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Post-accession compliance with EU gender equality legislation in post-communist new member states*

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Abstract: This paper analyses the transposition of EU legislation on gender equality at the workplace in the Czech Republic, Hungary, Lithuania and Slovenia, as well as the enforcement powers of their national equality institutions. It does not find significant differences between post- and pre-accession compliance. Overall compliance can be considered good in Hungary, Lithuania, and Slovenia, while it is considerably worse in the Czech Republic – both pre- and post-accession. As an explanation for these variations in legal transposition and enforcement bodies, the paper finds two equifinal paths towards correct transposition of EU gender equality legislation and strong enforcement bodies: either the absence of high adjustment costs, or the combination of strong social democratic governments and NGOs with special expertise in EU gender equality legislation.

Keywords: *acquis communautaire*; Czech Republic; directives; enlargement; gender policy; Hungary; implementation; Lithuania; NGOs; non-discrimination; post-Communism; Slovenia; political science

Table of Contents:

- 1. Introduction
- 2. Dependent variable: compliance with EU gender equality legislation
 - 2.1. EU gender equality rules: equal pay and equal treatment at work
 - 2.2. Assessing compliance: transposition and enforcement machineries
 - 2.3. Time periods: pre- and post-accession
- 3. Explanatory conditions: government orientation, adjustment costs, and societal mobilisation
 - 3.1. Partisan preferences of the government
 - 3.2. Adjustment costs
 - 3.3. Societal mobilisation: specialised women's NGOs
- 4. Compliance outcomes: transposition and equality institutions in the Czech Republic, Hungary, Lithuania, and Slovenia
 - 4.1. Czech Republic
 - 4.2. Hungary
 - 4.3. Lithuania
 - 4.4. Slovenia
- 5. Explaining cross-case variation in compliance outcomes
 - 5.1. QCA results for the main explanatory conditions
 - 5.2. Alternative explanations
- 6. Conclusions
- References

1. Introduction

Do the new member states of the European Union (EU) comply with EU law even after they have obtained membership? The conditional incentive of EU membership has been a key factor in the transfer of the EU rules to the then candidate countries (Schimmelfennig and Sedelmeier 2004). After membership is no longer conditional, does compliance suffer? Available data on infringements of EU law suggests that post-accession compliance in the new member states is much better than might have been expected in view of the changing incentive structure. During the first five years of membership, most new members outperformed virtually all of the old member states (Sedelmeier 2008).

However, is this finding borne out in a closer analysis of specific issue areas? Doubts may arise since the source of detecting infringements could be less developed in the new members than in the old members (Sedelmeier 2008: 818-19). About half of the suspected infringements that the Commission investigates result from complaints – by private individuals, firms, NGOs, etc. – but their importance as a source of detecting infringements in the new member states is much lower. There might be a suspicion that the good performance of the new members might mask a higher incidence of undetected non-compliance. In-depth case studies are therefore necessary to complement quantitative data on cross-national variation. Indeed, one of the first issue-specific qualitative studies of compliance in the new members suggests that EU directives are generally faithfully transposed into national law, but remain ‘dead letters’ as application and enforcement are not satisfactory (Falkner and Treib 2008; Falkner, Treib, and Holzleithner 2008).

This paper contributes to the emerging research agenda on post-accession compliance in the EU’s post-communist member states (Epstein and Sedelmeier 2008; Schimmelfennig and Trauner 2009 this issue; see also Sedelmeier 2010 forthcoming). It analyses pre- and post-accession compliance with EU gender equality legislation in four new member states – the Czech Republic, Hungary, Slovenia, and Lithuania. These countries display variation with regard to the explanatory factors that this paper analyses. A comprehensive analysis of compliance needs to include the study of application, but the scope of this paper’s analysis is more modest. The paper focuses on the transposition of EU legislation into national law and the enforcement powers of domestic equality institutions established to support implementation. At the same time, it compares not only pre- and post-accession performance, but also takes a step towards explaining differences in transposition and enforcement capacities across countries and time periods.

The following section clarifies the dependent variable of the analysis: the correct transposition of EU legislation on workplace equality between women and men and the enforcement powers of the national bodies set up to promote the implementation of gender equality legislation. Section three presents the explanatory factors that this paper focuses on: partisan preferences of governments, adjustment costs, and societal mobilisation. Section four provides an assessment of whether transposition in the four countries is broadly correct and of the equality bodies’ enforcement capacities. I do not find significant differences between post- and pre-accession compliance. Overall compliance can be considered good in Hungary, Lithuania, and Slovenia, while it is considerably worse in the Czech Republic. As a first step towards explaining variation in legal transposition and enforcement bodies, section five uses crisp-set Qualitative Comparative Analysis (csQCA) to present a structured comparison of the configuration of explanatory conditions and compliance outcomes in the four countries, distinguishing between the pre- and post-accession period. The result of the analysis is that there are two equifinal paths towards correct transposition of EU gender equality legislation and strong enforcement bodies in the new members: either the absence of high adjustment costs, or the combination of strong social democratic governments and NGOs with special expertise in EU gender equality legislation.

2. Dependent variable: compliance with EU gender equality legislation

With regard to the dependent variable, this paper makes three choices that narrow down the focus of the analysis. The first choice concerns the specific rules within the broader area of EU gender equality legislation. Second, the paper focuses on a narrower aspect of compliance by distinguishing between the legal transposition, enforcement, and the application of legislation. The third choice concerns the temporal distinction between the pre-accession and post-accession period.

2.1. EU gender equality rules: equal pay and equal treatment at work

At the time of the accession of the post-communist new members, EU gender equality legislation consisted of nine different directives (four of which were consolidated in the so-called Recast Directive of 2006). These directives include issues such as equality with regard to part-time work, self-employment, social security schemes, occupational pensions, the burden of proof in discrimination cases, protection of pregnant workers, and parental leave. In order to make the analysis more manageable, this paper focuses on two directives that arguably cover the most important provisions of EU gender equality legislation: the *Equal Pay* Directive and the *Equal Treatment* Directive.

