

# THE EFFECTS OF ANTI-DISCRIMINATION LAWS AND POLICIES ON POLITICAL AND ECONOMIC STABILITY OF EUROPEAN UNION

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## ABSTRACT

*Development of a civil society and social systems for protection of different groups is directly related to well functioning political and economic systems. If the level of economic development or political stability is not continuous the implementation of antidiscrimination laws would most likely be at a very low level. In this case development of social rights along with implementation of antidiscrimination rights may be marginalized due to three factors: lack of cooperation among political and economic spheres, lack of knowledge about antidiscrimination laws and absence of political will for adoption and implementation of antidiscrimination laws. Therefore, we focus on the examination of specific issues concerning the three aforementioned factors primarily focusing on EU and divergence in the level of political and economic development among the member states. We will argue that antidiscrimination laws are not welcome in new member states, especially since they increase political and economic costs for the governments of respective countries. Level of political development has much to do with the acceptance and inclusion of AD laws in the decision making process. Economic development has much to do with social and living standards within a country which is directly related to the general perception of the population on AD laws. Therefore, one could say that implementation of AD laws heavily depends on the preparedness of people, economic and political system and their will to cope with costs and benefits of implementing those laws.*

**Key words:** *antidiscrimination laws, political and economic symbiosis, new member states, European Union, economic development*

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## INTRODUCTION

Political and economic systems have always been closely interrelated. It would be hard to argue that the symbiosis between the political and economic realm did not play an immensely important role in the establishment of the EU (European Union). Costs and benefits born out of this symbiotic

relationship are reaped by the common folk regardless of their age sex, race or nationality. Rather than neglecting the fact that the impact of European integration has affected diverse social groups differently, it would be reasonable to accept the existence of enormous economic and political disparities within EU.

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Analysis of political and economic systems may seem necessary as we look for specific reasons for lack of antidiscrimination (AD) laws implementation. Full or partial absence of those laws could be related to different levels of political and economic development. Development of a civil society and social systems for protection of different groups is directly related to well-functioning political and economic systems. If the level of economic development or political stability is not continuous the implementation of antidiscrimination laws would most likely be at a very low level. In this case development of social rights along with implementation of antidiscrimination rights may be marginalized due to three factors: lack of cooperation among political and economic spheres, lack of knowledge about antidiscrimination laws and absence of political will for adoption and implementation of antidiscrimination laws. Therefore, this paper will focus on examination of specific issues concerning the three aforementioned factors primarily focusing on EU and divergence in the level of political and economic development among the member states.

### **KEY CHALLENGES FOR NEW MEMBER STATES**

The core argument will revolve around the fact that antidiscrimination laws are not welcome in new member states<sup>1</sup>, especially since they increase political and economic costs for the governments of respective countries. Although all member states adopted *Acquis Communautaire* which guarantees implementation of AD laws, the costs of their

implementation are just too high for some countries. This may sound as something impossible but lack of competitive markets, increased pressures to achieve economic progress and political reforms leave little or no room for AD laws. However, Sandra Fredman argues that “social rights are (re) conceptualized, not as burdens on business but as essential contributors to efficiency (Fredman, 2006). Regardless what the burdens are AD laws should be upheld and implemented through relevant institutions.

One of the major problems for many new member states has been the creation of institutions for communication with EU and implementation of relevant EU laws. Such inefficiencies have had a negative impact on the overall understanding of social rights especially in culturally and socially diverse EU. Finding a common ground between political and economic system has completely neglected the need for social rights and implementation of AD laws. On the one hand there is the need to fulfill the criteria specified by the Copenhagen (political, economic, and judicial), while on the other hand there is the Maastricht criteria which are purely economic defined as a precondition for full membership in EU. However, none of these criteria cover the AD laws nor does it specifically examine level of discrimination in candidate countries. How can we be certain that AD laws will be implemented or even discussed by the law makers in new member states?

