The Limits of Europeanisation: EU Accession and Gender Equality in Bulgaria and Romania

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ABSTRACT The paper seeks to bridge the existing gap between three distinct strands of literature: scholarship on EU enlargement; studies of social policy in the European Union; and feminist theorising on equality between men and women. It explores the impact of the EU’s conditionality on policies, legislation and institutions on gender equality in Bulgaria and Romania between 1990 and 2007 from a feminist perspective, uncovering the multifaceted process whereby Europeanisation and domestic determinants of change interact with each other in the formation and implementation of a new gender equality agenda.

KEY WORDS: Europeanisation, gender equality, European Union, conditionality, Bulgaria, Romania

Gender equality occupies a relatively marginal place in the literature on the EU’s eastern enlargement. Scholarly attention has tended to focus on policy areas that proved to be particularly controversial during the accession process, such as freedom of movement (Grabbe, 2006), ethnic minority rights (Schwellnus, 2005; Sasse, 2006) or environmental policy (Andonova, 2003). More recently, equal opportunities have begun to attract the interest of students of social policy, either within the context of exploring the impact of the EU’s conditionality (Sissenich, 2007) or as part of an examination of member states’ record of compliance with the acquis communautaire (Falkner & Treib, 2008). Similarly, the impact of EU accession on gender equality does not hold pride of place in recent feminist work on the status of women in post-communist Europe. Nevertheless, several studies have begun to shed light on the impact of the EU in the region. For instance, Bretherton (2001, p. 75) identifies an EU-level ‘failure to pursue commitments to integrate gender in all EU activities’, including enlargement. Anderson (2006) analyses the differentiated impact of the EU accession process on the adoption of gender equality legislation in Poland and the
Czech Republic, while Sloat (2004) provides a comprehensive overview of the implementation of the EU’s equality *acquis* in Central and Eastern Europe.

This paper examines the impact of EU accession on gender equality policies in Romania and Bulgaria, bringing together three distinct strands of literature: scholarship on the eastern enlargement of the European Union; work on EU social policy; and feminist theorising on equality between men and women. The key aim of the paper is to analyse processes of Europeanisation in the field of gender equality while also providing an insight into the extent to which EU accession has reshaped gender relations in the two countries. In doing so, the paper draws on the concept of Europeanisation – in Claudio Radaelli’s (2003, p. 30) well-known definition, ‘processes of (a) construction, (b) diffusion and (c) institutionalisation of formal and informal rules, procedures, policy paradigms, styles, “ways of doing things” and shared beliefs and norms’ as they are first ‘defined and consolidated’ at the EU level and then incorporated into national settings. Originally developed in order to account for the EU-15 (Hix & Goetz, 2000; Cowles et al., 2001; Featherstone & Radaelli, 2003), theories of Europeanisation have been successfully applied to the countries of Central and Eastern Europe during the accession process (Grabbe, 2003, 2006; Schimmelfennig & Sedelmeier, 2005). This paper draws on existing scholarship by viewing EU conditionality vis-à-vis applicant states as the most important factor in the Europeanisation of Central and Eastern Europe. Within this context, as frequently noted in the literature on the eastern enlargement, the effects of EU accession have been profound in virtually all policy areas. This is certainly true of gender equality as well. In Bulgaria and Romania, as in the other Central and East European candidate countries, meeting the requirements of EU conditionality provided the principal impetus for the redefinition of the legal and institutional bases for equality between men and women in the public sphere since the mid-1990s.

