

## 4. Gender in the Impact Assessment of the European Commission

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This second empirical chapter, presents interview results derived from the European Commission's practices. The first part explains the context of the EU's political, multilevel governance and administrative system and provides a chronological reiteration of the development of the EU's ex-ante IA system and the position of GIA within it. The second section presents a critique of the guidelines currently available in the Commission's IA system. The third part explores the role of the EU's gender equality architecture with regard to gender impact assessment. In the fourth and main part, I present the interview evaluation and the stance the European experts have taken, contextualised with the document analysis of tools and supporting literature, as presented in the subchapters before. As in the previous chapter on Canada, part five attempts a summary of the main findings on the position of gender equality in the EU's IA system. Again, in the EU context, impact assessment (IA) is used as innate terminology, referring to ex-ante policy and programme IA (unless otherwise indicated).<sup>1</sup>

### 4.1 POLITICAL SYSTEM, POLICY MAKING AND IMPACT ASSESSMENT

The following chapter is intended to familiarise readers with the EU's political system and reach of its policy making. It focuses in particular on the pivotal role of the Commission, in order to demonstrate the centrality of its IA system and the potential it bears for gender assessments and more equitable policy design. In addition, there is the legal obligation for gender equality and gender mainstreaming and its consequences for gender in policy and programme making. Finally, a detailed account of the development of the Commission's integrated IA system is laid out, as it developed parallel to the EU's gender mainstreaming efforts.

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**1** | For a detailed discussion on international IA terminology, see chapter 1.3.; for tool typologies see subchapter 1.6.

#### 4.1.1 Policy Making Process and the European Commission

The political system of the EU has often been categorised as a system of its own, “*sui generis*,”<sup>2</sup> and therefore beyond a comparison with other political systems. In particular researchers in international relations and comparative politics have emphasised the peculiarities of the EU’s institutions, thus deeming a direct comparison of its executive, legislative and judicative powers with national state systems difficult.<sup>3</sup> This chapter focuses on the EU’s policy making process and its administrative system, a system which is subject to “the same governance modi,”<sup>4</sup> hierarchies, and competition as the national states. Political science research concurs that the Commission’s administrative structure and staff “shares [...] similarities with national core executives,”<sup>5</sup> and that the same horizontal organising principles are evident in nation state ministries as well as in the Commission’s DGs.<sup>6</sup> Drafting law proposals is mainly the task of the Commission and is executed in its DGs by in-house public servants and experts.<sup>7</sup> In this role and function, such actors execute tasks, like drafting law proposals<sup>8</sup> and designing public service, considered comparable to the policy and programme making process in national ministries.

The Commission is empowered under the Treaty of the Functioning of the European Union (TFEU)<sup>9</sup> (Art. 294) to initiate all legislative proposals of the EU, and to ensure the application of the Treaties under Lisbon (Treaty on European Union—TEU) (Art. 17).<sup>10</sup> The EU’s body of law exists within the limits of the competences conferred to the TEU (Art. 5) and is divided into primary and secondary legislation, of which the treaties as primary legislation represent the foundation and set the rules. Regulations, directives and decisions all count as secondary law and are based on the standards and goals of the treaties and as such.<sup>11</sup> A regulation is the most powerful tool and it is directly applicable to member states in full. The directives are also binding, but indirectly, since it is left to the member states of how they wish to achieve the content and goals of the directives within their national legal systems. The EU issues a large body of soft, non-binding laws such as recommendations, opinions, white papers etc. in order to coordinate and harmonise EU political strategizing and policy making.

Although composing part of a larger, supranational political process, the legal instruments mentioned above are also subject to ex-ante IAs within the EU’s inter-

2 | Ward/Ward 2009, 6. See also (Magiera 2008, 75).

3 | Bailey 2011; Tömmel 2008c.

4 | Tömmel 2008a, 422.

5 | Trondal 2010, 47.

6 | Trondal 2010, 257.

7 | The Commission is bound by the Treaties to represent an independent body enacting laws on behalf of the good of the Union (Grüner 2011, 140-148).

8 | For which there are common guidelines by the Commission, EP and the Council (European Parliament et al. 2013).

9 | European Union 2008.

10 | Bermann et al. 2011, 45. Not many publications have yet engaged this new, strengthened role of the Commission; for its general administrative functions see (Niedobitek 2008), for its role in policy making see (Magiera 2008; Hartlapp 2008).

11 | Bermann et al. 2011, 75-76.

institutional and common approach to impact assessment, where the Commission's IA system is the basis and at the centre.<sup>12</sup> Herewith, state authority is "laterally loaded,"<sup>13</sup> away from representative to toward nongovernmental arenas—in this case: research. The IA system is administered in-house as part of the Commission's comparatively slim administrative apparatus. Permanent personnel; including approximately 23,000 European civil servants, also called Eurocrats; another 9,000 contractual workers, so called Seconded National Experts<sup>14</sup>, who work for the 43 DGs and Services, including the 19 DGs who work on policies.<sup>15</sup> The Commission's permanent personnel are required to rotate positions and/or DGs every five years in order to enhance innovation.<sup>16</sup> According to Jarle Trondal, the Eurocrats' work logic follows the roles and rules framed by their administrative unit and their professional education and standards.<sup>17</sup>

Following the Treaty of Lisbon (Art. 289),<sup>18</sup> the formal co-decision making procedure was replaced by the *ordinary legislative procedure*, which strengthened the role of the European Parliament (EP) in decision making processes.<sup>19</sup> The EP, in

**12** | "15. When the European Parliament and the Council carry out impact assessments, they will, as a general rule, take the Commission's impact assessment as the starting point for further work. Moreover, they undertake to organise and present, to the greatest possible extent, their impact assessments in a way that will ensure comparability with the Commission's impact assessment, without duplicating the Commission's work." (European Commission et al. 2005a, 4).

**13** | A governance concept suggested by Louise Chappell (Chappell 2013, 609-6010).

**14** | 23,645 as of 2013, with 52.56 per cent male and 47.44 per cent female employees (European Commission 2013a). Some sources also cite lower figures such as 18,000 members of permanent staff, calling the EC's administrative body "surprisingly small" (Bermann et al. 2011, 50) for its many tasks, but ignoring the steady rise of employment figures and the also growing Secondment system, where the Seconded National Experts stay on the pay roll of national, regional and local governments as well as private companies, while working for the Commission. According to Jarle Trondal all public servants in EU administrative bodies, including the temporary Seconded National Experts, "go native" in the sense that they follow the Weberian archetype thus demonstrating portfolio, unit, section and department loyalty. Functions are fulfilled in a well-defined, hierarchical division of labour, and the self-perception is one of an "impersonal, impartial and free civil servant" (Trondal 2010, 251-252). This view is sharply contradicted by Michèle Knodt (2013), who criticises the intransparency of the Secondment system, which allows for easy access and lobbying for particular political and business interests in heart of the EU (Knodt 2013).

**15** | Bermann et al. 2011, 50. The rest is occupied with external affairs and with providing internal services. Compare also the chapter on the EC's staff in (Trondal 2010, 33-57). David Spence and Anne Stevens criticised the unequal vertical and horizontal gender distribution within the Commission's staff despite the equal pay EU polices in place: "Given the forward-looking role of the policy-makers, it is surprising that the Commission's own personnel practices suggest little impact." (Spence/Stevens 2006, 203).

**16** | Trondal 2010, 53.

**17** | Trondal 2010, 257.

**18** | With the rules as laid out in Art. 294 (European Union 2007).

**19** | I.e. the EP can and does informally ask the EC to draft a new law, an initiative the EC would usually follow, however the EP does not possess the right to direct legislative initiative.

conjunction with the Council, legislates the vast majority of EU law.<sup>20</sup> Despite the increased legislative power granted to the EP and the Council by the Lisbon Treaty, the Commission is still the main driver of the EU's law and policy making process.<sup>21</sup> As the EU's executive body, it drafts and implements all policies and legislative acts. Although other actors are able to propose a request for the adoption of new legislative regulation,<sup>22</sup> the Commission continues to inhabit the central position in the spider web of law making (as shown in table 19 below),<sup>23</sup> putting forward the largest number of new proposals.<sup>24</sup>

**20** | If the EP wishes to amend or reject a law proposal it needs an absolute majority. In areas of special legislative procedures such as justice and home affairs, budget, taxation or fiscal aspects of environmental policy, the Council or EP give up the joint adoption process in adopt alone. The Treaty of Nice introduced the principle of qualified majority, in force since January 1, 2007, under which the number of votes, representing the simple majority of member states, is sufficient to adopt a new law. Member states may also ask for a verification test that the qualified majority is based on votes representing a minimum of 62 per cent of the EU's total population, which would prevent the adoption if found below that. The treaty of Lisbon introduced yet another system, which entered into force in November 1, 2014, called double majority until which the qualified majority remains into place. The new double majority must then equal a minimum of 55 per cent of the members of the Council, at the same time comprising a minimum of 15 of the individual members, who are representing the minimum of 65 per cent of the total EU's population. The treaty also implemented the possibility of a blocking minority consisting of the minimum of four members of the Council (de Bryn 2009, 376).

**21** | Older literature even attributed an initiative monopoly to the EC (Kantola 2010b, 77).

**22** | Starting from 2014, even petitions for new laws and regulations with more than one million signatures by EU member state citizens will have to be accepted by the Commission (de Bryn 2009, 375-376).

**23** | For instance, the Council is supported in its decision-adoption process by a permanent committee of national bureaucratic experts, the Comité des Représentants Permanents (COREPER), monitoring and coordinating the work of some 250 committees and working parties, consisting of officials from the member states who draft the Council's documents at technical level, exchanging on and collaborating with the EC's bureaucratic level (Schmidt 2010, 165).

**24** | One can only but speculate on the effect reduction, induced by the Treaty of Lisbon, from currently 27 to 18 Commissioners with rotating nationality, starting in 2014, on the EC's administrative and policy-making system (Bisio/Cataldi 2008, 6). For the time being the appointment of Commissioners follows mostly the logics of membership in the nationally ruling party or party coalition, in combination with preferences for policy fields that are of particular importance for the member state, i.e. DG Budget for Germany (Wonka 2008, 202-210). Commissioners are setting the tone and political agenda of each DG, which in turn can exert significant influence on policy drafts, at least on those for which the Commissioner heading the DG has a party—and/or national political preference. However, the active political role only goes so far since the Commissioners also control each other in the College of Commissioners, where central policy drafts can be subjected to common decision making (Wonka 2008, 204-205). Only on drafts, which do not seem to be politically contingent, neither within the DG nor for the Commission as a whole, the bureaucracy scenario sets in, where the administrative stuff enjoys relative freedom in the drafting process (Wonka 2008,

This study is centring on the Commission's pre-legislative IA system. Therefore, the other two European policy making mechanisms (the inter-governmental and the co-ordination mode) are not discussed. Arndt Wonka observes three main advantages to the Commission under the *Community method*<sup>25</sup> of policy making and the Commission's right to initiative and *agenda setting powers*. Control of the timing of drafting and when to table the act; the monopoly on content and formulation of the act; and the choice of policy instrument, e.g., a directive, regulation, decision or another softer regulative tool,<sup>26</sup> have implications for the depth and nature of the respective IA. In order to grasp the full extent of the Commission's powers and the potential for its IA system to influence its policy making, it is necessary to examine its legislative output in quantitative terms. The following table 19 shows the total number of the legislative acts adopted by the EU, broken down by respective initiating institution.

Table 19: Number of Acts Adopted in the Year 2011 in the European Union<sup>27</sup>

Closing date December 31, 2011	2011	Total Number of Acts
Regulations	1,234	78,058
EP and Council	56	644
Council	111	16,944
European Commission	1,066	60,309
Other	1	161
Directives	105	5,584
EP and Council	24	913
Council	12	2,822
European Commission	69	1,841
Other	0	8
Decisions	723	28,498
EP and Council	28	326
Council	305	7,449
European Commission	356	19,833
Other	34	890
Total	4,124	224,280

These figures demonstrate that most initiatives resulting in actual law passed in the EU stem from the Commission.<sup>28</sup> It must be noted, however, that Commission initiatives must typically be aligned with expert networks, the Council and the EP in order to be deemed successful.<sup>29</sup> Until 2011 and despite an increase in law making activity, the proportionality concerning the legal activity among the three

206). The role of IAs was not addressed in Arndt Wonka's study on the EC's Commissioners, focusing on the policy drafting and stakeholder's consultation process.

25 | Kantola 2010b, 77-80.

26 | Wonka 2008, 31-32.

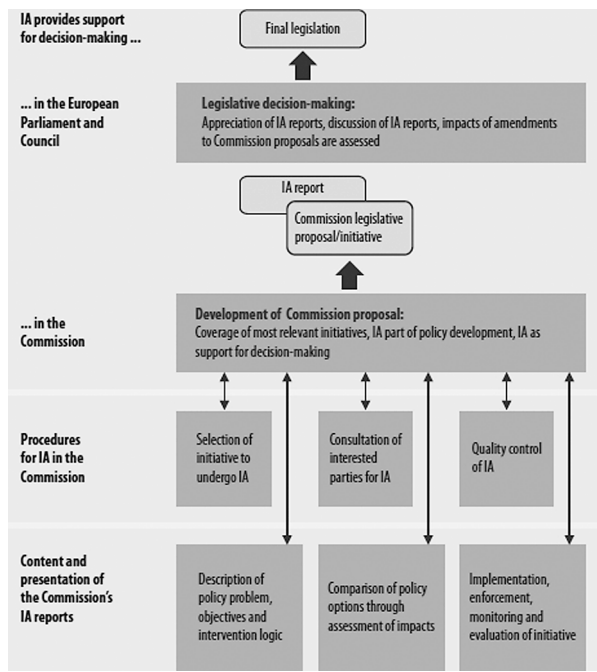
27 | EUR-Lex n.d.

28 | Although other sources ascribed only approximately 10 per cent to the initiative of the Commission in the past (Grüner 2011, 142).

29 | Grüner 2011, 142.

institutions was comparable to any given year before.<sup>30</sup> Consequently, the role of the Commission's ex-ante IA system has gained prominence with respect to bureaucratic policy and programme drafting, as well as the inter-connectedness of the Commission in its implementer's role with the ex-post evaluation system.<sup>31</sup> On the road to developing new regulations, directives or decisions, IAs play a central role in assessing the necessity of the Commission's activities. As the following chart demonstrates, the IA reports determine the framing of the policy problem, as well as the monitoring and evaluation systems. As the following table 20 demonstrates, the IA reports influence the entire process, from the framing of the policy problem to the legislative draft. Even though the drafts are discussed and amended in the multilevel governance system of the EU by other players, such as the EP and the Council, the Commission IA reports continue to serve as the basis for discussion, informing and supporting decision making on all levels.

Table 20: The Role of Impact Assessment in Developing and Deciding on the Commission's Initiatives and Legislative Proposals<sup>32</sup>



Not all Commission initiatives are subject to IAs. The applicability of IAs to individual planned activities is determined under the Secretariat General's

**30** | Due to the post Treaty of Lisbon reform process still underway, it remains to be seen, which effects the shared initiator's role with the EP and the Council as well as with the European citizens' right to petition will have on the proportionality.

**31** | Centre for European Law and Governance; Jean Monnet Centre of Excellence 2014.

**32** | Figure 1 in (European Court of Auditors 2010, 12).

guidance in cooperation with the Impact Assessment Board (IAB). This is in accordance with the Annual Policy Strategy that contains political priorities and central initiatives and allocates the matching monetary and human resources.<sup>33</sup> The screening of all forthcoming initiatives disemboogues in annual roadmaps for ex-ante IAs to be conducted as part of the programming cycle.<sup>34</sup> Compared to the overall legislative activity of the EU, the number of actual IAs is low. Between the initiation of the IA system in 2002 and 2009, the Commission had completed just over 400 impact assessments since the IA system was put in place in 2002.<sup>35</sup> A report by The European Court of Auditors on the EU's IA system found that by 2008, 69 per cent of the Commission's initiatives with "significant impacts"<sup>36</sup> were covered by ex-ante IA. When compared to the EU's total regulatory output, the ratio appears much lower. In 2007, a total of 102 IAs were conducted, equalling 3.46 per cent compared to 2,948 adopted directives, decisions and regulations.<sup>37</sup>

135 IAs were carried out in 2008<sup>38</sup> and only 79 for the year 2009<sup>39</sup>, equalling 5.17 percent of 2,611 and 2.55 percent of 3,097 adopted directives, decisions and regulations respectively.<sup>40</sup> Nevertheless, the importance and centrality of IAs in directing EU's policy making is difficult to overstate. The *black box* of the drafting stage and the significant role IAs play in formulating, framing and solving policy problems in the EU gains importance as the legislative power of the EU increases. For instance, in 2010 over 60 per cent of German national laws have been adopted based on European initiative and law making.<sup>41</sup> Since IAs are prepared in the same Directorate-General in charge of drafting the particular policy, the IA has an influence on the policy as well as on the perception of and reaction to the proposal by other DG's representatives in the College.<sup>42</sup> Officials within the system, such as the former industry Commissioner Günther Verheugen, have long recognised the important place of *Eurocratic* administration in the Commission's agenda setting

**33** | European Commission 2016a.

**34** | European Commission 2016a.

**35** | European Commission 2010a, 2.

**36** | European Court of Auditors 2010, 16.

**37** | EUR-Lex n.d.

**38** | EUR-Lex n.d.

**39** | The low IA numbers in 2009 were attributed to the reform of the IA system in the same year and are expected to increase again (European Commission 2010a, 2). Based on these figures, it is fair to estimate that no more than an average of five per cent to a maximum of ten per cent of all relevant EU activities will usually be subject to ex-ante IAs, especially since directives, regulations and decisions do not represent all relevant documents requiring IAs (also foreseen for other documents such as roadmaps, white papers, communications etc.). To a very significant proportion, IAs also occur on a case to case assessment of non-work programme items, amounting to i.e. over half of the IAs conducted in 2008 (European Court of Auditors 2010, 17). Green Papers, proposals for consultation with social partners, periodic Commission decisions and reports, proposals following international obligations and COM measures are in general not earmarked for IAs (European Court of Auditors 2010, 16).

**40** | EUR-Lex n.d.

**41** | Schmidt 2010, 161.

**42** | European Court of Auditors 2010, 20.

process: “The whole development in the last ten years has brought the civil servants such power that in the meantime the most important political task of the [then, A.S.] 25 Commissioners is controlling this apparatus.”<sup>43</sup>

The *apparatus* of the Commission’s administration has played a central role in fostering gender equality and has a proven track record in striving for employment equity.<sup>44</sup> Integrating gender into the Commission’s IA system is closely related to the follow-up on gender mainstreaming and its status in the post-Lisbon strategy and the post-Treaty of Lisbon process. Bearing in mind its central position in the IA and consequential law making process, I disagree with some opinions that the Commission’s bureaucratic “powers to further gender equality have been [...] limited.”<sup>45</sup> In fact, I regard the “unpacking the organisational machinery of the Commission—including its staff”<sup>46</sup> as pivotal to understanding the decision making processes and their effects on gender equality.

