



Exchange of good practices on gender equality

**Gender Impact
Assessment**
Austria, 03-04 June 2014

Comments Paper - Romania

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This publication is supported by the European Union Programme for Employment and Social Solidarity - PROGRESS (2007-2013).

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Gender Impact Assessment in Romania

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1. Gender equality in Romania: a difficult context

There is no legal provision for gender impact assessment in Romania, nor is it mentioned in any national or ministerial strategy or other plan of action. This absence is connected to how gender equality policies were developed (or more precisely, not developed) in the country. The following study examines the legal and institutional framework, which was certainly affected by the financial crisis of recent years: but alongside these economic factors, two further elements must be emphasised from the start, both of them essential for understanding the Romanian context:

- There is a general lack of political consensus on gender equality policy, particularly since gender equality is not perceived as a real or valid political objective; equality between men and women is most often associated with Marxism, neo-Communism or “strident” feminism.
- There is a lack of social demand to influence the political agenda; in general, Romanians consider that equality between men and women exists, since the Communist regime promoted it for fifty years, while NGOs in the domain are unable to have a real social impact.

1.1. Gender equality and gender mainstreaming: the legal framework

The principle of equality between the sexes is enshrined in the Romanian Constitution, though the main law governing gender equality was only adopted during the process of Romania’s entry into the EU, as part of the *acquis communautaire*: this is law 202/2002, which has so far been re-promulgated and amended four times, the principal changes being due to the creation and then the dissolution of the ANES.¹

1.1.1. Gender mainstreaming: a marginal principle

The terminology used in the wording of law 202/2002 is important if we are to understand its approach to gender equality. The law talks of equal opportunities and equal treatment of men and women, of discrimination (defining various kinds) and harassment. It does not use the term gender equality at all (although this is omnipresent in European legislation and policy), while the section on settlement and compensation refers exclusively to “claims brought on the basis of sexual discrimination”. Thus the clear aim of the law is to combat discrimination, rather than

¹ ANES was created as a governmental agency under the ministry of labour, though it was legally autonomous and had its own budget.

to promote any policy favouring gender equality. Even in the latest version of the law (2013), the reference to the principal of gender mainstreaming (“integrated approach to the gender perspective”) is mostly marginal and refers only to the creation and functioning of the ANES, which is supposed to ensure “the active integration of the gender perspective into all national policies and programs”.² The reference disappeared in the law as amended in 2010, after the ANES was dissolved by emergency ordinance (OU 68/30.06.2010).

Positive aspects: the most recent version of the law contains a section dedicated to “integrated approach to the gender perspective in national policy.”³

1.1.2. The legal framework: inconsistencies and empty phrases

Though space does not allow a complete analysis here, it may be useful to point out some problematic aspects of law 202/2002, in order to understand why it had so little effect and to realise how little importance is attached to this field in Romania:

- The 2007 variant of law 202/2002 established the CONES: art. 31, para. 1-8, with the chairperson of CONES also being the chair of ANES (para. 1). The OUG nr. 68/2010 abrogated articles 24-30 (referring to ANES). But the article 31, paragraph 1 is identical in content to the previous version of the law: “We hereby establish a National Commission for Equal Opportunities (*Comisia națională în domeniul egalității de șanse între femei și bărbați*, CONES), its activity to be coordinated by the chairperson of the Agency [which had just been abolished, n.n.], who also chairs the CONES”.
- In all variants of law 202/2002, section IV, art. 23 (Equal opportunities between men and women in decision-making) requires equal participation by men and women in all government and parliamentary commissions and committees (art. 23 para. 2). We need hardly add that this requirement is not met and that there are no reports on compliance or sanctions for failure. It is also telling that the Romanian Senate’s Commission on equal opportunities was 100% male from the 2012 elections right through to March 2014, after which one female member served on the commission without, however, having any designated function.
- Likewise, as law 202/2002 went through successive amendments and variants, some of its principles and provisions were eliminated rather than built upon. For example, the version promulgated in 2013 suppresses article 16 para. 2, although it had been present in all previous versions and is a very important measure for the elimination of gender stereotypes (this article requires the Ministry for Education and Research to promote school textbooks and analytical programme handbooks which do not contain sexual discrimination).