The *Equal Pay* Directive (75/117/EEC) provides for equal pay for the same work or work of equal value. The *Equal Treatment* Directive (76/207/EEC, amended in 2002 by Directive 2002/73/EC) prohibits direct and indirect gender discrimination in a wide range of areas, including employment, promotion, and working conditions. It also introduces definitions of harassment and sexual harassment; guarantees victims access to judicial and/or administrative procedures, and compensation; provides the right for organisations to engage in judicial procedures on behalf of, or in support of, victims; and requires the imposition of dissuasive sanctions. A key innovation of Directive 2002/73 is the requirement to establish an equality body ‘for the promotion, analysis, monitoring and support of equal treatment.’ This body’s competences have to include providing independent assistance to victims of discrimination in pursuing complaints; conducting independent surveys; publishing reports; and making recommendations.

2.2. Assessing compliance: transposition and enforcement machineries

Compliance with EU law comprises at least two distinctive stages (see e.g. Falkner et al. 2005: 4). The first stage is the correct (and timely) *transposition* of the requirements of EU law into national legislation. The second stage is the subsequent correct *application* of the rules by those towards they are addressed, including the *enforcement* of the rules by public authorities if the targets of the rules do not comply. The differences between these stage is also captured in the distinction between formal compliance or the formal adoption of rules and behavioural compliance or behavioural rule adoption (Schimmelfennig and Sedelmeier 2005: 8).

Of course for a complete assessment of compliance, an analysis of the correct application of legislation in practice is crucial. Even correctly transposed legislation can remain ‘dead letters’ (Falkner and Treib 2008; Falkner et al. 2005) if it is not applied on the ground by the targets of legislation and if public authorities do not take measures to enforce legislation if the target actors do not comply. Problems with application can be expected to be particularly salient in the area of gender equality – both in old and new member states – which is difficult to monitor. Application would need to be monitored at the level of individual firms and there are no readily available quantitative indicators. By same token, practical application is also difficult to evaluate for researchers. Although interviews reveal the existence of widespread application problems, it is still very difficult to establish on the basis of this information a comparative assessment of problems across countries, which could lend itself to an

explanatory analysis of such variation. In view of these methodological problems, this paper focuses primarily on transposition and enforcement, and leaves an analysis of application – which ideally should also include old member states as comparators – for follow-up research.

With regard to transposition, the paper assesses the timely and correct transposition of the provisions of the EU's equal pay and gender equal treatment directives into national law. The assessment whether legislation has been correctly transposed is not as straightforward as it may appear (as opposed to whether national transposition measures are notified in time). Even legal experts can disagree about whether the definition of key terms in national legislation is adequate. Another challenge is a comparative assessment of correct transposition. In most member states there are at least some shortcomings in legal transposition. For example, with regard to Directive 2002/73 alone, the Commission opened infringement procedures for incorrect transposition against 25 member states (Commission 2009: 3). This paper's comparative analysis is therefore based on a qualitative assessment of relative differences in the extent to which legislation is broadly correct and how serious the shortcomings are, rather than a simple count of each instance in which national legislation is incompatible with the requirements of EU directives.

In terms of enforcement, the paper analyses the institutions that were set up to enforce gender equality legislation. The literature on 'Europeanisation' identifies the existence of domestic institutions that provide resources for changes in line with the goals of EU legislation as important factors that mediate the EU's adaptational pressure (Risse, Cowles, and Caporaso 2001: 9). In the area of gender equality in particular, such institutions have been found to play a crucial role (Alter and Vargas 2000; Caporaso and Jupille 2001: 31-34; Conant 2001: 110-12). These institutions include labour inspectorates or specialised courts, but of central importance are public bodies that have been specifically established to promote gender equality. While such equality bodies are considered an independent variable in analyses of the application of equality legislation, this paper assesses variation in the characteristics of these institutions across countries as part of the dependent variable. It is precisely the importance of such equality bodies for the enforcement and subsequent application of legislation that makes it necessary to analyse the characteristics of these bodies as an aspect of compliance outcomes.

As mentioned above, Directive 2002/73 requires the member states to designate institutions to promote gender equality. However, its requirements with regard to the tasks and competences of such bodies – the conduct of independent surveys concerning discrimination, publishing independent reports and making recommendations, as well as the provision of 'independent assistance to victims of discrimination in pursuing their complaints' – specify only minimum requirements. This paper therefore does not only evaluate – in terms of transposition– whether national equality bodies meet the minimum requirements, but also – in terms of enforcement – the extent to which these bodies are endowed with resources beyond these minimum requirements.

In terms of the three-fold classification of equality institutions by Krizsan et al. (2009: 6-7), enforcement powers are characteristic of 'statutory complaint bodies' with an investigatory, complaints-driven mandate and some independence from the executive, rather than of 'equality policy machineries' with monitoring functions within the executive, or coordinating and advisory 'consultative council-type bodies' that bring together representatives from different ministries and non-state actors. Apart from this broad distinction, the power of such statutory complaints bodies can still vary considerably across countries. To assess the relative enforcement capacities of equality bodies, this paper focuses on the following three characteristics. The legal and organisational status of the institution concerns both the independence and the authority of an equality body. *Independence* increases when the body responds directly to parliament, rather than being part of the executive; within the executive, independence is higher if it is a separate ministry, or part of the prime minister's or president's office, rather than a unit within the ministry of labour or family affairs (see also Avdeyeva 2009: 163). The *authority* of the equality body increases the more its competences go beyond monitoring and advocacy, towards an ability to investigate claims, issuing binding opinions on discrimination cases, imposing fines on offenders (and the more significant such fines can be),

as well as when the equality body has legal standing in courts and if it has the right to pursue legal proceedings in courts on behalf of victims. A further factor is the extent to which the equality body has *specific expertise on gender equality* (see also Caporaso and Jupille 2001: 31), rather than on other possible grounds of discrimination, such as race, ethnic origin, age, disability, or sexual orientation. This paper considers that an equality body has enforcement capacity if it has independence and if it can either adjudicate discrimination cases or has legal standing. In addition, it requires at least a moderate extent of specialisation, while a high degree of specialisation can compensate – in the margins – for shortfalls in independence and authority.