#### 4.1.2 Legal Mandate for Gender Mainstreaming

This subchapter reiterates the general legal basis for gender mainstreaming in the EU and its member states. The initial commitment of the EU to implement gender mainstreaming dates back to the Beijing Platform for Action (BPfA) in 1995,<sup>47</sup> which was then signed by all its member states, giving it an immediate binding character on a national level. Henrike Müller divides the EU’s gender equality policies into four phases,<sup>48</sup> of which the post-Beijing and Amsterdam Treaty phase is the last phase.<sup>49</sup> In this period, the supra-national legal foundation for gender mainstreaming and its tool implementation were laid. The Treaty of Amsterdam in 1997<sup>50</sup> codified gender mainstreaming in the EU treaties for the first time. This elevated it to a binding principle for all European institutions and member states, with gender equality outlined in Art. 2 and gender mainstreaming in Art. 3(2). Furthermore, Art. 23 of the Charter of Fundamental Rights of the European Union (2000) states that “equality between men and women must be ensured in all areas” and Art. 21 affirms the ban on discrimination on a wide number of grounds, including sex.

In 2007, the Amsterdam Treaty was followed by the Lisbon Treaty, which was later consolidated into the Treaty on the European Union (TEU). Art. 2 and 3 of the TEU commits member states and the institutions of the EU to non-discrimination and equality between women and men. Gender mainstreaming is anchored in Art. 8 of the Treaty on the Functioning of the European Union (TFEU), which states that “**in all its activities**, the Union shall aim to eliminate inequalities, and to promote equality, between men and women.”<sup>51</sup> The all-encompassing nature of the gender

43 | Günther Verheugen in 2006, cited from (Trondal 2010, 47).

44 | Altgeld/Maschewsky-Schneider 2003.

45 | Kantola 2010b, 220.

46 | Trondal 2010, 56.

47 | UN 1995. See also chapter 1.5.

48 | Müller 2007, 60-66.

49 | German original: “Querschnittsorientierte Gleichstellungspolitik” (Müller 2007, 62).

50 | European Union 1997.

51 | Emphasis by author.



equality duty, and its proactive mandate, is herewith maintained and also extended to the realm of policy making, including policy advice. Art. 10 further stipulates non-discrimination principles aimed to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, as the cornerstones of diversity in EU rights-based approaches.

With this so-called post-Lisbon process, gender equality in the EU has now entered a fifth phase, the main characteristics of which are yet to be defined. There are conflicting opinions among feminist scholars on the role of gender equality in the new Treaty of Lisbon. Some highlight the new elements of the treaty and view the “equality between women and men” and “non-discrimination” (also found in Art. 10 of the Charter of Fundamental Rights) as fundamental rights of the Union positively. In particular, many interpret the Art. 3(3) of the Treaty determination that the EU is obliged to combat social exclusion and discrimination as well as enhance “equality between men and women” as a strengthened position.<sup>52</sup>

Others fear that the treaty’s commitment to neo-liberal principles, such as free market economy or abolition of trade barriers stands in contrast to its human rights based goals, such as social inclusion and gender equality.<sup>53</sup> Unlike the Amsterdam Treaty, neither the Treaty of Lisbon, nor the TEU, include the wording *gender mainstreaming*. While noting this somewhat enigmatic fact, many feminist scholars, such as Kantola, also hint towards the fact that gender was not “successfully mainstreamed into all parts of the treaty.”<sup>54</sup> She further points to the fact that, while gender found entry into issues such as combating trafficking, it is not highlighted in areas such as health, culture, education, finance or foreign security. For the realm of ex-ante IA, explicit mentioning of gender mainstreaming in the treaties would be helpful when attempting to mainstream gender into the respective policies and programmes. Notwithstanding these potential shortcomings, gender mainstreaming remains a legal obligation for the European institutions and member states in *all* areas; as such the duty also encompasses the field of impact assessment.<sup>55</sup>

#### 4.1.3 Impact Assessment between Economy, Sustainability and Gender

Some call the current European approach of integrated IA “a practice of intelligent regulation.”<sup>56</sup> Under the complex multilevel governance system of the EU, the formal organisation of administrative tasks (like *better regulation*) and structures ensures procedural security and legitimacy in a “turbulent environment.”<sup>57</sup> I investigated the role of gender equality in the development of the Commission’s integrated IA system, and examined its “intelligence” with regard to the EU’s commitment in the BPfA in 1995.<sup>58</sup> In 1996, the Commission adopted a Communication that delineated

**52** | For a more detailed summary of EU policy mechanisms and milestones with regard to gender equality, see (Rubery 2015, 722).

**53** | Bisio/Cataldi 2008, 27. Other critics are (Lombardo/Verloo 2009a; Kantola 2010b).

**54** | Kantola 2010b, 216.

**55** | Rubery 2015, 721.

**56** | Vielle 2012, 106.

**57** | Trondal 2010, 252.

**58** | UN 1995.

a framework for implementation of gender mainstreaming in its institutions for the first time. The Commission's, *Communication Incorporating Equal Opportunities for Women and Men into All Community Policies and Activities*,<sup>59</sup> stipulated that mainstreaming promotes:

"Equality between women and men in all activities and policies at all levels. This is the principle of 'mainstreaming', a policy adopted by the Community, and attention was drawn to its crucial importance at the Beijing Conference. This involves not restricting efforts to promote equality to the implementation of specific measures to help women, but mobilising all general policies and measures specifically for the purpose of achieving equality by actively and openly taking into account at the planning stage their possible effects on the respective situations of men and women (gender perspective)."<sup>60</sup>

In this definition, the demand for ex-ante and early assessments of gender equality outcomes of EU's policies and law making is established. Moreover, its far reaching objective to mobilise no less than *all* policies stays true to the gender mainstreaming intent laid out in the BPfA (1995),<sup>61</sup> which was signed by the EU and all members states. The Communication further details specific requirements stating:

"The systematic consideration of the differences between the conditions, situations and needs of women and men in all Community policies and actions, this is the basic feature of the principle of "mainstreaming" which the Commission has adopted. This does not mean simply making Community programmes or resources more accessible to women, but rather the simultaneous mobilisation of legal instruments, financial resources and the Community's analytical and organisational capacities in order to introduce in all areas the desire to build balanced relationships between women and men."<sup>62</sup>

The Communication clearly states that the gender mainstreaming of policies and programmes "should be done actively and openly at the planning stage" to "systematically" consider possible differential consequences for women and men in "all" Community policies and programmes.<sup>63</sup> It adds, however, the expression, "balanced relationships" to the already somewhat unclear list of terms relating to the goal of gender equality.<sup>64</sup> The Communication on Gender Mainstreaming is a starting point and a clear mandate to systematically integrate the gender perspective with the goal of proactively promoting gender equality in policy and programme formulation.

In 1996, the Inter-departmental Group on Equal Opportunities was founded for monitoring purposes<sup>65</sup> and the Amsterdam Treaty legally introduced gender mainstreaming into the *aquis communautaire*, a vertical top-down approach in Art.

59 | European Commission 1996.

60 | COM (96) 67 final, dated February 21, 1996 (European Commission 1996). Emphasis as in original.

61 | UN 1995.

62 | European Commission 1996, 5. Emphasis by author.

63 | European Commission 1996, 2.

64 | Compare chapter 2.3.1.

65 | European Commission 1996, 21.

2 and 3.<sup>66</sup> The Amsterdam Treaty represents an important shift towards addressing gender inequalities together with other forms of structural discrimination based on race, ethnicity, religion and belief, age, disability and sexual orientation.<sup>67</sup> Before the Amsterdam Treaty, gender equality and non-discrimination were perceived as different approaches to battling inequalities.<sup>68</sup>

In the aftermath of the Amsterdam Treaty and the as a follow up to the Communication on gender mainstreaming, the Commission's Guide to Gender Impact Assessment was created. The Guide's official full name, is partially based on a prior Dutch policy tool also called Gender Impact Assessment,<sup>69</sup> and carries elements of the Swedish 3R tool<sup>70</sup> and other elements. The DG for Employment, Social Affairs and Equal Opportunities introduced the tool to the Commission between in 1997/1998.<sup>71</sup> The table 21 gives a summary of this genealogy.

*Table 21: Genealogy of Gender in Impact Assessment in the European Union*

<b>1995:</b> Communication on Integrating Gender in Development (COM(95) 423 final)
<b>1996:</b> Communication on Mainstreaming (COM(96) 67 final): "Incorporating equal opportunities for women and men into <u>all</u> Community policies and activities"
<b>1997:</b> Treaty of Amsterdam: Gender Equality (Art. 2) and Gender Mainstreaming (Art. 3 (2))
<b>1997/98:</b> Commission's Guide to Gender Impact Assessment (GIA) (DG EMPL)
<b>2000/09*:</b> Charter of the Fundamental Rights of the European Union (2000/C 364/01): Principles of non-discrimination (Art. 21 (1)) and equality between women and men (Art. 23) [*enacted in 2000, in full legal effect in 2009 with TEU]
<b>2002:</b> Introduction of Integrated Approach to IA with Communication on IA (COM/2002/0276 final)
<b>2005:</b> Common Approach to IA by EC, EP and Council; release of integrated guidelines, gender equality integrated as social impact area in SIA
<b>2006:</b> Update of integrated IA Guidelines; creation of Impact Assessment Board (IAB)
<b>2007:</b> Principle of <i>Proportionate Analysis</i> ; evaluation of IA system
<b>2007/09*:</b> Treaty of Lisbon (TEU): Non-discrimination principle and equality between women and men fundamental values of the EU (Art. 2 TEU); combatting discrimination and promoting equality between women and men (Art. 3 TEU) [*signed in 2007, in force since 2009]
<b>2009:</b> Review of IA system; updated guidelines
<b>2015*:</b> Revision of integrated IA guidelines [*planned for 2014, executed past closing date of research in 2015]

**66** | European Union 1997. It entered into force May 1st, 1999.

**67** | Compare chapter 2.3.1.

**68** | Lewalter 2011.

**69** | Verloo/Roggeband 1994. First English publication in 1996 (Verloo/Roggeband 1996). Its Dutch predecessor dates back to 1982, making it nearly as old as the Canadian analysis tool (van der A et al. 1982).

**70** | Swedish Association of Local Authorities et al. 1999; Division for Gender Equality at the Ministry of Industry 1999. Information on the tool merger stems from the Norwegian former EU policy officer in charge (Anne Havnør, interview).

**71** | European Commission, Directorate-General Employment, Equal Opportunities Unit DG 5 1997/1998. For the precise tool genealogy, see subsection 4.2.1.

#### 4.1.3.1 Dual Origin of the Impact Assessment System

IA, as applied to EU institutions, is mainly an ex-ante analysis of potential economic, social and environmental impacts. The Commission defines IA as “a process aimed at structuring and supporting the development of policies, programs and legal initiatives.”<sup>72</sup> It first identifies and assesses the problem at stake and the objectives pursued. It then develops alternative strategies for achieving these objectives and analyses their likely impacts in the economic, environmental and social fields.<sup>73</sup> As an overall process, it “prepares evidence for political decision-makers on the advantages and disadvantages of possible policy options by assessing their potential impacts.”<sup>74</sup> I will narrate the development of the EU’s integrated IA, with special regard to gender equality, in chronological order to render the diverging strategies and timelines transparent.<sup>75</sup>

The Commission initiated its commitment to IA almost three decades ago, in 1996, with the “fiches d’impact,”<sup>76</sup> concentrating on economic effects, such as bureaucratic costs, the tax burden or macro-economic impacts. Those first Business Impact Assessments were not yet developed into standardised assessment tools and were only applied more widely by the DG for Economic and Financial Affairs starting in 1989.<sup>77</sup> Sometime between 1996 and 1998, the Equal Opportunities Unit DG 5 in the DG for Employment, Social Affairs and Equal Opportunities (EMPL) designed the GIA tool, making it one of the earliest standardised tools in the Commission’s IA history.<sup>78</sup> However, GIA was never officially endorsed as an instrument by the whole Commission and remained confined to DG Employment. GIA, while gender mainstreaming, the strategy that triggered its creation, maintained a rather *divorced*

**72** | European Commission/Directorate-General for Employment, Directorate-General for Employment, Social Affairs and Inclusion n.d.

**73** | Meuwese 2008.

**74** | European Commission 2009a.

**75** | Robertson 2008.

**76** | Hanisch 2008, 19.

**77** | Grüner 2011, 336. Originally introduced to raise the quality of European law making, the fiches d’impact were criticised from the start for assessing only compliance costs, and not costs arising from possible impacts, as well as for entering late in the process, after a proposal had already been made (Renda 2006, 47). As the origin of the EU’s IA system, they can be regarded as the foundation for developing the Standard Cost Method and persisting dominance of economic aspects.

**78** | The GIA tool is sometimes dated to 1996 (Radaelli 2003, 7), 1997 (Hunt/MacNaughton 2006, 17) and/or 1998 (Weller/Fischer 2003). When dated to 1996, it is often confused with an earlier tool, developed in 1994 for the Dutch government (Verloo/Roggeband 1994) and first published in English in 1996 (Verloo/Roggeband 1996). The EC’s original GIA tool itself has no publication date but is cited in this study with 1997/98 based on information gathered in an interview with the tool’s developer, Anne Havnør. She attributed its development to 1997 but was uncertain about its publication, approximately sometime between 1997 and 1998 (European Commission, Directorate-General Employment, Equal Opportunities Unit DG 5 1997/1998). In its layouted version it was re-published and dated to 1998 (European Commission; Directorate-General for Employment, Industrial Relations and Social Affairs Unit V/D.5 1998). For an overview of the Commission’s tools developed in the 1990s, see Figure 1 in (Radaelli 2003, 7).

life from the Commission's IA system. Gender mainstreaming and a gender equality outcome orientation of all Commission policies were never mentioned as driving strategies.<sup>79</sup>

Instead, the IA system can be seen as a feature of the *Better Regulation Action Plan* and of the *European Strategy for Sustainable Development* and the *Lisbon Strategy for Growth and Jobs*<sup>80</sup>. Sustainability (in environmental and ecological terms) was adopted as an EU strategy for its future policies in the Helsinki Council Conclusions in 1999,<sup>81</sup> which also led to the development of a trade sustainability IA tool by the DG Trade the same year.<sup>82</sup> The tool focuses outwards to the trade relations the EU maintains with other countries and organisations, and was the first one to put sustainability on the IA agenda of the EU.<sup>83</sup> As a result, sustainability was discussed during the introduction of gender mainstreaming into the EU but, just as with gender equality, was de-coupled from the EU's Lisbon Strategy, adopted in 2000.

In 2001, the sustainability discourse resurfaced in the Goteborg (SN 200/1/01 REV 1) as well as the Laeken (SN 300/1/01 REV 1) European Councils. There, the evaluation of the effects of policy proposals in the *economic, social and environmental* dimensions was introduced. Each of these bears consideration in a more systematic and integral way. In Goteborg, it was agreed upon that IAs for "all major policy proposals"<sup>84</sup> needed to add the environmental dimension as the third pillar to the former two pillar model of analysing economic and social impacts.<sup>85</sup> The Laeken Council<sup>86</sup> embraced the so-called Mandelkern Report by the High-Level Advisory Group on the Quality and Simplification of Regulatory Arrangements in the Commission,<sup>87</sup> which identified ex-ante IA as being *a key tool* in achieving better regulation and recommended its use.<sup>88</sup>

In 2002, as part of the follow-up process of the EU's IA system development, the White Paper on Governance<sup>89</sup> and the Communication on Impact Assessment<sup>90</sup> were released, symbolising the interconnectedness of good governance with ex-ante IA. The White Paper provided a principle-based meta-framework of expectations for European governance in terms of rules, procedures and behaviour. In the Communication on Impact Assessment, the Commission announced the launch of

**79** | See following chapter 4.2.2.

**80** | In short, Lisbon Strategy. The Lisbon Strategy was targeted to make the EU the fastest growing knowledge-based economy of the world, initially just focusing on economic and social dimensions.

**81** | European Union 1999.

**82** | European Commission/DG Trade 2015.

**83** | Ruddy/Hilty 2008.

**84** | European Union 2001a, 5.

**85** | European Union 2001a. The implementation of the Goteborg Strategy resulted in a Communication from the Commission on a Sustainable Europe for a Better World: A European Union Strategy for Sustainable Development.

**86** | European Union 2001b.

**87** | European Union 2001b, 1.

**88** | Mandelkern 2001. The Laeken process resulted in the Communication Action Plan Simplifying and Improving the Regulatory Environment (European Commission 2002a).

**89** | European Commission 2002b.

**90** | European Commission 2002c.

its first integrated IA tool that was designed to improve quality, create coherence in EU policies, and contribute to “an effective and efficient regulatory environment.”<sup>91</sup> It also established a direct link to sustainability issues. The new IA tool and system, in place starting in 2003, would be applicable to “all major initiatives” in order to enable a “more coherent implementation of the European strategy for Sustainable Development.”<sup>92</sup> The integrated IA was meant to replace all existing tools such as:

“Business impact assessment, gender assessment, environmental assessment, small and medium enterprises assessment, trade impact assessment, regulatory impact assessment etc. Indeed, the new integrated Impact Assessment tool builds on these existing practices and incorporates them into the new tool.”<sup>93</sup>

In the same year, the EU published its first integrated assessment procedure guidelines, which were intended to integrate all existing stand-alone tools, but were also explicitly denoted as a “work in progress.”<sup>94</sup> For the first time in an integrated fashion, they made allowances for the intended and unintended effects of major legislative and policy-defining proposals and provided a two step structure for the IA process with a preliminary assessment, demonstrating relevance, followed by a more extensive IA, if applicable.<sup>95</sup> In the first section of the guidelines, basic elements for policy units on how to prepare and conduct an IA were stipulated.<sup>96</sup> The second part took the form of a reference manual, with technical IA tools and methods under the umbrella of sustainability analysis. Part three contained a set of technical specifications intended for use by IA specialists.<sup>97</sup>

Based on the Communication on Impact Assessment, the guidelines also introduced the principle of *proportionate analysis* that referred to the significance of the likely impacts of a proposal: The more significant the more exhaustive the analysis.<sup>98</sup> Since the integrated IA officially replaced the previous single-sector type analysis, the conditionality of proportionate analysis was a potentially

**91** | European Commission 2002c, 1.

**92** | European Commission 2002c, 1.

**93** | European Commission 2002c, 3. Emphasis by author.

**94** | European Commission 2002d, 1.

**95** | Tanasescu 2009, 188-197. In the same year, the EC also issued a Communication on Minimum Consultation Standards (COM(2002) 704 final) that are better linked to the IA procedures (European Commission 2002e). A proportionate gender representation or routine mechanism for consulting women's or other marginalised interest groups were not mentioned.

**96** | European Commission 2002d, 5.

**97** | European Commission; Directorate-General for Research 2002.

**98** | For scoping and determining significance, see (George 2009). The principle of proportionate analysis was originally introduced in order to allow for flexibility and make responsible use of allocated resources to IA. It has often been criticised for its “lack of clarity” being very difficult to “clearly interpret and apply” in practice (Tanasescu 2009, 204), with a wide “discretionary” room and “undefined responsibilities” (George 2009). In this context, I would like to remark on the paradoxical tautology of this principle: Ex-ante IAs are conducted in order to gain evidence-based insight into the future consequences, intended as well as unintended effects. A priori decision on the depth of assessment, depending on the not yet

hampering factor for deepening specific lenses, like gender equality aspects of the assessment. Also, this first guide incorrectly referred to the tool either as “gender mainstreaming”<sup>99</sup> or as “gender assessment,”<sup>100</sup> but never by its proper name GIA, pointing to a lack of conceptual clarity and knowledge of GIA inside the Commission and among its IA experts.