Apart from law 202/2002, the only laws on equal opportunities between men and women passed in recent years have been those required by prevailing European legislation, and there has been no separate initiative at national level. Perhaps the only really effective measure at the national level has been that on combating discrimination: OUG 137/2000 sets out sanctions for all kinds of discrimination. We should also add here that some provisions have been adopted *in extremis*, through

² Law 202/2002 republished in MO nr. 150 / 1.03.2007, Art. 24, para. 3.

³ Law 202/2002 republished in MO, Part I nr. 326/ 5.06.2013, cap. V.

emergency ordinance, to prevent the application of infringement proceedings (for instance OUG nr. 61/2008 on equal opportunities between men and women in access to goods and services).

1.2. Gender equality and gender mainstreaming: the institutional framework

The bodies charged with promoting equal opportunities between men and women were set up during the EU accession process: ANES, CONES,⁴ COJES, CNCD.⁵ Once the economic crisis led to the need to reduce staffing levels, in 2010 ANES was dissolved and became instead a simple Directorate for Equality of Opportunity between Men and Women within the Ministry of Labour, and at the same time the ministry's portfolio was renamed: what had been the Ministry for Labour, Family and Equality now became the Ministry for Labour, Family, Social Protection and Senior Citizens. Under the new version of law 202/2002 promulgated in 2010, CONES and COJES are to continue, though as we have shown above CONES is to be chaired by the chairperson of ANES while the chairperson of COJES is to be the local representative of ANES (which has, however, been dissolved). Thus the only bodies which functioned at all, *de facto*, from 2010 to 2013 were the Directorate within the Ministry of Labour, the CNCD, which has a remit for all kinds of discrimination, sexual discrimination being only a part of its brief, and the two parliamentary standing committees on equality of opportunity. The Directorate in the Ministry of Labour is not legally autonomous and does not have its own budget; indeed it does not even have an organisational chart on its website, and works with a considerably reduced staff.

At least formally, 2013 marked the moment when governmental attitudes on equal opportunities between men and women changed. CONES was set up by government decision nr. 396/11.09.2013. Law 202/2002 was amended to provide that the Ministry of Labour should work out national policies and action plans for the government in the field of equal opportunities between men and women, and coordinate the application of plans and policies (art. 23, par. 1). Recently, OU 11/2014 has established a Department for Equal Opportunities between Men and Women (art 4), subordinated to the Ministry, with its own legal status "responsible for drawing up, coordinating and applying government strategies and policy in the field of equal opportunities between men and women, and exercising state competencies in strategy and regulation for the field of equal opportunities between men and women" (art. 4, para. 1).

1.3. Gender equality and gender mainstreaming in national strategies

The legal and institutional framework described above, with all its inconsistencies and loose ends, has directly influenced how national strategy in the field of equal opportunities between men and women is drawn up.

⁴ CONES was intended (or at least so all versions of the law declare) as a body bringing together representatives from all ministries: this was to be the main body for the implementation of gender mainstreaming.

⁵ Unlike ANES, CNCD is also responsible for investigating cases of discrimination (OUG 137/2000).

1.3.1. National strategies on equal opportunities for men and women

Thus the first two national strategies were drawn up by ANES (2006-2009 and 2010-2012). This period also saw the release of the only report so far on implementation of the national strategy (for the period 2006-2009). No evaluation report was ever released for the national strategy for 2010-2012, and from 2012 to 2014 no national strategy on equal opportunities between men and women was even adopted. For all the weak points of the first two strategies (among which the most important is the lack of any precise indicators either for implementation or for evaluation), it is evident that the existence of ANES was a positive force in developing policies for equal opportunities.

1.3.2. Equal opportunities in government programmes

The programme for government from 2009-2012 mentions equal opportunities between women and men explicitly in the title to chapter 9 ("Family, child protection and equal opportunities"), as well as in a sub-chapter devoted exclusively to equal opportunities. However, the programme for government from 2013-2017 does not mention equal opportunities in the titles of any chapter or sub-chapter. The only references to the subject appear in the chapter on labour policy, where equal opportunities for men and women in wages and salaries are mentioned (p. 101).

