregnancy and maternity,
39 to be enforced with a one-year delay, although they erroneously brought the
40 deadline forward by a year and a few days, to 13 December 2007 instead of 21
41 December 2008. However, driven by the conviction that the interests of both the
42 insurance sector and the clients require 'the accurate evaluation of actual indi-
43 vidual risks as the condition of the calculation of fair fees and thus of insurance
44 practices' (Lencsés 2009), insurance companies soon found ways to circumvent
45 the prohibition.





The introduction of new regulations did not cause any hitch to insurance practices. As explained by a representative of AHIC, the legal environment of the insurance trade is constantly changing, thus companies are accustomed to having to adapt to new circumstances all the time (Interview 9). Nevertheless, dealing with pregnancy and maternity is seen as a constant problem, particularly for travel insurance. Our contacts at AHIC and the Ministry of Financial Affairs affirmed that companies employ a ‘technical solution’ to avoid any inconveniences called the ‘institution of exclusion’ (Interviews 9 and 6). In effect, companies simply refuse to sign travel insurance contracts with women at late stages of pregnancy (cf. Lehoczky 2009: 80), a practice that our interviewees considered perfectly justified and legitimate (Interview 6).

The consequences of the new insurance regulations have not yet had an impact on society at large. There were no complaints up to 2009 to the Equal Treatment Authority in charge of supervising compliance with anti-discrimination provisions (Lehoczky 2009: 80). However, by 2008 there were some more general complaints involving gender-based distinctions related to the provision of, and access to, goods and services reported the Equal Treatment Authority. However, none of these cases concerned insurance contracts (ETA Yearbook 2008).

The absence of legal cases concerning the new regulations of the insurance sector was explained by our respondent at AHIC (Interview 9) as having to do with a well-developed consciousness among its insured clients: ‘[O]ur clients, so it seems, are more mature in thinking than legislators: they know that necessary differentiation does not mean discrimination’. Considering this statement, and the ways in which the significance of the Directive have been dismissed or inverted in general, it is not surprising to find a negative attitude among officials towards gender equality. Indeed, the head of the Insurance Regulation Office in the Ministry of Financial Affairs expressed as much in interview, noting that ‘pushing equal opportunities may have contrary effects: equal rights should not be defended so militantly because that may eventually cause disadvantages’.

Bottleneck points: gender democracy in decision-making

The implementation of the Goods and Services Directive was successfully accomplished by Hungary inasmuch as the country fulfilled the requirements of legal harmonisation set out by the European Commission. Yet the outcome of the process – i.e. the new body of law and enforcement measures – is not altogether satisfactory with respect to gender equality. The reasons are manifold. First, the dominant interpretation of gender relations in Hungary fails to acknowledge women’s relative disadvantages and the need to eliminate them. The equalising of genders as a political programme is seen as arising from a forceful disregard of ‘natural’ differences between women and men, and aimed at the mechanical eradication of all distinctive marks, thereby introducing uniformity and desexualising the population.⁵ Second, as the relevance of the Directive was restricted to the insurance sector, other fields of social life potentially concerned

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1 by related legislation remained unaffected. Third, the impact of the new legisla-
2 tion was highly ambiguous even here, as the Directive, in fact, provoked legal
3 changes seeking to legitimise gender differentiation, while actual practices go
4 even further in employing clearly discriminatory means in service provision.

5 The hypothesis behind this case study is that while the Directive in itself
6 remained well below the expectations of those pushing for it at EU level, its
7 ambiguous impact in Hungary partially has to do with the shortcomings of its
8 implementation. Thus, it is worth taking a closer look at the decision-making
9 process in light of the three principles of gender democracy: inclusion, account-
10 ability and recognition.

11 ***Inclusion***

12 In determining the extent to which women were considered equal partners during
13 deliberations, assessments were made regarding the degree of participation of
14 women and organisations promoting women's interests in the decision-making
15 process, the accessibility of deliberative sites, and the extent to which women's
16 interests were incorporated in the deliberative agenda. Our data suggest that the
17 representation of women and women's interests in the process was very limited
18 in scope and intensity.

