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From formal adoption to enforcement. Post-accession shifts in EU impact on Hungary in the equality policy field*

Andrea Krizsan

Central European University (CEU), Hungary

E-Mail: krizsana@ceu.hu

Abstract: Research on EU conditionality in equality policy in Hungary shows that while the formal EU *acquis* has been transposed in a fast and successful way, its enforcement and application largely lag behind. Most researchers explain this weak enforcement with factors such as state capacity problems, the absence of inclusive policy making, and low norm resonance at the domestic level. This paper analyzes how changes in EU influence in the post-accession, post-conditionality period contribute to maintaining compliance with and improving the enforcement of EU equality policy in Hungary. It aims to understand implementation processes that take place in the post-accession period through the Hungarian case of equality policy. The paper argues that in order to capture the impact of the EU in the post-accession period, one must look beyond formal transposition-related mechanisms and increasingly at financial assistance and social learning mechanisms. While mechanisms connected to formal transposition might suggest major drawbacks in formal compliance, financial assistance and social learning mechanisms seem to address more directly the application and enforcement problems that Hungary faces in the equality realm. The paper shows that these mechanisms directly and indirectly impact the most crucial factors that determine enforcement – state capacity, the strength and involvement of civil society, and norm resonance. A slow but steady move toward sustainable improvement in enforcement is indicated.

Keywords: Central and Eastern Europe; Hungary; civil society; Europeanization; enlargement; implementation; policy learning; policy diffusion; policy coordination; non-discrimination; gender policy; Roma; structural funds; political science

Table of Contents:

- 1. Introduction
- 2. Previous research
- 3. EU mechanisms at work
 - 3.1. The EU conditionality story
 - 3.2. Soft policy mechanisms and behavioral change
 - 3.3. Financial support mechanisms
 - 3.3.1. Community Action Programs
 - 3.3.2. Structural Funds
- 4. Domestic changes
 - 4.1. Norm resonance
 - 4.2. State capacity
 - 4.3. Empowering and including non-state actors
- 5. Conclusions
- References

1. Introduction

The European Union had a critical role in shaping equality policy in its new Central and Eastern European Member States, among them Hungary. During the accession process, these states went from having fragmented, unenforceable equality policies limited to a few politically-privileged inequality grounds, to adopting, in most cases, comprehensive, legally-enforceable equality policies and adjacent institutional structures that cover multiple inequality grounds and multiple inequality domains in complex ways.

However, relatively little academic research has been conducted on the influence of the EU in countries in Central and Eastern European (CEECs) in this policy field. Most available work focuses on pre-accession conditionality and the emphasis is typically on transposition. Far less research deals with how the EU influences the application and enforcement of the transposed norms. Existing work on equality policy, as well as the wider social policy realm, recognizes a quite good transposition record among CEECs that was achieved by the accession date, as well as persistent problems in application and enforcement (Treib, Falkner, Holzleithner 2008; Sissenich 2007; Krizsan and Papp 2005).

The aim of this paper is to identify and understand the mechanisms through which the EU influences equality policy in the post-accession period as compared to the period preceding accession. In particular, the paper uses a process-tracing approach (Checkel 2005) to look in-depth at mechanisms that act towards improving the application and enforcement of the transposed equality acquis in the specific case of Hungary. By explaining and analyzing mechanisms in place in the rich context of one country and one policy field, the paper attempts to fill a gap in understanding the EU impact in the new Member States in the post-accession period. Specifically, it investigates what policy processes the EU generates, how it brings about change, and how it responds to existing application and enforcement problems. Understanding the complexity of processes through which the EU continues to impact post-accession in one country will contribute to the refining of research agendas on European integration of CEECs.

Equality policy is the focus of this paper. Three major equality directives – the Race Equality Directive, the Employment Directive and the Equal Treatment Directive (as amended in 2002) – are taken to form the core of EU equality policy. For the purposes of this paper, these three directives are read together with EU soft regulations in the field of equality policy, particularly under the social policy chapters of anti-discrimination and gender equality. These regulations can be seen to indicate directions for the enforcement of the directives, especially in areas that reach beyond legal transposition. This includes measures on prevention, the promotion of “full equality,” or the obligation to review all relevant laws, regulations, provisions, and even contracts to prevent conflicts with the “principle of equal treatment.” Soft law also goes beyond the narrow equality understanding of the directives and toward more comprehensive European approach to equality – one that includes, beyond anti-discrimination, the promotion of equal opportunities, positive action, and mainstreaming (Verloo 2001). Starting from Booth and Bennett’s (2002) conceptualization, this paper sees these three approaches to equality – anti-discrimination, positive action policies, and mainstreaming – as components of a “three-legged stool” in that they are interconnected and complement each other. In this understanding, which is supported by other equality thinkers (O’Cinneide 2006; Fredman 2005), anti-discrimination law as one leg cannot be seen to be fully enforceable without the use of elements of the other two legs. This comprehensive view of equality policy also corresponds to the multilayered conception of equality that the EU conveys to accession and new Member States through the conditionality criteria on equality as formulated in regular reports as well as through soft regulations that come to complement hard law⁽¹⁾.

What do enforcement and application of equality law mean in the EU context? Elements of EC ideas about the meaning of enforcement can be discerned partly from the relevant directives, but more thoroughly from the relevant Community Action Plans. Four pillars of enforcement are proposed, much along the lines suggested by earlier thinking on anti-discrimination enforcement bodies (McEwen 1997; PLS Ramboll Management 2002).

- The first pillar relates to the investigation of discrimination cases and includes facilitating complaint procedures and strategic and structural investigations of discrimination cases. It also includes the creation of equality bodies which, beyond being complaint mechanisms, may also conduct strategic ex officio investigations in structural and institutional discrimination cases (McCrudden 1982; O’Cinneide 2006).
- The second pillar consists of promotional activities directed at victims, stakeholders, and potential perpetrators.
- The third pillar focuses on generating systematic knowledge on discrimination, so that beyond the scarce individual complaints, structure-oriented procedures can be launched to address discrimination.
- Finally, the fourth pillar entails supporting civil society organizations that make claims for, or often instead of, victims of discrimination and promoting their participation in relevant policy processes. Such an understanding of enforcement clearly implies proactive measures and makes implementation of equality law not only an issue of compliance, but also of resources.

This paper argues that to capture the impact of the EU on Hungarian equality policy since the last years of accession, one must look beyond the formal transposition-related external incentive mechanisms and increasingly at financial support and social learning mechanisms. Many financial support and social-learning mechanisms are grounded in soft EU policy measures and in different funding mechanisms, such as Progress or Structural Funds spending. While mechanisms connected to formal transposition continue to indicate major drawbacks at the formal level (Epstein and Sedelmeier 2008), the other mechanisms seem to

address in more direct ways the application and enforcement problems that the country faces in the equality realm. The paper shows that these mechanisms directly and indirectly impact the most crucial factors that determine the enforcement problem: state capacity, strength and involvement of civil society and norm resonance. They indicate a slow but steady move toward sustainable improvement in enforcement.

The following section reviews previous research on EU influence on Hungary's equality policy. Next, the paper attempts to establish a causal link between post-accession EU mechanisms that are relevant from the point of view of equality policy and progress in some of the domestic factors that are most crucial from the point of view of more efficient enforcement and application of EU equality law in Hungary. Separate sections look at the different EU mechanisms: formal transposition mechanisms, soft policy mechanisms and financial assistance mechanisms, and their relevance, and the different domestic factors these mechanisms impact – namely norm resonance, state capacity, and the standing of civil society actors.

2. Previous research

This section analyzes previous research that has put forth two arguments that are of major relevance for the paper. The first says that, despite good formal transposition, enforcement is lagging behind in Hungarian equality policy. The second argues that soft policy mechanisms and financial assistance mechanisms have the potential to complement and ease the transposition of EU norms by facilitating their enforcement and application.