2.3. Time periods: pre- and post-accession

In order to assess whether obtaining EU membership has made a difference, the paper analyses compliance with EU gender equality legislation in the various countries in two distinctive periods. The pre-accession period starts roughly 1998/1999, after the Commission's first assessments of the then candidate countries' alignment with EU legislation - its opinion on their membership applications in 1997 and the first annual monitoring report at the end of 1998. The post-accession period starts in 2004, when the countries concerned joined the EU. The analysis of two separate periods for each country allows us to assess whether compliance deteriorates after accession, and to increase the number of observations.

Two objections could be raised against using such a distinction to disaggregate cases. One concern might be that compliance during the two periods consists of different activities. If the pre-accession period was characterised by the need to carry out formal changes to national legislation and their actual application became only necessary after accession, a comparison of compliance between the two periods would be difficult. However, it would be wrong to equate pre-accession compliance with transposition, and post-accession compliance with application. The new members indeed had to transpose the equal pay directive prior to accession, but the transposition deadline of the amended equal treatment directive fell into the post-accession phase. With regard to equal treatment, upon accession thus only the provisions of Directive 76/207 had to be implemented, but the extensive and much more demanding provisions of Directive 2002/73 transposition mentioned earlier only needed to be in place in October 2005.

A related concern might be that the two periods do not constitute independent observations of the outcome. Correct transposition in the pre-accession phase (t_0) increases the likelihood that the same legislation is correctly transposed in the post-accession period (t_1). However, the need to transpose new legislation during the post-accession phase makes it an independent observation, as separate transposition measures are necessary during pre- and post-accession. Moreover, even for legislation that was already transposed prior to accession, the maintenance of compliant legislation is not guaranteed. In principle, legislation can be amended and dismantled. Maintaining previously transposed legislation therefore can be considered as a separate incidence of compliance. Although reversing correctly transposed legislation might be problematic in areas of the *acquis communautaire*, it might be particularly salient with regard to the enforcement capacities of the equality body, for which the *acquis* only specifies minimum requirements. In sum, while the analysis needs to be mindful that compliance in the post-accession period might not always be independent from the outcomes in the pre-accession period, a separate analysis of the pre- and post-accession periods can be justified.

3. Explanatory conditions: government orientation, adjustment costs, and societal mobilisation

Different explanatory factors matter for transposition and application respectively⁽¹⁾. To explain transposition and enforcement institutions, this paper focuses on the following three factors that appear particularly pertinent: the government's ideological orientation (and its parliamentary strength), the costs of compliance with EU legislation, and societal mobilisation. The penultimate section of the paper also considers alternative explanatory factors, such as the

resonance of EU rules with domestic political culture; monitoring and adjustment pressures exercised by EU institutions, and national administrative capacity and coordinating structures for the transposition of the *acquis*. This section discusses the three explanatory factors that the paper analyses and their constellation in the Czech Republic, Hungary, Lithuania, and Slovenia.

3.1. Partisan preferences of the government

While EU compliance research has started only more recently to focus on party political preferences of national governments (see e.g. Treib 2008: 10; Mastenbroek and Kaeding 2007; Linos 2007), the importance of this factor is more established in comparative studies of gender equality. The influence of the government's left/right orientation on a country's general compliance patterns might be less obvious, but it is arguably indeed particularly salient in areas of EU social policy, such as gender equality. There is 'considerable evidence that [...] social democratic and labour parties are more favourably disposed to gender equality issues than parties to the right of the political spectrum' (O'Connor, Orloff, and Shaver 1999: 202-3; see also Anderson 2006).

Table 1 (below) provides an overview of the party political configuration in the four countries during the pre-accession and post-accession periods. I use two different indicators of the strength of social democratic governments. I consider a period to be characterised by a strong left government if social democratic parties held over 40 percent of parliamentary seats for at least two years, and over 66.6 percent of cabinet positions (using the cut-off point in Armingeon et al. 2008) in a majority government for at least two years. As Table 1 shows, both indicators lead to the same result for the countries and periods under consideration.

Table 1 about here

3.2. Adjustment costs

The key factor emphasised by 'enforcement' approaches to compliance with international institutions are the adjustment costs that international rules impose on national governments, either directly or indirectly if these targets of such rules are private actors on which the government depends to stay in power (see e.g. Fearon 1998; Tallberg 2002: 611-12).

One way to assess the adjustments is to focus on the institutional and policy 'misfit' between the requirements of EU legislation and the domestic level (see e.g. Börzel 2003). Under communism, equality between men and women was portrayed as much more advanced than in capitalist countries, which suggests that EU gender equality legislation should not create high adjustment pressures. However, this presentation is misleading. Equality might have been more developed in terms of female employment levels, and progressive attitudes towards reproductive rights, but across all the candidate countries legislation on workplace equality reveals major deficiencies with regard to the provisions of EU legislation. This indicator therefore does not capture much cross-national variation in adjustment costs.