In 2004, the Commission issued a staff working paper entitled, “Impact Assessment: Next Steps,”<sup>101</sup> representing an evaluation of the first year of practice and containing recommendations for improvements to the IA system. Its central novelties were the extension of ex-ante IA application, which would be made obligatory for “all major-policy defining documents and all legislative proposals listed in the Commission’s legislative and work programme,”<sup>102</sup> and the replacement of the preliminary IAs with roadmaps.<sup>103</sup> Roadmaps constituted an extended form of preliminary IAs because they included a list of required assessments and consultations, in addition to laying out the policy problem, options, impacts, as well as their probability. In terms of enhancing transparency, all IAs were to be made accessible through a single website instead of remaining decentralised in the individual DGs. Finally, the list of impacts was refined.<sup>104</sup> The general thrust of the working paper as an overall frame for the IA system was to “support competitiveness and sustainable development,”<sup>105</sup> in precisely that order, and to raise quality of IAs through quantification and monetisation.

The dominance of growth and efficiency oriented economic aspects in IA was present in the birth of the system. There have been some attempts to make growth, efficiency and sustainability more complementary and egalitarian in the EU’s future development. At one point, the Commission even called sustainability an overarching strategy for the Lisbon strategy.<sup>106</sup> But the de-coupling of the monitoring processes of the *Sustainable Development Strategy* (every two years by the December European Council) and the *Lisbon Strategy* (every year by the Spring European Council) further strengthened the primacy of the economy.<sup>107</sup> In fact, such bias has come to be accepted as a normal part of IA business by the European

fully explored future consequences seems premature, more assumption than fact-based. It, therefore, has the potential to be politically tainted or bias-prone, including gender-biases.

**99** | It is also an indication that the tool GIA was perceived as a gender mainstreaming instrument: “The Commission has in the past used a wide range of tools to assess its proposals: environmental assessments, SME fiches, regulatory analyses, economic studies, ad hoc consultations, business assessments, gender mainstreaming, green books and dialogues with lobbies.” (European Commission 2002d, 3). Emphasis by author.

**100** | European Commission 2002d, 9.

**101** | European Commission 2004.

**102** | European Commission 2004, 6.

**103** | European Commission 2004, 6.

**104** | For a list of revised impacts see (Tanasescu 2009, 198-199). Despite this revision, gender shares a lack of conceptual coherence and true integration in IA with the sustainability strategy and its adaptation that researchers see being subjected to economic growth and job creation, producing an “inherent conflict within the instrument” Ruddy/Hilty 2008, 102).

**105** | European Commission 2004, 1.

**106** | Tanasescu 2009, 190.

**107** | Tanasescu 2009, 190-191.

Court of Auditors, which found in its 2010 audit of the Commission's IA system that: "The Commission's IA work was asymmetric between the three pillars and between costs and benefits [...]. This reflects the fact that not all types of impacts are equally relevant for any particular initiative."<sup>108</sup>

#### **4.1.3.2 Inter-Institutional Common Approach to Impact Assessment**

In November 2005, as a follow-up to the 2003 Inter-Institutional Agreement on better law making,<sup>109</sup> and in order to improve the quality of the IA system, the three EU institutions (Commission, EP and Council) agreed on an inter-institutional Common Approach to Impact Assessment.<sup>110</sup> This clarified the target audience of IA reports to be the Commissioners and their Cabinets, as well as EP members and the Council, and gave IA a new centrality in the law making process. The Common Approach mandated times at which IAs are necessary, which generally consisted of the most important Commission initiatives, such as proposals and substantive amendments by the EP and Council. All initiatives of the Commission's Legislative and Work Programme (CLWP), as well as those legislative proposals not considered part of the CLWP but which have significant impacts, were required to be accompanied by a roadmap. A roadmap included a description of a planned Commission initiative and outlines the necessary IA work and was, itself, subject to ex-ante IA.<sup>111</sup> The Commission's IAs were required to be accessible to all three institutions and to the wider public—an important gain in terms of transparency.<sup>112</sup> However, the Council or the EP would have to instigate its own IAs when the Commission's prior assessment was deemed insufficient for their own "substantive" amendments to the Commission's proposals or regulations:

"The Commission will, as a general rule, carry out impact assessments on major items of draft legislation, notably those included in its Annual Legislative and Work Programme, and the European Parliament and the Council will examine the Commission's impact assessment alongside the Commission's initiative and be responsible for assessing the impacts of their own substantive amendments."<sup>113</sup>

In the beginning, neither the EP nor the Council interacted significantly with the Commission's IA system, leaving the IA playing field almost exclusively to the Commission's public servants and policy analysts. Since that time, both institutions

**108** | European Court of Auditors 2010, 36.

**109** | 2003/C 321/01, see website of the Commission on smart regulation (European Commission 2015b).

**110** | European Commission; European Parliament; the Council of Europe 2005.

**111** | The EC is also undertaking additional harmonising initiatives by streamlining its regulatory procedures to meet international, in particular US, standards. There exists regular multi- and bilateral exchange on regulatory issues and the harmonization of impact assessment criteria (e.g. with the UN, OECD, World Bank or the U.S. Office of Management and Budget), see "International Dimension—Regulatory Cooperation" on the Commissions smart regulation website (European Commission 2015d).

**112** | Being published in draft, commented and final adopted version on the Commissions IA website und list of IAs.

**113** | European Commission; European Parliament; the Council of Europe 2005, 1.



have discovered the agenda-setting power, and presumably to a certain extent also the political effects, inherent in ex-ante appraisals.<sup>114</sup> Although all three institutions initially revealed their intent to use the Commission's IA as the starting point for their work and decision making, recent developments have shaken that "accord" by implementing and enlarging their own IA capacities. In the Common Approach, it was already foreseen that: "Each Institution should be responsible for assessing its own proposals/modifications, and for choosing the means to be used for their impact assessment, including the internal organisational resources."<sup>115</sup>

However, in January 2012, the EP created its own unit for Impact Assessment and European Added Value, which became part of the newly created European Parliamentary Research Service (EPRS) in 2013. Intended to serve as an independent and objective authority, conducting analyses complementary to the Commission's IAs, the unit identifies strengths and weaknesses of the Commission's initial appraisals and can ask for and conduct a substitute or complementary IA. EP parliamentary committees can also ask the unit for IAs of their amendments.<sup>116</sup> In 2014, the Council of Europe also installed its own IA service.<sup>117</sup> Although strictly framed under a quality management paradigm, it is evident here as well that the political power of governance by and through IA has been discovered by all three institutions.

#### 4.1.3.3 Integrated Impact Assessment Guidelines and System

2009 saw the publication of the revised integrated IA guidelines,<sup>118</sup> which were scheduled to be overhauled again in 2014,<sup>119</sup> after the conclusion of my research. They form the basis of inquiry at the time the EU interviews were conducted.<sup>120</sup> The following table 22 provides an overview of the chronological development of the EU's integrated IA system, under the better governance frame, and the GIA tool under a gender mainstreaming mandate.

**114** | European Parliament/Ballon 2014.

**115** | European Commission; European Parliament; the Council of Europe 2005, 1.

**116** | The EP's IA unit also conducts balanced analysis of economic, social and environmental impacts, and has a proven track record for a focus on the SME test, vulnerable social groups and social benchmarking. It is envisioned to staff 30 to 50 employees and can conduct a maximum of 30 to 50 IAs per year. Also, an ex-post IA unit has been founded at the EP, in order to monitor the Commission's work through follow-up analyses as published in the European Implementation Assessment Report (Pataki 2014).

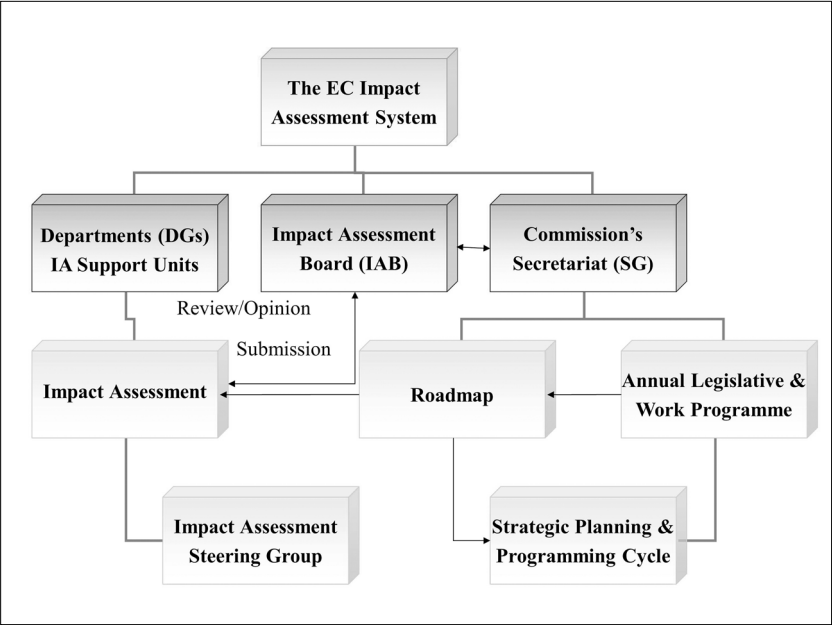
**117** | Pataki 2014.

**118** | European Commission 2009a.

**119** | European Commission 2013b, 28.

**120** | The new 2015 guidelines were not yet published (European Commission 2015c; European Commission 2015d).

Table 22: The European Commission’s Impact Assessment System



2009 represented another caesura, since in these newly issued guidelines and in addition to legislative proposals, the IA duty was extended to non-legislative initiatives, including white papers, action plans, and expenditure programmes, which inform and define future policies.<sup>121</sup> The very negotiating process of guidelines for international agreements now had to undergo obligatory IAs.<sup>122</sup> Likewise, IAs were required for certain implementing measures, so called “comitology” item<sup>123</sup>, with foreseeable significant impacts. This section laid out the relevant detailed processes and practices of IA in order to better understand it for policy assessment and the implementation of GIA on the ground. The Secretariat General,<sup>124</sup> the Impact Assessment Board,<sup>125</sup> and the single Commission Directorate-Generals jointly decide each year whether an initiative requires an IA.

After these decisions have been made, IAs are conducted internally by the Commission services in the responsible DG, over an average period of 52 weeks,<sup>126</sup> supported by departmental IA and evaluation support units and a mandatory Impact Assessment Steering Group (IA steering group). The IA steering group

**121** | European Commission 2009c.  
**122** | In practice, IAs on legislative proposals represent the vast majority. For instance, 78 per cent of all IAs in 2012 (European Commission 2013b, 12).  
**123** | The comitology system has changed fundamentally, but not completely expired, under the Treaty of Lisbon (Christiansen et al. 2009).  
**124** | For tasks and duties, see (Trondal 2010, 40-43). See also the EC Secretariat General website (European Commission 2015c).  
**125** | For tasks and duties see the Board’s rules of procedures (European Commission 2012c).  
**126** | European Commission 2009a, 8.

consists of inter-service experts, whose job it is to be involved in all phases of the IA work. In the Commission, integrated IAs can and should be conducted by in-house analysts and experts; most, however, are contracted out to external consultants.<sup>127</sup> As part of these assessments, all relevant stakeholders need to be consulted according to consultation guidelines on a range of issues.<sup>128</sup> Section 4.3 of the new 2009 guidelines makes it clear that consultation needs to be carried out early-on to enable stakeholders to sufficient time to comment on the problem definition, subsidiarity analysis<sup>129</sup>, description of the possible options and potential impacts.<sup>130</sup> As a last step, the IA steering group reviews the final draft of the IA report before it is submitted to the Impact Assessment Board.<sup>131</sup>

#### 4.1.3.4 Impact Assessment Board and Quality Management

In response to the various practises and problems regarding the application of the integrated guidelines, the Impact Assessment Board was created in 2006 as the new quality management watchdog.<sup>132</sup> Since the “aim of regulatory oversight

**127** | Meuwese 2008, 83.

**128** | For consultation guidelines, see (European Commission 2002e). From January 2012 onwards, the EC extended the consultation period from the previous 8 to the now 12 weeks and introduced an online early alert service, with upcoming initiatives, such as roadmaps etc., being announced up to one year in advance, see (European Commission 2012a). Organisations of civil society and business have to sign up for the Transparency Register, which was set up by the EC and EP, in order to participate in IA consultations. The register is searchable according to areas of interest, following mainly, but not exclusively, the EC's DG policy structure, such as Agriculture and Rural Development, Climate Action, Consumer Affairs or Justice and Fundamental Rights etc. Gender, or gender mainstreaming, is not enabled as a separate search category. It would be interesting to research how many women's or feminist organisations are listed.

**129** | Which is monitored in annual reports on subsidiarity and proportionality, for example, compare the last 2012 report, which remarks on deficits of assessments in 43 per cent of the ex-ante IAs (European Commission 2012b, 3). The Commission also admits freely to the political nature of operationalising subsidiarity and proportionality: “The concepts of subsidiarity and proportionality are fundamental elements in the policy development process of the EU Institutions; and the Commission's impact assessments remain the main vehicle for addressing subsidiarity and proportionality issues during the pre-legislative phase [...]. However, institutional practice shows that the way these principles are interpreted and applied during the legislative phase often depends on the political context, highlighting thus their political dimension.” (European Commission 2012b, 10).

**130** | The 2009 guidelines incorporated results of the guideline draft consultation (European Commission 2008a). In it i.e. the issue of more concern for Fundamental Rights was raised by a number of interested stakeholders, which led the Commission to include an additional paragraph (European Commission 2008a, 4), creating ambiguity about whether gender equality is treated as an integrated fundamental right's issue or, as in the past, treated in its own right or even both?

**131** | For the integration of gender in these guidelines, see chapter 4.2.3.

**132** | In 2015, it was renamed Regulatory Scrutiny Board and equipped with a wider mandate, which was not subject to this examination (European Commission 2015f). For an

is both democratic and technocratic,”<sup>133</sup> the Board reviews all IAs for quality of report content and delivers an opinion. A “positive opinion”<sup>134</sup> means that the Board is satisfied with the technocratic as well as quality of IA execution and has not requested the resubmission of an IA report. In any other case the DGs are requested to re-work the IAs, considering the Boards’ opinion, finalise and re-submit them.

The need to create the Impact Assessment Board arose in response to stagnating economic conditions and a rising number of (health, safety and environmental) concerns and regulations, including stiffening commercial development, socio-economic dynamics and prosperity. The regulatory oversight body of the EU was introduced to address “both the need for and problems with regulation”<sup>135</sup> from an economic perspective, which is still visible in its composition today. Appointed for two years by Secretary General,<sup>136</sup> the Board is made up of eight high departmental officials, usually the heads of DGs, and one chair. All members are selected according to the professional expertise accumulated in their respective DGs, but with the intent that they act “independently of the interests of their home departments.”<sup>137</sup> What sounds persuasive in theory can, however, represent a quandary in practice, since non-partisanship can be difficult to establish within the bureaucratic logic of departmental loyalties.

The board operates under direct authority of the President of the Commission<sup>138</sup> and the Deputy Secretary General responsible for better regulation chairs the Impact Assessment Board.<sup>139</sup> The eight DG Directors and board members should cover the following four fields of expertise: 1) macro-economic, 2) micro-economic, 3) environmental and 4) social. With two of the four experts having an economic focus, the primacy of the economy is expressed in the configuration and no particular gender expert is required on the Board. This imbalance in the Board’s

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international comparison of regulatory oversight bodies between the U.S. and the EU, see (Wiener/Alemanno 2010).

**133** | Wiener/Alemanno 2010, 310.

**134** | European Commission 2011b, 9.

**135** | Wiener/Alemanno 2010, 313.

**136** | European Commission 2012c, 1.

**137** | European Commission; Impact Assessment Board 2006a, 6.

**138** | European Commission; Impact Assessment Board 2006a.

**139** | The 2012 Impact Assessment Board consisted of the following nine members: As Chair the Deputy Secretary General of Secretariat-General and the eight Directors of the DG Economic and Financial Affairs; DG Taxation and Customs Union; DG Enterprise and Industry; DG Internal Market Services; DG Employment, Social Affairs and Inclusion; DG Home Affairs; DG Environment, DG Climate Action. In 2012, for the first time four female and four male heads of DGs were appointed and the chair is also a woman (European Commission 2012d). Before 2010 the Boards was exclusively male, see annual reports 2007-2011 (European Commission; Impact Assessment Board 2006b; European Commission 2009d; European Commission; Enterprise and Industry DG 2010; European Commission 2010a; European Commission 2012d). In 2010, Jonathan Wiener und Alberto Alemanno rated the “current IAB’s members [...] among the best IA experts among high-level officials within the Commission departments” (Wiener/Alemanno 2010, 332). The authors were not sure, whether the change of appointment rules, extending the Boards spectrum of policy fields, would guarantee the same level of IA expertise in the future.

structure may endanger the aspired “balanced approach”<sup>140</sup> to the three IA pillars (economy, ecology and social). Also, the capacity to judge the gender equality affects in IAs stands in question as gender expertise is not necessarily and explicitly represented on the Board. In theory, the heads of DG Employment and DG Justice, two departments with strong gender competencies and units, are meant inject the gender expertise generated in their departments into the IA quality management process. In practice, the DG’s heads would ask their equality units to evaluate assessments or appear before the Impact Assessment Board. But it remains at the discretion of each head to determine the need for additional gender expertise. It also counters a mainstreaming approach, which would require all heads obtaining gender expertise for their policy fields.

The Board is supported in its work by 54 national regulatory experts, designated by member states and appointed by the Commission. In its current composition, the expert group perpetuates the biases of the Impact Assessment Board, consisting exclusively of economic, financial, legal, and trade and industry experts.<sup>141</sup> A document analysis found that all Board reports from 2007-2011 remained silent on gender issues.<sup>142</sup> The Impact Assessment Board has repeatedly identified the social IA aspects, under which gender equality issues would be subsumed but would not become evident or visible in the Board’s reporting, as areas of analytical quality concern.<sup>143</sup> Viewing this heavy imbalance of expert representation and reporting gap on gender equality, the hypothesis emerged that *due* to the integrated approach to IA, gender is not part of the Commission’s present-day integrated IA quality management and, consequently, IA system.

**140** | European Commission 2010a, 19.

**141** | European Commission 2012e.

**142** | According to my analysis conducted for all annual Board reports from 2007-2011 as laid out in subchapter 4.4.6.1 and in annex V (European Commission; Impact Assessment Board 2006b; European Commission 2009d; European Commission; Enterprise and Industry DG 2010; European Commission 2010a; European Commission 2012d).

**143** | For example, in 2009 the board made additional requests and recommendations on 40 per cent of all social impacts and called for an improvement of SIA (European Commission 2010a, 10; 17). After the previous poor performance, in 2010 increasing analytical capacity for SIA was in focus and the recommendation rate on social impact areas was reduced to one-third, which is still the second most amount of comments made after economic impacts (75 per cent) (European Commission 2011b, 14). In 2011 the social recommendations were back up to 44 per cent (economic 83 per cent) (European Commission 2012d, 17). The 2009, 2010 and 2011 reports also showed first signs of quality management on fundamental rights, but no evidence on monitoring gender equality (European Commission 2011b, 16; European Commission 2012d, 18; 19; 22). In its 2011 report the Impact Assessment Board “welcomed the new operational guidance on assessing fundamental rights in Commission impact assessments, prepared by the Justice DG” (European Commission 2012d, 18), despite the fact that fundamental rights should be integrated into the assessment of social impacts, and not mentioning the still in force GIA tool either, as developed by DG Employment.