19 Although the institutional framework for the promotion of gender equality
20 existed at the time in Hungary, its relatively meagre capacities were not effect-
21 ively utilised during the implementation of the Directive. The Directive was sup-
22 posed to have no bearing whatsoever on equal opportunities and
23 anti-discrimination, as claimed unanimously by responsible officials at the Min-
24 istry of Justice, the Ministry of Financial Affairs and AHIC, the institutions
25 which appeared to have enjoyed priority, if not exclusivity, in setting the terms
26 of the implementation. The government's gender equality machinery was just
27 formally present at negotiations, and then only at the beginning of the process,
28 thus unable to leave their mark on the new legislation. Women's NGOs were
29 absolutely not involved in deliberations, let alone consulted by the legislator.
30 Gender experts and organisations representing women's interests contacted for
31 this study generally admitted that they were totally ignorant as to the contents of
32 the Directive and the specifics of its implementation in Hungary (Interviews 12
33 and 13). Those few who were familiar with it said they were not at all eager to
34 influence the transposition process as the die had already been cast, in other
35 words, since the essentials of the Directive had been lobbied out at the EU level,
36 there was not much at stake in national decision-making.

37 Besides the isolation of state gender equality bodies, the perception that the
38 Directive did not hold many implications for gender equality is an important
39 reason why civil society remained apart from the process. Thus it was not until
40 the last committee meeting that substantial criticism of the proposed transposi-
41 tion arose. According to the available records and oral communication, the ETA
42 representative who expressed her contention regarding legal consistency was
43 actually the only gender equality agent invited to participate in the negotiations
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(Parliamentary Committee 2007; Interview 1). Although representatives of the Department of Equal Opportunities were present at earlier interdepartmental meetings, only procedural issues were discussed at that point. By the time of the committee hearing, however, there was no chance to make substantial changes to the draft legislation.

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In looking at what was behind the lack of involvement of women’s interests and representative organisations in deliberations, it is useful to distinguish between the institutional opportunities of participation and the attitudes of potential actors. Apparently, it was not only the status of the agency in question that determined if it participated in negotiations but also the viewpoint it represented. When this view contradicted the strategy adopted by the government, exclusion or self-exclusion (i.e. giving up on efforts to influence the implementation) was likely to ensue. Thus, representatives of the government department responsible for gender equality (Office of the Social Equality of Women and Men in the Department of Equal Opportunities) were allowed to be present at in camera negotiations only at the beginning of the pre-proposal phase, before substantial matters were put on the table. By the same token, the Equal Treatment Authority was given an opportunity to contribute only to the last parliamentary committee meeting, when it was too late to make any significant changes in the draft legislation. In between, that is after the issue of institutional responsibility regarding implementation was settled and before the codification of the planned legal changes, only professional organisations representing the insurance sector were invited to ministerial and inter-ministerial negotiations. Since, according to the official standpoint, the legal harmonisation task required only the identification and implementation of technical solutions, the issue of gender equality and organisations representing it were pushed to the background.

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In sum, while on the one hand the political will and adequate institutional mechanisms to involve responsible bodies of gender equality and organisations advocating women’s interests were lacking, on the other hand these actors did not really strive to influence decisions. The exclusion of the Department of Equal Opportunities from the deliberations was probably partially owing to their own passivity and defeatism, related in turn to their meagre resources and authority and the generally uncertain situation of the gender equality machinery – well-known weak points of the institutional framework (Ilonszki 2014). In this light, harsh criticism against the department coming from other government bodies may be unfair, revealing its isolation within the government structure and perhaps a general distrust in public servants meddling with elusive matters like gender equality: ‘[The Department of Equal Opportunities] is totally inactive, always remaining in the background. They only declare principles, while actual tasks are undertaken by the responsible actors of the given professional field’, remarked a representative of the Ministry of Financial Affairs (Interview 6). As for women’s civil organisations, they were neither invited nor eager to participate in negotiations, as they did not attribute any significance to the Directive.