There is wide-ranging agreement that Hungary's accession performance in the social policy field in general and equality policy specifically can be characterized by timely and correct formal transposition, even in comparison with the EU-15 (among others Treib and Falkner 2008; Sissenich 2007; Krizsan and Papp 2006). Supply-side explanations for success are based primarily on the determinacy and legitimacy of hard conditionality in this field (Schwellnus 2005). Equality policy-related demands formed part of the conditionality criteria quite consistently during the entire accession period, despite the fact that they were, with the exception of the gender equality chapter, new to European social policy.

Explanations of good performance are also based on domestic factors. Treib and Falkner (2008) argue for the importance of policy misfit in understanding performance. Favorable governments are also seen as important factors in the success of formal transposition (Treib and Falkner 2008; Jacoby 2005). Different studies on Hungary note the visible effects of government change from center-right to left-liberal in 2002 on the transposition of EU norms (Schwellnus 2005; Jacoby 2005; O'Hagan 2004; Buzogany 2008). The quality of the policy process is also discussed as a domestic factor that influences success. Jacoby (2005) argues that change can better be explained if, beyond rule determinacy and the legitimacy of EU norms, domestic factors are also taken into consideration. He specifically emphasizes openness of the policy-making process in terms of involvement of epistemic communities and NGOs and receptivity to other international influences. He argues that such factors play a role particularly in cases when social-learning mechanisms are at the center of the transposition process. Buzogany (2008) attributes the success of transposition in Hungary (as opposed to Romania) largely to the impact of NGOs and Constitutional Court activism.

Besides the recognition of successful transposition, much of the available research notes problems in application and enforcement of transposed EU norms. Comparing the Hungarian and Polish cases, Sissenich (2005; 2007) highlights two factors that determine successful rule transfer: state capacity and organized, non-state interest (specifically, parties in social dialogue). A combination of weak states and weak organized interest, a situation that Sissenich regards as typical for CEECs, will accordingly lead to low formal and low behavioral adoption. She finds that in Hungary and Poland, formal adoption of the secondary law was high, but was followed by weak enforcement and no behavioral change. Sissenich explains this by focusing on the low state capacity of the two states and weak participation of organized interest, despite all efforts by the EU. She points to the state-building attempts of the EU (in terms of administrative capacity building, capacity building of sub-national governments, and the creation of regulatory and enforcement agencies) to address this double weakness (2007: 5).

Treib and Falkner (2008), in their work on enforcement of several equality directives in four CEECs, categorize Hungary as belonging to the “world of dead letters” model. This model is best characterized by politicized transposition burdened with political contestation and enforcement problems. Treib and Falkner explain enforcement problems with weak state capacity, which derives from lack of resources, weak bureaucracies, inefficient courts and enforcement agencies and low respect for rule of law, and with weak civil society and interest group participation. Buzogany's (2008) post-accession analysis of enforcement of equality based on sexual orientation attributes Hungary's relative success in comparison with Romania to supportive governments and continued involvement of non-state actors in the policy process. Meanwhile, he draws attention to what he calls the “lacking ownership” of equality norms and the negative influence this plays in enforcement.

Similarly, research specifically on gender equality in the CEEC enlargement process agrees that progress is undisputed in terms of formal adoption in fields where hard law has governed accession (Beveridge 2008; Bretherton 2006; Krizsan and Zentai 2006; Sloat 2006; Krizsan and Papp 2005). At the same time, there is widespread agreement related to enforcement and application abound. It is also argued that the formal adoption of rules has not been followed by adoption at behavioral and discursive levels (Beveridge 2008; Bretherton 2006; Krizsan and Zentai 2006; Sloat 2006; Krizsan and Papp 2005). Analyses list the absence of political will, shortages of both financial and human resources, and the low resonance of norms as main explanations for failure.

Stepping away from transposition-focused analyses, Lendvai (2005; 2008) argues for the path dependency of CEECs in the context of social policy in European integration. Her approach challenges the paradigm of adoption and learning and argues that impact can rather be formulated in terms of state formation and complex transformation processes – a quantum leap in which post-communist countries face the almost impossible task of approximating their welfare regimes to the EU social model (Lendvai 2008). She terms “problems” both as performance gaps and as discursive and normative failures specific to the realm of social policy. According to her, five specific criteria make post-communist countries (including Hungary) unable to adapt the social policy mechanisms of the EU (Lendvai 2005). These criteria are: rigid budgets, “messy contracts” (where legal obligations do not always result in service provision), broken policy cycles, weak social dialogue, and weak or unavailable statistical data. Lendvai adds the impossibility of coordination and cooperation and reluctance to cross-sectoral cooperation.

Thus, most research focusing on enforcement failure in Hungary tends to converge in that it attributes failures in a large part to structural factors, such as problems with state capacity, low inclusiveness in policy making, and behavioral, norm-resonance problems.

Responding to shifts in EU-driven policy processes, research has also increasingly started to discuss soft policy mechanisms in the CEE context. For instance, analyses point to ways in which they improve the enforcement of EU norms. Research has shown that the social learning-type impact that soft policy mechanisms may bring is important in smoothing the accession process and improving the efficiency of the massive rule adoption that these states had to perform (O’Hagan 2004; Pfister 2008). Meanwhile, critiques of soft policy methods draw attention to inefficiency that stems from the absence of stronger incentives. O’Hagan (2004) positively evaluates the role soft law played in Hungary in maintaining structures of social dialogue in a period of governmental hostility to social dialog institutions. She argues that, in Hungary, soft law was successful in combination with incentives coming from financial support mechanisms and the pressure of regular EU monitoring. Ferge and Juhasz (2004) find that the main benefits of soft policy mechanisms in Hungarian social policy are the introduction of new social policy concepts to the policy agenda, improved inclusion of civil society in policy making, and cognitive Europeanization.

Other authors (Pfister 2008; Fagan et al. 2005; Krizsan and Zentai 2006; Ferge 2004) specifically note the high potential of soft social policy mechanisms for equality policy in accession and new Member States. Research on the European Employment Strategy (EES) and the European social inclusion process has been conducted with a particular focus on gender equality. The EES was initially seen as a major opportunity for promoting substantive forms of gender equality (specifically gender mainstreaming) more widely in the EU (Rubery 2002). Documents produced within the framework of these processes are seen as especially relevant and carrying a high potential in the case of Hungary (Fagan et al. 2005; Krizsan and Zentai 2006; Ferge 2004). Pfister (2008) views the soft approach of the EES as a conceptual influence capable of influencing the agenda and setting the terms of the debate. Analysis partly confirms this potential for Hungary. It finds that the language of the National Action Plans (especially the 2004 round) is far more sophisticated and advanced in terms of equality than most of the national level documents (Krizsan and Zentai 2006; Fagan et al. 2005). Pfister also notes the importance and strength of the Hungarian Employment National Action Plan (NAP) in 2004 and the Revised NAP in 2006. Especially in comparison with German and UK programming in the field, he sees these plans as outstanding, forward-looking strategy papers that are backed by a ministerial-institutional framework (2008: 529). Pfister evaluates Hungary’s performance in this soft policy field as quite good.

Research also notes the importance of Structural Funds (SF) and particularly European Social Funds (ESF) for promoting equality. Given the importance of these funds in financing development in the EU, their requirements on equality may gain serious importance for different countries. Braithwaite (2000: 10) argues that mainstreaming gender into SF and ESF entails the introduction of equality in a wider range of priorities and measures, the improvement of monitoring and enforcement tools (such as data collection, indicator development) for gender equality, and increased involvement of equal opportunity organizations in programming and management. Meanwhile, she also notes the variation in the importance of gender between the different programming fields: gender is taken into account more in fields that spend less money and bring softer change (such as human resources). Little evaluation of SF and ESF spending took place for Hungary, and little of that had an equality focus. Preliminary research findings on the first programming period more generally already show the indirect impact of SF on inclusive policy making (Lakatos 2007).