## 4.2 GENDER IN IMPACT ASSESSMENT: EXPERIMENT IN SUBORDINATION

I present and critique the available gender analysis tools on the EU level from a gender mainstreaming perspective, starting with the overarching, stand-alone tool, Gender Impact Assessment (1997/98).<sup>144</sup> gender mainstreaming manuals available for Commission policy and programme analysis.<sup>145</sup> In particular, there are two gender mainstreaming instruments specific to the policy field. Thirdly, I take a closer look at the Commission's integration IA system in general, including the integration of the gender perspective into the Commission's integrated guidelines<sup>146</sup> and its SIA<sup>147</sup> sub-guidelines (both from 2009), as to show how gender equality issues are subordinated to the social impacts in the integrated IA, and are being distanced from the mainstreaming duty.

### 4.2.1 Gender Impact Assessment

In the EU, GIA is commonly referred to as one of the “key components of gender mainstreaming,”<sup>148</sup> which makes exploring the tool's history and differentiation prior to becoming the Commission's GIA a worthwhile endeavour. The two Dutch researchers, Mieke Verloo and Conny Roggeband, designed the first GIA for policy making in the Netherlands in 1994. This early Dutch IA tool was designed according to existing environmental IA guidelines<sup>149</sup> and was informed by Anthony Giddens' structuration theory.<sup>150</sup> In addition other sources inspired the design: a) Gender checklists in the context of international development,<sup>151</sup> and b) an already existing Dutch gender policy analysis check (“Analyse van het vrouwenvraagstuk”<sup>152</sup> — Analysis of the Women's Question), which was officially published in 1982.<sup>153</sup> Roggeband dates its origins back to 1978.<sup>154</sup> Such early policy investigation into the *women's question* is likely to make the Dutch gender check, along with the Canadian first policy on the status of women in 1979,<sup>155</sup> the earliest known means for gender policy analysis worldwide.

**144** | European Commission, Directorate-General Employment, Equal Opportunities Unit DG 5 1997/1998.

**145** | European Commission; Directorate-General for Employment, Social Affairs and Equal Opportunities; Unit G.1 2008.

**146** | European Commission 2009a. For annexes, see (European Commission 2009e).

**147** | European Commission 2009b.

**148** | MacRae 2010, 169.

**149** | Verloo 2001. See also (Holzleithner 2002, 90; Woodward 2004).

**150** | Giddens 1984. For the continued and still scholarly undecided discussion of the nature of social structure, commonly organised around the three pillars institutional structure, relational structure and embodied structure, see (López/Scott 2000).

**151** | The first international gender analysis tools for gender mainstreaming are mentioned in subchapter 1.5.1.

**152** | Conny Roggeband, Interview.

**153** | van der A et al. 1982.

**154** | Conny Roggeband, Interview.

**155** | See subchapter 3.4.2.

The identically-named European GIA tool was developed later in 1997/98. According to Anne Havnør,<sup>156</sup> the Norwegian policy officer and seconded national expert in charge (among other employees of that time, such as Maria Stratigaki) of the Commission's gender mainstreaming in DG Employment,<sup>157</sup> the DG Employment's equality unit built on parts of the Dutch GIA tool as well as aspects of the Swedish 3R-method<sup>158</sup> and other methods known at the time. The EU funded DIGMA project reiterates the tool creation process of the EU GIA, as follows:

"The Guide to Gender Impact Assessment was commissioned by the Group of Commissioners on Equal Opportunities, Inter-service Group on Equal Opportunities and Group of Gender Mainstreaming Officials of the European Commission. The context was the follow-up to the Commission communication, "Incorporating equal opportunities for women and men into all Community policies and activities", and the preparation of the implementation of the gender mainstreaming task of the Amsterdam Treaty. It was created by a group of gender mainstreaming officials, in particular, the unit responsible for this in DG Employment and Social Affairs, and based on expert advice and examples of good practices abroad that were tested for their usefulness inside the Commission."<sup>159</sup>

The Commission's GIA tool was intentionally designed in a "comprehensible" and "simple"<sup>160</sup> fashion and released in 1997/1998.<sup>161</sup> The guide was "intended for adaptation to the specific needs of each Directorate General and policy area."<sup>162</sup> DIGMA calls the tool a "general, short checklist for gender relevance and assessment of gender impact."<sup>163</sup> The final tool was divided into four segments: First, an introduction that explained the legal basis and the obligation to conduct GIA.<sup>164</sup> Second, there was a description of basic concepts and definitions of sex/

**156** | Anne Havnør, Interview.

**157** | Anne Havnør, Interview.

**158** | Swedish Association of Local Authorities et al. 1999; Division for Gender Equality at the Ministry of Industry 1999.

**159** | Amazone et al 2000-2001.

**160** | Anne Havnør, Interview.

**161** | European Commission, Directorate-General Employment, Equal Opportunities Unit DG 5 1997/1998. As aforementioned, neither the phase of tool design, nor the exact point in time of its release could be precisely reconstructed. According to Anne Havnør, work on the tool has at least started in 1997, "maybe even a year ago." (Anne Havnør, Interview). Tool design was triggered by gender mainstreaming progress reporting (Commission of the European Communities 1998) and an internal interdepartmental survey on gender mainstreaming capacity, identifying 29 departmental representatives who formed a working group, which adopted the new GIA tool (Fuhrmann 2005, 181).

**162** | European Commission, Directorate-General Employment, Equal Opportunities Unit DG 5 1997/1998, 2. Interestingly, Anne Havnør was not informed about the fact this original "small brochure" was still officially in force within the EC's policy analysis system (Anne Havnør, Interview).

**163** | Amazone et al. 2000-2001.

**164** | European Commission, Directorate-General Employment, Equal Opportunities Unit DG 5 1997/1998, 2.

gender, equality, and mainstreaming(including examples given).<sup>165</sup> The third part shed light on how to determine gender relevance, i.e., the so-called *gender check*, being a pre-test.<sup>166</sup> If a response is positive and gender aspects are deemed relevant, then the appraisal and a full-fledged assessment, whose criteria and steps are explained in part four, should be carried out.<sup>167</sup> As an annex to part four, the tool cites case studies and gives examples of when gender was deemed relevant for analysis and how the GIA criteria would be useful to detect it.<sup>168</sup>

It is worth noting that in its opening lines the GIA tool is directed at presumably gender-neutral policies, whilst employing the good governance and NPM efficiency frame for its implementation:

“Policy decisions that appear gender neutral may have a differential impact on women and men, even when such an effect was neither intended nor envisaged. Gender impact assessment is carried out to avoid unintended negative consequences and improve the quality and efficiency of policies.”<sup>169</sup>

The tool remains silent however, on how exactly the quality of policies could be improved. In addition the request for implementation was mandated rights-based: In the tool, Art. 2 and 3 of the Treaty of Amsterdam are named as the legal and formalised basis, establishing the necessity to conduct GIA. The “elimination of inequalities and the promotion of equality between women and men”<sup>170</sup> belong to the EU’s equality duty. In its genesis, the GIA instrument makes further reference to Commission’s Communication on Mainstreaming,<sup>171</sup> but describes the tool only as “a first step towards implementing the commitment of the EU to gender mainstreaming at the Community level.”<sup>172</sup> Thereby GIA is considered as just one element, but importantly the beginning, of all EU mainstreaming efforts. As a departmental tool issued by DG Employment, the Secretariat General never officially endorsed it and its distribution was left to the gender unit in DG Employment. In retrospect, Anne Havnør has expressed disappointment with the lack of political support for the tool, even from the time of its introduction:<sup>173</sup> “Mainly we wanted to make this small leaflet [the GIA tool, A.S.] you are referring to mandatory... but

**165** | European Commission, Directorate-General Employment, Equal Opportunities Unit DG 5 1997/1998, 2-3.

**166** | European Commission, Directorate-General Employment, Equal Opportunities Unit DG 5 1997/1998, 3-4. See subsequent chapter 4.2.1.1.

**167** | European Commission, Directorate-General Employment, Equal Opportunities Unit DG 5 1997/1998, 4-5. See subchapter 4.2.1.2.

**168** | European Commission, Directorate-General Employment, Equal Opportunities Unit DG 5 1997/1998, 6.

**169** | European Commission, Directorate-General Employment, Equal Opportunities Unit DG 5 1997/1998, 2.

**170** | European Commission, Directorate-General Employment, Equal Opportunities Unit DG 5 1997/1998, 2.

**171** | European Commission 1996.

**172** | European Commission, Directorate-General Employment, Equal Opportunities Unit DG 5 1997/1998, 2.

**173** | Anne Havnør, Interview.



... it was at a lower level that it stopped, [...] the resistance was there that it was not the way to go.”<sup>174</sup>

Although the tool was created to “explain and introduce GIA in the administrative practice of the Commission services,”<sup>175</sup> it was neither disseminated by the Commission’s Secretary General nor was its use obligatory. Instead, its use was oddly restricted to employment policies,<sup>176</sup> considering it should have marked the introduction of gender mainstreaming in *all* the Commission’s administrative processes and policy making. Despite the 2002 introduction of an integrated IA system, which was officially supposed to replace all existing stand-alone tools (of which GIA constituted one), the Commission did not render GIA, or the other departmental DG Employment gender mainstreaming tools,<sup>177</sup> as out-dated. This sent mixed-messages to analysts in the continued refinement of the integrated IA.

#### 4.2.1.1 Gender Impact Assessment: The Relevance Check

The first gender relevance check<sup>178</sup> raises awareness to the fact that the gender difference between women and men is a structural one, to be found in even seemingly gender-neutral policies. The tool states that women should not be treated as a special interest group. On the contrary, the tool introduces intersectional elements by drawing attention to how gender affects other vulnerabilities and structural differences such as “race/ethnicity, class, age, disability, sexual orientation etc.”<sup>179</sup> The tool recommends the following questions when checking the gender relevance of policies and programmes:

“Does the proposal concern one or more target groups? Will it affect the daily life of part(s) of the population? Are there differences between women and men in this policy field (with regard to rights, resources, participation, values and norms related to gender)?”<sup>180</sup>

If analysts answer any of these questions with a *yes* then gender is deemed relevant to their issue(s) and a proper full-fledged assessment should be conducted. This is especially true when the second question triggers a positive response. By nature all public policy and programme making affects some parts of “the daily life” of people-men and women<sup>181</sup>—to a greater or lesser degree.

**174** | Anne Havnør, Interview.

**175** | Amazone et al. 2000-2001.

**176** | Callerstig 2014, 33.

**177** | European Commission; Directorate-General for Employment, Social Affairs and Equal Opportunities 2008a.

**178** | European Commission, Directorate-General Employment, Equal Opportunities Unit DG 5 1997/1998, 3-4.

**179** | European Commission, Directorate-General Employment, Equal Opportunities Unit DG 5 1997/1998, 3.

**180** | European Commission, Directorate-General Employment, Equal Opportunities Unit DG 5 1997/1998, 4.

**181** | The transgender and intersex gender minorities are usually overlooked.

#### 4.2.1.2 Gender Impact Assessment: Full-fledged

The tool encourages analysts to conduct a full-fledged GIA early in the process so that “changes” or even “major amendments” to the policy under scrutiny can still be made.<sup>182</sup> It then gives a definition of what GIA actually entails: “Gender impact assessment means to compare and assess, according to gender relevant criteria, the current situation and trend with the expected development resulting from the introduction of the proposed policy.”<sup>183</sup>

The tool goes on to highlight the legal obligation for analysts, to achieve the Community’s equality objective as stipulated in the Amsterdam Treaty. It mentions that in order to fulfil this task, gender competency is required. The tool also gives some sources for sex-disaggregate data required for an analysis,<sup>184</sup> and reminds analysts that a lack of data is by no means an excuse for inaction. Rather it is a mandate to set up steps that will provide the required information for analysis. As criteria for gender analysis, the tool suggests as a first step, questions pertaining to participation, resources, norms/values and rights, rendering the 3R structure visible. The tool refers to participation as “sex-composition of the target/population group(s), representation of women and men in decision-making positions.”<sup>185</sup> Resources are listed as “time, space, information and money, political and economic power, education and training, job and professional career, new technologies, health care services, housing, means of transport, leisure.”<sup>186</sup> Especially interesting is the importance of underlying values in this IA tool. According to the GIA tool, gender roles are influenced by the: “Division of labour by gender, the attitudes and behaviour of women and men respectively, and inequalities in the value attached to men and women or to masculine and feminine characteristics.”<sup>187</sup>

After answering all these questions, the tool requires analysts to think about the following:

“How can European policies contribute to the elimination of existing inequalities and promote equality between women and men (in compliance with Articles 2 and 3 of the Treaty of Amsterdam); in participation rates, in the distribution of resources, benefits, tasks and

**182** | European Commission, Directorate-General Employment, Equal Opportunities Unit DG 5 1997/1998, 4.

**183** | European Commission, Directorate-General Employment, Equal Opportunities Unit DG 5 1997/1998, 4.

**184** | “Eurostat, the officially appointed Gender Mainstreaming Official of your DG, the Equal Opportunities Unit V/D/5, or external experts, as appropriate” (European Commission, Directorate-General Employment, Equal Opportunities Unit DG 5 1997/1998, 5).

**185** | European Commission, Directorate-General Employment, Equal Opportunities Unit DG 5 1997/1998, 5.

**186** | European Commission, Directorate-General Employment, Equal Opportunities Unit DG 5 1997/1998, 5. Particularly the resource time, which is often too limited in the face of time sensitive policies, is emphasised in IA literature (Fritsch et al. 2012).

**187** | European Commission, Directorate-General Employment, Equal Opportunities Unit DG 5 1997/1998, 5.

responsibilities in private and public life, in the value and attention accorded to male and female, to masculine and feminine characteristics, behaviour and priorities?"<sup>188</sup>

According to the tool's criteria, it is clearly not enough to avoid negative impacts, rather positive gender equality outcomes ought to be sought in European policy and programme making. In order to give analysts a better idea of equality fostering policies, the last section draws their attention to examples of inequality and to case studies. Examples of these are the differential use of private and public transport between female and male mobile citizens, the importance of availability of part-time work, sensitivity to paid and unpaid work, differential career and household responsibility choices and so forth.

#### **4.2.1.3 Gender Impact Assessment and the Quality Criteria for Gender Mainstreaming Tools**

In brief seven pages, this very slim tool manages to provide a universally applicable, concise, and illustrated framework for conducting a gendered analysis. Its origin, design and implementation fit, renders it an explicit policy IA tool.<sup>189</sup> It also fulfils the criteria of a good gender mainstreaming tool,<sup>190</sup> with one exception: Although its assessment examines the participation of women and men in the subject area, it does not call for deliberative assessment methods.<sup>191</sup> It generally requires a method-driven, evidence-based analysis. It refers to the legal mandate, explains basic concepts and uses them in a coherent fashion.

#### **4.2.2 Other Gender Mainstreaming Impact Assessment Tools**

In the EU, there are other GIA or gender mainstreaming stand-alone IA tools developed by individual DGs for use within the Directorate-General, on Commission level and beyond. Understanding the multiplicity of methods of equality governance via IA tools, will help to develop a more differentiated understanding of the interview findings and the buried character of gender analysis in general and the 1997/1998 GIA tool in particular, in the overall Commission's IA debates and practices.<sup>192</sup>

**188** | European Commission, Directorate-General Employment, Equal Opportunities Unit DG 5 1997/1998, 5.

**189** | According to IA tool typology in sub-chapter 1.6.1. For explicit IA tools, see also the definition in (Podhora/Helming 2010).

**190** | As established in chapter 1.6.2.

**191** | Participation is one of four (resources, rights and norms/values) main criteria for assessment, It can be assumed that they ought to be represented in the assessment method itself—however due to its slim character the tool is not explicit about it.

**192** | For instance, there once was a gender mainstreaming guide, developed by DG Employment in 2004, for the 2000-2008 EQUAL Initiative, a programme (financed by the European Social Fund and EU member states), which equals gender impact assessment with gender impact analysis (European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities Unit B4 2005, 48). It does not mention the Commission's GIA tool. However, it explains the method of gender impact analysis, containing all four key components of the GIA's participation, resources, rights and norms/values approach (European Commission, Directorate-General for Employment, Social Affairs and Equal

#### 4.2.2.1 The Manual on Gender Mainstreaming in Employment and Social Cohesion Policies

Based on the two separate manuals on gender mainstreaming applied to employment policies,<sup>193</sup> social inclusion, and social protection policies,<sup>194</sup> the DG Employment published a converged, detailed manual in 2008 that supported the analysis of employment related *and* social cohesion policies.<sup>195</sup> All of these three manual versions derived from an attempt to support the *Open Method of Coordination for Social Protection and Social Inclusion* and the *Integrated Guidelines for Growth and Jobs*.<sup>196</sup> The *Manual on Gender Mainstreaming* was mentioned by two interviewees as being applicable and used in the Commission's IA system. It was seen as pertinent to the policy fields typically associated with gender impacts and representative of the latest methodological attempt of mainstreaming gender in policy making as developed within DG Employment. Indeed, it appears that the guidelines could be transferable to other policy fields and could be rendered relevant for Commission's internal IA system (although proof for such a use could not be established): The combined manual on gender mainstreaming in employment, social inclusion and social protection policies states explicitly that the "general method, [...] can be applied to any policy field and it is valid beyond the timeframe in which this manual is set."<sup>197</sup>

In all three manuals, gender mainstreaming in the assessment of public policies and programming is described as a four-step approach.<sup>198</sup> First, "getting organised;" second, "learning about gender differences" in order to determine the gender relevance of the proposal; third "assessing policy impact" and to conduct a full GIA, if the policy is deemed gender relevant; and the fourth step, "redesigning the policy."<sup>199</sup> This last step is intended for a policy deemed disadvantageous to one gender or mainly neutral in a way that the policy would eventually "promote gender

Opportunities Unit B4 2005, 22-23). Hence, if both methods are seemingly identical, why the new name and without reference?

**193** | European Commission; Directorate-General for Employment, Social Affairs and Equal Opportunities 2007.

**194** | European Commission; Directorate-General for Employment, Social Affairs and Equal Opportunities 2008a. Re-labelled Appendix 4—Manual for Gender Mainstreaming Social Inclusion and Social Protection Policies (European Commission; Directorate-General for Employment, Social Affairs and Equal Opportunities 2008b).

**195** | European Commission; Directorate-General for Employment, Social Affairs and Equal Opportunities; Unit G.1 2008.

**196** | European Commission; Directorate-General for Employment, Social Affairs and Equal Opportunities 2008a, 2.

**197** | European Commission; Directorate-General for Employment, Social Affairs and Equal Opportunities; Unit G.1 2008, 4.

**198** | The four steps remain unaltered and identical also in the longer version, which just adds more examples and explanatory passages (European Commission; Directorate-General for Employment, Social Affairs and Equal Opportunities; Unit G.1 2008).

**199** | European Commission; Directorate-General for Employment, Social Affairs and Equal Opportunities 2007, 8; European Commission; Directorate-General for Employment, Social Affairs and Equal Opportunities 2008a, 4; European Commission; Directorate-General for Employment, Social Affairs and Equal Opportunities; Unit G.1 2008, 15.

equality.”<sup>200</sup> In this step, the earlier 2007 manual focusing on employment policies, briefly mentions the four main areas of analysis (resources, norms and values and rights) of the original GIA tool.<sup>201</sup> The other two manuals include these categories of analysis in step two without referring directly to the content of original GIA tool. Instead, it is referenced in general terms in a footnote, with a broken link to DG Employment’s website.<sup>202</sup> The footnotes refer to the applicability of the GIA tool when policy decisions appear to be neutral, but “may have a different impact on women than on men,”<sup>203</sup> however unintended.