Complete disregard for human rights and AD laws usually results from attention diversion from one issue to another. In this case it is the economy driven EU covered by the veil successful political cooperation among all member states. Free markets and competitiveness have completely eliminated human rights from political consideration in some

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<sup>1</sup> The term Member States refers to Bulgaria and Romania. However, this does not exclude other member states such as Slovakia which are still burdened by the political baggage from old regimes and prefer not to enforce antidiscrimination laws.

member states. Although this may be a very provocative statement, it is nevertheless true. Partially it is due to domestic policies but mostly due to the very idea of EU based on free markets and freedom of movement of goods, services and labor. It seems that following the ideology of Adam Smith and *laissez faire* markets themselves should correct all the deficiencies in social rights sphere. Even Richard Epstein argues that “competitive markets with free entry offer better and more certain protection against individual than any anti-discrimination law” (Epstein, 1992). However, one cannot claim that discrimination is eradicated based on the fact that through free markets people are given more employment opportunities.

Switching focus from inadequate AD laws to the efficiency of economic and political system has always been a typical move to cover the inability to create an efficient political and economic system which would actually implement social rights. Concentrating on the economic part of AD laws can only lead to further problems since market forces cannot compensate for the lack of political involvement. However, political system or government is not sufficient enough to cope with the pressure of implementing and maintaining AD laws. As a result Pareto optimum<sup>2</sup> becomes apparent. Government regulations often tend to have negative effects on the economic system. Implementation of AD laws can bring additional costs for employers while at the same time it can benefit the employees. Transaction costs for the employers increase as well as production costs resulting in increased benefits employees.

Well balanced coordinated policies between political and economic systems should be implemented

2 An economic system that is Pareto efficient implies that no individual can be made better off without another being made worse off. Here ‘better off’ is often interpreted ‘put in a more preferred position.’

prior to any acceptance of AD laws. It is extremely important to put forth a detailed cost benefit analysis and minimize the costs while maximizing the benefits for labor markets, government and human rights. Nevertheless, government regulations will most likely infringe upon the functionality of labor markets in order to provide an equal treatment for all. The extent to which the labor market is willing to give up its freedoms and be controlled by the government completely depends on the efficiency of employees whose rights are in question. However, domestic implementation of AD laws is not always in sync with EU laws and the principle of subsidiarity should supersede all inefficiencies of domestic AD laws. Reluctance of many member states to accept AD laws on the EU level and lack of EU institutions which would actually enforce such laws can only be looked after by the ECJ (European Court of Justice). As a result there is only the possibility to solve problems with AD laws and not act preventively.

How does one prevent something from occurring if it is completely foreign to him? Lack of knowledge about AD laws leads to a ‘veil of ignorance’ put over one’s eyes in the decision making process. The case of gender mainstreaming for instance has become one of the most discussed concepts in EU. According to Mark Pollack and Emilie Hafner Burton gender mainstreaming “calls for the systematic incorporation of gender issues throughout all governmental institutions and policies” (Pollack & Hafner-Burton, 2000). The adoption of gender mainstreaming on the EU level and implementation of the same should not be a problem for well-developed member states. However, the question is how familiar are less developed member states with the concept of gender mainstreaming?

Is it possible to have gender mainstreaming implemented in all member states regardless of their level of development? Knowledge of specific AD laws, concepts and policies has not yet reached all member states. As a result implementation of the same is questionable. The process of educating new member states about AD laws and the process of passing those laws from the EU level to member state level is lengthy and costly. According to Pollack and Hafner-Burton the process involves three levels of passing “the supranational Commission bureaucracy, intergovernmental level of the Council and finally, the member state level” (Pollack & Hafner-Burton, 2000).

Issue such as gender mainstreaming is an excellent example of disparity among member states on several levels. As mentioned earlier there is the issue of lack of knowledge, differences in national culture and tradition, differences in development and funding of AD laws and many other issues. Nothing is as problematic as the hypocrisy on the part of EU when it comes to AD laws. Promotion of human rights, gender equality, protection of workers is only evident and important in EU but not in other countries, especially in trading partners. There is not a single factor which would justify being completely insensible towards protection of human and social rights in non EU countries. Lack of knowledge is not in question here but rather the will to promote AD laws in less developed countries. However, lack of those laws in trading partner countries will keep them underdeveloped with cheap labor which is desperately needed for companies in EU. In this case one could argue that economic interests supersede political interests regardless of the balance between the two.