The overarching argument presented here is that feminist theorising can provide valuable insights into the Europeanisation of gender equality in the post-communist member states of the Union in two distinct ways. First, feminist perspectives enhance scholarly understanding of EU enlargement by providing a set of conceptual instruments useful for elucidating an outstanding dilemma in the study of the Europeanisation of Central and Eastern Europe: the difficulty inherent in distinguishing between domestic and European determinants of change. In order to understand the scope and depth of the impact of EU accession on gender equality in the region, a feminist perspective requires that we move beyond the narrow focus on conditionality and towards a more comprehensive understanding of gender equality. On the one hand, the notion of gender equality embodied in the EU’s conditionality towards candidate countries was essentially concerned with the public sphere (primarily equality in employment). On the other hand, as feminist scholars such as Pateman (1988), Okin (1989), Phillips (1991), Landes (1998), Young (2000) or Lister (2003) have shown, inequalities between men and women are inextricably linked with women’s dual role as citizens and workers in the public sphere and as mothers and caregivers in the private sphere. Equality in the public realm depends on equality in the private sphere of sexuality, marriage and the family – areas that the EU member states have been remarkably reluctant to relinquish in favour of legislating at the Community level.
Moving beyond conditionality entails operating with a broader concept of gender equality encompassing both the public and the private. Thus, feminist perspectives have a crucial methodological advantage in that employing a comprehensive concept of gender equality spanning the public and the private allows us to assess (a) the impact of Europeanisation of gender equality in those areas covered by the EU’s conditionality; and (b) the transformation of gender equality in areas that were largely free of the adaptive pressures of EU accession, such as reproductive rights. In other words, a feminist perspective makes it possible to distinguish between European and domestic determinants of change and thus to identify the limits of Europeanisation. Nevertheless, it is important to clarify that this paper does not make a number of claims. It does not contend that the Commission should have employed a wider definition of gender equality than it did, or that the EU member states should have adopted more comprehensive legislation on gender equality. While it is possible to make a persuasive feminist case for both, this is beyond the scope of this paper. Instead, the formulation and implementation of EU conditionality on equality between men and women is best seen as an historical process contingent on the particular stage of development of this policy area in the EU at the time that the Central and East European countries joined the Union. Starting from this assumption, feminist theorising presents us with an effective heuristic device for assessing the scope and limits of Europeanisation through conditionality in the post-communist candidate countries.

Second, a feminist approach to the Europeanisation of gender equality in Central and Eastern Europe enables us to evaluate the consequences of the process of EU accession in distinct national settings. Two points of contrast with existing literature are relevant in this respect. First, feminist literature on gender equality in the European Union has typically focused on the impact of the EU on equality within the context of the EU as an organisation of West European countries (Hoskyns, 1996; Guerrina, 2005; Lewis, 2006). By contrast, the impact of EU accession on gender equality in the post-communist states has only recently started to form the subject of scholarly scrutiny (Bretherton, 2001; Anderson, 2006). Second, it is both timely and imperative to ascertain how Bulgaria and Romania, usually seen as the laggards in the race for EU membership, compare with the member states that had joined the EU two and a half years earlier. The paper seeks to contribute to both strands of literature by focusing on gender equality in relation to the 2007 enlargement round.

The paper is divided into two sections. The first outlines the development of EU policies on gender equality and traces the ways in which its principles and relevant legislation were incorporated into EU conditionality. The second looks at the Bulgarian and the Romanian cases from the broader comparative perspective of the eastern enlargement.

**Shaping Conditionality: Gender Equality in the European Union**

The post-communist candidate countries faced the unenviable task of adopting legislation on equality between men and women at a time when the Community was expanding its legal framework on equality broadly defined to comprise gender, race, ethnicity, sexual orientation, etc. Equality between men and women has been part of
the treaty basis of the European Community ever since its establishment in 1957, when Article 119 of the Treaty of Rome incorporated equal pay for equal work as one of the key elements of social policy in the future European Union. The 1975 Directive on the application of the principle of equal pay was followed by a number of other Community acts throughout the 1970s and 1980s, and reinforced by a number of groundbreaking decisions of the European Court of Justice. The 1990s and early 2000s witnessed renewed efforts to tackle inequalities across the Union, including the reversal of the burden of proof in cases of discrimination, and the introduction of the concepts of direct and indirect discrimination into Community law. The Amsterdam Treaty broadened the scope of non-discrimination to include racial or ethnic origin, religion or belief, disability, age and sexual orientation. These provisions were enshrined in secondary legislation in 2000, when the Racial Equality Directive (2000/43/CE), prohibiting discrimination on grounds of race and ethnic origin, and the Employment Framework Directive (2000/78/CE), prohibiting discrimination on grounds of religion or belief, disability, age and sexual orientation, were adopted. In order to meet the criteria for membership, the Central and East European countries had to transpose, implement and enforce this new equality-oriented body of the acquis in its entirety prior to joining the Union.