In their reference to the earlier GIA tool, the three gender mainstreaming manuals of DG Employment are the most visible remnants of gender analysis in the Commission IA. Although intended to contextualise the former GIA tool with the four-step approach, the result is somewhat confusing, because the four main GIA analytic components of resources, norms, and values and rights occur in the pre-analytic learning step two. For example, in the combined manual on gender mainstreaming in employment and social policies, step two is deemed a process meant to gather data and information on potential gender differences in order to decide whether or not an in-depth GIA is necessary. The main analysis of step three is vague and brief. According to the manual, step three, as the crucial step should pertain to analysing resources, norms and values and rights.<sup>204</sup>

Here is where guidance is required to assess how European policies can “contribute to the elimination of existing inequalities and promote equality between women and men.”<sup>205</sup> The benefits of the combined manual is that it provides targeted sets of questions pertaining to the different policies under scrutiny, namely active labour market policies,<sup>206</sup> pay and career policies,<sup>207</sup> reconciliation policies,<sup>208</sup> and flexicurity policies.<sup>209</sup> The downside of such policy field specific

**200** | European Commission; Directorate-General for Employment, Social Affairs and Equal Opportunities 2008a, 4.

**201** | European Commission; Directorate-General for Employment, Social Affairs and Equal Opportunities 2007, 6.

**202** | European Commission; Directorate-General for Employment, Social Affairs and Equal Opportunities; Unit G.1 2008, 27, footnote 31; European Commission; Directorate-General for Employment, Social Affairs and Equal Opportunities 2008a, 3, footnote 7.

**203** | European Commission; Directorate-General for Employment, Social Affairs and Equal Opportunities; Unit G.1 2008, 27; European Commission; Directorate-General for Employment, Social Affairs and Equal Opportunities 2008a, 3.

**204** | European Commission; Directorate-General for Employment, Social Affairs and Equal Opportunities; Unit G.1 2008, 12.

**205** | European Commission, Directorate-General Employment, Equal Opportunities Unit DG 5 1997/1998, 5.

**206** | European Commission; Directorate-General for Employment, Social Affairs and Equal Opportunities; Unit G.1 2008, 16.

**207** | European Commission; Directorate-General for Employment, Social Affairs and Equal Opportunities; Unit G.1 2008, 18.

**208** | European Commission; Directorate-General for Employment, Social Affairs and Equal Opportunities; Unit G.1 2008, 20.

**209** | European Commission; Directorate-General for Employment, Social Affairs and Equal Opportunities; Unit G.1 2008, 22.

guiding questions and manuals might be that policy makers will only deem social or employment policies suitable for extended GIAs. Thereby the already prevailing effect of assumed gender neutrality of all other policies and consequent analytic inaction could be confirmed, rather than softened. Another main drawback exists in the content of the pre-analytic relevancy, and actual assessment steps, which are partially inverted in comparison to the 1997/1998 GIA tool, contributing to methodological incoherence rather than clarity. Lastly, the manuals on gender mainstreaming continue to treat the stand-alone GIA in a subordinate way, albeit much less so than the Commission's integrated IA guidelines, rendering its four main analytic criteria and the tool as their source at least visible. Such a multiplicity of non-fully harmonised gender mainstreaming tools increases the potential for practical ambiguities in tool implementation.

#### **4.2.2.2 Gender Impact Assessment in Evaluating Socio Economic Development**

The Directorate-General for Regional Policy (REGIO) presented yet another explicit and stand-alone GIA tool,<sup>210</sup> to be implemented ex-post, as part of its EVALSED (Evaluating Socio Economic Development) Methodology and Tool Sourcebook.<sup>211</sup> The EVALSED guide and sourcebook are available as online tools and the specific GIA section, which is very detailed and employs the gender lens in eight steps of the policy cycle, was supposed to bring a gendered evaluation to the forefront of the structural fund evaluations. GIA was presented as one of three main tools for conducting IA (the other two being environmental IA and sustainability environmental IA). The realm of implementing the EVALSED, GIA exceeds regional or structural programming, i.e. it was employed to inform a "gender-aware"<sup>212</sup> analysis of the EU's multi-annual financial framework as commissioned by the EP.<sup>213</sup>

**210** | European Commission; DG for Regional Policy 2003. The EVALSED: The resource for the evaluation of Socio-Economic Development guide was designed by evaluation experts as a result of the MEAN research programme and aims to promote evaluation practice EU-wide. Developed from the 1999 MEANS collection as a comprehensive set of handbooks, it was published by the European Commission in form of a website-based tool kit in 2004, revised in 2007, 2008, 2009, 2012 and 2013 (European Commission; Directorate-General for Regional Policy 2003; European Commission; Directorate-General for Regional Policy 2004a; European Commission; Directorate-General for Regional Policy 2004b; European Commission; Directorate-General for Regional Policy 2008; European Commission; Directorate-General for Regional Policy 2012; European Commission; Directorate-General for Regional Policy 2013).

**211** | European Commission; Directorate-General for Regional Policy 2004b.

**212** | European Parliament; Directorate General for Internal Policies; Policy Department C Citizens' Rights and Constitutional Affairs; OpCit Research 2013, 24 footnote 24. For an engagement with the concepts of gender-awareness and gender-sensitivity, compare subchapter 1.5.3.

**213** | European Parliament; Directorate General for Internal Policies; Policy Department C Citizens' Rights and Constitutional Affairs; OpCit Research 2013.

In the EVALSED<sup>214</sup> bibliography of the GIA tool, the 1997/1998 Commission GIA tool<sup>215</sup> was also mentioned as a valuable resource. The EVALSED sourcebook did not explain why it deviates from the content of the original 1997/1998 Commission's GIA tool, which could also be employed ex-ante as an instrument for evaluation. Designed for a programme or project level, it did not explain Howitt differentiates from the technical instrument and detailed checklist *Mainstreaming Equal Opportunities For Women And Men In Structural Fund Programmes And Projects*.<sup>216</sup> The benefits and purpose of those varying procedures for analysis of similar objects remain unaddressed in the two tools developed in the same Directorate-General for Regional Policy. Equally confusing is the degree of difference between conducting GIA for the purpose of evaluation in contrast to ex-ante GIA, since the term GIA is used interchangeably<sup>217</sup> for very different procedures and tool content. This is also true for the term evaluation, which in the guide is defined as practically identical to IA: "Evaluation takes place at ex ante, interim and ex post stages."<sup>218</sup> Having occupied such a central place in 2003, in its later versions, the GIA section was dropped from the EVALSED guide.<sup>219</sup> The flurry of various tool designs in the early 2000s did not translate into coordination of activities and instruments. It seems that such dissonant, illogically aligned tool development has contributed to gender equality concerns neither being meaningfully nor sustainably integrated in IA and evaluation procedures.

#### 4.2.3 Gender in the Integrated Impact Assessment Guidelines

Despite criticism, the three-pillar IA, as established in 2003, remains intact to date. As already mentioned, the first integrated guidelines from 2002 were revised in 2005.<sup>220</sup> Ever since those 2005 Impact Assessment Guidelines and the 2006 update, the Commission's CLWP and its Annual Policy Strategy (APS) have been made subject to IAs, in which one obligatory part is an integrated SIA.<sup>221</sup> Therein, gender is subjugated to social IA and some social impact areas contain gender equality and non-discrimination concerns. By implementing the systemic integrated IA, the Commission decided to harmonise IA processes and replaced single tools, such as GIA, with this integrated approach. Unlike the first ones in 2002, the revised

**214** | European Commission; DG for Regional Policy 2003.

**215** | European Commission, Directorate-General Employment, Equal Opportunities Unit DG 5 1997/1998.

**216** | European Commission 2000a.

**217** | Evaluation studies define evaluations as always taking place ex-post, being one moment in time cross-sectional studies, with interim evaluations as mixed forms between evaluation and parallel ex-ante IAs, see subsection on evaluations 1.4.2.

**218** | European Commission; DG for Regional Policy 2004a.

**219** | The 2013 version is available without a GIA section (European Commission; Directorate-General for Regional Policy 2013).

**220** | European Commission 2005c. As mentioned in chapter 4.1.3.

**221** | With decision SEC(2005)790, the Secretariat-General is obliged to regularly up-date the IA guidelines, based on consultations with the various Commission services. As such, the SIA guidelines were developed based on internal Commission expert advice (European Commission 2009a, 3).

general guidelines of 2005 did not make any reference to the GIA tool. After the first reform, gender remained relegated to a few sets of sub-questions in three social impact areas: “Equality of treatment and opportunities, non-discrimination, social inclusion and protection of particular groups,<sup>222</sup> as well as public health and safety.<sup>223</sup>

The 2005 guidelines were updated in March 2006<sup>224</sup> with new sections on procedural rules and the assessment of administrative costs.<sup>225</sup> Consequently the assessment questions and impact areas remained untouched, including gender. General quality concerns accompanied the introduction of the integrated IA and also the new and updated guidelines were not seen as sufficient to guarantee consistent application, in line with the principal political strategies and objectives of the EU. Printed on each first page of both guidelines, analysts were reminded that competitiveness, growth, jobs, economic and social cohesion, a healthy environment should act as guiding principles of the analysis ( fundamental rights or gender equality were omitted).<sup>226</sup>

#### 4.2.3.1 The Integrated Impact Assessment Guidelines

In order to perform IA in accordance with good governance and better regulation principles, the Commission’s general guidelines were again revised in 2009, after an externally contracted evaluation of the overall IA system in 2006/2007.<sup>227</sup> The 2009 IA guidelines replaced the previous guidelines of the 2005 and 2006 updates. GIA as a tool is only mentioned in footnote 22 of the supporting *Guidance for Assessing Social Impacts within the Commission Impact Assessment System*.<sup>228</sup> The 2009 integrated guidelines is divided into three parts. In part one, basic principles and procedures for performing an IA, such as the implementation of an IA steering group for each individual IA, are laid out.<sup>229</sup> The second part is devoted to the key analytical steps in IA that engage with problem definition, the goals, options and the likely economic, social and environmental consequences, and how to best compare them.<sup>230</sup> Part three, the annex,<sup>231</sup> is a separate document that contains details about the individual assessment steps for the economic, environmental and social assessment section and concludes with a best practice library.<sup>232</sup>

**222** | European Commission 2005c, 31.

**223** | European Commission 2005c, 32.

**224** | European Commission 2006a.

**225** | For a detailed description of the EU IA tool, see (von Raggamby 2008). In an undated publication on the EU practices of environmental IA within the rather imprecise, integrated IA framework, she also refers to the high degree of freedom of the individual desk officer to pick and choose a method or combination of method (von Raggamby n.d., 8).

**226** | European Commission 2005c, 1; European Commission 2006a, 1.

**227** | The Evaluation Partnership 2007.

**228** | European Commission 2009b, 21.

**229** | European Commission 2009a, 4-20.

**230** | European Commission 2009a, 21-49.

**231** | European Commission 2009a, 50; European Commission 2009e.

**232** | European Commission 2009e.



In the 2009 update, the general IA guidelines as well as the more detailed SIA sub-guidelines of the EU's integrated IA contain the following questions concerning gender equality, equality treatment and opportunities, and non-discrimination:

- “• Does the option affect the principle of non-discrimination, equal treatment and equal opportunities for all?
- Does the option have a different impact on women and men?
- Does the option promote equality between women and men?
- Does the option entail any different treatment of groups or individuals directly on grounds of sex, racial or ethnic origin, religion or belief, disability, age, and sexual orientation? Or could it lead to indirect discrimination?”<sup>233</sup>

Most obvious is the abstract nature and the lack of precision and coherence of these guideline questions concerning gender.<sup>234</sup> A meaningful IA guide relies mainly on precise, well formulated and relevant questions that present gender as a real cross-cutting issue. However, across all policy and impact areas, this lack of detail and precision is shared in principle by all guiding questions in the integrated guidelines. This is owing to the fact that the general integrated guidelines were designed to be applied universally. The need to respond to such universal impact areas results in such levels of abstraction and generalisation in order to remain readable and manageable. However, in the light of the pertaining lack of gender competency and the limited knowledge-based ability to judge gender relevance among analysts, combined with the lack of access to more refined gender specific analysis tools, the non-specificity constitutes an obstacle to meaningful implementation.

The relevant part for conducting the assessment is “What are the likely economic, social and environmental impacts?”<sup>235</sup> telling analysts how to approach their IA in a three step process.<sup>236</sup> First, they need to identify the relevant “economic, social and environmental impacts of a policy, why they occur and who is affected”<sup>237</sup> In order to draw a “comprehensive picture”<sup>238</sup> in line with the Charter of Fundamental Rights<sup>239</sup>, this section asks analysts to distinguish between two types of distributional impacts likely to occur in any of the three areas (economy, ecology, society). They should start out any assessment by looking into the: 1) “Impacts on

**233** | European Commission 2009a, 35.

**234** | Whether they fulfil the quality criteria of good gender mainstreaming tools, as established in chapter 1.6.2., will be clarified in chapter 4.2.3.4.

**235** | European Commission 2009a, 31.

**236** | After identifying all the possible impacts comprehensively, step two is to narrow them down to the more important impacts, before in step three and in-depth analysis of only the most significant impacts is envisioned (European Commission 2009a, 31-39).

**237** | European Commission 2009a, 32.

**238** | European Commission 2009a, 33.

**239** | According to the Communication on Compliance with the Charter of Fundamental Rights in Commission legislative proposals (COM(2005) 172) (European Commission 2009a, 22, footnote 21). Fundamental rights impacts are to be stated in qualitative means and are horizontal issues, ranging across all economic, ecological and social impact areas (European Commission 2009a, 39).

different social and economic groups,” and 2) “impacts on existing inequalities.”<sup>240</sup> Here, gender equality is located in the inequality context of the guidelines, and close to the group concept. The guidelines point towards the systemic dimension of the social construction of gender differences and the difficulties in identifying them:

“Impacts on existing inequalities: you should for instance compare regional, gender impacts and impacts on vulnerable groups of the proposed action to see if it is likely to leave existing inequalities unchanged, aggravate them, or help to reduce them. This is not a simple matter: for example, differences between male and female lifestyles may mean that a proposal which appears to be neutral as regards gender equality will in practice have different impacts on men and women.”<sup>241</sup>

As such, a gender equality assessment is given prominence, an essential component part of all IAs, but the insertion of “for instance” leaves analysts the choice to pick up on gender inequalities or not. It is also important to note some contradictions, incongruent use of terminology, and ambiguity between mainstreaming and non-discrimination. As the above quotation shows, gender equality is framed as one of several inequalities, where interestingly the differences between women and men were phrased as a matter of different “lifestyles” rather than addressing systemic forces and the power question.<sup>242</sup> Women are also set in close semantic proximity to children or youth, which perpetuates gender stereotypes of women *naturally* being the primary care-takers for children and youth. Highlighting the “different impact on women and men,” is meant to address the systemic character of gender inequality, but analysts are not provided with any specific guidance on how to avoid framing women as merely another disadvantaged group.

The incongruence of terminology is continued in other sections of the integrated guidelines, where gender (and not sex) is mentioned. These are the only sections in which gender as a real cross-cutting, mainstreaming approach can be identified and only within the SIA part of the guidelines in the areas:

- Public Health and Safety (“Are there specific effects on particular risk groups (determined by age, gender, disability, social group, mobility, region, etc.)?”)<sup>243</sup>;
- Social inclusion and protection of particular groups (“Does the option affect specific groups of individuals (for example the most vulnerable or the most at risk of poverty, children, women, elderly, the disabled, unemployed or ethnic, linguistic and religious minorities, asylum seekers), firms or other organisations (for example churches) or localities more than others?”).<sup>244</sup>

This conceptualisation of gender as “a group at risk” means that some analysts are aware of potential gender issues within their policies and programmes, but do they

**240** | European Commission 2009e, 34.

**241** | European Commission 2009e, 33.

**242** | European Commission 2005c, 27. As an underlying feminist gender concept would, compare chapter 1.6.2.

**243** | European Commission 2009a, 36.

**244** | European Commission 2009a, 35.

know what to attribute to gender and what to sex? The *groupist*<sup>245</sup> framing gains dominance by the second question that again frames women as a vulnerable group in areas connected to social inclusion. When the social impacts are listed, women constitute simply another possible disadvantaged social group under a social inclusion paradigm.<sup>246</sup> With its *groupist* framing and segmented design, partitioning gender equality in “social inclusion” and “gender equality, equality treatment and opportunities, non-discrimination,”<sup>247</sup> the guidelines send mixed messages to the analysts with regard to direct group based discrimination or indirect, systemic discrimination. Analysts might additionally be confused about the concepts of sex and gender, since they are applied incoherently and without explanation.<sup>248</sup>

The various socially relevant impact areas and corresponding questions on inequality are again defined in the corresponding section of the part III of the guide, the annex, which is not any more concise on gender. Noteworthy here is that point “8.2. Impacts on the number and the quality of jobs”<sup>249</sup> referring to the quality indicators of the European Council, which includes diversity and gender equality as central analytical aspects for the job market. The annex also hints at a different and purposeful integration of mainstreaming of gender (and age). Other sections such as “impacts on consumers,” do not mainstream gender. The introduction to the social impacts section of the annex states that social impacts are “strongly connected with economic and environmental impacts,”<sup>250</sup> constituting a basic social mainstreaming mandate—which in practice seems to be as complicated and inefficient as the mainstreaming of gender.<sup>251</sup>

The question remains, whether gender equality could still be mainstreamed in the guidelines by being a fundamental right? With regard to basing all analyses on the EU common values of Fundamental Rights, the subsection “8.3 Assessing specific aspects of economic, social and environmental impacts”<sup>252</sup> of the integrated guidelines begins by mentioning the “impact on fundamental rights,”

**245** | For a more detailed discussion of the concept of groupism, see sub-section 2.3.1.

**246** | “Does the option affect specific groups of individuals (for example the most vulnerable or the most at risk of poverty, children, women, elderly, the disabled, unemployed or ethnic, linguistic and religious minorities, asylum seekers), firms or other organisations (for example churches) or localities more than others?” (European Commission 2005c, 35.). Emphasis by author. Petra Debusscher has noted on the potentially damaging effects of a resulting women as a vulnerable group framing in the policy documents produced, which are often employing a disempowering language and serve to objectify and victimise women (Debusscher 2012, 337).

**247** | European Commission 2009a, 35.

**248** | Another question in the equal treatment set of questions adds yet another group-based framing of women, but this time based on sex, not gender: “• Does the option entail any different treatment of groups or individuals directly on grounds of sex, racial or ethnic origin, religion or belief, disability, age, and sexual orientation? Or could it lead to indirect discrimination?” (European Commission 2009a, 35).

**249** | European Commission 2009e, 29-30.

**250** | European Commission 2009b, 3.

**251** | The results of the document analysis of the Board reports 2007-2011 can be found in 4.4.6.3. and Annex V.

**252** | European Commission 2009a, 39.

It lists the various chapters of the Charter of Fundamental Rights, including non-discrimination and gender equality in subchapter 8.3. A “full list”<sup>253</sup> of fundamental rights is given in chapter 8.1 of the guidelines’ annex.<sup>254</sup> Here, the list of the “fundamental goals of the EU” does not mention the goal of equality between women and men, as stipulated in Art. 2 of the Amsterdam Treaty, and Art. 2 of the Lisbon Treaty. The designers of the guide might have been assuming that gender equality was sufficiently addressed within all the questions mentioned above, but such an observation is worrisome in regard to a possible, unspoken, inner ranking of central, and not so central value-based goals?

