

RECWOWE Seminar

**« Understanding the Europeanisation
of Domestic Welfare States »**

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**EU Law as a Driver Of
Domestic Gender Policies**

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Introduction

- Features of gender policies
- The choice of worklife/balance as revelator of the orientation of gender policies

Features of gender policies(1)

- Determining influence of the international arena (CEDAW, Beijing) on the EU and the Member States
- Cross-loading, networking, epistemic community in gender at all levels

BUT

- Different pillars :
 - Elimination of discriminations (HL)
 - Gender mainstreaming (SL)
 - Specific actions (structural funds)
 - Institutional dimensions
 - Participation of actors
- ⇒ Organisational fragmentation and corollary risk of dilution of policy objective

Features of gender policies(2)

- Fragmentation of principles and meanings (from combating gender based discriminations to diversity, by equal opportunities)
 - ⇒ Risk of confusion from the POV of expected social behaviours
 - ⇒ Risk to mask the conflicts between objectives behind consensual terms
- Institutional fragmentation (transversal principle, federalism),
 - But unifying role, in Belgium, of the IEFH

The choice of work-life balance (1)

- Essential for substantive gender equality
- Articulation with the other case studies of ETOS.be
- Integrated policy on all the instruments covered by ETOS.be

BUT :

- Resistance to intervention in the family sphere
- Variance of policies following the policy domains
- Ambiguity of objectives (in terms of gender-based roles)
- Variance of national policies

I. EU(1)

- Recall:
 - International interferences in the up- and down-loading phases (Beijing)
 - Instrumental set relatively complete
BUT no self-standing OMC on equality
(elements in EES and ESF / Roadmap)
 - Time perspective of the gender approach
(formal to substantial)

II.EU(2)

Gendermainstreaming and coordination of financial instruments

- No specific OMC, but present in EES and OMC on social protection
- Specific financial instruments (until Progress), but weak; But present in structural funds (especially ESF)

Evolution over the last decade:

- General: ESF->EES->growth and employment
- Gender: Mainstreaming (formal) // reduction of specific actions

⇒ **Impression (of the actors) of a dilution of the objective of gender equality in the EES and ESF**

⇒ **Cross-loading, networking, epistemic community in gender relatively peripheral to the EES and ESF**

II. EU (3)

3 directives - Main Conclusion :

- Path dependency of the European gender equality law (since Defrenne)
- Limited capacity of the law (of the ECJ) to exit a binary logic inherent to the combat against discrimination and to engage into a reflection on gender equality
- In effect, essentialist approach

II. Belgium (1)

(Council Directive 96/34/CE on parental leave)

A. Context:

- Federalism (multilevel)
- Pillars (sub-optimal policy choices)
- Corporatism (horizontal division of competences)
- Role and institutionalisation of feminist groups (activism and crossloading tradition since Defrenne between UN, the EU Council and the IEFH)

II. Belgium (2)

B. Uploading :

- Role of the Belgian presidency
- Importance of Miet Smet
- « Shadow of the law »
- Influence of the Belgian model => via the CNT (Jo Walgrave as broker)

=> No traditional channel in the field of gender

II. Belgium (3)

C. Downloading

- Legislative adaptation on substance
- Transposition competition between Minister and CNT => 2 competing instruments
- Current complementarity but initially mutually exclusive until 1998

II. Belgium (4)

Conclusion

- Vanguard character of certain Belgian initiatives (parental leave, IEFH, ...), « caught up » by European law + lateness in transposition => loss in credibility for up-loading!
- Difficult to distinguish up/downloading : important crossloading
- Crossloading reinforced by the creation of the IEFH (horizontal and vertical coordination)
- Importance of individual voluntarism (more than institutions), at least before 2004

III. The Netherlands

- Council Directive 97/81/EC on part-time work
 - Recast Directive
- A. Uploading : important role of the presidency
(Recast Directive)
- B. Downloading : analogy to the problems
encountered in Belgium (Recast Directive)
- C. Actors: Strategic importance of the equality
agency in the downloading; Weak
implications of the national trade unions;
important role of civil society

Conclusions/ recommendations (1)

- + Emblematic example of « crossloading », institutionnally sustained (IEFH)
 - + Importance of vertical integration international/European/Federal/Regional, institutionnally sustained (IEFH), and exploited by the actors for up and downloading purposes
- => Good practices for other countries and policy domains

Conclusions/ recommendations (2)

+ importance of diversification of actors (institutional, political, civil society, academic), institutionnally sustained, and forming an epistemic community

But

- Dilution of their domains, especially in specific actions (OMC and ESF)

⇒ Empowerment and implication of actors of gender equality in these domains

⇒ To maintain the domains of specific actions of gender equality in the programmes of actions EES and ESF

⇒ Central role to be given to the Institute amongst the actors of gender equality in all the aspects of functioning of the EES and the ESF

Conclusions/ recommendations (3)

+ Important role of presidency

BUT

- Time lags between presidency and loss of influence in between

=> Must create networking capacities and alliances between countries

Conclusions/ recommandations (4)

+ Vanguard character of Belgian initiatives

BUT

- Lateness and incompleteness of transposition
might cause a problem of credibility

=> Necessity to reinforce the process of
transposition (for instance in centralising and
identifying organs for coordination like in the
NL)

Conclusions/ recommandations (5)

- Instrumentalisation of the gender equality policies

=> More actor vigilance and political monitoring practices necessary

Conclusions/ recommandations (6)

- Contradiction between the formal and substantive approaches developed between the instruments

=> Necessity of training of legal actors on the subject of substantive equality; Role of law in the creation of substantive equality