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Even the question of deadlines, which was the only contribution to the substantial issues regarding implementation and framed in terms of the principle of

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1 gender equality by the ETA representative at the last parliamentary committee
2 meeting, failed to provoke any important debate. This rather timid exposé –
3 underscored by a concern for legalism and the rule of law rather than gender
4 equality – was quickly dismissed as mistaken and irrelevant by more powerful
5 actors such as the representative of the Ministry of Financial Affairs. Hence, far
6 from being incorporated into the deliberative agenda, women's interests and per-
7 spectives were not even voiced during the implementation process.

8 It is worth noting, too, that the majority of persons actually involved in
9 decision-making were women. As a male representative of the Ministry of Fin-
10 ancial Affairs has put it in a somewhat, perhaps unintentionally, paternalistic and
11 derogatory way: 'the issue was settled by ladies who discussed it among them-
12 selves'. He also added that all of these women were very much against enforcing
13 implications of the Directive concerning gender equality, 'even more against it
14 than men' (Interview 6). This state of affairs clearly shows that descriptive
15 representation, as an indicator of the likelihood that women's interests will be
16 articulated, may be totally misleading. The ambiguous relationship of descrip-
17 tive and substantive representation can be traced back to background institu-
18 tional interests defined by structural factors, particularly the patriarchal social
19 order that appears to be more determining than individual group membership, i.e.
20 being a woman. Thus, the discrepancy between the two kinds of data highlights
21 a series of interconnected problems including general insensitivity around
22 gender-based discrimination, failure to understand its implications, ignorance
23 regarding related social responsibilities, the lack of means to correct it, and the
24 absence of any effective representation of women's issues.

Accountability

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28 The first reaction of the head of the Department of EU Law in the Ministry of
29 Justice to our query pinpoints the attitude of public administration towards
30 accountability: '[Legal harmonisation] is the state's duty and the way it is
31 accomplished does not concern the public' (Interview 4). In a similar vein, a rep-
32 resentative of the Department of Regulation at the State Supervision of Financial
33 Organizations argued that the introduction of the Directive was an obligation of
34 Hungary as an EU member state, a professional procedure, having nothing to do
35 with the civil sphere (Interview 7). It is a general belief, widespread in state bur-
36 eaucracy, that it is only the outcomes of legislative processes that citizens should
37 be informed about. This attitude, reflecting the immaturity of democratic institu-
38 tions and thinking, is supported by the ambiguities of relevant legislation dis-
39 cussed above.

40 However, this axiom does not hold for all segments of society in the same
41 way. Prevailing social norms and the uneven distribution of social and political
42 power generate asymmetries among social groups in relation to the opportunities
43 for political participation. Thus, women's organisations, customarily excluded
44 from decision-making on gender equality issues, were not consulted during the
45 implementation of the Directive. At the same time, the AHIC was intensely





involved in deliberations, both when designing the Directive at the EU level, and when implementing it at the national level. Finally, in addition to power imbalances, the striking asymmetry in the position of concerned parties also reflects the lack of acceptance of gender equality as a mainstreaming principle in Hungary. This is how, yielding to the pressure by the insurance lobby, the implementation of the Directive became regarded as a technical challenge to be managed by professionals adept in insurance mathematics and law, while its implications regarding gender equality were refuted, and the agents who could have promoted the enforcement of this aspect of the European legislation were totally excluded from the procedure.

Given the hostility of institutional rules and attitudes towards the principles of accountability and transparency, neither women’s organisations nor the broader public had access to information regarding the particulars of the decision-making process. As a rule, negotiations at this stage are conducted behind closed doors, and the public are generally not aware of who is participating, never mind the issues and arguments that are raised during discussions. Moreover, as assumed by a key person in charge of the implementation – the head of the Department of EU Law in the Ministry of Justice – it is quite possible that no documents were produced during the transposition of the Directive anyway, depriving the interested public of an opportunity for information and education on the planned transposition (Interview 4). Thus, excepting the minutes and recommendations of the three parliamentary committees which discussed the proposed legal changes, it is likely that there was no written or formal information produced to reach women’s organisations and the public before the enactment of the new legislation.