Finally, this new version of the IA manual fails to mention the “old” GIA tool, which as a tool, is not entirely obsolete and can still be consulted at the discretion of the analyst if found relevant. The more specific and additionally universal, cross-policy applicable GIA tool therefore remains unknown to a new generation of analysts. Subsequently it would not be applied in cases where in-depth assessments from a gender perspective are deemed necessary. Interestingly, the 2011 *Operational Guidance on Taking Account of Fundamental Rights in Commission Impact Assessments*<sup>255</sup> enjoys prominent exposure on the *key documents* sub-site of the Commission’s IA website, which the GIA tool does not.<sup>256</sup> The guidance emphasises its cross-cutting character, independent of the three IA pillars:

“The analysis of the impacts on fundamental rights should not be done in a separate category apart from the economic, social and environmental impacts. As highlighted in the ‘Key Questions’ section in the Impact Assessment Guidelines, the fundamental rights of the Charter are diverse and cut across all sectors.”<sup>257</sup>

**253** | European Commission 2009a, 39.

**254** | European Commission 2009e, 28.

**255** | European Commission 2011c. The EU’s Charter Strategy, the Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union, as adopted by the EC on October 19, 2010, has the objective to “make the fundamental rights set out in the Charter as effective as possible and to ensure that the EU’s approach to legislation is exemplary” (European Commission 2011c, 3). The development of Fundamental Rights IA (European Commission 2011c) was based on the Commission’s Communication on Securing respect for Fundamental Rights in Commission Legislative Proposals (COM(2005)172) and the “Commission’s Fundamental Rights Monitoring Strategy Communication” (Toner 2012, 5; 9).

**256** | As anecdotal evidence, in the pre-phase of my research I noted that the GIA tool was not published on the EU’s central IA website, along with the main IA guidelines and resources. On top, from 2008 to 2010, it was also no longer retrievable navigating the DG’s Employment gender equality website, using its search function, and it was not linked to gender equality or IA and evaluation issues either. After the change of the gender equality duty from DG Employment to DG Justice in 2010 and shortly after the completion of my set of EU expert interviews in 2011, where I mentioned the disappearance of GIA from the EC’s gender equality web resources, the GIA tool was put online again in DG Employment as well as DG Justice. It is still not to be found on the EC’s better regulation and impact assessment website (European Commission 2016a).

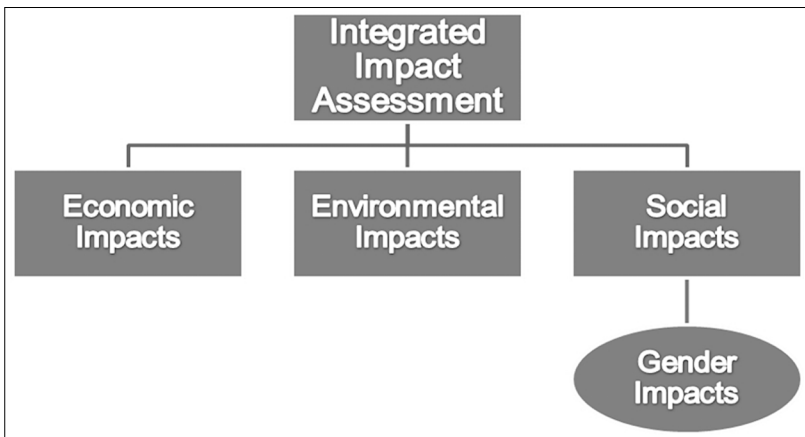
**257** | European Commission 2011c, 17.

Unlike in the SIA section of the integrated guidelines, the special GIA tool is not mentioned in the Fundamental Rights guidance, although e.g. the “gender pay gap” occurs as one example of a fundamental rights violation.<sup>258</sup>

#### 4.2.3.2 The Supporting Social Impact Assessment Guidelines

According to the Commission’s guidelines, all IAs conducted should consist of a balanced appraisal of all impacts (economic, ecological, social).

*Table 23: Gender in the Integrated Impact Assessment System of the European Commission*



Supporting the general, overarching integrated IA guidelines, there are additional, more comprehensive, annexed sub-guidelines designed and issued by individual DGs, as shown in the previous table. The Guidance for assessing Social Impacts within the Commission Impact Assessment system (in short: SIA) under the integrated IA guidelines, hosts the aforementioned set of questions pertaining to gender equality, non-discrimination and social inclusion. This IA system is underpinned by the principle of proportionate analysis, whereby the depth and scope of an IA—and hence the resources allocated to it—are proportionate to the expected nature of the proposal and its likely impacts. The use of the term “proportionate” has been criticised from an analytical point of view because it is not defined by precise criteria<sup>259</sup> and because it discourages use of more exact, but also more time- and resource-consuming add-on tools, such as GIA.<sup>260</sup>

Another point of critique is the lack of mainstreaming of gender in the integrated IA guidelines, which will be examined more closely in this chapter. The relegation of the gender questions to the social impacts leaves policy analysts with the (misleading) illusion that economic and/or environmental issues do not produce gendered effects, which is possibly the biggest default incorporated in tool design. The following chapter demonstrates this in greater detail. The social IA guide is

**258** | European Commission 2011c, 17; 22.

**259** | The Evaluation Partnership 2007, 8-9.

**260** | European Commission, Directorate-General Employment, Equal Opportunities Unit DG 5 1997/1998.

provided by DG Employment and entails more information on how to conduct an IA on social impacts and possible methods. Although the general integrated IA guidelines stipulate a total of 11 different social impact areas,<sup>261</sup> the social IA guide is only organised according to seven of them: Employment and labour market; standard and rights related to job quality; social inclusion and protection of particular groups; equality of treatment and opportunities, non-discrimination; social protection, health, social security and educational systems; public health and safety.<sup>262</sup>

In the introductory remarks of this more detailed guide to SIA,<sup>263</sup> the attempt to highlight and mainstream gender is evident:

“A gender perspective should in particular be integrated in the analysis and the assessment of potential impacts on gender should take into account the existing differences between women and men that are relevant to the given policy field.”<sup>264</sup>

In this version, the Commission mentions gender mainstreaming for the first time in its guidelines, as a Treaty obligation,<sup>265</sup> a part of the current EU’s gender equality strategy<sup>266</sup> and as the foundation for answering the specific question “Does the option promote equality between women and men?”<sup>267</sup>:

“Gender mainstreaming is a commitment at European level: the gender perspective should be integrated in all policies at each stage of policy development—design, implementation, monitoring and evaluation. Equality between women and men should be promoted at all levels and in all policy areas.”<sup>268</sup>

Again, these two statements on the integration of a gender perspective and the gender mainstreaming “commitment” are highly general and not very tangible or applicable. Following two questions “Does the option affect equal treatment and equal opportunities for all?”<sup>269</sup> and “Does the option entail any different treatment of groups or individuals directly on grounds of e.g. racial, ethnic or social origin, religion or belief, disability, age or sexual orientation? Could it lead to indirect discrimination?”<sup>270</sup> the legal framework,<sup>271</sup> the respective EU directives<sup>272</sup> and the

**261** | European Commission 2009a, 35-36.

**262** | Most of them, but not all, as falling under DG Employment’s mandate.

**263** | European Commission 2009b.

**264** | European Commission 2009b, 3.

**265** | European Commission 2009b, 19.

**266** | European Commission 2009b, 20.

**267** | European Commission 2009b, 21.

**268** | European Commission 2009b, 21.

**269** | European Commission 2009b, 20.

**270** | European Commission 2009b, 20.

**271** | Art. 2. 3. 13, 137, 141 of the EC Treaty (European Commission 2009b, 19). “[Sic!] art. 13 EC Treaty” (European Commission 2009b, 20).

**272** | As in the Race Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC) (European Commission 2009b, 20).

six grounds of discrimination, recognised in the EU.<sup>273</sup> The following explanation about indirect discrimination, which is defined as a seemingly neutral “provision, criterion or practice,” “unless the practice can be objectively justified by a legitimate aim,” leaves a backdoor for tolerating possible discrimination.<sup>274</sup>

In the employment and labour section of the guidelines the question “Does the option facilitate new job creation”<sup>275</sup> further elaborates on the differential impact of un/employment on different groups such as disabled people, women, younger/older, unemployed, unskilled people. In specifically mentioning the differential impact on women, the SIA guidelines are not only treating women as a seemingly coherent (here, non/under-employed) group, they also fall into the trap of reifying the androcentric bias, by reaffirming (employed, non-handicapped, white, middle-/working-age) men as the norm, while *othering* women and other groups by explicitly stating them as the deviation.<sup>276</sup> It serves as a reminder of the constant difficulties and treacherous terrain, categories and their utilisation in IA create, requiring the utmost care in terminology, concepts and design of tools and their manuals.

Since gender equality concerns are not explicitly included in the rest of questions pertaining to the other social impact areas, the operationalising of the stated gender mainstreaming commitment remains not only unclear, but contradictory: Now, is gender mainstreaming a guiding principle pertaining to *all* social impact areas? And if so, how? Or should only policies that seem to have the potential to actively “promote” equality be scrutinised for their gendered consequences? In order to compensate for the lack of clarity in concepts and for a lack of gender mainstreaming in the Commission’s integrated IA, the more sophisticated analytical framework of GIA would be helpful. Here we see a (confusing/insufficient) conceptualisation of gender equality.

#### 4.2.3.3 Subordination in the Integrated Impact Assessment of the Commission

The following chapter explicates the possibilities and pitfalls of the systemic integration of gender into the logics of the Commission’s IA system and guidelines, in the search for in-ways for GIA into the assessment process. As stated already in 2002, the new integrated guidelines were meant to replace all existing single or stand-alone instruments. However, those stand-alone tools did entirely disappear. According to the Impact Assessment Board, if the focus of analysis requires the application of a more detailed tool, such as GIA, such supplementary tools can still be consulted: “Operational guidance documents (on social impacts, fundamental

**273** | “Sex, age, disability, sexual orientation, religion or belief, race or ethnic origin” (European Commission 2009b, 20).

**274** | European Commission 2009b, 20. For the concepts of direct versus indirect discrimination, see chapter 2.2.3.3.

**275** | European Commission 2009b, 7.

**276** | The new guidelines also erroneously spell “sex-desegregated data” [sic!] instead of “sex-disaggregated,” demonstrating a lack of familiarity or a lack of care, or both (European Commission 2009b, 29). The *othering* concept as applied in this study, is explained in chapter 2.3.2.

rights and competitiveness) are complementary to the existing IA guidelines. Their use is left to the discretion of services preparing the IAs.”<sup>277</sup>

In this list of supplementary tools the Impact Assessment Board does not refer to or seem aware of the existence of GIA. The new updated integrated guidelines make no mention of GIA. GIA is first and only mentioned in one footnote of the annexed social IA guide, without further clarification of content and applicability.<sup>278</sup> If only consulting the integrated guidelines or Board’s reports, analysts must remain unaware that a separate and more specific gender analysis tool even exists. Due to the lack of the mainstreaming of gender in the overall guidelines and the subordinate character of GIA in the tool structure, it seems unlikely that it will be picked up. Without GIA application however, it is doubtful how gender mainstreaming will ever be implemented as a cross-cutting and overarching principle for IA, integrated in the overall objectives, indicators and monitoring requirements?

Similarly, there is a disconnect between the Commission’s IA design from the EU’s overall gender equality policies, as stated in the 2006 to 2010 roadmap<sup>279</sup> that called for reinforcing “the implementation of a gender perspective in the impact assessment,”<sup>280</sup> and stated that:

“The implementation of gender equality methodologies such as gender impact assessment and gender budgeting (the implementation of a gender perspective in budgetary process) will promote gender equality and provide for greater transparency and enhance accountability.”<sup>281</sup>

In light of this research, such optimistic expectations of the GIA tool and the EU’s IA practices are deemed to be unrealistic. It can be said that the integration of gender into the EU’s IA tools is in a state of non-aligned experimentation.

Internationally, the recognition of the added-value of gender to the assessment took the opposite path and moved from the margins to the centre—especially in the realm of SIA. On a project level for instance, where an analyses of social impacts is most widely employed and have the longest tradition in the IA community, social IA experts like Kuntala Lahiri-Dutt and Nesar Ahmad have made the experience that GIA adds “depth and nuance” to the general social IA analysis.<sup>282</sup> The same authors also suggest that “the field of social impact assessment be much more gender aware, and that it embeds gender analyses into its methods and thinking.”<sup>283</sup> In their state-of-the-art assessment of international social IA practice and theory,

**277** | European Commission 2012d, 30.

**278** | European Commission 2009b, 22, footnote 21.

**279** | European Commission; Directorate-General for Employment, Social Affairs and Equal Opportunities; Unit G.1 2006.

**280** | European Commission; Directorate-General for Employment, Social Affairs and Equal Opportunities; Unit G.1 2006, 12.

**281** | European Commission; Directorate-General for Employment, Social Affairs and Equal Opportunities; Unit G.1 2006, 11.

**282** | Lahiri-Dutt/Ahmad 2011, 134. The authors speak for the realm of gender in development and SIA in the development context.

**283** | Lahiri-Dutt/Ahmad 2011, 135. In order to facilitate increased gender mainstreaming in SIA activity, the International Association for Impact Assessment released its first list of



also Frank Vanclay and Ana Maria Esteves, who are among the leading social IA experts, propose the consideration of gender impacts as a “key component”<sup>284</sup> within the social IA project. Together with Behrooz Morardi, Rauno Sairinen and myself, the same authors shared their international experience with social IA on the project level and advised the Belgian Presidency of the EU Council on social mainstreaming and improvement of the EU’s policy social IA practices as follows:

“It is important to consider that all the processes [...] and associated social impacts are gendered, and gender mainstreaming is an underlying principle of all social impact assessment. Within an impact assessment framework, gender mainstreaming means determining, showing and assessing the anticipated impact in terms of gender equity.”<sup>285</sup>

#### 4.2.3.4 The Integrated Impact Assessment and the Quality Criteria for Gender Mainstreaming Tools

Now the question is whether the integrated IA guidelines of the Commission really have gender mainstreaming as an “underlying principle,” and how they fare in light of the quality criteria for gender mainstreaming instruments.<sup>286</sup> and if the five core quality criteria of gender mainstreaming tools, as derived from my understanding of *good* gender mainstreaming tools,<sup>287</sup> are applied to the integrated IA of the Commission, I arrive at the following conclusions:

1. Gender equality as a *cross-cutting* issue (gender mainstreaming): The tool design treats gender equality as a separate block of very general and abstract questions; gender in the integrated IA guidelines is conceptualised as women constituting a vulnerable group and not mainstreamed.<sup>288</sup> The above mentioned social IA criteria<sup>289</sup> name gender mainstreaming and equity concerns “an underlying principle” of assessing all social impacts. Equally and according to gender mainstreaming logics, gender concerns should be considered as part of the economic and environmental sub-assessments, which is not the case.
2. *Educational and awareness raising* for gender equality in its *multi-dimensional* mechanisms of exclusion (feminist concepts/intersectionality): The guidelines do not incorporate intersectionality from a gender perspective, instead they focus on “other vulnerable groups” and non-discrimination. Although they attempt to be educational and introduce into the legal framework, they lack clarity and do not employ feminist concepts (different lifestyle rhetoric) that would always address power issues.

GIA tools, resources and case studies applicable to the international field (Vanclay/Sauer 2011).

**284** | Vanclay/Esteves 2011b, 15.

**285** | Esteves et al. 2010, 37. A strong, but singular statement that was not shared by any of the other invited experts in the same edited publication nor by recent state of the art literature on policy IA (Adelle/Weiland 2012).

**286** | Compare quality typology and discussion in chapter 1.6., especially as summarised in 1.6.3.

**287** | As established in sub-chapter 1.6.2, and combined with IA tool criteria in 1.6.3.

**288** | European Commission 2009b, 19-23.

**289** | As in the prior chapter 4.2.3.3.

3. *Consistency* is not tool immanent: Basic concepts are not represented coherently in content and form, resulting in inconsistent understanding and enactment.
4. *Likelihood of application* and *tool fit* (implementation fitness): The tool fit is given since the integrated IA guidelines as well as the social IA annex as well as the GIA tool are instruments explicitly developed for ex-ante policy and programme analysis in bureaucratic context. But by requiring a multi-layered and hierarchical instrument application (first the integrated IA guidelines, then the supplementary SIA guidelines and then—maybe if relevant—the separate GIA guide), the Commission's IA system renders it very complicated to develop a gender focus in IAs. Also the requirement to narrow down the focus of assessment on the most significant impacts, contributes in the absence of mainstreaming gender in those impacts, to the marginalisation of gender. With regard to the time pressure and proportionality principle under which IAs are commonly performed, it is therefore very unlikely that the stand-alone tool GIA—despite its slim, universal and explicit policy IA frame—will ever be consulted and the implementation fitness is to be regarded as low.
5. *Participation* is foreseen in all IAs in form of an open public consultation, as a key pillar of good governance. Nonetheless, that an equal participation of women and/or women interest groups is desired and how it can best be safeguarded, is not explicitly mentioned. In transparency about methods, procedure and outcome, the integrated IA can be called a role model of internal accountability, by publishing IA roadmaps, consultation results and assessments.

These quality criteria make a triple fallacy visible with regard to gender in IA: 1) The *absence of mainstreaming* gender into all impact areas. 2) The *presence of mixed messages* (gender and/or sex structural and/or direct discrimination essentialist groupist and/or intersectional, post-categorical, transformative and transformed concepts of women and men). 3) The *omni-presence of the subordinate status of gender equality* to the other strategies of economic growth and/or environmental sustainability and/or non-discrimination. Gender mainstreaming was neither mentioned as relevant concept of the integrated IA guidelines nor was gender mainstreamed in all the different impact areas.<sup>290</sup> It is decoupled or at least strongly marginalised and subordinated, by being relegated into the social IA annex.<sup>291</sup> Summing up, the integration of gender into the Commission's IA guidelines does neither fulfil the criteria for *good* gender mainstreaming instruments nor does it meet basic social IA principles due to its multiple subordinate statuses.

**290** | Although the strategic objectives would have given reason for it under the fundamental rights frame, stating that: "Ensuring equal rights to all citizens and fighting against discrimination, including gender equality, should be mainstreamed into all European action." (European Commission 2005b, 9).

**291** | European Commission 2009b. Lewalter comes to similar conclusions in her brief analysis of the integrated IA guidelines in general and the SIA sub-guidelines in particular (Lewalter 2012, 251; Mandell 1995, 4-6;).

#### 4.2.3.5 Fundamental Rights Impact Assessment

In times of increased streamlining of assessment under the umbrella of one integrated IA, diversity aspects in the Commission are addressed under the fundamental rights and non-discrimination framing, which in 2011 resulted in the new stand-alone tool and Operational Guidance on taking account of Fundamental Rights in Commission Impact Assessment.<sup>292</sup> By introducing a new tool next to the IA process, which also pays attention to gender equality under Art. 23 of the EU's Charter of Fundamental Rights, and while still having the GIA tool, the fundamental rights IA diversity framing is decoupled from gender in IA and establishes a competing tool, not linked to the mainstreaming gender.

In effect, the strategy of gender mainstreaming in its overarching goals and the attempt to entrench the whole organisational body and procedures of public policy and decision making, cannot be realised with the fundamental rights guidance for three main reasons: First, the guide states that these "rights, freedoms and principles can be of relevance to **all Commission activities and EU policies**."<sup>293</sup> In this sentence, the Commission neglected to also highlight the word "*can*," which renders all analyses facultative. Second, the analysis has a reactive frame to discrimination by being rights- and not outcome-based, triggered by case-specific endangerments of individuals or groups as right holders, and not proactively addressing underlying structures and systemic inequalities. Third, gender mainstreaming is not named once as a guiding principle;<sup>294</sup> gender equality is mentioned in the context of the gender pay gap being one example of inequality between women and men.<sup>295</sup> The existence of the fundamental rights IA tool might contribute to abandoning GIA even more as an orphan tool without realising the mainstreaming duty.