A further challenge for the applicant states consisted in the Community’s shifting definition of gender equality during the accession process. As Hoskyns (1996) notes, the initial motivation for including gender equality in the EC Treaty was economic rather than political integration, together with France’s apprehension that its workforce would be detrimentally affected by the creation of the common market. Throughout the 1960s and the 1970s, legislation on equality between men and women remained firmly entrenched within the sphere of employment, with successive Directives addressing inequalities in equal pay, social security, vocational training and working conditions. By the mid-1980s, the EU’s focus on gender equality had begun to shift towards work/family reconciliation. Feminist scholars such as Hantrais (2000) argued that the new emphasis was largely beneficial to women, while others were somewhat more cautious in their assessment of the implications for equality between men and women (for instance, Stratigaki, 2004). Key developments in Community legislation, prompted by the desire to provide both men and women with the opportunity to reconcile their work and family responsibilities, include the adoption of a number of Directives on pregnancy, motherhood and parental leave from the mid-1980s to the mid-1990s. However, by the early 2000s, the EU’s policy on equality had changed once again with the introduction of gender mainstreaming and of the Open Method of Coordination. More recently, the concept of multiple discrimination – reflecting an awareness that ‘the implementation and enforcement of anti-discrimination legislation on an individual level is not enough to tackle the multifaceted and deep-rooted patterns of inequality experienced by some groups’ (European Commission, 2007, p. 9) – has started to take hold in the EU’s ever-shifting position on equality law. These developments resulted in the continued evolution of EU conditionality on gender equality throughout the accession process of the Central and East European candidates.

As noted by the other contributors to this issue and generally accepted in the literature on EU enlargement, the European Commission was the most important actor in formulating and monitoring candidate countries’ compliance with
conditionality and progress towards membership, a prerogative that it jealously guarded throughout the accession process. The Commission was in charge of providing step-by-step guidance for the applicants as to what exactly the otherwise vague Copenhagen criteria meant and how they would be monitored. In the case of gender equality, the Commission adopted a twofold approach. On the one hand, the Regular Reports assessed progress made by applicant states in adopting and implementing the *acquis* on equality between men and women, in accordance with the administrative Copenhagen criterion. This was typically subsumed under Chapter 13 of the negotiations, Employment and Social Policy. On the other hand, the Regular Reports also monitored compliance with gender equality under the political Copenhagen criterion concerning ‘stability of institutions guaranteeing democracy the rule of law, human rights and respect for and protection of minorities’.

The Commission had considerable room for manoeuvre in determining the precise meaning and scope of compliance with political conditionality. It usually highlighted a wide range of issues not covered in the relatively narrow EC *acquis* on gender equality: the ratification and implementation of relevant international obligations, such as those stipulated in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and in the European Convention on Human Rights (ECHR); measures against trafficking in human beings, including women and children; or developments in the representation of women in politics. The recommendations made in the Regular Reports were subsequently incorporated (usually in a watered-down form) in the Accession Partnerships concluded with the applicants every year. Executives also compiled extensive lists of measures to be taken in the National Action Plans for the Adoption of the *acquis*. Financial assistance was the least prominent of the instruments for transferring rules and policies from the EU level, primarily because it was allocated primarily to investment in infrastructure and institution-building, none of which usually formed part of policy-makers’ strategy for complying with the requirements on gender equality.

Overall, assessing progress in meeting the EU’s political conditionality was a much less precise exercise than monitoring the adoption and implementation of legislation in accordance with the *acquis*. For instance, when commenting on the political representation of women, the Commission generally noted positive or negative developments, but refrained from making any specific recommendations. By contrast, *acquis*-related problems, and their corresponding solutions, were often specified in painstaking detail. This situation illustrates the key role played by the leadership of the Commission during the accession process, as well as the difficulties inherent in providing legislative and institutional templates under circumstances where the EU member states themselves offered no uniform solution beyond that which had already been incorporated into the *acquis*. The process of Europeanisation certainly encompassed both facets of conditionality: the political dimension of democracy-building and the technical dimension of legal harmonisation with the *acquis*. For the purposes of this paper, then, legislative and institutional change not covered either under the administrative criterion or under political conditionality cannot be interpreted as constituting an effect of Europeanisation.