Apart from general accountability policies, it was precisely the nature of the issue at hand that was supposed to justify the austere treatment of the public. Regarded as a professional matter relevant for insurance mathematics only, civil society was simply considered to be unconcerned by such technicalities (Interview 7). What is more, since related legal modifications merely reinforced and legitimised existing practices employed in the insurance business, the public was supposed not even to be affected by the changes. The hypocrisy behind such presumptions is disclosed when it comes to the provisions of the Directive related to the need to introduce gender-neutral risk assessment measures, with these regulations being widely criticised with reference to ‘business interests’ by those in charge of enforcing them.

Recognition

The gender equality implications of the Directive were ruled out at the outset, meaning that it was not regarded as an anti-discrimination tool by the Hungarian administration. Consequently, crucial aspects of the European legislation with regards to the original intention behind it were not discussed throughout the implementation process. To the extent that the problem of gender differentiation was raised – in relation to insurance procedures only – it was immediately

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Proof

'Making a sow's ear from a silk purse' – Hungary 95

1 neutralised and, thus, depoliticised by reference to statistically relevant objective
2 differences between men and women. Also, the language used in resolving what
3 was conceived of as a 'technical matter' concerning financial services did not
4 favour the emergence of normative arguments related to human rights and social
5 justice. Philanthropic concerns were pre-emptively discarded by obscure techni-
6 cal reasoning acting as a foil for business interests.

7 As exemplified by the aforementioned exchange which took place at the last
8 parliamentary committee meeting, the only dispute came from a conflict between
9 legalism and the rationales of insurance practices. In her contribution, the ETA
10 representative warned against the legal inconsistency implied in the deterioration
11 of existing equal treatment legislation. She started by politely praising the
12 planned modifications for providing a 'reasonable, clear and transparent solution
13 to a problem that those in charge of enforcing legislation have been long strug-
14 gling with', in other words by offering an excellent tool to insurance companies
15 to justify gender-based distinctions without incurring the risk of becoming the
16 target of discrimination complaints. After this timid exposé, the speaker con-
17 tinued to explain that the absolute prohibition of employing gender-based dis-
18 tinctions in cases of pregnancy and maternity should be enforced nevertheless
19 without delay, since the new provision merely reiterates what has already been
20 established in the equal treatment legislation of 2003 and, thus, the proposed
21 one-year grace period would create confusion (Parliamentary Committee 2007).
22 Therefore, the contribution of the ETA representative concerned problems of
23 enforcement, specifically the need to avoid legal uncertainties, rather than the
24 goal of protecting gender equality or women's interests per se.

25 Starting with an outright dismissal of this argument as flawed for being based
26 on misapprehensions, as well as incomplete in describing the objectives of the
27 Directive, the representative of the Ministry of Financial Affairs employed a dis-
28 cursive strategy to dilute and, indeed, invert the meaning of gender equality. She
29 assured those present that the one-year exemption 'concerns only the representa-
30 tion of fees' and, therefore, 'this is not about social differentiation but only
31 taking related costs into account'. However, she failed to clarify exactly why and
32 how reckoning cost differentials did not imply social differentiation. In describ-
33 ing the background of the decision, she went on to explain that:

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35 [t]he government recommends one-year immunity because, obviously, legiti-
36 mate claims have been raised by insurance companies as well, suggesting
37 that this kind of distinction [i.e. the distinctive treatment of pregnant women
38 and mothers] should not entail any changes with respect to previous insur-
39 ance practices.
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41 In fact, the suspension of the prohibition had real significance and the insurance
42 sector was definitely favoured by the delay. The speaker employed a popular
43 argument, often raised to discredit the principle of gender equality and ridicule
44 women's movements: that women actually benefit from gender-based distinc-
45 tions that provide them with special protection. Positioning herself as a defender

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of women's rights and interests, the state's representative said that abandoning differentiating insurance practices 'would, as a matter of fact, cause disadvantages to women, who can otherwise count on preferential treatment in this matter' (Parliamentary Committee 2007).