### 4.3 GENDER IMPACT ASSESSMENT AND THE GENDER EQUALITY ARCHITECTURE

In addition to the quality of the tools, gender mainstreaming depends on equality architecture, its equality governance mechanisms, and its potential for engendering the EU's IA system. The EU has implemented a complex web of intergovernmental administrative gender and equality institutions and processes that deal with (gender) equality governance. I outline both the institution's and practices' good governance potential, according to Sawyer,<sup>296</sup> as well as their potential for incongruence and ambivalence, as expressed by Sauer,<sup>297</sup> with regard to fostering the practice of

**292** | European Commission 2011c.

**293** | European Commission 2011c, 5. Emphasis as in original.

**294** | In the instrument Unit C.1 Fundamental Rights and Rights of the Child in DG Justice is named as the resource and support unit for conductors of a Fundamental Rights IA (European Commission 2011c 3).

**295** | European Commission 2011c, 17. Then again, a couple of pages later the example of a closing gender pay gap given, sending a subtext message of equality between women and men as not being so bad (at least as it used to be) (European Commission 2011c, 22).

**296** | Sawyer 2011.

**297** | Sauer 2003.

gender analysis.<sup>298</sup> In this chapter, I first locate the EU's support for the gender perspective in the IA process in its gender equality strategy. Second, I provide a brief overview of the existing gender equality architecture in the EU pertaining to actual or possible interlinkages with ex-ante IA.

#### 4.3.1 Gender Impact Assessment in the Gender Equality Strategy

Strategizing and planning are important for achieving gender equality. The current EU strategy for equality between women and men (2010-2015)<sup>299</sup> is the central document of the EU's equality goals and activities. Its implementation is monitored by annual progress reports.<sup>300</sup> The current EU's equality strategy frames gender equality as one of the five main "fundamental right" issues. The gender equality strategy further links gender and governance tools to IA and policy making and thus demonstrates awareness about deficits in data and knowledge on gender. Already in the preparation process of the current EU's equality strategy, its background document explicated what the EU wide stakeholder consultation demanded: "Better consistency in the implementation of a gender mainstreaming—including gender budgeting and gender impact assessment."<sup>301</sup> Subsequently, the Advisory Committee on Equal Opportunities recommended "strengthening the institutional links at EU level and providing mechanisms to improve [...] gender impact assessment [...]."<sup>302</sup>

Consequently, in the gender action plan, the "Strategy for equality between women and men," in force from 2010 to 2015, the importance of consistency is emphasised and new institutional links were established.<sup>303</sup> In its section 6.3 on the governance and tools of gender equality, it contains a clear commitment for the future that gender equality will be integrated into the IA processes, devising the European Institute for Gender Equality a central role in indicator development:

"Gender mainstreaming will be implemented as an integral part of the Commission's policymaking, including via the impact assessment and evaluation processes. The

**298** | Compare chapter on equality machineries in 2.2.3.2.

**299** | European Commission 2010b.

**300** | European Commission; Directorate-General for Employment, Social Affairs and Equal Opportunities; Unit G.1 2010; European Commission 2012f; European Commission 2013c; European Commission 2015b. Prior an independent reporting mechanism, the progress report has now been made an adjacent of the EU's report on fundamental values, which Marc Tarabella, the rapporteur of the EP's Committee on Women's Rights and Gender Equality regards as a degradation, deflecting attention (and possibly resources) from gender equality: "The political signal is a strong one: women's rights are, apparently, a side issue" (European Parliament et al. 2015, 22). In his report he: "Considers it unfortunate that the annual report now ranks only as a working document annexed to the report on the application of the Charter of Fundamental Rights of the European Union and urges the Commission to restore the full political legitimacy of the annual report by having it officially adopted in its own right." (European Parliament et al. 2015, 13).

**301** | European Commission 2010c.

**302** | European Commission 2010c, 48.

**303** | European Commission 2010b.

Commission will increase the knowledge base on gender equality. A significant impact is expected following the establishment of the European Institute for Gender Equality.”<sup>304</sup>

Inscribing gender mainstreaming as an “integral part” into the Commission’s policy making is an attempt to realise its cross-cutting approach, and puts the IA tools and process on centre stage. However, it is notable that the roadmap does not mention GIA as an instrument. The total silence on this only real gender mainstreaming implementation instrument,<sup>305</sup> sends a loud administrative message of not needing to pay attention to GIA. The roadmap does not pick up on the continued contradiction between gender mainstreaming, meaning gender being if not an “integral part” then at least a part of *all* policy making, versus gender in the integrated IA system, as only assessed in the context of social impacts (and not economic or ecological ones), when it states: “DGs will assess the impact on gender equality as part of the social impacts of their proposals and evaluate the results achieved in their evaluation.”<sup>306</sup>

At the same time, the action plan further indicates regular monitoring of the implementation of integrated gender mainstreaming and gender equality in Commission policy making and programming, without noting on the fact that engendering social impacts cannot be equalled with mainstreaming. The EU’s gender equality strategy also neglects to set precise measures with regard to monitoring gender mainstreaming in policy making that could serve as milestones for the EU’s equality governance architecture.<sup>307</sup> The strategy does not specify concrete measures, responsibilities, objectives and timelines.<sup>308</sup> Any key actions apart from monitoring “the extent to which gender has been taken into account in applying the non-discrimination directives”<sup>309</sup> are missing. The general IA quality management through the Impact Assessment Board or the steering role of the IA system by the Secretariat General was not explicitly addressed with regard to gender mainstreaming, although these would be the central in-roads and institutions to ex-ante IA.

There is yet another policy document, in addition to the EU roadmap, informing and cross-fertilising overarching strategies and agenda setting like Europe 2020 from a gender equality angle: the second European Pact for Gender Equality 2011-2020.<sup>310</sup> In the Pact, the Council reemphasised its recommendations already

**304** | European Commission 2010b, 12.

**305** | As demonstrated in chapter 4.4.1.4.

**306** | European Commission 2010d, 20.

**307** | European Commission 2010d, 21.

**308** | As a result, measurable accountability cannot be exercised. For instance, although GIA is framed as a cross-cutting issue, the latest progress report does not address the European IA system, instead as the only example of activity an exchange on GIA practices on the member states level is mentioned (European Commission 2015b, 31). Also other actors have criticised the EU’s equality strategy for its lack of clarity and concrete measures, for example the European Women’s Lobby and various members of the EP (European Women’s Lobby/EurActiv 2010).

**309** | European Commission 2010b, 12.

**310** | The Council of the European Union 2011. The first Pact stems from 2006 (The Council of the European Union 2006b). It already demanded from the member states and the Union

given in 2006, like the relevance of governance through gender mainstreaming by integrating the gender perspective into all policy areas. It also encourages member states and the Commission again, to develop existing statistics and sex-disaggregated indicators further. Similar to the reporting on the EU gender equality roadmap, the recommendations of the Pact remain non-binding and offer no concrete accountability mechanisms for assuring its goals are achieved.

#### 4.3.2 Gender Equality Architecture and Equality Governance Through Impact Assessment

The EU is often viewed as an important actor or motor for gender equality<sup>311</sup> and a driver for change.<sup>312</sup> The EU has implemented a wide array of groups and commissions to support and monitor the gender equality duty, which is often called an equality architecture rather than a monolithic machinery.<sup>313</sup> This chapter explores the various roles and potential of the EU's equality actors with respect to IA. In the EU's equality strategy, the DG Employment<sup>314</sup> used to be the central support unit until in 2010 the cross-institutional responsibility for gender equality and implementing gender impact assessment was transferred from DG Employment to the relatively new DG Justice.<sup>315</sup> DG Justice's "D. Equality" unit consists of four sub-divisions, two of which are concerned with gender equality (D.1 and D.2).<sup>316</sup> Whereas D.1 "Equal treatment legislation" is in charge of safeguarding adherence to existing, and developing and drafting legislative initiatives with direct gender relevance, it is mostly D.2 "Gender equality," whose task it is to mainstream gender into all Commission's policies and activities, carrying this far reaching responsibility across the Commission with a total number of staff of nine policy officers and one assistant policy officer.

The shifting responsibilities demonstrate the influence of the Treaty of Lisbon and the adjacent The Charter of Fundamental Rights of the European Union, extending the EU's regulative powers into policy areas other than labour, social

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the "mainstreaming the gender perspective into all public activities" (The Council of the European Union 2006b, 27), to "ensure that gender equality effects are taken into account in impact assessments of new EU policies", to "further develop statistics and indicators disaggregated by sex, and to "fully utilise opportunities presented by the establishment of the European Institute for Gender Equality" (The Council of the European Union 2006b, 28).

**311** | Klein 2006.

**312** | Lombardo/Meier 2006.

**313** | For an engagement with the definition and terminology of equality machinery, see 2.2.3.2.

**314** | The tradition of an office for equal opportunities within DG Employment goes back to 1976 (Fuhrmann 2005, 226).

**315** | Under the Commissioner of for Justice, Fundamental Rights and Citizenship and the Commission's Vice-President Viviane Reding (European Commission; Directorate-General for Justice 2016).

**316** | DG Justice D3. is responsible for people with disabilities and D.4 for Roma and general issues of non-discrimination. This section is also based on paraphrased statements of DG Justice as participating in the interview sample. At this single occasion I deviate from the coded interview verbatim citation in order to guarantee for confidentiality.

affairs and employment and expresses the will to inject gender as a cross-cutting issue.<sup>317</sup> In addition, there are a number of other bodies concerned with gender equality tasks from different perspectives. Other EU bodies and agencies that deal directly with issues of non-discrimination are also linked to areas responsible for gender equality. Below is a cursory overview of how certain bodies perceive the potential of the tool GIA or gender in IA, and how they would be able to contribute to a more systematic and profound equality governance within the Commission's ex-ante IA framework.

One example is the *Advisory Committee on Equal Opportunities for Women and Men*, which comprises delegates from EU countries, social partners and civil society organisations at EU level. It was founded as early as 1981, and although it was created not only to “formulate,” but also to “implement” the EU’s “activities aimed at promoting equality between women and men,”<sup>318</sup> it is limited to contracting studies and issuing opinions to the Commission, which are non-binding. The committee attended the 4th Women’s World Conference in Beijing 1995 and was then assigned the role to accompany the introduction of gender mainstreaming in the EU. In 2002, it prominently evaluated the role of gender mainstreaming in the EU’s policy making,<sup>319</sup> and has ever since expressed its opinion also on GIA. In its 2010 Opinion on The Future of Gender Equality Policy after 2010<sup>320</sup>, the committee assigned GIA a crucial role in implementing gender mainstreaming and achieving the European goal of gender equality. For example, in the area of external relations and development aid, the expert group requests to “ensure that all EU external aid programmes incorporate a gender impact assessment.”<sup>321</sup>

In dealing with the after-effects of the financial and economic crisis and differential impact on women and men, according to the Advisory Committee the Commission should also: “Undertake gender impact assessment of the measures currently being taken under the European Economy Recovery Plan, the European Global Adjustment Fund and others.”<sup>322</sup> Those demands were based on a study done by the working group itself that proved that the stimuli packages had preferential biases towards male dominated professions and industry sectors, not factoring the role of women as either secondary affected small business owners or as immediately affected spouses and family members in.<sup>323</sup>

Concerning the design of the European gender equality strategy, the Advisory Committee highlighted the need to “promote a better monitoring system and systematic application of gender impact assessment, including in all new

**317** | European Union 2000.

**318** | Based on the upon the Commission’s Decision 82/43/EEC. The main addressees are the member states, not the EC’s institutions, see gender equality website of DG Justice (European Commission; Directorate-General for Justice 2016).

**319** | Advisory Committee on Equal Opportunities for Women and Men 2002.

**320** | Advisory Committee on Equal Opportunities for Women and Men 2010.

**321** | Advisory Committee on Equal Opportunities for Women and Men 2010, 15.

**322** | Advisory Committee on Equal Opportunities for Women and Men 2010, 18.

**323** | European Commission; Advisory Committee on Equal Opportunities for Women and Men 2009. For the disproportionate effects of the financial and economic crisis and the following stimuli packages in Germany, see also (Kuhl 2010). Sylvia Walby also pointed to its gendered causes (Walby 2009b).

legislation.”<sup>324</sup> The experts demanded that the Commission “set up a permanent gender impact assessment procedure for all European Structural Funds, Cohesion Funds and funds related to the European Neighbourhood Policy, with a special attention to fields other than employment.”<sup>325</sup> In the opinion, GIA is also recommended for other policy sectors such as labour agreements, integration, immigration and asylum policies.

The expert group’s insistence on the application of the specific tool GIA, which has never been officially endorsed by the Commission and hardly disseminated beyond the DG Employment, demonstrates a certain degree of disconnect from the rules and procedures of the Commission’s integrated IA system. One of the reasons for this disconnect might be that the manifold working groups and committees on gender and gender mainstreaming are not coordinated. They fulfil their tasks independently and there is no direct structural link into the Commission’s IA system, especially since the gender duty was moved from DG Employment, which initiated and chairs the most working groups, to DG Justice. With the move even informal, internal oversight and expertise got lost by not transferring the personnel.

Another important equality governance actor is the *Inter-Service Group on Gender Equality* (ISG), which was founded in 1995. It consists of gender equality representatives of all DGs and meets regularly four to five times a year.<sup>326</sup> Formerly headed by the DG Employment, now by DG Justice, its mandate is to develop gender mainstreaming measures and programmes as well as to coordinate them with the annual work programme on gender equality, to monitor and report on progress in gender mainstreaming as well as to facilitate good practice and know-how exchange. It would be *the* suitable institutional equality actor, supporting the IA system, in order to advice on gender-sensitive policy and programme making since: “Its main task is to develop a gender mainstreaming approach in all EC policies and programmes and to contribute to and co-ordinate activities in the framework of the annual work programme.”<sup>327</sup>

Reporting was already discontinued after the first report in 1998. Although the Commission still sees this group as the main driver for gender mainstreaming, and in the so-called Women’s Charter<sup>328</sup> re-emphasised its mandate to strengthen the gender perspective in all policies, its members do not have internal standing to be transformative, lacking the support of the higher echelons.<sup>329</sup> Linking the expertise in this group to the IA and evaluation units in the individual DGs as well as the Impact Assessment Board’s quality management of IAs, also remains a yet unmet challenge. Linking the Inter-Service Group to other groups working on gender

**324** | Advisory Committee on Equal Opportunities for Women and Men 2010, 24.

**325** | Advisory Committee on Equal Opportunities for Women and Men 2010, 24.

**326** | Pollack/Hafner-Burton 2010, 293.

**327** | European Commission; Directorate-General for Employment, Social Affairs and Equal Opportunities; Unit G.1 2006, 18.

**328** | European Commission 2010f.

**329** | When the Mid-term Review of the Strategy for Equality Between Women and Men mentions that the “members of the ISG [Inter-Service Group on Gender Equality, A.S.] need leverage within their Directorates-General,” it means that they obviously are missing it (European Commission; Directorate-General for Justice 2013, 12).



issues and rendering its activity more transparent,<sup>330</sup> are tasks worth pursuing. Although this group has only a weak or soft mandate and has no political clout in the respective DGs, it is the forum in which most gender expertise and institutional knowledge is assembled—especially because it is attended mostly by low- or mid-level officials from the various DGs who are closest to the policy problems and gender expertise at hand to solve them.<sup>331</sup> Instead of being the “poor sods who have to go back and nag at the hierarchy,”<sup>332</sup> a substantial reform of the EU’s gender equality expert networks with regard to their internal standing,<sup>333</sup> reporting, as well as their interaction with the common approach to IA<sup>334</sup> and with other equality actors such as DG Justice and the European Institute for Gender Equality, resulting in a mandate revision of the Inter-Group, could lend them actual clout to live up to their goal of establishing gender equality.

The *High-Level Group on Gender Mainstreaming*<sup>335</sup> is yet another equality actor with not yet established interfaces to the Commission’s IA system.<sup>336</sup> Founded in 2001, it is comprised of leading government officials responsible for gender equality in the member states as well as of Commission’s and Secretariat of the Council’s representatives. It acts only as an informal forum responsible for the long-term strategic planning of EU gender equality initiatives, including the planning and the organisation of gender equality conferences and informal ministerial meetings. In doing so, the group aims to support the EU Presidency by identifying relevant policy areas and issues.

The High-Level Group also acts as the principal expert body for strategic planning regarding the follow-up to the Beijing Platform for Action,<sup>337</sup> which theoretically could include fostering and watching over GIA implementation, and could give the High-level Group a central position in the network of equality actors. It is further active in developing relevant indicators; a field of action closely linked

**330** | Pollack/Hafner-Burton 2010, 294.

**331** | Although research has problematised the poor attendance in the past, since some DGs did not participate at all, while others only showed up for political topics relevant to their respective DG (Fuhrmann 2005, 231).

**332** | Interview quotation of a Commission’s official, dated 28 November 2007, cited after (Pollack/Hafner-Burton 2010, 294).

**333** | I.e. according to the suggestions made by Nora Fuhrmann as close to the top of the DGs as possible, preferably even within the Secretariat General (Fuhrmann 2005, 232-235; 278-279). The importance of placing gender equality mechanisms at the highest possible level in government has also been emphasised by the Council (The Council of the European Union 2013, 7).

**334** | European Commission; European Parliament; the Council of Europe 2005. See also chapter 4.1.1.

**335** | Heinrich Böll Foundation; Gunda Werner Institute n.d.

**336** | Judging by the last published activity report for the year 2010, according to the Register of Commission Expert Groups and Similar Entities (European Commission; DG Justice; Directorate D: Equality; Unit D1: Gender Equality 2011. It is notable, that despite the mainstreaming task, the High-level group is only listed for the two policy areas Employment and Social Affairs and Human rights and assigned a limited scope in the register.

**337** | As affirmed in the Beijing +15 evaluation of the Council of the European Union (The Council of the European Union 2009, 10).

to IA, and helps the Commission in the preparation of its annual gender equality report. Through its central role and the reporting function, the High-level Group would have the clout to establish closer links and cross-reporting duties to the Commission's IA system. Despite the fact that mainly member states government officials with their very own and often very different equality agenda are sitting in this forum, there is some leverage for steering, since it is chaired by DG Justice. DG Justice also spearheads the Inter-service Group on Gender Equality and could align the agenda of the two forums. That way, internal Directorate-General activities would be framed by top-down support for GIA implementation in policy and programme making from the High-level Group for Gender Mainstreaming.