Existing equality evaluation findings concerning the same programming period indicate inconsistency in terms of incorporation of equality priorities, as well as some good practices in integrating equality (MTA RKK 2007).

It is argued that the importance of soft EU policy mechanisms for promoting equality norms should be considered in the wider EU equality policy context in which equality norms, and particularly gender equality, have been competing with other priorities. The marginalization of gender equality was noted in the EES context (Radulova 2009; Pfister 2008; Fagan et al. 2005): researchers have argued that this marginalization impacts particularly heavily on the equality components of the National Action Plans of CEECs. Pfister (2008), analyzing EES impact in Germany, UK, and Hungary, notes the shifts in the priorities of the EES towards activation and away from gender equality. This has resulted in the loss of visibility, detail, and specificity of gender equality in the national debates and the documents produced. It seems that the marginalization of equality in on-going EU debates is particularly important in countries, such as Hungary, where the equality agenda is not so well established outside EU processes.

It is clear that soft law may bring much more in terms of equality than just a better and smoother application and enforcement of hard laws. Of particular significance for this paper, however, is the relevance of soft mechanisms for furthering behavioral change and for improving state capacity and inclusiveness of policy processes – and as such, contributing to application and enforcement of EU norms.

This section highlighted two claims presented by earlier research: first, that despite good formal transposition, enforcement is lagging behind in Hungary, and second, that soft policy mechanisms and financial assistance mechanisms have the potential to improve the enforcement and application of EU norms. Following from these claims, the next section of the paper looks at how these mechanisms complement the formal transposition mechanisms available to the EU to improve the implementation of EU equality norms in post-accession Hungary.

3. EU mechanisms at work

3.1. The EU conditionality story

The period between 2001 and 2008 brought dramatic improvements to the equality architecture of Hungary. The post-1989 Hungarian legal system has not been entirely averse to equality thinking. However, initiatives developed before the EU accession period were framed in terms that differed largely from the EU equality-related norms that were to be adopted within the framework of the accession process. While Hungary had wide constitutional protection against discrimination from 1989 and legislation protecting ethnic and national minorities from 1993 and disabled persons since 1999, the protection provided was not backed by enforcement measures and sanctions to make these laws effective. In the case of legislation, protection was also not framed primarily in equality and non-discrimination terms.

It is against this background and within the context of the EU accession process that from 1998, increasing NGO and expert mobilization in Hungary targeted the achievement of improved equality policy. Mobilization revolved around discrimination against Roma and women in the early stages and disabled persons and persons disadvantaged based on their sexual orientation(2) in the later stages. Conferences, publications, and test court cases pursued by public interest groups all pointed in the direction of the necessity to introduce change. The Minority Parliamentary Commissioner and different opposition MPs aligned with this mobilization. In 2000-2001, three anti-discrimination bills were developed and submitted before different Parliamentary committees: the Minority Commissioner's Bill on Racial Discrimination, an anti-discrimination bill concerning all grounds of discrimination by two Socialist MPs, and a bill on gender discrimination by two liberal MPs. All three bills were turned down.

Hungary started EU accession negotiations in 1998. The right-wing government in power between 1998 and 2002 posed a major obstacle to policy development in the social field generally (O'Hagan 2004; Jacoby 2005) and the equality field specifically. Using a language of external requirements (Dombos et. al 2007), this government favored – as a response to the EU accession conditionality – a politics of marginal change in the different sectors of the legal system as opposed to a comprehensive reform in the field of equality policy. In 2000-2001, as noted by the relevant Regular Reports on Hungary, a wave of amendments (especially of the Labor Code) made an important step towards the adoption of the social- and employment-related *acquis*, including most of the core elements of the equality *acquis*. While the government's approach failed to respond to the requests of the national policy debate, the Regular Reports (1998, 1999, 2000, 2001) indicate general reassurance from the European Commission towards the incremental change approach of the government. The main criticisms in the Regular Reports in the social field relate to enforcement issues. Also, they come from an assessment of the social status of the vulnerable groups that is not tied strongly to EU *acquis*, but rather to a wider EU understanding of equality principles – for instance, the low proportion

of women MPs in Parliament, the need for educational integration of Roma, integrated employment for the disabled, and low civil society participation. Some minor critical remarks note the need for further legal refinement particularly in the field of anti-discrimination, both connected to the Race Directive and to the Employment Directive. The need for improvement of the institutional set-up is also mentioned. The main focus of criticism in this period, besides the need for improving and speeding up implementation in all fields, seems to be the failure of social dialogue (Jacoby 2005; O'Hagan 2004) and the social exclusion of Roma.

The 2002 change of government to left-liberal coalition almost instantaneously brought changes in the government's attitude towards European integration and also towards equality policy. The new government framed the harmonization of EU norms more in terms of adherence to an abstract and positive Europeanness than as fulfillment of requirements (Dombos et. al 2007). In December 2003, after a one-year, intensive preparation and Parliamentary debate with NGO and expert involvement, the Act on Equal Treatment and Promotion of Equal Opportunities was passed. The law covers a generous list of equality grounds that far exceeds the EU list and covers all aspects of the equality *acquis* including the establishment, as of 2005, of an independent Equal Treatment Authority. Minor aspects of the law remained in contradiction with the *acquis* (Kadar 2007; Krizsan and Papp 2005). A round of post-accession amendments in 2006, upon pressure from NGOs and experts, rectified some of these problems, while others continued to be deemed problematic by the expert report (Kadar 2007) and infringement records.

After accession, in the equality field, infringement procedures continue to provide negative incentives. Hungary has been part of two infringement procedures, both of which started in 2008. The first concerns the Employment Directive. The problems noted mostly relate to the letters of the directive – primarily definitional inconsistencies and divergences. But, the infringement letter also notes the absence of proper regulation of reasonable accommodation for disability. The second infringement procedure concerns the 2002 amended Equal Treatment Directive between women and men. The reasoning notes the limited scope of the law and the mandate of the Equal Treatment Authority. Both infringement procedures are quite recent, and it is unclear what the response will be from the Hungarian state. It is important to note that most comments concern the cost-demanding aspects of transposition – particularly, reasonable accommodation and the mandate of the Equal Treatment Authority to go beyond complaint solving to also assist victims, produce reports, and make recommendations.

By and large, however, with the adoption of the Equal Treatment Law and subsequent amendments, Hungary harmonized much of its legislation with the equality related *acquis* (see also Falkner et al. 2008; Krizsan and Papp 2005) by the accession date, with some minor updates following that.

This story indicates the presence of a number of favorable domestic factors beyond the external incentives logic that played a role in successful transposition. The presence of some equality thinking in Hungary since the mid-1990s is quite obvious. In this context, starting from the end of the 1990s, NGOs, norm entrepreneurs, and some left-liberal politicians started to pursue a campaign for comprehensive equality policy. This campaign was rather unsuccessful while Hungary had a government unfavorable to developments in the social policy field, but it prevailed immediately after the political shift in 2002. While the EU influence cannot be neglected – neither in terms of strengthening political will to act, nor in terms of defining the framing of the adopted document (see Dombos et. al 2007) – the story clearly shows the importance of domestic factors in the success of transposition. Infringement procedures should be looked at against this background. Given the importance of domestic factors in the transposition process, a reversal upon accession seems unlikely. They seem to matter in terms of providing an impetus for more prompt fine-tuning of existing legislation vis-à-vis EU norms. Meanwhile, some implications of the infringement procedure for enforcement and application issues can be noted. The reluctance to integrate reasonable accommodation for disabled persons into law not only has serious cost components, but also raises applicability problems, given that it is meant to at least partly transfer accommodation costs to employers. The problems with the mandate of the equality body – namely, that it does not conduct research and surveys or assist victims – also has resource- and capacity-shortage elements. It is clear that the infringement procedures will not be able to go much deeper in addressing application and enforcement problems of the equality *acquis*.

