Exchange of good practices on gender equality

Gender Impact Assessment
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Comments Paper - Germany

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1. Introduction

This comment describes the situation in Germany in regard to Gender Impact assessment. It focuses on Gender Budgeting as well as Gender Impact Assessment (GIA) in law drafting. It is written from the perspective of an external expert.¹

The focus of this paper is on the federal government, although on the sub federal level there are a number of good practices on Gender Budgeting and on the “Gender-Check” within the procedure of drafting law (Lewalter 2013, p. 55). To deal with these examples would however go beyond the scope of this paper.

1.1. Gender equality situation in Germany

The Gender Equality Index assessed by EIGE shows that in the European context Germany is below average (51.6 – EU27: 54.0)².

Germany faces a Gender Pay Gap of 22.0% in 2013 (DESTATIS, without date) and a Gender Pension Gap of 59.6% (BMFSFJ 2011, p.7). There is also a high and persistent segregation in regard to the horizontal segregation and especially concerning the vertical segregation (BMFSFJ 2011, p. 133f.).

The gender equality situation is described in detail in the Gender Equality Report which was compiled by an independent expert commission and published in 2011 (BMFSFJ 2011). It focusses on Gender Equality in the course of the lives of women and men - and it clearly shows gender equality gaps in the several stages of the lives of men and women in several domains. The report states a lack of consistency in gender equality policies and contradicting political incentives for personal decision making for women and men in different phases of the life course. For example, the commission recommends a change in the German taxation system because it creates disincentives for an equal share of employment work within marriage (“splitting system”) (BMFSJ 2011, p. 59f.; see also Spangenberg 2013).

The Coalition Contract between the Governing parties in the current 18th legislation period tackles the vertical gender segregation in the labour market, especially in the private sector, as well as the gender pay gap. Further topics are violence against women, human trafficking of women and forced prostitution. However, neither a coherent and structural gender equality policy nor the establishment of an institutional mechanism on gender equality is mentioned.

¹ “genderbuero” is a private company based in Berlin. See http://www.gender.de/summary/
² http://eige.europa.eu/content/gender-equality-index/#/country/DE
1.2. Main legal provisions

Article 3, para. 2 sentence 2 of the German constitution (Grundgesetz) states: "The state shall promote the actual implementation of equal rights for women and men and take steps to eliminate disadvantages that now exist."

The “Common Rules of Procedure of the Federal Ministries” (“GGO”) state under para. 2 that gender equality is a basic principle of federal governance and shall be fostered by all political, legal, and administrative measures of the federal ministries and their areas of accountability. Gender Mainstreaming is explicitly mentioned in the GGO (BMI 2011, p. 6).

Some of the Codes of Social Law (SGB II, III and VIII) include obligations for gender equality, for example in SGB III gender equality is set as a cross-cutting principle (§ 1 Abs. 1 (2) SGB III).

Especially the formulation in the GGO gives a strong legal basis for GIA.

1.3. Implementation of Gender Mainstreaming and Gender Budgeting

In some of the European Countries and especially Austria there is a complementary approach in the implementation of Gender Mainstreaming and Gender Budgeting. In Germany the same approach was taken in the State of Berlin (sub federal level). The federal government however refrained from continuing the process of implementing Gender Mainstreaming which started in the beginning of the 2000. It did not initiate Gender Budgeting.

1.3.1. Gender Mainstreaming

A cabinet decision in the year 1999 introduced Gender Mainstreaming as a leading strategy to achieve gender equality. A high level inter-ministerial “Working Group Gender Mainstreaming” was installed in May 2000 and a GM unit was setup in the Ministry for Family Affairs, Senior Citizens, Women and Youth. In each Federal ministry a focal point for GM was installed and pilot projects started. Gender Training for civil servants was provided (Geppert/Lewalter 2012, p. 10f).

Some of the pilot projects developed working aids in the core fields of administration, these were:

- Working Aid: Gender Mainstreaming in the preparation of Legislation;
- Working Aid: Gender Mainstreaming in the implementation of the European Social Funds;
- Working Aid: Gender Mainstreaming in public relations;
- Explanatory note on § 2 GGO: Gender Mainstreaming in reporting;
- Explanatory note on § 2 GGO: Gender Mainstreaming in research;

• Working Aid: Gender Mainstreaming in reporting⁴;
• Working Aid: Training – gender-oriented!⁵.