Several other observations should be made at this stage. First, the gender equality agenda was sometimes used instrumentally in order to pursue the member states’
interests in other policy areas. In particular, gender equality tended to become a prominent concern for the Commission when it intersected with other policy areas that were considered especially sensitive. For instance, from 1999 until 2003, the Regular Reports repeatedly exhorted the post-communist candidates to adopt legislation against trafficking in human beings (sometimes referred to explicitly as ‘trafficking in women and children’). This concern, however, seems to have been prompted by some member states’ fears of unrestrained migration and organised crime after enlargement rather than by a commitment to gender equality. In the case of Bulgaria and Romania, trafficking in human beings remained at the very top of the Commission’s concerns vis-à-vis the two countries from 1999 until the very last Comprehensive Monitoring Report released in September 2006.

Second, gender equality, and social policy more generally, were not one of the priority areas in the enlargement strategy of the Commission. As Sissenich (2007, p. 36) found in her interviews, ‘Commission officials readily admitted that a country’s non-compliance in social policy was unlikely to delay its admission into the EU’. Negotiations on Chapter 13 were opened (and concluded) relatively early, in accordance with the policy that the ‘easier’ chapters be set aside first. Bulgaria and Romania concluded the negotiations within six months, faster than Hungary, Poland or the Czech Republic, opening Chapter 13 in October 2001 and closing it in April 2002. Romania requested no transitional arrangements, while Bulgaria obtained one (on the maximum tar yield of cigarettes) until the end of 2010. In this instance at least, the laggards proved to be the frontrunners, albeit at the cost of token compliance with EU conditionality on social policy.

Finally, the overview presented here highlights the different mechanisms of Europeanisation at stake in the field of gender equality during the EU accession process. Of the five mechanisms identified by Grabbe (2006), the provision of legislative (and, to a much lesser extent, institutional) templates was the most important, followed closely by benchmarking and monitoring and only occasionally by financial aid. By contrast, neither advice and twinning nor gate-keeping played a vital role in this policy area. Indeed, the effects of EU conditionality may well have been mitigated by the status of gender equality as a low-key policy in the enlargement process overall.

**Europeanisation-Led versus Domestic-Driven Change in Bulgaria and Romania**

Applying a feminist framework to the study of gender equality during the EU accession process in Central and Eastern Europe requires that we distinguish between those areas where change was essentially driven by the pressures of EU conditionality, and those where change occurred as a result of domestic processes. The distinction largely corresponds to feminist conceptualisations of equality between men and women in the public and the private realms. On the one hand, EU conditionality was primarily concerned with equality in the public sphere: access to employment, the burden of proof, maternity and paternal leave, social security or equal pay. Other relevant concerns appearing in the Commission’s Regular Reports included trafficking in human beings (often strongly emphasised) and the political representation of women (mentioned occasionally but never explicitly linked to the conditions for membership). In addition, the relevant Community Directives
mandated the establishment of institutional structures able to analyse and monitor equal treatment. It is within these areas that we need to look for evidence of Europeanisation.

On the other hand, reproductive rights – an area where the EU-15 covered the whole spectrum, from making abortion on demand available to all women to prohibiting it altogether – were never even broached by the Commission or other EU institutions. It is within the private sphere that we can safely find the most unambiguous evidence for domestic-driven change. Most crucially, identifying the degree and nature of resistance to full reproductive rights for women can provide a relatively accurate measure of domestic preferences on gender equality independently of the adaptive pressures exerted by accession to the European Union. Within this context, it is important to note that one issue pertaining to the private realm, namely domestic violence, drew the attention of the Commission sporadically, being particularly prominent in the reports on Romania. The remainder of this paper discusses the cases of Bulgaria and Romania by organising the analysis around the public/private distinction, as conceptualised in feminist scholarship.

In order to gauge the full impact of the EU in those areas covered by the conditionality for membership, it is useful to provide a brief outline of the status quo prior to the start of the accession process in 1997. An overview of the comprehensive regional reports published by a variety of non-governmental organisations (International Helsinki Federation for Human Rights, 2000; KARAT Coalition, 2000; Open Society Institute, 2002, 2005) makes it apparent that none of the candidate countries had in place measures remotely resembling either secondary legislation on gender equality or institutional mechanisms for the advancement of women prior to 1995–1997. Within this context, the Commission’s decision in Agenda 2000 to single out Romania and Bulgaria from among the other candidate countries by noting vaguely that ‘laws in favour of women are not always applied in practice and the situation of women appears to have deteriorated’ is hardly supported by the evidence available (European Commission, 1997a, 1997b).