This comment, reiterated by some of our interviewees and emphasised even by advocates of women's rights, reveals a kind of hare-brained or sometimes even cynical non-recognition of the issue at stake, that is, the meaning and social significance of gender equality (Interview 6; private correspondence with women's advocacy organisations and gender experts 2013). In addition, given that the polemic was about a particularly vulnerable category of women whose health risks are generally higher than average, it is doubtful that they could benefit from gender differentiation when signing insurance contracts. Obviously aware of how nonsensical such a suggestion was, the ministry representative cautiously remained at the level of generalities, evading the concrete problem raised by her interlocutor. She concluded by reassuring those present that both parties would benefit from the decision: 'In sum, one-year exemption, instead of two years, was the product of a compromise that aimed at increasing security on one side, while ensuring the calculability of the situation on the other' (Parliamentary Committee 2007). Thus, the planned modification was misleadingly presented as actually protecting women whose interests were allegedly promoted by the insurance sector, while the argument set forth by the ETA representative regarding the temporary deterioration of the existing equal treatment legislation, and so the weakening of the rule of law, was made to appear out of place, incompatible with anybody's interests, indeed as some finicky reasoning.

Apart from this interaction in which respect for the groups affected by the legislation appeared as secondary to the concerns of legalism, the issue of women's interests was only peripherally touched upon at the committee meeting. A female representative of the conservative party FIDESZ gave voice to this type of concern in very general terms, only to be quickly silenced by the spokesperson of the Ministry of Financial Affairs, who assured her that her worries were completely unjustified (Parliamentary Committee 2007).

The denial of the gender equality implications of the Directive forcefully discarded the key issue, that of the problem that occasionally allowing gender-based differentiation not only results in incidental unfair consequences but, by legitimising the distinctive treatment and evaluation of men and women, also undermines gender equality and democracy. The deliberate misinterpretation of the Directive represents a rejection of equal treatment as a policy principle. Thus even though all questions and claims were responded to, and no harsh remarks were launched against any discussants, none of the points made by those questioning the proposition of the government were answered according to the merits of the issues raised. Recognition was lacking with respect to both the objects and the subjects of the negotiations, that is, women's interests and gender equality. Nor were the democratic qualities of deliberation respected. The argument set forth by the ETA representative, just like the comment made by the FIDESZ

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1 MP, were warded off by the government's spokesperson without any logical
2 reasoning or reference to the common good. In merely satisfying formalities
3 with some empty words, her speech demonstrated the actual level of acceptance
4 of gender equality claims. The reactions of the representative of the state are
5 connected with the technocratic approach which dominated the implementation
6 procedure and, more generally, with a widespread practice characterising delib-
7 erations of public policy issues, namely the avoidance of the negotiation of inter-
8 ests. The degradation of even timid counterarguments challenging the official
9 position is a symptom of the underlying paternalism, and indeed patriarchalism,
10 of the state's approach to gender equality.

Conclusion

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14 The implementation of the Goods and Services Directive in Hungary was
15 accomplished without much ado, and without impact as far as the extension and
16 enforcement of the gender equality principle is concerned. What is curious about
17 the Hungarian story is that, as it became incorporated into national law, the
18 Directive gained an inverted significance. The transposition was effectively real-
19 ised by weakening the existent anti-discrimination rules through a lenient provi-
20 sion allowing for gender-based unequal treatment in certain situations. As
21 legality breeds legitimacy, the practice of making gender-based distinctions,
22 constantly reinforced by self-fulfilling arguments about 'objective' gender dif-
23 ferences, was made even more acceptable than it already was. Therefore, the
24 implementation of the Directive meant a step back in terms of gender equality,
25 not only for allowing for the unequal treatment of men and women in certain
26 situations, but also for stripping the concept of gender equality of its actual
27 meaning and political significance.