The main weak points in the government programmes' approach to equal opportunities for men and women are: a) that the topic is only introduced in a chapter on labour policy and social support to families; b) while the chapter on the labour market refers to equal opportunities and equal treatment for men and women, in all other respects (e.g. child care, family protection) equality between men and women is subsumed to far stronger social and political values concentrating on harmony within the family and child welfare, so that the equality agenda loses any impact on social practices and representations.

Likewise, gender equality is not taken up or assumed in national strategies in any sector, not even in the schools strategy or in labour strategy. In reality, gender mainstreaming does not exist even at the level of programmes or action plans, while gender equality is most often merely a declaration of principle, with no real effect on public policy.

2. Policy debate

In the context described above, it is difficult to speak of the existence of a policy debate concerning gender equality or gender mainstreaming, and even less of a debate on gender impact assessment.

2.1. Gender equality in public debate

Public and political debate on the subject is extremely rare in Romania, while the topics which do stir public interest are the following:

- Parental leave, though work/life balance and gender equality are not touched upon here;
- Equalisation of pensionable age;

- Projected legislation for electoral gender quotas;
- Marriage, family, abortion;
- Marriage defined as between man and woman.

By far the most hostile reactions are to the notion of homosexual relationships and the possibility (rejected by the overwhelming majority of voters and politicians) of recognising gay marriage. Then there is the recurring problem of abortion, which despite the traumatic recent history under the Communist regime is still dominated by voices claiming to defend the “true values of the Romanian people”: family and Christian morality.

2.2. Possible developments of gender mainstreaming and introduction of gender impact assessment

Current circumstances do not especially encourage any effective implementation of gender mainstreaming, nor the subsequent introduction of gender impact assessment. Although there have been some signs of improvement in the last few months, many other aspects continue to be problematic and difficult.

The main positive aspect is the reintroduction in 2013-2014 of the institutional framework which would be needed to draw up and implement policies on gender equality. The government has adopted measures to establish CONES and the Department for Equal Opportunities between Men and Women, which may signal a change in political attitudes to gender equality, at least in the context of shifting political majorities and recent cabinet reshuffles.

However, there are still several weak points, among which two are particularly revealing:

- The absence of any national strategy for equality of opportunity between men and women since 2012. The Ministry of Labour published a government draft project on adopting a strategy and an action plan for the period 2014-2017. No further information has been published on the ministry website after the period of public consultation closed.
- Equal opportunities between men and women appears nowhere in the new government programme for 2013-2016, either as a main chapter or a subsection. After a declaration of principle at the beginning proclaiming respect for European values, equality between men and women does not appear until page 100, in the chapter on labour, discussing the goal of equal salaries for men and women. In the rest of the document, equal opportunities issue is reduced to provisions concerned with social equality and fighting poverty. The document comes very near hypocrisy when, after 103 pages of governmental strategy containing no goals or measures connected to gender equality, the very last point in the sub-section on Family and Child Protection on page 103 proclaims the “Inclusion of the principles of social cohesion and gender equality in all public policies and the stronger monitoring and application of these principles.”

3. Transferability issues

The transferability of good practice in gender impact assessment, as presented in the analysis of Austria and Finland, depends on at least two key elements, without which it is hard to see any such good practice developing. In both countries, gender mainstreaming is present as a political objective and principle in government and ministerial strategies and in specific gender equality strategies. Furthermore, gender mainstreaming has been integrated into national policy for a long time (since 2000 in Austria, and before 2000 in Finland) and has been constantly developed at the level of both law-making and public policy, as our two analyses emphasise. Likewise, specific governmental or ministerial entities for women and gender issues exist at governmental level in both countries: the Federal Minister for Women's Affairs and Civil Service in Austria and the Government Gender Equality Unit (TASY) in Finland.

Also, as a fundamental condition is **the institutionalisation of gender mainstreaming** to the legal and to the institutional level.

3.1. Gender impact assessment (GIA) in Austria and Finland

A further pre-requisite for any discussion of good practice transfer is the explicit introduction of gender impact assessment at the level of law-making and government strategy. Whether directly linked to gender mainstreaming policy (as in Finland) or separately (as in Austria), a clear, set definition of how gender impact assessment will be implemented at the level of national legislation and policy is indispensable for the development and transfer of good practice.