Indeed, the extent to which post-communist countries exhibit a similar pattern is striking not only in the virtual absence of legal and institutional safeguards for gender equality beyond constitutional provisions in the early to mid-1990s, but also in the fact that 1997 constituted a veritable watershed in the adoption of relevant measures on gender equality. Renewed impetus to adopt secondary legislation and to build institutions became apparent throughout the region after 1997 (Karat Coalition, 2000). However, the extent to which these developments took place in response to the EU accession process is not readily apparent, not least because the 1995 Beijing conference and the increasing awareness of national governments that they needed to abide by international obligations, such as CEDAW, may have interfered to various degrees with the impact of EU conditionality. Nevertheless, the contention that the process of EU accession was the key determinant in the transformation of the legal and institutional bases for gender equality in the public sphere finds strong support when we analyse the two case studies within the overall comparative context of the eastern enlargement.

The bulk of gender equality legislation in the EU is concerned with the public sphere of employment: equal pay (Directive 75/117/EEC); equal treatment for men and women in employment, vocational training and promotion, and working
conditions (Directive 76/207/EEC); social security (Directive 79/7/EEC); pregnancy and motherhood (Directive 92/85/EEC); parental leave (Directive 96/34/EC); or the burden of proof in cases of discrimination (Directive 98/52/EC). The Commission monitored candidate countries’ progress in this area and offered detailed guidance on what remained to be done prior to accession. Since the adoption of the acquis in its entirety was one of the prerequisites for EU membership, candidate countries had a very strong incentive to follow the suggestions of the Commission, whose technical expertise remained unparalleled throughout the accession process. The final Comprehensive Monitoring reports issued in 2003 for the eight post-communist countries joining in May 2004 identified a number of gaps, for example that the equality bodies mandated by the Directives had not been established yet, or that the acquis had been incompletely transposed in particular areas. None of these criticisms were especially problematic, since they were unlikely to trigger the postponement of membership. Within this context, Bulgaria and Romania, which benefited from two years’ additional time to prepare for membership, were largely in line with the acquis by September 2006.

The technical exercise of adopting the acquis notwithstanding, the post-communist applicants often found that meeting the political and administrative criteria in the area of gender equality was akin to shooting at a moving target. This is largely due to the fact that the EU was engaged in an exercise of redefining its equality policy writ large as the accession process unfolded. After the adoption of the Racial Equality and Employment Framework Directives in 2000, the Commission began to urge candidates to adopt ‘comprehensive anti-discrimination legislation’, reflecting a preference for this particular type of legislative solution at the EU level. By the autumn of 2003, less than one year before accession, none of the eight post-communist countries leading the EU membership race had fully aligned its legislation on anti-discrimination with the EU acquis, and many had not yet established the equality bodies stipulated in the relevant Directives. Considering the 2007 entrants’ poor record in meeting EU conditionality, it is striking that Bulgaria was praised by the Commission in the 2003 Regular Report for having just adopted the required comprehensive anti-discrimination legislation (European Commission, 2003a). Similarly, Romania (where relevant legislation came into force in 2002) was singled out positively in the 2003 Regular Report for having the first functioning equality body among the acceding and candidate countries (the National Council for Fighting Discrimination, CNCD) (European Commission, 2003b). By 2005, Bulgaria had also set up its own institutional mechanism, the Commission for the Prevention of Discrimination. Thus, both countries had the institutional infrastructure in place prior to accession. However, the two countries’ unusually positive record is likely to reflect the marginal status of equality policies in the two countries and relatively low levels of domestic resistance, rather than principled commitment to equality.

The European Commission’s insistence on comprehensive gender equality legislation had a significant, albeit different, impact in the two countries by affecting the particular choice available to legislators as to how to tackle inequalities most effectively. Policy-makers were faced with two options: either to adopt separate legislation against discrimination on gender, ethnicity, race, age, disability, etc., ensuring that each social group’s experience of inequality was addressed as closely as
possible; or to pass one piece of legislation covering all grounds for non-discrimination. In some cases, the Commission’s preference for the latter successfully pre-empted domestic innovation on equality. However, Romanian policy-makers chose both options. On the one hand, Governmental Ordinance No. 137/2000 prohibited discrimination on grounds of race, nationality, ethnicity, religion, belief, age, gender or sexual orientation. It subsequently became Law No. 48/2002. Here, Romania complied with the Commission’s request that comprehensive equality legislation be adopted. On the other hand, Act No. 202/2002 on Equal Opportunities between Men and Women tackled gender equality separately from the other aspects of non-discrimination. Both laws were explicitly designed to incorporate the provisions of EU Directives on equality into national law (as clearly stated in the parliamentary debates; see also Open Society Institute, 2002, p. 433).