3.2. Soft policy mechanisms and behavioral change

In parallel with the process of the formal transposition of the *acquis*, from 2001, Hungary started to join a series of soft social and employment policy mechanisms. After a three-year preparatory period, Hungary launched its first National Employment Action Plan in 2004. In 2003, the government signed the Joint Inclusion Memorandum, followed in 2004 by the 2004-2006 National Action Plan on Social Inclusion. While these processes are not directly part of EU equality thinking, equal opportunity thinking related to both gender and other recognized inequality grounds informs them as horizontal principles. In the EES and the social inclusion processes, documents contain separate equal opportunity chapters; also, equality is

mainstreamed to varying degrees of success in all the other parts (Rubery 2002; Fagan et al. 2005; Pfister 2008). Hungary is considered a “disciplined programmer” and as a state that has given serious and strategic weight to documents produced in the process of the formal transposition of the *acquis* (Pfister 2008). These documents brought a new language of equality to Hungary with emphasis on horizontal and mainstreaming-driven thinking on equality (Krizsan and Zentai 2006). Also, they introduced a more strategic focus in Hungarian social policy, based on programming, enforcement, and capacity building. As such they seem to respond directly to some of the more systemic failures in the field of equality that have underpinned the difficulties of proper enforcement of EU equality norms. A second round of these documents was launched around 2006. While the National Strategy Reports on Social Protection and Social Inclusion (for 2006-2008 and for 2008-2010) clearly continued on pursuing a forward-looking, mainstreaming-minded equality agenda, the new NAP on employment has clearly reacted to the redrawing of priorities in the EES at the European level and the marginalization of equality considerations in it (Pfister 2008).

Beyond the more general, soft social policy processes, post-accession Hungary became part of European equality programming. Two such processes stand out: the European Year for Equal Opportunities for All (2007), and the domestic implementation of the EC Roadmap for Equality between Women and Men (2006-2010). Both meant the launching of new and important strategies for Hungarian equality policy and the start of programming along the priorities established in the respective EU processes⁽³⁾. The Roadmap is important especially in terms of defining priorities and harmonizing strategies on gender equality across Europe. The year of equal opportunity provided direct impetus through some funding and initiative on actions of awareness raising, improving representation of inequality issues, promoting research and understanding and state-non-state actor cooperation on all equality grounds. States developed domestic equality strategies under its aegis and undertook national level campaigns along these lines. While measures supported under the Year of Equal Opportunities are of soft nature, they clearly lead in the direction of improving enforcement of EU equality norms.

EU normative pressure comes from the EU Expert Groups established for the different equality aspects, as well. These groups are formed by experts from every Member State and are financed by EC Funds. They include: the EC network of legal experts in anti-discrimination, an EU expert group on Gender, Social Inclusion and Employment, the European Network of Legal Expert on Gender Equality, and to some extent, the European Network of Equality Bodies - EQUINET. The task of these expert groups and networks is to issue expert reports in which equality-related conceptual matters are tackled and proposed for EU Members States, to regularly monitor and evaluate practice in the field at the domestic level, and to make recommendations for improvement. Their work is informed by domestic challenges and solutions in equality policy brought by the experts to the group; their work informs equality policy changes and debates in the domestic realm. They also feed information into the EC monitoring of legal transposition. The regular monitoring reports produced by these expert groups contain country evaluations for every Member State and often address – besides narrow transposition issues – issues of application and enforcement. Even though these reports have no mandatory power, they nevertheless feed into domestic policy-making processes by social learning mechanisms.

Social learning and normative pressure come to Hungary in the equality field through every major policy mechanism that was launched in the field in the last years of the accession period as well as in the post-accession period. While criticism concerning the weaknesses of soft policy mechanisms in terms of efficiency and impact should not be neglected (Pfister 2007: 71), two kinds of potential impact can nevertheless be discerned. These soft policy mechanisms may bring a strategic programming approach to policy making that has not been around in the field before Hungary’s EU accession; they have the potential to enhance state capacity. The other potential impact comes in terms of aligning Hungarian policy frames with EU framing and improving norm resonance in the field. Section 4 of this paper looks at how some of this potential impact comes across in Hungary.

3.3. Financial support mechanisms

In the post-conditionality context, Schimmelfennig and Trauner (2009 this issue) see alternative external influence mechanisms, including financial and technical support mechanisms, to be instrumental in preventing involuntary non-compliance and strengthening domestic capacity for improving the enforcement and application of transposed norms. Financial assistance seems to be particularly efficient in environments that are politically favorable to compliance but that lag behind in terms of implementation for various reasons (such as due to administrative or resource-related issues). The case of the equality realm in Hungary, with its strong formal compliance and connected enforcement problems, fits perfectly with this view. Several funding mechanisms reach out to the equality agenda and can be seen to contribute in one way or another to the enforcement of EU equality norms.

Distinction may be drawn between different types of financially-driven influence mechanisms. While some may act as external incentives, which are only allocated upon compliance and can be withdrawn with non-

compliance, others act towards supporting compliance more along the lines of financial assistance. EU financial mechanisms vary according to the extent to which they operate as external incentives mechanisms: some are solely external incentives type, others are financial assistance type, and yet others combine the two aspects, in that their allocation is conditional on fulfilling some of their core programming criteria, but not on fulfilling other criteria. While Structural Funds allocation, discussed below, is an external, incentive-type financial mechanism with respect to some core criteria of its distribution, such as transparency, the equality aspects are more marginal to their allocation and do not threaten withdrawal. It is also important to note that most of the instruments analyzed here go beyond funding. This section also recognizes instruments' roles in facilitating social learning through guidance in programming, and also through cross-Member State cooperative action, such as networking, disseminating good practices or knowledge-transfer. Therefore, some points made in the previous section of this paper also apply to mechanism discussed in this section.

The year 2004 marked the beginning of Hungary's full access to relevant EU funding. Some funding mechanisms were targeted directly towards the equality policy agenda. The Community Action Program to combat Discrimination (2001-2006) and the Community Program on Gender Equality (2001-2006), merged in 2006 in the PROGRESS program (2007-2013), is the enforcement pillar of, among others, the equality-related directives. Hungary gained full access to this package from 2004, as well as to more general funding mechanisms of relevance, such as the EU Structural Funds, their European Social Funds, and the specific ESF targeted community initiative, the EQUAL program. In order to explain the potential of these mechanisms to impact the enforcement and application of EU equality norms, this section looks at how the programming of these funding mechanisms integrates equality policy aims, complemented with information on specific projects implemented within the framework of these mechanisms and targeted specifically to the equality field(4).

3.3.1. Community Action Programs

The mechanisms of financial support closest to the equality policy of the EU were the two Community Action Programs: the Community Action Program of the Community strategy on gender equality (2001-2006) (5) and the Community Action Program to combat discrimination (2001-2006)(6). Both programs aim to support and finance the enforcement of the EU gender equality policy respectively the EU anti-discrimination policy in cooperation between the EC, Member States and civil society. Both programs primarily financed projects that impacted across several Member States and focused mainly on three aspects: awareness-raising, capacity development of relevant stakeholders, and knowledge and expertise generation. Both their funding targets and their transnationality indicate that they were meant not only to provide financing for enforcement, but also to promote social learning in enforcement matters across Europe. Both specifically state in their programming documents that they were intended to be complementary to and coordinated with other programs and grants aiming to promote equality – specifically, Structural Funds and the Community Initiative EQUAL .

The Community Action Program on gender equality (2001-2006) spent a bit less than half of its funds on capacity building, more than one-third on awareness raising and “sensibilization,” the rest on knowledge and expertise generation. More than one-fourth of the funds within the programs priority on capacity-building and on awareness-raising went towards state actors. One-fourth of awareness-raising actions targeted the larger public opinion (European Commission 2008). Similarly, the evaluation of the Community Action Program to combat discrimination finds that the Action Program has played a key role both in raising awareness of the issues surrounding discrimination and in developing the ability of stakeholders to tackle discrimination(7). On average, half of the spending went towards capacity development, primarily for NGOs promoting the interests of vulnerable groups and pursuing actions against discrimination. More than one-third of the budget targeted awareness raising and sensibilization. This work was geared in particular towards the general public, but also entailed training judges and practitioners in working with anti-discrimination law (European Commission 2006).