An indicator of the costs that the implementation of gender equality in employment imposes on companies is the gender pay gap. It presents the difference in average gross hourly earning, calculated as a percentage of men's earnings. Caporaso and Jupille (2001) use the pay gap as one indicator of the 'fit' between EU directives and national practice. Still, it has to be used with caution. It is not a direct measure of the extent to which women and men receive the same pay for work of equal value. Part of the pay gap results from the gender segregation of the labour market. Women are disproportionately employed in part-time and low-paid work, and underrepresented in the highest paid positions in a particular occupation. Yet to the extent that the gender pay gap also reflects these more subtle forms discrimination, it appears suitable as a more general indicator of workplace discrimination – and hence of the adjustment costs that equal treatment involves – rather than only the lack of equal pay. On the other hand, low pay

gaps do not always reflect less discrimination. In states with a low female employment rate (e.g. Italy and Poland), the pay gap is lower than average, which may reflect the smaller proportion of low-skilled or unskilled women in the workforce.

Moreover, as the figures published by Eurostat draw on unadjusted national survey data, they are problematic for precise cross-national comparisons. Still, the broader patterns appear nonetheless suitable to establish at least broader patterns of variation in the extent to which countries face adjustment costs. [Table 2](#) (below) presents the pay gap in 1999 and in 2004, as an indicator of the adjustment costs at the beginning of the pre-accession and post-accession periods respectively. This paper considers the adjustment costs high if they are 4 percent or more above the EU average.

[Table 2 about here](#)

3.3. Societal mobilisation: specialised women's NGOs

Mobilisation by domestic groups benefitting from the rights that EU legislation bestows on them is a factor that has recently become more prominent in EU compliance studies (Börzel 2003: 38–9, 53–4; 2006; Cichowski 2004; Conant 2002; Falkner et al. 2005: 36–7). The EU's decentralised monitoring mechanism relies heavily on private actors at the domestic level to raise complaints with the Commission or to litigate in national courts if national governments fail to implement EU legislation (Tallberg 2002: 620-22). Comparative studies of gender equality also emphasise the strength and mobilisation of women's groups as an important factor (Alter and Vargas 2000: 457–9; Anderson 2006; Avdeyeva 2009; Caporaso and Jupille 2001: 25; O'Connor, Orloff, and Shaver 1999: 202).

Gender equality is a hard case for the mobilisation of societal groups. As gender equality benefits diffuse societal interests, NGOs that promote it face a collective action problem, in contrast to issue areas in which the beneficiaries of EU rules are businesses. A methodological problem is that neither membership in women's organisations, nor strong social movements promoting women's rights might be a reliable indicator of societal capacities to mobilise for the implementation of EU workplace equality. Membership in women's groups – recorded e.g. in the World Values Survey – does not distinguish between NGOs that aim to promote women's rights and leisure groups only open to women. Moreover, women's rights movements might be strong, but the typical focus of their advocacy is not workplace discrimination, but issues such as reproductive rights or domestic violence that are outside the scope of EU law. This paper therefore focuses on whether a country has (in the respective periods) NGOs that have specialised expertise on EU law concerning gender equality at work.

I do not attempt to determine whether there are further cross-national variation in the mobilisation capacities of such women's NGOs that might result from differences in, e.g. their funding, staffing levels and membership. Moreover, transnational linkages – such as to the European Commission or transnational women's NGOs – can increase the capacity of domestic groups. However, where specialised women's groups exist in East Central Europe, their cross-national linkages appear fairly similar, both with regard to the Commission, as well as concerning membership in the European Women's Lobby and the KARAT coalition (the regional association of gender equality NGOs). The paper does, however, consider differences in the extent to which such women's NGOs cooperate or compete for funding and influence, and in the quality of their links with government and equality bodies. The following sections present an overview of whether specialised women's NGOs existed in the four countries, drawing on interviews with women's NGOs, equality bodies, and government officials in the countries concerned during 2005 and 2006. [Table 3](#) summarises these findings.

[Table 3 about here](#)

- In Hungary, two main NGOs have expertise in gender equality at the workplace: the Women's Rights Association (NANE) and the Hungarian Women's Foundation

(MONA), created in 1994 and 1993 respectively. Although NANE is mainly concerned with domestic violence, both organisations have specialised expertise on EU workplace equality legislation, run projects in this area, and engage in policy advocacy. MONA also conducted the Hungarian study for the Open Society Institute (OSI) report on the implementation of EU gender equality legislation (Krizsan and Pap 2005). Although the two organisations potentially compete, it appears that in practice their activities are complementary and their relationship is cooperative. The formulation of common positions on legislative changes under the umbrella of the Hungarian Women's Lobby works well. Some policy-makers suggest that women's groups in Hungary are fragmented, yet this observation appears to hold not so much for the relationship between the main NGOs working on gender equality, but to their critical attitude towards the equality body, in which their perceived gender equality concerns are inadequately represented.

- In the Czech Republic, the most active women's NGO with specialised expertise on gender equality at work is 'Gender Studies o.p.s.', founded in 1992. Its activities include the publication of a 'shadow report' on equal treatment (Pavlik 2004), compiled by a number of individuals from the non-governmental and academic sectors with funding from the Open Society Fund Prague. The organisation was initially reluctant to support such a confrontational strategy of shaming the government over shortcomings in the implementation of EU gender equality legislation. Disagreement over such a strategy also caused some friction between women's groups. Otherwise, however, relations between women's groups are cooperative, although cooperation is mainly ad hoc despite the creation of umbrella associations such as the Association for Equal Opportunities and the Czech Women's Lobby.
- In Lithuania, two NGOs have specialised expertise on gender equality at work. The Women's Issues Information Centre (WIIC) was created in 1996 and the Centre for Equality Advancement (CEA) in 2003, continuing the work that the Open Society Fund-Lithuania Women's programme had carried out from 1997. However, workplace equality is not a main concern for the WIIC, and although the CEA carried out the Lithuanian study for the OSI's monitoring of the implementation of EU workplace equality (Mackeviciute 2005), its main focus with regard to EU gender equality legislation has otherwise been on parental leave and the promotion of paternity leave.
- Slovenia stands out among the four countries for not having an NGO with specialised expertise and activities on gender equality at work. In principle, the absence of a specialised women's group might be compensated with societal mobilisation through women's sections in trade unions, which are relatively strong in Slovenia compared to other countries in the region. However, gender equality is generally not one of the main concerns for unions in East Central Europe.