The Bulgarian case presents an interesting contrast to that of Romania. In 2000, Bulgarian legislators, working together with women’s organisations and the Ministry of Labour and Social Policy, drafted a much more comprehensive piece of legislation on gender equality than that required in line with the EU’s conditionality. The act would have included not only provisions for non-discrimination in employment, but also measures concerning political participation or education and gender stereotypes, as well as the establishment of an Ombudsperson for Equal Opportunities. The Act was rejected by Parliament on the grounds that comprehensive anti-discrimination legislation would be more appropriate given the demands of EU accession (Open Society Institute, 2002, p. 61). The Law on Protection against Discrimination came into force in 2004, covering a wide range of grounds for non-discrimination, rather than only gender equality, as it had been envisaged in the initial draft of the law on equal opportunities. In this case, EU conditionality severely constrained policy options on gender equality (or other grounds for equality, for that matter). This outcome both disempowered those non-governmental actors that had played an important role in drafting a gender equality law, and took political participation off the policy-making agenda for gender equality. At the time of writing this paper, a special law on equal opportunities for men and women is being once again discussed by the executive and non-governmental actors.

Another important aspect of the impact of EU conditionality is that, in Bulgaria and Romania alike, national governments sometimes adopted a maximalist view of what was required in the field of equality generally, as well as in the area of gender equality specifically. In this sense, the process of EU accession encouraged compliance beyond the strict criteria for membership. It is not only the case that, as Grabbe (2006, p. 78) shows, candidates ‘were encouraged to comply closely with minimalist directives and non-compulsory directives’ and that the Commission ‘presented a maximalist version of a largely non-binding acquis to the applicants’. Rather, national governments occasionally went even further. In Bulgaria, Article 4 of the 2004 Law on Protection against Discrimination extended the scope of equality by prohibiting direct or indirect discrimination ‘on the grounds of gender, race, nationality, ethnic belonging, citizenship, origin, religion or belief, education, opinions, political belonging, personal or public status, disability, age, sexual orientation, marital status, property status, or on any other grounds, established by the law’. In Romania, Article 22 of the Act on Equal Opportunities left the door
open for affirmative action, stipulating that ‘local authorities will adopt measures that stimulate a fair and balanced representation of women and men within the decision-making structures of the social partners’.  

The case of legislation against domestic violence offers another illustration of how the adaptive pressures exerted by the process of EU accession affected areas not originally covered by the EU’s conditionality. Domestic violence made an occasional appearance in the Commission’s Regular Reports (in 1999, 2000 and 2004 for Romania, and in 2000 for Slovakia). Subsequently, the Romanian legislature passed Act 217 of 2003 on Preventing and Combating Violence within the Family. Parliamentary debates on the law suggest that the women MPs initiating it invoked EU accession in order to support their case (although not without some confusion, since the Council of Europe and the European Council were often mentioned in the same breath; this suggests that it is likely that prospective EU membership was invoked largely rhetorically and did not reflect a particular MP’s expertise on accession conditionality). In Bulgaria, the Protection against Domestic Violence Act was adopted two years later, in 2005. Interviews conducted by Krizsan and Popa (2009) with representatives of Bulgarian non-governmental organisations uncovered a similar phenomenon: the strategic use of EU conditionality in support of a particular piece of legislation and/or policy initiative. Extending the scope of legislation beyond the EU *acquis* and, in the case of domestic violence, the rhetorical use of EU membership by political actors suggest, according to Krizsan and Popa (2009), that Europeanisation has had a spillover effect in the area of gender equality. Although this may be the case, it is also apparent that these effects cannot be clearly identified as an instance of Europeanisation, because they were neither due to the consistent application of EU conditionality, nor to a sustained effort to undergo ‘anticipatory adjustment’ with a view to future membership in the Union. Rather, they occupy an intermediate grey zone where policies and legislation, although spurred by the momentum of EU accession, remained firmly in the hands of domestic policy-makers.