The Progress Program(8) was launched in 2007 to continue, among others, the activities of the previous Community Action Programs for the period 2007-2013. The idea was to rationalize and streamline EU funding in the social policy field and to improve its impact. Two out of its five priority areas are relevant for our purposes: non-discrimination and gender equality; another two, social inclusion and employment, are indirectly relevant. The main targets of the program are Member States, local and regional authorities, public employment services, national statistics offices, as well as specialized equality bodies, universities and research institutes, as well as the social partners and non-governmental organizations, all of these key actors in enforcement of equality related norms. Training, knowledge generation, policy transfer and learning, and engaging all stakeholders in the process are the main tools used by the Program(9). No evaluations are available yet on the Progress Program.

Community Acton Programs are specifically geared towards addressing the specific enforcement problems of equality policy. The driving force in programming is the recognition that pro-active measures are needed to enforce anti-discrimination measures (O'Conneide 2006). They directly address components of such an

approach to enforcement, both through funding and through facilitating cross-Member State networking and transfer of enforcement models.

3.3.2. Structural Funds

One-third of the EU budget is spent on EU Structural Funds (SF), which aim to facilitate the development of economically disadvantaged regions of the EU. The Funds are allocated to countries in accordance with their National Development Plans, developed within the framework and along the principles of the EU regional policy, though largely by the Member States themselves. Hungary, as a New Member State, currently participates in the second programming period in SF spending. The first programming period (2004-2006) was driven by the National Development Plan (2004-2006), the second was launched in 2007 and is grounded in the New Hungary Development Plan (2007-2013). The importance of SF spending to Hungary is best indicated by the amount of the funds disbursed to the country, which was 2.68 billion EUR for the first programming period and is expected to be 22.4 billion EUR for the second programming period (roughly 4% of the country's GDP). Structural Funds spending largely defines Hungarian development policy. Beyond direct impacts – that is, the money coming from the EC – it has been argued that SF priorities also indirectly impact Hungarian spending. Given the SF co-financing and additionality principle (25% for the 2004-2006 period, 15% for the 2007-2013 period), and the large budget deficit with which Hungary struggles, SF programming determines most of the development-related spending of the country, often coercing all public tenders within the framework set by the Development Plans (Lakatos 2007). Structural Funds spending influences Hungarian policy making and implementation in many different ways. Its influence can be discussed under two aspects. First, SF (and particularly ESF) programming and implementation are clearly and directly relevant to equality issues. Second, SF indirectly influences equality policy implementation through impacting the different problematic factors that hinder good enforcement and application of equality policy, such as state capacity, inclusive policy making, and norm resonance.

First, how are SFs directly relevant to equality policy? Structural Funds in Hungary relate in two ways to the promotion of the equality agenda. First, the EC, in its core SF regulations(10), sets the elimination of inequalities and the promotion of equality between women and men as horizontal priorities for the functioning of SF. As such, equality is to be applied in all aspects of the functioning of the SF. Thus, it is relevant for all Operational Programs (OP), in all their programming and implementation efforts, including all grant distribution, monitoring, and evaluation. Accordingly, the 2004-2006 National Development Plan sets equality of opportunity between women and men as horizontal priorities. In different parts of the document, equal opportunities for Roma are also included among the horizontal principles. The New Hungary Development Plan (2007-2013) takes up a wider approach and defines the horizontal principle with reference to equal opportunity and anti-discrimination on all grounds, while specifically mentioning equal opportunities for women and men(11). Detailed descriptions of the horizontal principle put the focus on gender, ethnicity (specifically the Roma minority), disability, and regional inequalities (NHDP: 64-65).

The horizontality of equality has specific and far-reaching implications for the implementation of the SF. It implies that all Monitoring Committees have representatives of the three main vulnerable groups recognized in Hungary: women, Roma, and the disabled. Also, equal opportunity guidelines were developed for every OP to inform both the tenders and the preparation and evaluation of the projects. Every submitted project must reach certain scores on fulfilling the equal opportunity horizontal principle. Unfortunately, only minimal scores should be reached; this has been one of the criticisms regarding the efficiency of the system (MTA-RKK 2007). Specific evaluation concerning the horizontal principle of equality is only available for one of the OPs of the previous programming period (MTA-RKK 2007). The evaluation notes several programming and practical problems, but it also emphasizes several equal opportunity success stories (MTA-RKK 2007).

Besides the horizontality principle, specific Operational Programs focus on different aspects of the implementation of the EU equality policy, some of the objectives and spending of which might be relevant from the point of view of the enforcement and application of equality norms. In the 2004-2006 National Development Plan, one OP – the Human Resources OP – had a focus on equality-related matters. The New Hungary Development Plan (2007-2013) has two OPs that can be seen as particularly relevant to equality policy: the Social Renewal OP, and the Social Infrastructure OP. The Social Renewal OP has, as one of its five core objectives, the strengthening of social inclusion and promotion of equal opportunities in society, with the specific goal to strengthen and promote anti-discrimination policy. Projects developed with these OPs can often be linked directly to improving the enforcement of equality policy. For example, a 2008 tender under the Social Renewal OP specifically targeted the improvement of the awareness-raising and knowledge-generation capacities of the Equal Treatment Authority(12). While the focus of these OPs goes well beyond improving the enforcement and application of EU equality norms, they may be instrumental in backing equality policy enforcement through projects and programs directed towards structural forms of inequality, but also, quite importantly, through collecting data and developing indicators for specific inequality phenomena.

Structural Funds programming and spending also indirectly impact Hungarian policy processes by improving the enforcement and application of norms in the equality field through (potentially) state capacity development. The implication here is that SF programming and spending can lead to more inclusive, transparent, and facts-based policy processes at all stages of policy making, as well as the recognition of the need for better indicators and data collection for these purposes. These processes also have components such as developing state infrastructure, building capacity within the state administration (including bodies in charge for enforcing equality policy), and providing funding for programs and activities in the field that could not be pursued because of the lack of funds. Beyond the overall impact, specific OPs might also feed directly into developing state capacity. The State Reform Operational Program of the New Hungary Development Plan could be especially relevant. The two main priorities of the OP are the renewal of processes and the organizational development and improvement of the quality of human resources. Both are of high importance from the point of view of the enforcement of equality norms.

Another important indirect gain of the SF mechanisms is their focus on inclusive policy making, through partnering with civil society, as one of the core principles in both programming and implementation (Lakatos 2007). Lakatos, in his evaluation of the 2004-2006 National Development Plan, depicts the impact of the SF on taking the partnership principle increasingly seriously. Despite the soft guidance that is attached to the SF programming, Lakatos argues that the two core principles given by the EU – regionalism and partnership – nevertheless have a strong, indirect impact on Hungary. They impact and they are implemented because they are seen to serve more efficient programming and therefore more efficient absorption of funds (Lakatos 2007: 178). The strength of civil society and non-state organizations is also improved by their access to this important funding mechanism. It should also be noted, however, that small NGOs may face extreme difficulties in fulfilling the stringent criteria SF sets for partners in winning bids (13).

Finally, the SF mechanism has the potential to improve norm resonance in the field of equality policy. Research has already noted the visible shift in framing equality, specifically in the field of gender equality, brought by the Development Plans (Krizsan and Zentai 2006), as well as by instruments such as the equal opportunity guidelines developed for each OP, or practices such as the equal opportunity screening of each project. Through these, a higher awareness and understanding of the equality agenda is likely to spread among some of the most important stakeholders in the equality norms enforcement process (state, non-state, and labor market actors, as well). More research and analysis on how exactly the programming and distribution of funds translates to progress in the equality policy field are clearly needed.