Table 4 summarises the settings of the three explanatory factors discussed in this section.

[Table 4 about here](#)

4. Compliance outcomes: transposition and equality institutions in the Czech Republic, Hungary, Lithuania, and Slovenia

This section provides a brief overview of the transposition of the Equal Pay and Equal Treatment directives in the Czech Republic, Hungary, Lithuania, and Slovenia, as well as of the enforcement capacities of the equality bodies that these countries have established. It draws on interviews conducted with representatives from women's groups, women's sections in trade unions, equality bodies and government departments, and independent gender equality experts in the four countries, but refers to secondary sources wherever possible. The overview shows that transposition is generally good, although there are some shortcomings in all countries. Especially if the equality bodies are taken into account, a broad comparative assessment suggests that Lithuania, Slovenia, and Hungary perform better than the Czech Republic, mainly due to shortcomings with regard to the equality body. At the same time, the performance did generally not differ between pre- and post-accession.

4.1. Czech Republic

The Czech Republic did not establish one single legal act to transpose EU legislation on gender equality in employment. Instead, transposition is fragmented through numerous amendments of several laws that affect equal treatment in employment. The key legal changes were two amendments to the Labour Code in 2000 and 2004 and elements of the Employment Act of 2004 (see also Havelkova 2006: 300-03; Falkner, Treib, and Holzleithner 2008: 41-43).

Transposition has a number of shortcomings. Concerning equal pay, for example, the narrow definition of remuneration in the Act on Wages excludes a range of financial benefits, and although the Labour Code affirms the principle of equal pay, it does not explicitly state 'for the same work and work of equal value' (Havelkova 2005: 11). Concerning equal treatment, the fragmented transposition created inconsistencies (see also Havelkova 2006: 300-01; Falkner, Treib, and Holzleithner 2008: 42-3). For example, after the entry into force of amendments to the State Service Act and the Military Service Act was postponed, the employees concerned were not covered by equal treatment provisions. Definitions of sexual harassment in the Labour Code, Employment Act, and Military Service act differ, and none corresponds to the 2002 amendment of the Equal Treatment directive. Discriminatory prohibitions in the Labour Code remain, such as of underground work for women (based on an ILO Convention that is incompatible with the *acquis*, but can only be repealed every 10 years). Access to self-employment is not covered, nor the right of associations to engage in judicial procedures in support of victims. The shortcomings led the government to propose a new Anti-discrimination Act, which was passed by the Chamber of Deputies, but rejected by the Senate in 2006 (although primarily in opposition to other non-discrimination grounds than gender), and the lower House failed to obtain the necessary majority to overturn the veto.

The equality institutions are rather weak, with limited competences and arguably lacking independence (Koldinská 2005: 12). The Government Council for Equal Opportunities for Women and Men, created in 2001, is not a permanent institution, but a forum for regular meetings of representatives of government ministries, gender NGOs, and the social partners. It is a consultative council with only advisory functions (recommendations; policy coordination across ministries) and does not engage in monitoring and enforcement, nor does it provide independent support for victims. It is supported by a unit in the Ministry of Labour and Social Affairs with limited autonomy and a small staff. The work of the Gender Equality Unit consists primarily of the publication of an annual report on the government's programme and activities on gender equality. In sum, in both pre- and post-accession there are important shortcomings with transposition and the equality body is rather weak.

4.2. Hungary

Initially, the transposition process in Hungary was also rather fragmented. Pre-accession alignment consisted of piece-meal amendments of various laws affected by EU gender equality *acquis* and was completed with an amendment of the Labour Code in 2001. The approach changed after the centre-left won the election in 2002. A comprehensive Act on Equal Treatment and Promotion of Equal Opportunities was passed by parliament in December 2003 and entered into force in January 2004. The Act does not only cover gender equality but also discrimination on other grounds, including race, ethnicity, religious belief, disability, age, and sexual orientation.

The Equal Treatment Act is generally well developed and progressive (see also Falkner, Treib, and Holzleithner 2008: 79; Krizsan and Pap 2005; Krizsan 2009). Still, some shortcomings with regard to gender equality remain. One reason is the government's desire to treat all grounds of discrimination equally, rather than treating gender as a special case, not least since gender discrimination in Hungary is perceived as less salient than racial discrimination – especially of the Roman minority. As a result, sexual harassment is not explicitly prohibited.

The drafters of the act in the Ministry of Justice argued that sexual harassment is covered by the general prohibition of harassment. This argument neglects that sexual harassment does not only concern harassment on the ground of a person's gender, but also of a sexual nature. Another shortcoming is that the burden of proof is more onerous than intended by Directive 2002/73. Plaintiffs have to prove that they have 'suffered a disadvantage', rather than just provide facts that suggest that discrimination may have happened (Falkner, Treib, and Holzleithner 2008: 78; Krizsan and Pap 2005: 12).

The equality body created through the Equal Treatment Act – the Equal Treatment Authority – is comparatively powerful, with more competences than required by Directive 2002/73, especially in the area of enforcement. It can investigate claims *ex officio* and initiate lawsuits – also in parallel to the labour court – that can lead to the imposition of fines. As the Authority covers all discrimination grounds, women's groups criticise the comparatively weak representation of gender discrimination (see also Krizsan 2009 this issue). Indeed, although the Authority has adjudicated an increasing number of cases after it started operating in 2005, only few concerned gender discrimination (Kollonay-Lehoczky 2005: 24). Concerns for its autonomy were raised by the transfer of its budget from an independent chapter into a sub-heading within the Ministry for Youth, Family, Social Affairs and Equal Opportunities.