A GenderCompetenceCenter served as a support structure in the creation of these documents and supported the implementation of Gender Mainstreaming in general (on institutional mechanisms see below).

From about 2006 on the government avoided to use the term “Gender Mainstreaming” because of critical reporting in the media. Some of these reports were clearly misinterpreting the strategy. They said Gender Mainstreaming would aim at “re-educating” individuals to abandon their gender identity and it also would aim at the creation of a “New Human”⁶.

This may also have contributed to the fact that the government has abandoned an active implementation of Gender Mainstreaming today.

1.3.2. Gender Budgeting

Whereas on the level of Federal Countries and on communal level there are many examples for the implementation of Gender Budgeting (for example the State of Berlin⁷), the Federal Government states that Gender Budgeting in their view is not an adequate mechanism to achieve Gender Equality on the Federal level.

As feasibility Study (BMFSFJ 2006) showed, that it would be possible to introduce Gender Budgeting in the Federal Government of Germany; it also suggested concrete steps how to do so.

In answer to the feasibility study the former Government stated the following:

“The Federal Government holds the view that the recommendations [of the report, R.F.] go hand in hand with considerable bureaucratic efforts. Nevertheless the Federal Government is currently investigating a fundamental reform of the budget and accounting system. The focus is on basic conceptual issues and modernisation of the budget. The criteria of assessment if and which additional mechanisms of gender equality will be included in future, is the question if and to what extent this information is relevant for decision making within the budget process.” (BMFSFJ 2006, introductory remarks of the Federal Government, without page)

In reaction to an enquiry of the opposition parties in 2012, the former government (Ministry of Finance) replied: „The federal budget is just mirroring the portion of departmental policies which correspond with income and spending of funds. Therefore outcome analysis and management by objectives (...) are original tasks of the respective sectoral policies and have to be located there.” (Deutscher Bundestag 2012).

⁴ The six documents can be downloaded at: http://www.bmfsfj.de/BMFSFJ/gleichstellung,did=192702.html
⁵ This document can be be downloaded at: http://www.bmfsfj.de/BMFSFJ/Service/Publikationen/publikationen.did=132580.html
⁶ For a critical analysis of the reporting see Rosshardt (2007) and Frey et. al (2013).
Since the budget has the status of law and in consequence undergoes a Gender Impact assessment (see below), the draft law on the Budget 2014 from March this year, contains one section on gender equality, stating: “(…) With the budget statement gender-specific roles and tasks distributions are not fixed or changed. It is the task of the respective sectoral policies to consider gender impacts when claiming a financial framework”. (Deutscher Bundestag 2014, p. 14)

1.4. Institutional mechanisms

As mentioned above, the First Gender Equality Report on the basis of the strong evidence of gender gaps demanded a more consistent gender equality policy. It also called for a “research centre for gender equality” (BMFSFJ 2011, p.35).

The existence of an institutional mechanism can be seen as a precondition for a successful implementation of gender equality policies (EIGE 2013).

In 2003, in the course of the process of implementing Gender Mainstreaming, a support structure for the whole Federal administration was set up - the “GenderCompetenceCenter”. After seven years the government stopped funding the Centre, which is now a private company. According to a report by EIGE (2013) within EU 27 there are currently only three member states without an institutional mechanism for gender equality – Germany being one of them (EIGE 2013, p. 57).

However, there was one exception in regard to a support structure in the area of the European Structural Funds

Example: The Agency for Gender Equality within the European Social Funds

For the funding period 2007 to 2013 the Federal Ministry of Labour and Social Affairs contracted the “Agency for Gender Equality within the ESF” from March 2009 to February 2014. This agency was a support structure with a team of four experts as a core team and three other external experts as well as one programme officer. The task of the Agency was to consult responsible actors on different levels of implementation of the ESF, with the goal of mainstreaming gender equality into the ESF programmes and projects. The team provided training and counselling for responsible actors, published studies on diverse ESF topics. It networked with national and international Gender Equality bodies and organisations and set up a website providing information. It also published Gender Budgeting reports: Quantitative reports provided an ex post analysis of the proportion of male and female participants. There was also a pilot report providing an ex-ante analysis for five programmes that did not have individual participants. This report can be seen as a Gender Impact analysis on a limited area of the ESF funds.