4. Domestic Changes

The discussion of EU impact mechanisms in the context of an analysis of enforcement and application of EU equality norms has highlighted the importance of soft social learning mechanisms and financial assistance mechanisms. This section discusses the progress of three domestic factors that have been discerned in the literature as particularly important in enforcing equality norms in the context of these EU mechanisms. It assesses their actual and potential change and also the aspects that resist change and continue to constitute an impediment to better enforcement, and attempts to causally link this change to EU influence, as much as possible within the framework of this paper. While it is difficult to delimit the impact of EU mechanisms from other causal mechanisms bringing change, the fact that the equality policy agenda in Hungary is largely set by the EU makes the assumption of at least partial causality safe in the case of this policy field.

4.1. Norm Resonance

The resonance of norms has been emphasized by several authors as being an important endogenous determinant of EU impact both in the success of transposition and in enforcement (Buzogany 2008; Dombos et. al 2007; Schweltnus 2005). Norm resonance is important in the context of enforcement of equality policy in two ways. First, norm resonance can engender awareness and understanding of discrimination among victims, potential perpetrators, and those who are in a position to detect discrimination; as such, it leads to fewer violations, more active rights claiming, and more cases of discrimination that are dealt with by authorities. Second, norm resonance, manifesting in the work of different policy stakeholders, leads to better implementation and programming documents and to addressing the enforcement problem at stake more extensively, through a range of different available policy tools. This section looks at both of these aspects.

The recent Eurobarometer survey (2008) on perceptions of discrimination and attitudes towards groups vulnerable to discrimination can be used to assess the awareness and equality norm resonance of the general public in Hungary. Perceptions of discrimination in society is generally around the average of the EU population or above in the realm of ethnicity, age and gender. Below average are perceptions of

discrimination based on religion and sexual orientation. One-fifth of Hungarian respondents (which is above the EU average) felt they had been discriminated against in the previous 12 months. Here, while grounds of discrimination are quite dispersed, age and ethnicity seem to be the most prominent. On diversity attitudes, Hungary performs worse than the European average in every single category except religion: close to half of the sample would not like to see Roma or members of sexual minority groups as neighbors or high-level elected politicians; disabled persons also do not fare well as politicians.

Meanwhile, in terms of awareness and acceptability of equality policies and equality rights in Hungary, there is an above-average perception of the insufficiency of domestic equality policy, especially on grounds of age and gender and in the domain of education. The Hungarian population is also particularly supportive (9 out of 10) of providing positive measures for promoting equality for groups on all grounds, with the exception of sexual orientation. Hungarians believe almost 10 percentage points more than the European average that they know their discrimination and harassment related rights (Eurobarometer 2008: Hungary Fact Sheet).

Data indicate that in Hungary, there is an above-average (within Europe) norm resonance among the population concerning equality standards and the rights-related to them. At the same time, the population is generally more intolerant and averse to diversity than the European average, especially as far as Roma or sexual minorities but in some contexts disability is concerned.

As compared to the 2006 Eurobarometer survey (Eurobarometer 2007) data show a moderate increase or relative stability in terms of perception of discrimination. The survey also shows a clear (15-20%) increase in awareness of rights over the two years, and an increasingly favorable attitude (10% increase) towards positive action measures on all grounds. Data on change show improvement at least in terms of the potential for improving the enforcement of equality law.

Data on norm resonance and identification with equality norms by actors that are important in the enforcement of equality policy – judges, employees of employment offices, police, public administrators that work with clients – are obtainable from the end of the 1990s. Data indicate pervasive anti-Roma sentiments within the police (OSI EUMAP 2001: 242). While no direct measurement of change of norm resonance of enforcement actors with the EU accession is available, data on the general public has implications for the attitudes of enforcement actors, as well. In their case, stagnant negative attitudes toward vulnerable groups seem even more problematic since such attitudes lead to persistent patterns of institutional discrimination.

Attitude change takes place in the context and under the impact of media campaigns, awareness-raising actions, and trainings directed at different segments of the population, much of which has been financed by the Community Action Programs and Progress and different SF-related programs.

Analyses of the resonance of policy frames between Hungary and the EU in the gender and sexual orientation-based equality policy field show that the EU had an important impact on framing equality in Hungarian debates. However, this has not brought full resonance between the two. Analysis done with frame analysis methodology (Krizsan and Zentai 2006) indicates that there is a difference between framing gender equality in domestically-developed policy documents and policy documents developed in some kind of cooperative model with the EC, particularly the Joint Inclusion Memorandum (2003), National Employment Strategy (2004), or National Development Plan (2004-2006). These documents have used a much more sophisticated gender equality framing, which is close to the frames used at the EU level. Recent research (Dombos et al. 2009) that compares framing of policy debates in Hungary and the EU in several gender equality and LGBT rights-related policy issues argues that in Hungary the dominant frames of the debates are, as a rule, less gender equality-sensitive than the dominant frames in the respective EU debates (14). Even in the fields of gender equality where there is strong EU impact, only partial frame convergence has taken place; there is no full resonance (Dombos et. al 2009). Progress in convergence of policy frames in the laggard fields of gender and sexual orientation can be seen as a good proxy for progress in other equality fields that traditionally have developed more dynamically in Hungary(15).

Improvement in frame resonance can largely be attributed to programming in different EU policy processes (Krizsan and Zentai 2006). Meanwhile, as soft policy processes do not impose specific policies, the framing in these documents can at least partly be regarded as the result of some level of norm resonance and behavioral change of policy actors that are highly relevant for the application and enforcement of EU equality norms in Hungary. As such, they may stand to indicate the potential for sustainable improvement in the enforcement and application of these norms.

Improvement in norm resonance in Hungary can thus be identified in two realms: of awareness concerning rights and the need for state intervention to prevent and address inequality; and of understanding and use of an equality language and framing in policy documents that increasingly conforms with that of the EU. While these factors might lead to better enforcement of anti-discrimination policy, especially in terms of

identifying violations and bringing more complaints, the persistence of negative attitudes towards vulnerable groups indicates that a social problem, which is the source of these violations, is not likely to decrease.

4.2. State capacity

Relevant literature converges on attributing the limited success in the enforcement of the formally adopted EU anti-discrimination norms at least partly to state weakness (Falkner et. al 2008; Sissenich 2007; Lendvai 2004; 2005; 2008). A comprehensive analysis of state weakness in the equality field is beyond the scope of this paper. Instead, the paper will proceed to illustrate some of the illnesses of the system through the limited yet emblematic case of the gender equality machinery(16), and indicate the potential for change by looking at the Equal Treatment Authority, the Hungarian anti-discrimination body.

Initially established at the end of 1995 upon the impact of the Beijing Platform for Action, the gender equality policy machinery in Hungary has been at the whims of different government administrations. Its place in the governmental hierarchy has shifted repeatedly, ranking somewhat higher under left-liberal government and lower with right-wing governments, ranging from lower secretariat levels up to the ministerial level. But changes frequently occurred even within the course of one government (Krizsan and Zentai 2006; Krizsan and Papp 2005). The relation of gender equality to other policy sectors – and consequently, the placing of the machinery within different ministries – has also shifted repeatedly, placing gender equality within social and employment affairs, or family affairs, or international and European integration affairs, or ultimately, as an independent equal opportunity policy field. Staff of the machinery has changed frequently. At one moment in 2005, the whole department staff was dismissed and replaced with people who had limited or no expertise in gender equality (Hungarian Women Lobby 2007). Ultimately, since 2006, relative stability can be noticed: the Ministry for Social and Labor Affairs at the level of a separate state secretary is responsible for equal opportunities. Separate departments deal with Roma equality issues, disability equality issues, and equal opportunities as an umbrella term taken to include youth and children issues, elderly policy, and equal opportunities between women and men. As of late 2009, the gender equality department had a staff of five, with varying expertise in the field. With its instability and the related lack of professionalization among the staff, the machinery had never operated in a transparent way. For instance, annual reports were rarely released (reports were available for 2003 and 2004, never before and after). It works on the basis of six months work plans, and for a long time (until 2003), had no rules of procedure. The lack of financial and human resources and the significant fluctuation in the past explain to a large extent the absence of strategic planning and implementation in the field of gender equality policy. The consultative mechanism for coordinating the government, NGOs, and experts on gender equality issues – the Council on Gender Equality, originally established in 1997 – had a similarly stormy history, which resulted in the poor relationship between the government and its gender equality machinery with NGOs and experts in the field (Hungarian Women Lobby 2007). Only its 2008 reform(17) resulted in a more transparent functioning and agenda, and increased NGO participation and increased state attention, which makes the Council currently the main state NGO interface in gender equality policy in Hungary.