28 The main reasons why gender equality was not even at issue during imple-
29 mentation are manifold and concern both social structures and political pro-
30 cesses. First, the objective of the procedure was defined in contradiction to the
31 original intentions behind the Directive. According to its biased national inter-
32 pretation, only the opt-out clause was deemed worth considering. This approach
33 was not effectively countered by gender equality agents who assumed this
34 hollow piece of legislation did not represent a real political challenge. What they
35 may not have considered is that, despite the deficiencies of the Directive, its
36 implementation could have provoked important debates about instituting gender
37 equality, and that its ignorance could impair the existing equality legislation,
38 which it did. Second, due to the unequal distribution of social power, the insur-
39 ance sector with its greater lobbying potential, and more political weight than
40 women's NGOs, gained an upper hand during the transposition process, to the
41 detriment of the already weak women's advocacy network. As a result, the new
42 body of legislation was restricted to the operations of insurance companies, and
43 was not beneficial there, either, in terms of promoting gender equality. Rather, it
44 represented a warranty to enable companies to go on with their age-old habits of
45 gender differentiation.





A recurrent statement raised by various actors of the implementation process that ‘it’s not about discrimination’ (Interviews 6 and 4) actually relates to the various issues discussed in this study. It concerns insurance practices in which the application of gender-based differentiation is considered perfectly legitimate for only restating ‘objective’ differences. As the head of the Insurance Regulation Office in the Ministry of Financial Affairs complained: ‘the distinction has objective bases and it is not discriminatory. Nevertheless, they tried to impose this [anti-discrimination] rule on this field as well’ (Interview 6). It also bears on the implementation process that was ‘negotiated by ladies who were much more against it [i.e. the promotion of equal treatment] than men’, as claimed by the same person. Finally, given the absence of any related legal cases, the insurance-buying public was also supposed to transcend the anti-discrimination perspective demonstrating that Hungarians form a kind of national front that wards off outside influences. As the head of AHIC affirmed: ‘our clients, so it seems, are more mature in thinking than legislators: they know that necessary distinction does not mean discrimination’ (Interview 9).

What we see emerging here is a typical Hungarian from of Euroscepticism, infused with a blend of nationalistic pride and self-pity (Szonda Ipsos 2009). This attitude is based on the assumption that Hungarians – decision-makers, agents of enforcement and the subjects of policies alike – are more reasonable than outsiders – as represented by the European Union – boldly trying to impose their worldview and imperial interests on this long-suffering nation. Hungarians relentlessly fighting against foreign influence – that is, European norms – feel heroic for rebelling against outside actors, even though (or precisely because), given the dependent position of this country, they are doomed to fail. This tragic fate (or pompous defeatism) offers a compensatory reward to the overpowered in the form of a mockery; in formally complying with the rules, while finding ways to evade them. The clever Hungarians, so this narrative goes, are able to cheat their rulers, thereby preserving their national identity. In other words, Hungary is not really a member of the EU. Such underlying sensibilities represent a serious obstacle to adopting European gender equality principles and standards.

Notes

- 1 The paraphrased aphorism is meant to describe how something of value gets downgraded and, indeed, inverted in significance in an inhospitable environment.
- 2 New or modified sectorial laws ensuring the transposition of 2004/113/EC include: Act XCVI of 1993 on Voluntary Mutual Insurance Companies; Act LX of 2003 on Insurance Companies and Insurance Practices; Act CXVII of 2007 on Employment Pension and Its Institutions; CXXXV on the State Supervision of Financial Organizations; Government order 362/2004 (26 December) on the Equal Treatment Authority.
- 3 This interpretation of the stakes of transposition was suggested by the same interviewee, who said the representation of insurance companies had been ‘bombarding’ state institutions during 2005 and 2006 for fear of losing the opportunity secured by the opt-out clause. (In case of any delay in enforcing the new legislation, the prohibition of gender-based distinctions would have been enforced automatically.)





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'Making a sow's ear from a silk purse' – Hungary 99

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- 4 Since several issues were discussed on the same day, it is impossible to figure out from the minutes who was actually present at the debate of this bill; the records only indicate the names of those speaking up during the meeting. However, what is clear from the document is that the Ministry of Justice was not represented at all, and that there were only two invited guest speakers who contributed to the debate of the bill on financial services: a representative of the Equal Treatment Authority and a head of department from the Ministry of Financial Affairs. The rest of the participants remained silent, apart from a member of the conservative party FIDESZ, who made only some very general remarks.
- 5 This is reflected, for instance, by the massive opposition provoked by the introduction, in 2009, of a national programme aimed at gender equality education in kindergartens.

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