More preventive measures in less developed countries would most likely result in prevention of

discrimination rather than solving current problems. This practice would protect specific groups from discrimination before it even occurs. However, the need for specific implementing institutions still remains an issue as new member states are adapting to EU laws. Decision and policy makers have to “adopt new perspectives, acquire new expertise and change their established operating procedures” (Pollack & Heffner-Burton, 2000). In the short run new perspectives and expertise can be acquired but it is unlikely that many changes can be done in the framework of changing established operating procedures. Regardless of how many new laws are brought forth and passed the implementation of the same will most likely remain a long and arduous process on the EU level.

Double standards of law implementation remain the biggest challenge on EU level. Lack of AD laws knowledge is actually supported by relieving some states of any responsibility for their implementation. Considering enormous disparities among member states it is understandable that some will show more and some less improvement in implementation of EU laws. However, it is absurd that some states are allowed to completely disregard implementation of EU laws. This does not have anything to do with their level of development but it has everything to do with their complete disregard for the entire idea of EU. Ulf Svedrup notes that EU implementation function on the premise that “if benefits of the collective good created by the rules outweigh the costs to them of providing the good, some states are likely to carry on covering the costs, even if other states refrain from implementing” (Svedrup, 2007). Creation of different strategies for progress and growth as well as specific laws is actually pointless if implementation does not exist. How can this be productive when it comes to implementation of

AD laws, cohesion and convergence regarding the same laws on the EU level? Although they have all agreed to give up a part of their sovereignty and autonomy, many member states still put national laws and interests before laws and interests of EU. Ilona Oster and Jane Lewis argue that “the weakening of the Member States power as EU policy making expands” (Oster & Lewis, 1995) which is directly related to the fact that some member states are not willing to give up their sovereignty and decision making power. Lack of political will and determination could cause another historical transformation of the EU social policymaking. Moreover, evidence from Svedrup which shows that some member states are reluctant to implement EU laws presents a problem with the legitimacy of the EU and her decision making/implementation power. Pinpointing specific problems with the implementation of AD laws has proved to be efficient in defining dysfunctional areas within EU. It is relatively hard to define whether the problem lies within the member states or on the EU level. National and supranational decision making powers should be working in sync. However, domestic decision making powers are different across the EU primarily due to national and cultural differences but also to vast economic and developmental disparities.

## EQUALITY WITHIN EU

Is it possible for EU to implement same norms in all her member states and can there be monitoring to make sure those policies are implemented? This would be next to impossible since the functionality of EU is still questionable. Provoking as it may sound it is not far from the truth. Oster and Lewis define two needles’ eyes with the second

needle focusing on the “different gender orders in Europe-national structures of labor markets, social policies, and patterns of unpaid caring work influencing implementation of gender-equity policy at the national level” (Oster & Lewis, 1995). Implementation of the principle of subsidiarity should be enforced more often and EU should not solely be focused on economic integration with complete lack of capability to implement AD laws on supranational level.

It is also evident in Mark Bell’s discussion that there are many uncovered areas regarding gender and nationality discrimination. Of course gender and nationality discrimination are still two unknowns in AD laws creation and implementation. Indirect discrimination is used in such a manner that as Bell defines it as “neutral criteria are used but which in fact disproportionately disadvantage EU migrants” (Bell, 2002). Protection of migrants is one of the key issues mostly because treaties of Amsterdam and Nice gave wings to development of migrant workers and put forth the norms for EU members. EU is supposed to guarantee all people equal rights regardless of their origin on one hand, while on the other hand there are numerous requirements for EU membership (political, social, and judicial) which in fact discriminate against some countries. Bulgaria and Romania were discriminated against as their workers are not allowed to go to England to look for low skilled labor. In this case AD laws actually benefit the well developed and keep the less developed even more underdeveloped.