This Agency was the only institutional mechanism after the GenderCompetenceCenter was no longer funded. Its contract ended in the end of February 2014. Bidding for setting up a new institution was published in the end of April 2014. This new body will cover not only gender equality but also equal opportunities and non-discrimination as well as sustainability as cross-cutting issues.

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9 See [www.esf-gleichstellung.de](http://www.esf-gleichstellung.de)
1.5. Gender Impact Assessment of Draft Law

In accordance with the GGO (§ 44, impact assessment and § 2 gender equality) in the preparation of legislation a GIA should be applied. As mentioned above, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth has published a Working Aid for supporting civil servants to do a “Gender-Check” within the procedure of drafting a law (BMFSFJ 2007). This working aid describes two phases within a GIA: a) the (short) relevance-check and b) the regular impact assessment (Lewalter 2013, p. 55f).

The working aid was introduced when the GenderCompetenceCenter was still in place, its staff providing assistance for applying the working aid until 2010. However, in a review of the last years’ experience with this practice Lewalter (2013) states that the majority of law comes into force without a GIA. There is no systematic monitoring and evaluation of the application of GIA in law drafting. There is no transparency on the statistical data and evidence that have been used and what kind of expertise informed the assessment.

It is the obligation of the respective department to practice the assessment on a regular basis, the Ministry for Family Affairs, Senior Citizens, Women and Youth can be involved. However, the department for gender equality within the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth is not endowed with the necessary human resources to systematically support the law drafting process in other departments; there is also no body for coordination and monitoring (checking systematically whether a GIA has been done and if so, of which quality the analyses have been).

2. Current policy debate in Germany

The gender equality report published in 2011 has initiated a debate in Germany about the need for a fresh start in gender equality policies. In addition there was a change in government in the end of 2013 which created new aspirations.

At the same time the concept Gender and Gender Mainstreaming as a strategy are under attack, mainly from right wing groups as well as the new formed party AfD. The AfD is also actively involved in protests against the “ideology of gender” or “genderism” as they call it (Kemper 2014).

There are some initiatives by civil society groups to push for gender equality issues and to lobby for a stronger institutionalisation of gender equality politics: An initiative of researchers and gender equality experts published a proposal for the strengthening of gender equality policies (“equality now”). It demands the strengthening of gender equality as a policy field as well as a better visibility. A regular report on gender equality as well as the establishment of a permanent supporting structure (research centre) is also proposed. This proposal was signed by more than 1,200 persons by the end of the year 2013.\(^{11}\)

\(^{11}\) [http://gleichstellung-jetzt.net/](http://gleichstellung-jetzt.net/)
There are two more civil society initiatives calling for a redirection of gender equality policies: The Call of Feminist Scientists\(^\text{12}\) and the Care Manifesto\(^\text{13}\).

All of these initiatives aim at bridging the gap between the existing legal obligations and the actual policy implementation in the last years.

3. Transferability

In the following I will discuss the transferability of Gender Budgeting as a good example for the Austrian context. The example of a gender check of draft law will be discussed from the background of the Finnish example.

3.1. Transferability of the good example in Austria: Gender Budgeting

There are similarities between Austria and Germany in regard to the gender equality situation: The gender equality index of Austria is only slightly lower (50.4) compared to Germany (51.6).\(^\text{14}\)

When it comes to Gender Budgeting on the Federal level, there are hardly any similarities between Austria and Germany because, as outlined above, Gender Budgeting is simply not implemented in Germany by the federal government.

The main **differences** between Austria and Germany can be seen as follows:

The Austrian government has started to introduce Gender Budgeting along with a reform of the budget system and a focus on outcome orientation of the budget, aiming at increased effectiveness and efficiency, transparency and accountability of the budget policy. As long the German federal government is not implementing structural reforms in the Budget process as the Austrian Federal government did and does, it is unlikely that Gender Budgeting will come into reality in Germany.