Thus, the impact of Europeanisation is most clearly identifiable in those areas of the public sphere that formed the subject of EU conditionality: non-discrimination, employment and the creation of institutions with a mandate in the field of gender equality. Furthermore, this paper has also established that there are at least two intermediate examples of how the process of EU accession can affect areas that only bear a tenuous relationship with the conditionality for membership (such as domestic violence). In order to conclude the examination of the Bulgarian and Romanian cases, it is to equality in the private sphere (legislation on domestic violence notwithstanding) that this paper turns in its final section.

‘The personal is political’ has been a long-standing slogan of the feminist movement, encapsulating the idea that equality in the public realm cannot be achieved in the absence of equality in the private sphere. Most importantly, since the EU member states have been reluctant historically to agree to common principles and actions on private life, policy-making in this area has, by implication, remained largely free of interference from the EU level during the accession process in Central and Eastern Europe. Since abortion is still a highly contested issue in many Western and Eastern democracies, it constitutes the best example within this context. Thus, policy-making on abortion can be used as an indicator of how domestic agendas and
interests are shaped outside the formal requirements of EU membership by political actors acting independently of the EU accession process. In particular, resistance to the legalisation of abortion can provide a measure of the degree to which domestic actors’ agendas are likely to hinder the achievement of gender equality in the public realm.

Women’s reproductive rights became increasingly visible in the political arena in the immediate aftermath of communism’s collapse in 1989. This typically occurred in response to four decades’ worth of demographic policies designed to provide state-socialist systems with the labour force necessary to maintain economic growth (Gal & Kligman, 2000). In some countries, the victory of the anti-communist opposition in the first free and fair elections of 1990 resulted in the adoption of restrictions on abortion. In Hungary, post-communist debates on abortion were underpinned by discourses emphasising national identity, anti-communism, morality, and women’s human rights (Gal, 1994). The executive led by the Hungarian Democratic Forum restricted access to abortion in 1992, and further restrictions were introduced by the FIDESZ-led executive in 2000. In Poland, the powerful influence of the Catholic Church ensured that abortion became illegal in 1993 at the initiative of the Solidarity-led government (Zielinska, 2000). To date, Poland has the most restrictive anti-abortion law in Europe. In other countries, most notably Bulgaria and Romania, the legacy of the post-communist past dictated otherwise. The state-socialist pro-natalist policy adopted in Bulgaria in the 1980s was swiftly dismantled by the government led by the Bulgarian Socialist Party in 1990 (Daskalova, 2000). In Romania, a country with one of the most draconian anti-abortion, anti-contraception regimes in the world between 1966 and 1989 (Kligman, 1998), addressing several decades’ worth of social consequences was deemed so urgent by the National Salvation Front that abortion was legalised in the very first decree passed by the Front in December 1989. Abortion has been legal in both countries ever since.

The variety of policies on reproductive rights described above suggests that there is a significant potential for diverse patterns of resistance to gender equality, as well as for the mobilisation of social and political actors with feminist or conservative agendas. For example, in Poland the parties of the left forged strong alliances with feminist organisations, while those of the right maintained close ties with the Democratic Left Alliance (Anderson, 2006, pp. 116–117). Positions on abortion played a key role in the creation and reinforcement of these political divisions, and were in turn reflected in support for or opposition against the principle of equal opportunities embodied in the EU acquis. Solidarity Electoral Action, the leading party in the governing coalition, actively rejected laws that would have brought Polish legislation into line with the acquis in the late 1990s and early 2000s, although eventually it had to yield to overwhelming pressures from the EU (Anderson, 2006, p. 118). In cases such as Poland, where women’s bodies become a political battleground, it is possible to estimate the full measure of the distance between domestic and European determinants of change. In cases where antagonism of this magnitude is not present, such as in Romania, Bulgaria and the Czech Republic, it is more difficult to judge where domestic actors stand vis-à-vis gender equality in the absence of EU pressures for change. Nevertheless, it is clear that additional factors are at work for the persistent discrimination against women and the gender segregation of the labour market. One useful starting point for further analysis is
provided by Falkner and Treib’s (2008) conceptualisation of a fourth, hitherto uncategorised ‘world of compliance’ in social policy, the ‘world of dead letters’. They suggest that, despite the fact that the EU-8 have a better record of transposition of the _acquis_ in social policy than the EU-15, the post-communist countries lag very much behind the old member states when it comes to implementation and enforcement. Bulgaria and Romania, plagued as they have been by institutional and administrative weaknesses, certainly fit the pattern where ‘what is written on the statute books simply does not become effective in practice’ (Falkner & Treib, 2008, p. 308).