The story of the gender equality machinery illustrates several of the symptoms of state weakness. We see an absence of strategic planning and conscious programming in the field that have a debilitating impact on the place of gender equality within the larger social field and within equality policy. The machinery is a clear-cut case of dependency on political cycles and beyond that, even on changes of higher-level governmental officials. The lack of expertise, continuity, and capacities among staff impact the quality of work in the machinery. Besides the absence of in-house expertise, the machinery by and large has failed – until recently – to establish good cooperation with NGOs and experts who can inform their work. The best confirmation for the failure of the machinery in establishing itself as a hub for gender equality expertise within the government is the recently-planned initiative of the SF managing authority, the National Development Agency, to establish its parallel structures for gender equality. As the Agency found that the governmental machinery on gender equality fails to give sufficient support and information for developing the gender equality components of the SF spending, it is pondering to establish parallel institutions to serve as its own programming support mechanism in the field with the involvement of experts and NGO representatives(18).

The story of the gender equality machinery shows a case of how state capacity problems lead to inefficiency in policy enforcement. Though extreme, it nevertheless illustrates well some of the problematic patterns that occur in other fields of equality policy and need to be acted upon to improve enforcement.

Some recent improvements in the activity of the machinery can clearly be linked to soft EU policy processes of equality programming, such as the launching of the national Roadmap for Gender Equality. Beyond becoming the first strategic gender equality document in the last decade, the Hungarian Roadmap also projects the development of further gender equality strategies and acts as a catalyst for involving experts and NGOs in the strategic work of the machinery. EU-driven soft policy mechanisms thus bring a

strategic programming approach to equality policy making that has not existed in the field before Hungary's accession to the EU.

A less extreme manifestation of state capacity problems in the field of equality is shown by the case of the Equal Treatment Authority. Established along the lines set in the Race Directive and the 2002 Equal Treatment Directive as an independent enforcement body, the Authority's main purpose is the enforcement of the Equal Treatment and Equal Opportunities Law, which incorporates most of the EU equality law in Hungary(19). The Authority has been in place since 2005 with a steadily increasing staff and number of complaints received and addressed on all grounds of inequality covered by EU norms(20). While seemingly successful in complaint-solving, it clearly transpires from the annual reports of the Authority. The November 2008 infringement letter also noted that the Authority focuses exclusively on complaint-handling and does not act along the other tasks set by the Directives and Hungarian law. It fails in launching ex officio investigations, a crucial feature of such bodies (Krizsan 2006), and does not play a role in producing reports and commissioning research to improve understanding of discrimination. It does almost no awareness-raising, has very little involvement in the monitoring, review, and development of legislation and policy in the field. Finally, it does not act as a state-NGO interface. The Authority, while it could be a catalyst for change in enforcement of anti-discrimination policy (European Commission 2007), fails mainly because of the limited financial and human resources allocated to it(21).

Financing and capacity-building activities under the different EU mechanisms discussed above come to address directly these kinds of capacity problems. For example, the 2008 tender coming out under the Social Renewal OP, which specifically targeted the improvement of the awareness-raising and knowledge-generation capacities of the Equal Treatment Authority(22) is an excellent example for how the SFs can be applied to deal with enforcement problems that do not flow from voluntary non-compliance. But of course, the question of sustainability of such progress in case of decrease or withdrawal of EU funds from the field remains on the table.

4.3. Empowering and including non-state actors

The role of NGO actors in the enforcement of equality policy is twofold. NGO participation in policy-making and implementation processes can be seen as a guarantee for better targeted policies with more transparent implementation and more responsiveness to the realities of the social problem at hand. At the same time, in the equality field, NGOs are important actors in the enforcement and application of the law as organizations that support victims, bring cases by representing victims, and develop projects, trainings, guidelines for improving enforcement of anti-discrimination law. This section discusses post accession changes in NGO participation along these two lines.

In the Hungarian equality policy development, along with the EU impact, NGOs had a relatively important role to play from the early stages of agenda-setting. NGOs took part in the process from as early as the end of the 1990s, both as mobilizers and as norm entrepreneurs. They acted both as catalysts of domestic norm development and as brokers of EU norms. The adoption of the Act on Equal Treatment and Promotion of Equal opportunities was preceded by a rather intensive consultation process involving a wide range of NGOs and experts(23).

The consultation process on the Equal Treatment Act stands out as quite exceptional in the pre-accession process, consultation not being ab ovo part of the policy process during this period. Other major documents relevant from equality point of view, such as the Joint Inclusion Memorandum, the first Social Inclusion Strategy, the first National Employment Strategy, or the National Development, involved much fewer and more pro-forma consultations with NGOs. Improvement in going beyond pro-forma consultation towards meaningful consultation processes is noted by activists with the second round of programming documents. For example, the launching of the New Hungary Development Plan is seen by activists to have been preceded by a much more thorough and successful consultation procedure than the previous development plan. The procedure included representatives of inequality groups that are recognized under the Plan: women, Roma and the disabled(24).

Consultative bodies formalizing civil society consultation in velvet triangle-type (Woodward 2004) patterns in the realm of equality policy have been around in Hungary from surprisingly early on, but with varying efficiency. Consultative bodies that bring together experts, NGOs, and the government were established for most major inequality grounds in the 1990s. The relatively successful and stable National Council for Disability Affairs was established in 1998; the above-described Council on Women's Affairs (later Council on Gender Equality) was established as early as 1997. The Roma Integration Council – in its current form – came about only in 2006(25). No such mechanism exists for the LGBT groups and for youth. The scope and functioning of these institutions has varied in time, with some tendency towards better functioning during the last years (as is especially visible in the case of the Council on Gender Equality and the Roma Integration Council). The instrumentality of these consultative bodies can partly be linked to the EU

demand for inclusive policy making and partly to EU-driven demand for more professional policy-making processes in which expertise is only available from outside the government, most often from NGOs.

Another way in which NGOs that work on equality policy are included in policy-making processes is through Monitoring Committees (MC) that have been established mandatorily under every OP of the SF implementation. Equality work in the MCs has brought some successes already in the first programming period (2004-2006), but has been especially wide-ranging in the second period. Gender equality groups and disability groups have been especially active in the MCs(26).