3.1.1. Gender Impact assessment in Austria

In the case of Austria, we may remark that a precise legislative framework has been developed fairly recently; it is only since 2009 that all governmental levels are required to aim at effective gender equality budgeting, and gender responsive budgeting has been obligatory for all federal ministries since 2013. This legislative framework represents the key element for Austria's implementation of gender impact assessment.

The main weakness is that gender impact assessment is not related to gender mainstreaming. Furthermore, the way gender is recorded in indicators mostly relates to women, so that the use of gender as a substitute for the feminine/masculine pairing reduces the ambitious aims of the gender mainstreaming principle.⁶

Transferability

Adopting gender responsive budgeting and gender impact assessment is a very good practice that deserves to be adopted in all European countries. The principal transferable aspects of this practice are:

- A legal framework requiring effective gender equality at all governmental levels;
- Introducing gender equality as an element in drawing up the national budget and in all ministerial budget projections;

⁶ The difficulties of giving a theoretical definition of gender mainstreaming and transposing this into practice have been pointed out several times, cf. e.g. Silvia Walby, *Gender mainstreaming: Productive Tensions in Theory and Practice*, 2005, pp. 321-343.

- Requiring all ministries to include a gender equality objective in their major objectives;
- An obligation upon all ministries and all draft laws to develop appropriate indicators to measure the effectiveness of concrete measures;
- Requiring assessments of gender impact in, at least, all major new laws.

Constraints of the transferability

Alongside the conditions listed above, other factors condition or influence the transferability of good practice in gender impact assessment, as found in Austria:

- The political will must be in place to make gender equality an important element in the economic sphere;
- Legislation for performance budgeting;
- The creation of a legislative framework to impose gender responsive budgeting and gender impact assessment.

For the Romanian context, there are two elements that could be particularly useful: present gender mainstreaming as part of the good governance and link the GIA to the accountability and transparency requests.

3.1.2. Gender Impact assessment in Finland

In Finland the development of gender impact assessment in the drafting of laws is related to strong gender equality policies and especially to gender mainstreaming, the main element of the Finnish solution.

Nevertheless there are risks in reducing the practice to a set of simple instructions which do not require special expertise and which settle for a simple dichotomy of man/woman (thereby eliminating the sophisticated theory of gender and gender relations). Such reductionism risks perpetuating the stereotypes and social structures which underlay gender inequality, while the effects of gender impact assessment would remain fragmented and circumstantial. This is one of the points for discussion in the seminar of 3rd-4th June.

Transferability

Requiring gender impact assessment in the legislative process is a good practice to be implemented in all European countries. Finnish practice should be transferred as far as possible as a method for implementing gender mainstreaming. Although its applicability certainly depends on national legislative and institutional contexts, the following elements should be maintained (or adapted) in any attempted transfer:

- Government support in promoting GIA (by inclusion in Government Programmes);
- Introducing GIA into guidance for the legislative process;
- The establishment of precise procedures with clear objectives and indicators enabling the monitoring of GIA inclusion in the legislative process;

- Broad-based preparatory bodies for major laws, consulting all relevant actors (civil servants, representatives from other ministries, stakeholders, experts and political decision-makers);
- Developing and implementing procedures for monitoring and accountability of the introduction of gender impact assessment in the legislative process.

Constraints of the transferability

The transferability of good practice depends on the following elements, the absence of which may prevent transfer:

- The institutionalisation of gender mainstreaming and its effective implementation (i.e. the Act on Equality between Women and Men (1986/609));
- An official definition of gender impact assessment;
- The creation of institutional structures in all ministries to strengthen gender mainstreaming implementation.

For the present Romanian context, the Finland's example could be used for the institutionalisation of the gender mainstreaming. Another element that could be transfer is the regular cooperation between political decision makers, civil servants and other stakeholders, including academia field.

List of abbreviations

ANES – National Agency for Equal Opportunities between Women and Men

CNCD - National Council for Combating Discrimination

CONES - National Commission in the Field of Equal Opportunities between Women and Men

COJES - County Commissions in the field of equal opportunities between women and men

MMFPSPV - Ministry of Family, Social Protection and Elders

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