Overall, as expected in the literature (Radaelli, 2003), the process of Europeanisation through conditionality has not led to convergence among the new member states in the field of gender equality. Instead, post-communist states, Bulgaria and Romania included, embarked on divergent paths in their policy and institutional choices. Furthermore, domestic-driven change – in particular social and political mobilisation for or against reproductive rights – is largely consonant with but independent from the process of Europeanisation, demonstrating the extent to which Europeanisation and domestic determinants of change interact with each other in the formation and implementation of gender equality in the new member states of the Union. However, it is important to bear in mind that, in the new member states as in the old, giving in to the adaptive pressures generated by the process of EU accession is not the same as acquiescing to a feminist agenda on gender equality, especially when, as in the case of Poland, domestic veto players are in a powerful position to affect the direction and substance of policy-making on gender equality.

**Conclusion**

As this paper has endeavoured to show, a consistently applied feminist theoretical framework yields valuable insights into the study of gender equality policies in the new member states. First, it can help uncover the limits of the process of Europeanisation and the dynamic interaction between Europeanisation and domestic determinants of change. Second, it can provide a useful analytical counterpoint to the literature on EU enlargement, particularly to studies focusing on policy-making and institution-building in the post-communist countries of the Union. Furthermore, the cases of Bulgaria and Romania demonstrate that, in policy areas that are relatively marginal and therefore of little consequence in the EU membership race, patterns of change are not necessarily predetermined by a country’s overall position in the enlargement ‘regatta’. Finally, the paper demonstrates the added value of a broader comparative perspective, highlighting the ways in which the 2007 member states fit with (or differ from) the 2004 accession states within the eastern enlargement of the Union.

**Notes**

1. As Sasse (2006) or Grabbe (2006) show, this was not valid only in the case of political conditionality. A similar effect was particularly noticeable in policy areas where the _acquis_ was either largely non-existent (such as ethnic minority rights) or fast-developing (such as Schengen).
2. The exceptions are Poland, where a Plenipotentiary for Women and the Family – a curious remnant of communist-era institutions – continued to exist within the Prime Minister’s Office; and Czechoslovakia
before the break-up, where a Government Committee for Women and the Family existed on the Slovak side from 1991 until 1993. Neither of the institutions seemed to function (KARAT Coalition, 2000).

3 Member States shall designate and make the necessary arrangements for a body or bodies for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex. These bodies may form part of agencies with responsibility at national level for the defence of human rights or the safeguard of individuals’ rights’ (Directive 2006/54/EC). Virtually identical provisions are contained in the Racial Equality and the Employment Framework Directives (2000/43/EC and 2000/78/EC respectively).

4 By contrast, the Equal Treatment Authority in Hungary started to operate from January 2005, several months after accession.

5 The exceptions are non-discrimination on grounds of ethnic origin, which proved a veritable bone of contention in Romania, and non-discrimination on grounds of sexual orientation, ardently debated in both Romania and Slovakia.

6 Author’s translation.

7 In the Romanian case, it is likely that the emphasis on domestic violence is related to the issue of institutionalised children, which emerged very prominently in the 1999 Regular Report.

8 It was briefly re-legalised in 1996 by the social-democratic government, only to be made illegal again a few months later, after a veritable battle involving the Constitutional Court.

9 Somewhat paradoxically, the return of communist successor parties to power in Bulgaria and Romania in 1990, typically described in negative terms in the literature on democratisation in Central and Eastern Europe, seems to have had a positive impact on women’s reproductive rights, because neither the FSN nor the BSP had an interest in reawakening memories of communist-era repression. This, however, is a tenuous conclusion in the absence of further investigation: the Czech Republic, among other countries, has also liberalised abortion even if the 1990 elections were won by the anti-communist opposition.

References


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