However, the feasibility study (BMFSFJ 2006) discusses Gender Budgeting within the current budget system and shows that implementation would be possible as well. Many other country examples, including Austria before the reforms, show that Gender Budgeting can contribute to transparency and accountability within any public budget system.

Austria in comparison to Germany has maintained the Gender Mainstreaming strategy including a coordination body (Interministerial Working Group on Gender Mainstreaming)\(^\text{15}\), it has published a couple of tools also on Gender Budgeting\(^\text{16}\).

From a German perspective, the preconditions for a systematic use of GIA in Austria are much better.

\(^\text{13}\) http://care-macht-mehr.com
\(^\text{14}\) http://eige.europa.eu/content/gender-equality-index#country/AT
\(^\text{15}\) http://www.imag-gendermainstreaming.at/cms/imag/subcoverpage.htm?channel=CH0561
3.2. Transferability of the good examples in Finland

There are similarities between the Finnish example of law drafting and the German regulations but also some differences between Germany and Finland in using GIA for draft law:

**GIA as a Gender mainstreaming tool:** Since the government has abandoned GM as a strategy, GIA does not have backing by this strategy.

**Law drafting process:** the process in Germany is similar to the one in Finland, however GIA is less binding. There is an obligation to involve the gender equality department, due to the restricted human resources, in practices this is not always possible. GIA is sometimes limited to checking whether the text of the draft version uses a gender sensitive language (Lewalter 2013).

**Legal provision:** With § GGO there is a strong legal provision for GIA in Germany, this seems to be even stronger than in Finland.

**Financial provisions and human resources:** Civil servants also conduct GIAs as part of their regular legislative work, however there is time pressure and limited human resources to fulfil this task within the departments. Also there is no mechanism/structure which could support departments in this task and, as mentioned above, the gender equality department does not have the resources in terms of personnel to do so.

**Theory and methodology:** The German Working Aid on GIA also has a “relevance-check” as a first stage, followed by the actual GIA. The Finnish procedure however, goes beyond the German Working Aid in regard to a) the need to report on methods and results and b) the monitoring after implementation of the law.

However, the working Aid is not a legally binding document; its application is not obligatory.

**Tools and Training:** The “Working Aid on Gender Impact Assessment. Gender Mainstreaming in the Preparation of Legislation” (BMFSFJ 2007) is the main tool, providing practical advice to civil servants. The GenderCompetenceCenter provided Workshops in this context. It cannot be assessed whether any training on GIA took place after the GenderCompetenceCenter was no longer funded.

**Monitoring and accountability:** There was an internal evaluation in 2005 on how GIA was applied. No further monitoring and evaluation has been undertaken so far (Lewalter 2013).
4. Recommendations for action to improve or introduce Gender Impact Assessment in national policy making

A) European level

- Promote research on GIA, especially comparative research on different models in different countries
- Document and disseminate standards and examples on GIA
- Linking GIA to policy reforms and a discourse on good governance
- Establish networks on good practices of GIA (see for example CoP on GM for structural Funds)\(^{17}\)
- Strengthen Gender Budgeting by providing good practices (like the implementation of Gender Budgeting on EU level).\(^{18}\)

B) National level

- Formulation of gender equality policies with clear objectives for different policy fields,
- Establishing an institutional mechanism on gender equality since Germany is one of only three countries within the EU without such an institution (EIGE 2013, p. 57).\(^{19}\)
- Promotion of research on gender equality issues in key sectors of administration
- Linking GIA to policy reforms and a discourse on good governance
- Creating gender differentiated as well as intersectional statistical data
- Developing of tools for specific contexts in a participatory process together with civil servants (no blueprint tools)
- Introducing gender equality monitoring systems (including Gender Budgeting) to follow up and evaluate gender mainstreaming activities
- Public awareness and media campaign to present gender equality as a core value of democracy

\(^{17}\) [http://www.gendercop.com/](http://www.gendercop.com/)
\(^{19}\) An institutional mechanism only exist for the European Structural Fund on federal level (see above).
• Strengthening gender equality capacity and competences of civil servants

4. References


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