In sum, notwithstanding comparatively minor shortcomings, the transposition of Equal Pay and Equal Treatment legislation both in the pre-accession and post-accession period has been good. Enforcement capacities through the equality body are also comparatively strong, albeit concerns that gender equality does not have equal importance as other grounds of discrimination.

4.3. Lithuania

Lithuania was the first among the new member states to pass an act on gender equality. The Law on Equal Opportunities for Women and Men was adopted in December 1998. Several amendments between 2002 and 2005 broadly achieved an alignment with EU gender equality legislation, but certain specific problems remained. These include clarifications in the definitions of sexual harassment and direct discrimination, the inclusion of access to self-employment and professional organisations, or the right of associations to engage in judicial procedures in support of victims of discrimination (Davulis 2005: 35-36; Mackeviciute 2005: 13-14). With regard to equal pay, the law on Equal Opportunities refers only to 'equal work', rather than 'work of equal value' (in contrast to the official English translation).

The equality body is a fairly strong, autonomous enforcement institution. The Office of the Equal Opportunities Ombudsperson was created as early as May 1999. As an independent state institution answerable to parliament it has considerable autonomy. Its enforcement powers include the investigation of complaints, including anonymous complaints and on its own initiative. During an investigation, its requests for information and documentation are binding. If it concludes that discrimination has taken place, it can impose administrative sanctions, make recommendations to discontinue discriminatory practices, or refer the material to other investigative bodies. It can also provide legal advice to victims, but not legal representation in judicial procedures. The 2003 Act on Equal Treatment that introduced a general anti-discrimination bill expanded its mandate to other grounds of discrimination, but through its legacy as a gender equality institution, this has remained a strong focus.

In sum, although a number of shortcomings with regard to the transposition of specific provisions occurred both pre- and post-accession, its broader pattern is satisfactory. The equality body has long-standing expertise in gender equality, and considerable enforcement powers and autonomy.

4.4. Slovenia

The Employment Relationships Act passed in 2002 already includes a general prohibition of discrimination and sexual harassment, as well as provisions for equal pay for work of equal value. The two main acts transposing EU gender equal treatment legislation are the 2002 Act on Equal Opportunities for Women and Men, and the 2004 Act on the Implementation of the Principle of Equal Treatment. The remaining shortcomings are rather specific, relating to clarifications on pregnancy and maternity within the definitions of discrimination, and to the definition of sexual harassment (Koderman-Sever 2005: 53).

The equality body is comparatively strong and has long-standing experience in promoting gender equality. The Government Office for Equal Opportunities, an independent government body, was formally established in 2001, but originated in 1992 as the Office of Women's Policy. Enforcement within the Office is primarily carried out by the Advocate for Equal Opportunities for Men and Women. The Advocate investigates complaints, including anonymous complaints. If s/he concludes that discrimination has taken place, the Advocate can recommend measures to rectify it and request to be notified of such measures. If the offending party does not comply with the recommendations, the Advocate can refer the case to other investigative bodies, such as the labour inspectorate.

In sum, gender equality legislation is generally well transposed in Slovenia. The equality body has independence, long-standing experience in promoting gender equality, and significant enforcement capacities, even if it cannot impose sanctions.

A broad comparison of the four countries (see [Table 5](#)) shows that transposition and enforcement capacities through the equality body are generally well developed in Hungary, Lithuania, and Slovenia, but both of these aspects of compliance are rather problematic in the Czech Republic, both during the pre-accession period and after accession. In the countries with a positive record, there is no significant deterioration in the post-accession period compared to pre-accession.

[Table 5 about here](#)

5. Explaining cross-case variation in compliance outcomes

5.1. QCA results for the main explanatory conditions

This section conducts a crisp-set Qualitative Comparative Analysis (csQCA) (Ragin 1987) in order to explain the different outcomes across the countries. [Table 6](#) presents the raw data with regard to the configuration of explanatory conditions and outcomes for the eight cases. In contrast to fuzzy-set QCA, csQCA only distinguishes whether or not a case has membership in the set of cases that share a causal condition (or outcome), but not between different degrees of membership in these sets. In [Table 6](#), the number 1 expresses membership in the set, while a 0 expresses the absence of membership (note the difference between membership in the set of countries that do not have high adjustment costs and those with low adjustment costs). [Table 7](#) presents the same data in a 'truth table' of all eight logically possible constellations of the three conditions. Two of these constellations are not empirically observed among the cases analysed in this paper. The corresponding truth table rows therefore remain empty (while two of the constellations fit two cases each).

[Table 6 about here](#)

[Table 7 about here](#)

Using Boolean algebra, a minimisation of the results for the constellations that share the outcome ‘compliance’ yields two equifinal explanations, or causal paths to compliance(2): either the *absence of high adjustment costs, or a strong left government in combination with specialised interest groups* (solution without any simplifying assumptions about the unobserved cases). The first path covers the case of post-accession in Hungary, as well as pre- and post-accession in both Lithuania and Slovenia. The second path covers post-accession in Lithuania, and both periods in Hungary. None of the three explanatory factors are by themselves necessary conditions.

How plausible are these results? The result that the absence of high adjustment costs is a sufficient condition fits well with the findings of other studies on the EU’s impact on candidates/member states (see e.g. Schimmelfennig and Sedelmeier 2004). However, in the area of gender equality policy this finding might appear more problematic: companies do not usually lobby against gender equality legislation, despite the potential costs involved. The difficulty to quantify the costs is a disincentive to lobbying, especially since a more effective way to minimise the adjustment costs is to flout equality legislation in practice, as long as the risk of court cases and sanctions is low. Indeed, concerns about costs have not generally figured prominently in opposition to equality legislation. The finding that adjustment costs matter is nonetheless not necessarily just a spurious correlation. The financial implications were the main reason for the postponement for over two years of the entry into force of the Czech State Service Act and Military Service Act containing non-discrimination provisions (Havelkova 2006: 300).