Over time, a professionalization and expertization of equality NGOs and their leaders can be discerned. The integration of equality into the different aspects of policy making both as horizontal and as targeted policy priorities increasingly required expertise many times available only from NGOs. While this improves recognition of NGO members and makes the lines between NGOs and experts much permeable, it does not necessarily lead to better resources allocated to sustaining core NGOs. The scarcity of funding is obvious across all equality-related NGO sectors. State funding is especially scarce – almost nonexistent for NGOs working on gender equality or LGBT issues. Roth (2007) argues that while NGOs in the New Member States seem to have gained better access and funding through the accession to the EU, the very same process has led to a loss of funding from international donors that were around earlier (like the Ford Foundation, Open Society Institute, UNDP, UN Trust Fund, USAID, World Bank, and so o.). The absence of state funds providing institutional-organizational support for the groups leaves them entirely at the whims of project-linked money coming almost exclusively from different EU sources. While EU funding towards equality norms enforcement may fill an important gap, financial preconditions for applying for such funds and the delays in disbursing the funds exclude small, financially weak NGOs from the calls, and favour larger groups with a longer history of EU funds management and larger reserves – features that are typically not applicable to equality groups. The funding problem has an important impact on NGO participation in enforcement activities in the equality field. While in principle, their involvement is promoted by new EU mechanisms, in practice, the absence of solid state backing typically prevents these groups from contributing to the process. The funding problem not only threatens the participation of most of these groups in projects, but puts them in an uncertain financial situation(27).

This section showed, on the one hand, the improvement of standing of NGOs in policy-making and implementation processes and the connected professionalization of these groups and their representatives in the context of discussed EU mechanisms. On the other hand, it pointed out the intervening funding problem, which, if not dealt with structurally, can become a hindering factor in the efficient inclusion of NGOs in equality law enforcement processes regardless of the EU mechanisms in place. The section pointed to the failure to translate NGO professionalization, largely linked to involvement in EU driven policy processes, into stronger and more sustainable organizations, which can become long-term partners of the state.

5. Conclusions

This paper started its argument from findings in previous research that suggest that transposition of EU norms in the equality field can be seen as a success, though this success is riddled by enforcement and application problems. The paper argues that while strong compliance mechanisms, such as the infringement procedures used in EU equality law, may stand to detect non-compliance in formal terms, they are not able to address the enforcement and application problem that Hungary struggles with in the field. Alternative EU influence mechanisms (Schimmelfennig and Trauner 2009 this issue), based on social learning and on financial assistance, can address the problems at hand more directly. They impact the most important factors that were suggested by previous research to inhibit enforcement: state capacity, norm resonance, and NGO standing. Mechanisms discussed indicate processes in which there is move away from fast, formal compliance along fixed criteria towards slower processes in which there is more space for adaptation and for behavioral change. These processes may be partly determined by the character of the European equality project as it is embedded in the wider social policy agenda much defined by soft policy coordination; they also have to do with smoother adaptation brought by the post-accession period.

The paper has shown the potential of these mechanisms to act towards the improvement of a number of hindering domestic factors. Where data were available, it also pointed to already-detectable changes and improvements. Identified progress has two components. First, improvements can be seen specifically in the equality field, in terms of improved norm resonance, inclusion of NGOs in processes specific to equality policy, and the professionalization of NGOs. Second, the discussed EU mechanisms bring change and improvement in policy enforcement processes more generally. This means improvement in strategic programming, in recognition of the need for facts-based policy making, increasing use of monitoring and evaluation, and the creation of formal mechanisms for inclusion of NGOs in policy-making processes. While this paper attempted to locate the manifestations of these changes in relation to the equality policy enforcement process, they can be expected to occur across the board in most policy fields where the EU has competence, and even to spill over to other policy fields.

In terms of equality policy enforcement, this paper has presented the potential for steady improvements, especially in the realm of norm resonance, where some positive changes in raised awareness among the Hungarian public concerning anti-discrimination policy and rights has been discerned. Improvement has also been shown with respect to NGO inclusion in the policy processes and professionalization of NGOs. Signs for improving state capacity have also been found, though it remains unclear to what extent the improvements that are closely related to the equality policy enforcement are sustainable in the long-term. Meanwhile, analysis pointed out that problems remain in the norm resonance realm in terms of unchanging intolerance levels, which means that the social problems to be addressed by equality policy is here to stay – though perhaps, more people will be willing to voice their complaints. The analysis also showed that the scarcity of institutional funding for NGOs could be seen as a factor hindering the sustainability of NGO inclusion in equality policy processes in the long-term, despite EU-driven processes opening up to them. These difficulties point, on the one hand, towards the tasks to be fulfilled by wider EU equality policies that go beyond the narrow equal treatment approach of the EU equality law; on the other hand, towards the need for more complex structural reforms that address domestic hindering, structural factors in Hungary.

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Endnotes

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(1) For example through the Community Action Programs. See section 3.3.

(2) In the following LGBT persons (lesbian, gay, bi-sexual and trans-sexual persons).

(3) For the Roadmap on Equality between Women and Men, see <http://ec.europa.eu/social/main.jsp?catId=422&langId=en> accessed on 7 December 2009. For the Year of Equal Opportunities, see http://ec.europa.eu/employment_social/eyeq/index.cfm accessed on 7 December 2009.

(4) Little evaluation work is available specifically on the impact of these funding mechanisms, and even less that is specific to Hungary.

(5) http://europa.eu/legislation_summaries/employment_and_social_policy/equality_between_men_and_women/c10904_en.htm accessed 7 December 2009.

(6) http://europa.eu/legislation_summaries/human_rights/fundamental_rights_within_european_union/l33113_en.htm accessed 7 December 2009.

(7) The program spent EUR 100 million in the period between 2001 and 2006 in 31 countries (including candidate countries).

- (8) <http://ec.europa.eu/social/main.jsp?catId=327&langId=en> accessed 7 December 2009.
- (9) The program has a budget of over 700 million EUR for seven years.
- (10) Council Regulation No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds.
- (11) New Hungary Development Plan at http://www.nfu.hu/the_new_hungary_development_plan accessed 7 December 2009.
- (12) TAMOP-5.5.5/08/1 - A diszkrimináció elleni küzdelem – a társadalmi szemléletformálás és hatósági munka erősítése (Fight against discrimination. Strengthening administrative work and transforming social attitudes. In Hungarian) http://www.nfu.hu/doc/13_11 accessed 7 December 2009.
- (13) This was one of the main points of criticism on the first programming period coming from civil society actors. See social debate of the New Hungary Development Plan (in Hungarian)
- (14) Data analyzed within the framework of the QUING project (<http://www.quiring.eu> accessed 7 December 2009). The policy fields covered include: general gender equality, equality machinery, non-employment (including tax-benefit policies, reconciliation of paid work and family, care work, and gender pay gap and equal treatment in employment) intimate citizenship with focus on partnership (includes divorce, marriage and separation; same sex partnership and sexual orientation discrimination and reproductive rights) and gender based violence (includes domestic violence, sexual harassment, rape, trafficking) . Policy debates around most recent policy shifts were analyzed. For more on methodology see the project website.
- (15) No such systematic analysis of framing is available for disability or ethnicity based inequalities.
- (16) For a detailed discussion of the machinery see Krizsan and Papp (2005), Krizsan and Zentai (2006), Hungarian Women's Lobby (2007).
- (17) 1008/2009. (I. 28.) Governmental Decree on Operation of the Council on Gender Equality.
- (18) Interview with Member of Central Monitoring Committee (December 2008).
- (19) Act CXXXV of 2003 on equal treatment and the promotion of equal opportunities.
- (20) Website of the Authority (in Hungarian) <http://www.egyenlobanasmod.hu/> accessed 7 December 2009.
- (21) Interview with Member of the Advisory Board of the ETA. October 2008. The Budget has also been decreasing in nominal terms in the last years. See website <http://www.egyenlobanasmod.hu/> accessed 7 December 2009
- (22) TAMOP-5.5.5/08/1 - A diszkrimináció elleni küzdelem – a társadalmi szemléletformálás és hatósági munka erősítése <http://www.nfu.hu/doc/1311> accessed 7 December 2009
- (23) On the dismissed opinion of the Hungarian Women Lobby (umbrella organization of feminist NGOs) see Dombos et. al (2007)
- (24) Interview with Member of Central Monitoring Committee (December 2008).
- (25) Government Decision 1129/2006. (XII. 25.) on establishment of the Roma Integration Council.
- (26) Interview with Member of Central Monitoring Committee (December 2008).
- (27) This is the case with some women's rights groups.