Regardless of the level of development there is the issue of maintenance of the current political and economic system in EU. It would be wise to go back to Sandra Fredman and see the two specific ideologies which have been influencing the development of EU. According to Fredman

“recent decades have seen the struggle of two opposing political and economic ideologies, social democracy and neo-liberalism” (Fredman, 2006). On the one hand social democracy fosters development for all member states, equality, has tendency to eradicate poverty and implement the welfare state. On the other hand there, going back to the roots of Adam Smith neo-liberalism has actually promoted individual rather than a society as a whole, complete absence of state intervention and stressed the importance of free markets. Neo-liberalism worked for the well-developed member states but only after they achieved their desired level of development. Out this came out the need for EU but the fact that expansion to Eastern Europe will take place was never taken into account. There was enormous political will to start EU and expand it to the first ten member states in which the ideology of neo-liberalism flourished and was widely accepted. Needless to say all member states were playing on the same team. None of them were prepared for the entrance of new system of social democracy.

However, the expansion of EU to ten new states plus Bulgaria and Romania has brought forth many conflicting issues between the old and the new system. Almost all new member states have been living in a system of social democracy or communism. State controlled economies and decision making powers, more collective less individual were just of the typical characteristics of the other system. Membership in EU was never planned for any of those countries but was looked at as something that has no other alternative. Bringing the well developed countries together with the less developed countries under one umbrella had to have some negative consequences. New member states are forced to develop overnight and adopt numerous new rules and regulations (AD laws). This

put an additional strain on the people in those member states as their entire social system including their social and human rights are being turned upside down. State controlled economies and decision making power has been thrown into a lap of individuals who are just not ready to cope with those challenges. Although there may be enormous political will in new member states, they are just not fully prepared to embark on a journey to achieve political, economic and social level of development in the short run. Needless to say most of them are fairly successful in converging with other member states. However, social standards and standard of living are still relatively low. Is it wise in such a political, economic, and social situation to talk about AD laws? In all honesty most of those countries are struggling to overcome the hardships of low development levels. It would be unfair to expect governments of less developed member states to include gender mainstreaming and gay and lesbian AD laws at this time. One could argue that same standards must be applied to all member states but since as we mentioned earlier some states do not have to fully show implementation results exceptions can also be made in this case. Nevertheless, along with political and economic development, less developed member states should practice the inclusion of AD laws in the decision making policies. As we have seen on numerous occasions EU has almost no control over decision making power on national level. Regardless of the ability to monitor and control the actions of all her members, to achieve equality, convergence among member states and full functionality, EU will have to find a common playground with similar rules for all the players. Inability of EU to implement AD laws in all member states can be caused by the differences among political and economic systems among member states. In some cases AD laws are not clearly defined prior to their acceptance or rejection

due to the lack of knowledge. However, some authors such as Anne Phillips claim that 'as long as capitalism remains there will be a problem of inequality: first, because capitalism depends on profits and cannot accommodate significant redistribution; secondly, because it requires capital to command over labor, which necessarily means unequal power' (Phillips, 1999). We must state the politically incorrect but yet obvious and that is the fact that we live in a society where discrimination must exist or the entire system would break down.

## CONCLUSION

We discriminate on daily basis against people for our own benefit being completely oblivious to the needs of others. Although we do this unconsciously, we still discriminate when we pick a specific product rather than the other. It is true that people cannot be compared to goods but what if we must discriminate regardless of the AD laws. If we go back a step and remind ourselves about neo-liberalism we will see that discrimination is inevitable regardless of lack of cooperation among political and economic spheres, lack of knowledge about antidiscrimination laws and absence of political will for adoption and implementation of antidiscrimination laws. Fredman argues that 'both liberty and equality are among the primary goals pursued by human beings through many centuries; but total liberty to wolves is death to the lambs, total liberty of the powerful, the gifted is not compatible with the rights to decent existence of the weak and the less gifted' (Fredman, 2006). Examination of the aforementioned citation puts us right back to the premise of neo-liberalism and complete disregard for social welfare. Clashing views on social democracy and neo-liberalism are in fact the true reasons for lack of implementation of AD laws on national and EU level.

Controversial views towards migrants, third country nationals, racial and sexual discrimination are very different across EU. In the same manner the difference between enforcing AD laws varies from state to state. Level of political development has much to do with the acceptance and inclusion of AD laws in the decision making process. Economic development has much to do with social and living standards within a country which is directly related to the general perception of the population on AD laws. However, social development usually results from a successful symbiosis between political and economic systems. Therefore, one could say that implementation of AD laws heavily depends on the preparedness of people, economic and political system and their will to cope with costs and benefits of implementing those laws.

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