The explanation of a combination of strong left governments and specialised interest groups is not only logically plausible; its causal relevance is also confirmed by a closer analysis of the cases. Social democratic governments are more likely to take gender equality seriously, and more willing to endow equality bodies with enforcement capacity, but they need sufficient support in parliament to implement these changes. For example, key changes in Hungary were only carried out after the centre-left replaced the centre right government in 2002. In the Czech Republic, the social democratic party lacked the strength to pass a more comprehensive anti-discrimination act. Women’s groups by themselves are not sufficiently strong to push through changes against unfavourable governments. At the same time, favourably disposed and sufficiently strong government as such might also not be enough for correct transposition and equality bodies with adequate enforcement capacities. These might only be achieved if willing governments can draw on the specialist expertise of NGOs.

5.2. Alternative explanations

In view of the limited number of cases, this paper’s in-depth analysis has focused on three explanatory conditions that appear particular salient. This sub-section considers additional explanatory factors in order to ascertain whether this selection can be justified or whether the findings are biased due to the neglect of other plausible factors.

Key explanatory factors at the EU level concern the strength of the external incentives (granting/withholding membership prior to accession; fines by the European Court of Justice after accession) as well as the intensity of EU monitoring after accession, which increases the likelihood that non-compliance is detected. With regard to the latter, we are more likely to find variation across issue areas, but not across countries within the area of gender equality. With regard to external incentives, of course the starting point of the paper was the question whether the changing incentive structure after accession has a negative effect on compliance. At first glance, the findings of this paper appear to reject the importance of external incentives for domestic compliance: the changing incentive structure did not matter for compliance in Hungary, Lithuania and Slovenia; and even prior to accession, the potential threat of withholding membership did not lead to compliance in the Czech Republic. Instead, domestic conditions seem to trump external incentives.

However, first, such a reading neglects that an ‘external incentive’ model of domestic change

does not claim that external incentive always override domestic factors, but rather that they might change governments cost/benefit calculations – depending both on the size and credibility of the benefits offered by the EU and on the size of domestic costs (Schimmelfennig and Sedelmeier 2004: 664). The lack of compliance in the Czech case fits the explanation that EU incentives (or rather the threat of withholding incentives) in the area of social policy were not sufficiently credible, due to mixed signals from EU actors (Sissenich 2007), to trump unfavourable domestic conditions. Second, although the cases of pre-accession compliance required favourable domestic conditions, it would be difficult to explain the changes in equality policies without the demands made by the EU. Domestic changes in equality policy and institutions in each of the three cases (as well as the more limited changes in the Czech Republic) were triggered by adjustment pressure from the EU. Thus, in terms of the explanatory power of external incentives, the paper confirms that when these face problems of credibility, favourable domestic conditions were necessary for domestic compliance with EU legislation. Moreover, a key finding of the paper is indeed that the changing incentive structure after accession as such does not necessarily lead to a deterioration of compliance.

An explanatory factor drawn from constructivist approaches to the domestic impact of international institutions is the extent to which international rules resonate positively with domestic rules or political culture more broadly (Schimmelfennig and Sedelmeier 2004: 668). As mentioned earlier, the widespread perception that equality between men and women had been achieved already under communism led to a lack of positive domestic resonance of EU gender equality policies. This perception undermines arguments that gender discrimination is a salient issue in post-communism, while communism left traditional gender stereotypes and role perceptions with regard to work and family intact. While the lack of positive resonance can be considered a general obstacle to compliance across post-communist new members, currently available data does not lend itself easily to establish clear variation across countries, which might explain differences in outcomes.

Administrative capacities are an explanatory factor generally emphasised in compliance studies (Tallberg 2002; Treib 2008). More recently some studies have suggested to focus more specifically on the coordinating mechanisms – the administrative and legislative arrangements – for the implementation of the *acquis* (Dimitrova and Toshkov 2009 this issue; Sedelmeier 2008: 820-1; Zubek forthcoming). These macro-mechanisms might be more suitable to explaining aggregate cross-national differences in compliance patterns, while as explanations for issue-specific variation across countries coordination is more likely to interact with other factors. Indeed, Dimitrova and Toshkov (2009) suggest that it only facilitates transposition in the absence of political opposition – which in turn can be considered to depend precisely on factors that this paper has focused on, such as government partisan preferences and domestic adjustment costs. While at first glance the effectiveness of national coordination appears a sufficient condition for compliance – among the four countries, only in the Czech Republic is the coordination mechanisms weak (Verheijen 2007: 26) – a closer analysis refutes this interpretation (apart from the methodological problem that we only have data for 2006). For example, in Hungary, the most significant changes were related to the change in government in 2002, not to a change in coordination mechanisms; the lack of compliance in the Czech case remained largely due to political opposition among the centre-right parties, rather than the weak administrative coordination.

6. Conclusions

Does compliance with EU law in the new member states deteriorate after they have achieved accession? This paper provides a preliminary answer based on an analysis of the transposition of EU gender equality legislation – in particular equal pay and equal treatment at the workplace – and of the enforcement capacities of equality bodies in the Czech Republic, Hungary, Lithuania, and Slovenia. The analysis suggests that despite the decline in the sanctioning power of EU institutions, there is no significant deterioration in the post-accession period compared to the pre-accession period. The Czech Republic had transposition problems and the equality body lacked enforcement capacities both before and after accession.

Transposition in the other three countries has some shortcomings (as indeed do all other member states), but in broader terms, it is adequate, and the equality bodies have considerable enforcement capacities – again, both before and after accession.

The paper also makes a first step towards explaining these differences in outcomes across the four countries (and time periods). The results of a csQCA suggest two different causal paths that can lead to broadly adequate transposition and strong equality bodies. One is the absence of high adjustment costs, even if businesses do not usually lobby strongly against the adoption of equality legislation. The other path to compliance is the combination of strong social democratic governments and NGOs specialising in EU gender equality legislation. Neither is sufficient by itself. NGOs are powerless when faced with unfavourable governments. Conversely, even favourable governments need the expertise and support of NGOs to devise adequate legislation and equality bodies.

In terms of the study of the role of the incentives that international institutions provide for domestic compliance with their rules, this paper does not challenge the argument that such international incentives are a necessary part of an explanation for compliance in post-communist Europe. However, with regard to pre-accession compliance, it confirms that such incentives (i.e. the positive incentive of a credible promise of membership) have to be combined with favourable domestic conditions. With regard to post-accession, the paper's findings suggest that the weakening of such incentives (the threat of financial sanctions through the ECJ and the reputational costs associated with infringement procedures, rather than the pre-accession threat of withholding membership altogether) as such does not necessarily lead to a deterioration of compliance if domestic conditions are favourable.

Further research in this area will need to take account of the application of legislation for the assessment of compliance. First studies in this vein argue that there is a gap between good transposition and problems with application (Falkner and Treib 2008; Falkner, Treib, and Holzleithner 2008). One challenge is to go beyond a more general acknowledgement of the existence of application problems towards an operationalisation that lends itself to establish variation in the nature and extent of such problems (and subsequently to explain them). Moreover, such studies should also include the old member states in order to analyse to what extent the gap between transposition and application is characteristic of post-accession compliance patterns or of this particular issue area.

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Endnotes

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(1) A broad range of factors matter for correct application of legislation. They include the authority of institutions mandated to promote specifically the implementation of workplace equality legislation, such the equality bodies (arguably, they can also matter for formal compliance if a body established at t0 mobilises for correct formal transposition of equality legislation at t1), or labour law more generally (such as Labour Inspectorates). Another set of factors affects the likelihood that victims of discrimination attempt to, and are able to, claim their rights, such as the working of the legal system (trust in it; expertise; existence of specialised industrial tribunals and Employment Appeals Tribunals; speed of proceedings; case law; etc.); beneficiaries' information about their rights; and unemployment levels.

(2) As QCA does not assume causal symmetry, usually a separate analysis for the outcome 'non-compliance' should be conducted. In view of the limited number of cases with the outcome 'non-compliance' in the sample, the results of such an analysis might not be particularly useful.

List of Tables

Table 1: Strength of social democratic parties

	Czech Republic		Hungary		Lithuania		Slovenia	
	1998-2003	2004-2006	1998-2003	2004-2006	1998-2003	2004-2006	1998-2003	2004-2006
Parliamentary seats (%)								
<i>mean</i>	36,3	35.7	38.5	46.8	24.1	49.7	27.8	43.3
<i>2 best years</i>	37	36	46.1	47.2	36.2	49.7	27.8	43.3
Years of dominance in majority government	0	0	2 (1.7)	3	0	2	0	2
Strong left government?	No	No	Yes	Yes	No	Yes	No	Yes

Source: calculated from Armingeon et al. (2008)

Table 2: Gender pay gap

<i>EU average</i>		Czech Republic		Hungary		Lithuania		Slovenia	
1999	2004	1999	2004	1999	2004	1999	2004	1999	2004
16	15	22	19	21	11	16	16	14	9
High adjustment costs?		Yes	Yes	Yes	No	No	No	No	No

Source: calculated from Commission (2006: 15).

Table 3: Existence of NGOs with expertise in EU gender equality legislation

Czech Republic		Hungary		Lithuania		Slovenia	
1998-2003	2004-2006	1998-2003	2004-2006	1998-2003	2004-2006	1998-2003	2004-2006
Yes	Yes	Yes	Yes	Yes	Yes	No	No

Source: own compilation

Table 4: Overview of configuration of explanatory factors

	Czech Republic		Hungary		Lithuania		Slovenia	
	1998-2003	2004-2006	1998-2003	2004-2006	1998-2003	2004-2006	1998-2003	2004-2006
Strong left government	No	No	Yes	Yes	No	Yes	No	Yes
High adjustment costs	Yes	Yes	Yes	No	No	No	No	No
Specialised NGOs	Yes	Yes	Yes	Yes	Yes	Yes	No	No

Table 5: Compliance outcomes (transposition and enforcement bodies)

	Czech Republic		Hungary		Lithuania		Slovenia	
	1998-2003	2004-2006	1998-2003	2004-2006	1998-2003	2004-2006	1998-2003	2004-2006
Broadly correct transposition and capable enforcement bodies?	No	No	Yes	Yes	Yes	Yes	Yes	Yes

Table 6: Configuration of explanatory conditions and outcomes

Cases	not high adjustment costs	strong left government	specialised interest groups	compliance (transposition/enforcement)
CZ (pre-acc.)	0	0	1	0
CZ (post-acc.)	0	0	1	0
HU (pre-acc.)	0	1	1	1
HU (post-acc.)	1	1	1	1
LT (pre-acc.)	1	0	1	1
LT (post-acc.)	1	1	1	1
SI (pre-acc.)	1	0	0	1
SI (post-acc.)	1	1	0	1

Table 7: Truth table

not high adjustment costs	strong left government	specialised interest groups	compliance (transposition/enforcement)	cases
0	0	0	(no cases)	
0	0	1	0	CZ (pre-acc.); CZ (post-acc.)
0	1	0	(no cases)	
0	1	1	1	HU (pre-acc.)
1	0	0	1	SI (pre-acc.)
1	0	1	1	LT (pre-acc.)
1	1	0	1	SI (post-acc.)
1	1	1	1	HU (post-acc.); LT (post-acc.)