Real reporting duties with regard to gender in IA concern only the Council and EP, for the moment being. Especially the EP's *Committee on Women's Rights and Gender Equality* (FEMM) has the political authority to render the DG's drafts of proposals for directives, regulations, communications, opinions and all other Commission publications accountable,<sup>338</sup> and alongside with them the accompanying IA.<sup>339</sup> If the draft and/or the IA is deemed insufficient with regard to gender equality, the Committee has the political power to ask for amendments to the legislative draft—and additionally, under the common approach, not only the freedom, but the responsibility to assess “the impacts of their own substantive amendments.”<sup>340</sup> In the past, the FEMM Committee has already used its amending and challenge function, to demand the inclusion of GIA for particular initiatives, such as in its suggestions for the 2008 budget and the Committee on Budgets, where Committee: “Notes that the EU budget is not gender-neutral and has different effects on women and men; therefore reiterates the call to include gender impact assessment in **all** impact assessments.”<sup>341</sup>

With the extended policy capacity within the EP, the FEMM Committee has now even the power to do so in a more systematic way.<sup>342</sup> In its 2011 report on gender mainstreaming, the FEMM Committee reminded the Commission of its gender mainstreaming commitment in the IA processes, referring to the GIA tool. However, the report did not reference to the status of gender under the current integrated IA system, in particular as part of the SIA guidelines, which exhibits a certain degree of unfamiliarity with current IA streamlining strategies:

“The Commission aims to implement gender mainstreaming as an integral part of its policymaking, including through gender impact assessments and evaluation processes, and has developed a ‘Guide to gender impact assessment’ for this purpose.”<sup>343</sup>

As an example for gender-sensitive policy making, the report draws attention to a specific policy directed at women, the trafficking directive,<sup>344</sup> which does

**338** | European Parliament et al. 2011, 10.

**339** | European Commission; European Parliament; the Council of Europe 2005, 1.

**340** | European Commission; European Parliament; the Council of Europe 2005, 1.

**341** | European Parliament et al. 2007, 3. Emphasis by author.

**342** | European Parliament/Ballon 2014.

**343** | European Parliament et al. 2011, 6.

**344** | Directive 2011/36/EU of the EP and of the Council on preventing and combating trafficking in human beings and protecting its victims.

neither proof mainstreaming activity nor the use of GIA. Within the EP, there is yet another expert network, the Gender Mainstreaming Network of Members, on which each committee of the EP has a member responsible for implementing gender mainstreaming. In theory, through this network gendered effects of policy making and budgetary initiatives of the EU could be scrutinised in the overall EP committee structure. But due to the soft coordination, as in the case of the Inter-Group, pressing for gender mainstreaming especially in seemingly gender-neutral policies and programmes seems still an on-going challenge also for the EP, which has assigned the gender mainstreaming duty predominantly to its FEMM committee.<sup>345</sup> The most recent initiative to meet this challenge is the publication of several studies, including a collection of key studies, providing sample evidence base for “better law-making.”<sup>346</sup>

The latest and most central piece in the EU’s equality governance architecture, is the *European Institute for Gender Equality* in Vilnius, officially founded in 2006, but operational only after 2009. Again, the European Institute for Gender Equality inhabits mainly a supportive and advisory role, to “enable” the Community’s institutions and the individual member states alike to implement a “gender equality policy.”<sup>347</sup> Its mandate is stipulated in its foundational document regulation 1922/2006, where the European Institute for Gender Equality’s derivative tasks also include the occupation with gender mainstreaming in tools. As stated in Art. 3.1(c), the European Institute for Gender Equality is supposed to:

“Develop, analyse, evaluate and disseminate methodological tools in order to support the integration of gender equality into all Community policies and the resulting national policies and to support gender mainstreaming in all Community institutions and bodies.”<sup>348</sup>

According to its first and still acting director Virginija Langbakk, the European Institute for Gender Equality set out to fulfil that mandate and “provide support to the development of mainstreaming tools and methods (2011-2015),”<sup>349</sup> and it consequently concentrates on “collection, analysis; gender mainstreaming tools and methods development; identifying good practices as a tool for mainstreaming gender into EU Institution and Member State policies and programmes.”<sup>350</sup> Under its first work programme, there is little evidence the European Institute for Gender Equality would take on a central role with regard to fostering GIA implementation within the Commission’s institutions.<sup>351</sup> The following excerpt from European Institute for Gender Equality’s current work programme demonstrates the limitations, under which the European Institute for Gender Equality operates, in supporting the Beijing Platform for Action with regard to its gender mainstreaming implementation tools:

**345** | Thereby negating the mainstreaming aspect (Fuhrmann 2005, 235-240).

**346** | European Parliament 2014.

**347** | European Parliament; Council 2006, 1.

**348** | European Parliament; Council 2006, 3.

**349** | European Institute for Gender Equality 2011, 11.

**350** | European Institute for Gender Equality 2011, 11.

**351** | European Institute for Gender Equality 2012f.

“Useful methods, tools and good practices, such as gender impact assessment and gender training resources, will be identified and adapted to provide policy actors in the EU and the Member States with information and tools to develop capacity.”<sup>352</sup>

The European Institute for Gender Equality’s envisioned output remains still at the tool development stage, helping to provide “effective gender mainstreaming tools to support policy-making and implementation,”<sup>353</sup> for which it states no target audience, timelines, responsibilities or policy fields (which tools, for which actors, in which context?). In its activities, the European Institute for Gender Equality focuses on the member states’ methods, tools and practices, with only side-lined attention for the policy and programme making of the institutions of the EU.<sup>354</sup> Such vague mandate and strategizing without clear responsibilities, addressees, concrete goals or tangible steps, hinders the European Institute for Gender Equality in its ability to fulfil its role as a *guardian* of the gender mainstreaming strategy and with special regards to GIA implementation.

However in 2014, the European Institute for Gender Equality conducted two important studies: one study on institutional mechanisms for gender mainstreaming<sup>355</sup>, and on the use of methods and tools for gender mainstreaming<sup>356</sup>. Both studies were commissioned by European Institute for Gender Equality in 2012.<sup>357</sup> One of the disclosed findings of the second, tool-specific study was that gender analysis was only conducted in a few member state. The European Institute for Gender Equality found it “a striking conclusion, as the process of gender mainstreaming should start with gender analysis.”<sup>358</sup> Both studies saw ample room for improvement in the EU member states, but did not address the European Union level, leaving the Commission’s IA system aside. In addition to focussing on the practices of the member states, the European Institute for Gender Equality i.e. could target the Commission’s IA system, as the EU ought to be serving as a role model to member states.<sup>359</sup> The room for improvement became clear in the Council’s first

**352** | European Institute for Gender Equality 2012f, 12.

**353** | European Institute for Gender Equality 2012f, 12.

**354** | Borza/European Institute for Gender Equality 2013; European Institute for Gender Equality 2014c.

**355** | European Institute for Gender Equality 2014a; European Institute for Gender Equality 2014b. As also discussed in subsection 4.1.2.

**356** | With the working title “Review of the Institutional Capacity and Effective Methods, Tools and Good Practices for Mainstreaming Gender Equality in a few Selected Policy Areas within the European Commission, the EU Member States and Croatia.” Its results were only published in parts and not pertaining to Commission practices. Of what has been revealed, it draws a bleak picture of the low level of implementation and practice (European Institute for Gender Equality 2014a, 23-26; European Institute for Gender Equality 2014b, 59-65; European Institute for Gender Equality 2014c, 9).

**357** | While the final report of the tool specific study was supposed to be made available in 2014, it was not yet published when the research was concluded.

**358** | European Institute for Gender Equality 2014c, 9.

**359** | Both, the current European Pact for Gender Equality 2011-2020 and the Council Conclusions on the “Effectiveness of Institutional Mechanisms for the Advancement of Women and Gender Equality” call upon the European Commission to better utilise the

review of the EU's institutional mechanisms for gender mainstreaming<sup>360</sup> in 2006, again primarily pertaining to the member states. The Council concluded:

"Despite some progress, structures and methods for gender mainstreaming need either still to be put in place or reinforced, [...] that formal commitment and formal structures for gender mainstreaming are not enough and that practical action in all relevant areas is needed, [the Council, A.S.] URGES in particular all Member States and the Commission to improve and strengthen the development and regular use of mainstreaming methods, particularly gender budgeting and gender impact assessment when drafting legislation, policies, programmes and projects."<sup>361</sup>

On the member state level, those indicators were again reviewed in the Beijing+15 process by the Swedish Presidency in 2009<sup>362</sup> and as a set of indicators in 2013 by the Lithuanian presidency<sup>363</sup>, with special regards to the effective application of a gender impact assessment of policies, development of statistics broken down by sex, the use of indicators to measure progress and training programmes to develop gender expertise. This set of four indicators substantiated the objectives, and its third indicator for gender mainstreaming was again further substantiated by the following three sub-indicators. First, the government commitment is measured in the binding or non-binding status of gender mainstreaming. Second, the structures for gender mainstreaming are assessed. Third, the use of the methods and tools of gender mainstreaming express the commitment in a four-fold way: 1) Training and capacity building for gender mainstreaming; 2) gender impact assessment; 3) gender budgeting; and 4) monitoring and evaluation of method use. For measuring the application of GIA, a point system was introduced: for gender impact assessment in law drafting, the Council rewards member states with 2 points, if gender impact assessment in law drafting is widely used in most ministries, 1 point if the method is used in some ministries, 0.5 points if it is at its initial stage, 0 points if it is practically an unknown concept at the governmental level.<sup>364</sup>

No positive change over time could be attested for.<sup>365</sup> For this indicator three, gender mainstreaming, the European Institute for Gender Equality saw some formal commitment and structures in the member states, and attested that largely the methodologies and trainings were available, but found again, how methods and tools are still not institutionalised and especially GIA and gender budgeting are "in their infancy."<sup>366</sup> The status quo of GIA on the level of the Commission

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capacities of the EIGE (The Council of the European Union 2011; The Council of the European Union 2013).

**360** | Based on the BPfA area H, compare chapter 2.5.1.

**361** | The Council of the European Union 2006a, 8. Capitalisation as in original, emphasis by author.

**362** | The Council of the European Union 2009.

**363** | The Council of the European Union 2013.

**364** | Langbakk 2013, 16.

**365** | European Institute for Gender Equality 2014a; European Institute for Gender Equality 2014b.

**366** | Langbakk 2013.

was not mentioned in any of the reviews, which appears problematic in terms of comparability and credibility, tainting the role model function of the EU.<sup>367</sup>

Summing up, the EU's gender equality governance architecture suffers from lack of coordination and clear mandates for (inter-)action, pertaining to ex-ante IA.<sup>368</sup> The institutionalised gender architecture of the EU is characterised by its multiplicity, and soft and overlapping modes of governance mainly based on expert advice and knowledge brokerage<sup>369</sup>. Its interlinkages with the EU IA system are non-systematic, disconnected from IA rationales, and in the case of the European Institute for Gender Equality not-existent. GIA, as a gender mainstreaming instrument, is hampered by the soft mandates and non-coordinated efforts of the European gender equality architecture. With respect to GIA, the EU's equality architecture lacks clear roles and responsibilities as well as an authoritative interface to the Commission's integrated IA system in order to enhance the gender equality governance of the EU's policy and programme making. Promoting GIA as a tool from within the Commission is crucial. Conversely, more engagement with the realities of the integrated IA and the actual practicability of conducting GIA would be required by equality actors yet to be specified and beyond the small DG Justice, in order to make the GIA recommendations in the various documents and groups meaningful and effective.

#### 4.4 GENDER IN THE IMPACT ASSESSMENT OF THE EUROPEAN COMMISSION: EMPIRICAL FINDINGS

"Evidence from other international experiences as well as from the past EU experience reveal that it is preferable not to have RIA, than to have a bad one."<sup>370</sup> (Andrea Renda)

Just as Norman Glass, the Director of the National Centre for Social Research in the UK, warned about bias<sup>371</sup>, in the above citation, Andrea Renda, one of the leading experts in European IA, refers to the danger of incomplete assessments. One of the factors making an assessment incomplete is—according to the logics of gender mainstreaming—the absence of a gender perspective. The following sections present the status-quo of gender analysis in the current EU IA system as presented in my empirical field research through interviews with the European Commission's policy analysts and gender experts. The chapter first outlines the parameters of the state of the art of GIA and gender in IA implementation based on my analytical framework.<sup>372</sup> I have previously explained the concept of the European experiment

**367** | In 2005, Fuhrmann complained about the inactivity of the Commission, which had not yet implemented its own gender mainstreaming directives internally in the majority of its DGs and services (Fuhrmann 2005, 234).

**368** | For a more detailed qualitative network analysis of the Gender Equality Policy Networks in the EU—including non-governmental organisations, see (Ahrens 2011).

**369** | For the concept of knowledge brokerage, see sub-chapter 2.2.3.1.

**370** | Renda 2006, 135. Andrea Renda is a Senior Research Fellow at the Centre for European Policy Studies (CEPS).

**371** | Compare introductory citation of chapter 1.

**372** | Moser/Moser 2005. See sub-chapter 2.5.

in subordination,<sup>373</sup> my research was designed to track the subordinate hierarchy in which gendered aspects are to be found within the guidelines of the Commission's integrated IA in practice. Interview participants were also asked about the tool subjugation of the stand-alone tool GIA and its practical effects.

#### **4.4.1 Tools: “Demonstrate That [...] We’re Doing What We Preach”**

In the course of this study it became clear that gender analysis practices of the European Commission deviate from what their institutional and regulative commitments. On the supra-national level of the Commission's IA system, gender plays a subordinate role in tools and practices, and thus the system is far removed from the original intent of the mainstreaming approach. The following section engages with the current state of affairs on the ground, where Commission policy analysts have demanded “to demonstrate that [...] we’re doing what we preach... to other member states [...]”.<sup>374</sup> Based on my adapted analytical framework on the institutionalisation of gender analysis,<sup>375</sup> I present the critical issues raised in my interviews and identify the main areas for improvement and action.

##### **4.4.1.1 Status-quo: “It’s Not an Institutional Success”**

As noted previously, existing international IA tools inspired the development of the GIA tool by the Directorate-General Employment, Social Affairs and Inclusion (DG EMPL) in 1997.<sup>376</sup> GIA refers only to the soft policy tool based on the non-binding 1996 Communication “Incorporating equal opportunities for women and men into all Community policies and activities”<sup>377</sup> and the equally non-binding gender equality plans.

Overall, the GIA tool has not inspired institutional enthusiasm:<sup>378</sup> “I’m not sure if there has been enthusiasm at all. [...] I think there has been enthusiasm within the academic circles, maybe with some civil servants, but I think it’s not an institutional success.”<sup>379</sup> Because of this lack of institutional support, the GIA tool was never officially adopted by the Secretariat General and was disseminated only by the DG Employment,<sup>380</sup> whose reach was limited mainly to social and employment issues. Not even the interviewed gender experts were aware that specific gender analysis tools like GIA existed: “You mention in your questionnaire [the] GIA tool... and I

**373** | In chapter 4.2.

**374** | EU19, Interview.

**375** | As developed in subsection 2.5.

**376** | Compare chapter 4.2.

**377** | European Commission 1996.

**378** | Conny Roggeband, Interview.

**379** | Conny Roggeband, Interview.

**380** | GIA shares this lack of attention with other, even legally mandated tools, such as environmental IA (EIA). The EIA community often expresses dissatisfaction with the general marginalisation of EIA as opposed to other tools such as cost-benefit analyses, economic or competitiveness analyses, see the results of the European network of excellence research project mapping LIAISE (Linking Impact Assessment to Sustainability Expertise) of EIA tools, which found that the section Environment of the 7th EU Framework Programme funded policy IA related research projects with only 4 per cent (Podhora/Helming 2010; 11).

went immediately to print it out. I read the article to find out what it was about, I've never heard to speak about that before!"<sup>381</sup> In her interview, even Anne Havnør, the public servant who was once in charge of designing the Commission's own GIA tool, had difficulty remembering GIA's existence: "Gender impact assessment, I have even forgotten it was called like that. [...] I remember this small tool, I was actually quite pleased with it myself at the time."<sup>382</sup>

My interviewees, with the exception of four Commission analysts, did not know about the 1997 stand-alone GIA tool either.<sup>383</sup> But it is interesting to note that the four interviewees who knew about the tool showed greater gender competency and had more detailed knowledge of gender concepts and theory than the others. They also exhibited deeper knowledge about tool development and genealogy:

"My understanding of the history of IAs was that indeed the GIA module dating back to the 1990s was one of the first examples within the commission, where partial IAs were promoted. The second one was probably a kind of business IA that started around 1998/1999/2000 as well and then later people recognised that it would be useful to have a more comprehensive and more structured set of general IA guidelines, which were then developed I think in 2003 and published 2005 for the first time."<sup>384</sup>

All other analysts working under the integrated IA framework were either unaware of the stand-alone 1997/98 GIA tool or were only aware of the 2008 gender mainstreaming tool, whose implementation is limited to social and employment policies and programming.<sup>385</sup> Over the years a lack of official acknowledgement has broken the link between GIA and the Commission's IA and has hampered implementation on the ground:

"I also have to say that my feeling at that time was that those guidelines indeed existed, but they were not used that much. [...] They might have been used for other purposes, such as DG Development or other gender policies and action plans and other stuff, but in terms of IA I'm not sure that those guidelines on gender were really used."<sup>386</sup>

This is problematic, since the gender mainstreaming mandate is not limited to social and employment policies or development cooperation.

Interviewees also appeared not know that the integrated IA guidelines acknowledged the validity of the stand-alone tools that could be consulted in addition to the integrated IA. Consequently, they were unaware that the stand-alone GIA tool could still be used and had never been officially declared non-operational. Even the Impact Assessment Board failed to list GIA among the stand-alone "guidance documents," as emphasised in a 2011 statement: "Operational guidance documents (on social impacts, fundamental rights and competitiveness) are complementary to

**381** | EU10, Interview.

**382** | Anne Havnør, Interview.

**383** | EU12, Interview.

**384** | EU20, Interview.

**385** | European Commission; Directorate-General for Employment, Social Affairs and Equal Opportunities; Unit G.1 2008.

**386** | EU26, Interview.



the existing IA guidelines. Their use is left to the discretion of services preparing the IAs.<sup>387</sup> The above citation underlines how little is known in the Commission about the GIA tool, and it stresses its hidden, invisible, *subordinate* status.

With regard to the subordinate position of gender aspects in the Social Impact Assessment (SIA) section of the integrated IA guidelines, it is worth noting that the group steering the SIA sub-guidelines development did not include a specific gender expert, but had to rely on gender expertise within the Directorates-General. Three representatives of DG Employment, which was spearheading the effort, drafted the Social Impact Assessment segment in collaboration with colleagues from other Directorates-General responsible for social affairs. However, the group took the guiding questions in the GIA tool as a point of departure and consulted with the gender experts of DG Employment on the draft.<sup>388</sup>

“I think to remember, that all, even before the integrated IA guidelines were developed we had the gender impact assessment [GIA], which existed already at that time [...]. Which means that we already had a basis, it was clear that gender issues were important. And we had gender experts within the DG, so we can count on specific expertise that’s why it was included. And there was clearly also a kind of agreement with all the other DGs that gender was one of the issues we needed to look at.”<sup>389</sup>

The strategy of gender mainstreaming did play a role in the sub-section development, but was not framed as a legally mandated and cross-cutting issue:

“I think to remember that there are questions specific on gender and they are mainstreaming questions, so the mainstreaming was indeed part of the debate and discussions. But I don’t know how this concretely translated into the specific questions which are now in the guidance.”<sup>390</sup>

The gender questions in the Commission’s GIA tool were incorporated into the integrated guide, but without proper mainstreaming considerations. This fact reduces the current state of the art of gender analysis in the Commission’s IA to a subordinate status of gender in the Social Impact Assessment section. As a consequence, the Commission’s support for GIA as a stand-alone tool waned, since gender was now supposed to be integrated. According to the interviewees, GIA was never put into practice, and no participant was able to produce a case study.

#### **4.4.1.2 Intersectionality: “It’s Not Something That We Do Systematically, but It Happens Of Course”**

Although the EU’s policy advisors do not use the term “intersectionality” in IAs, diversity and marginalisation are well established concepts, and some interviewees reported research activity at the project level pertaining to marginalised groups:

**387** | European Commission 2011b, 30.

**388** | EU26, Interview.

**389** | EU26, Interview.

**390** | EU26, Interview.

“For instance fighting against child labour where children come from minorities, or they are disabled children exploited sexually or..., you know, all this kind of terrible situations, where there are the poorest among the poorest who are, you know, suffering. [...] there are fiches we published, there are sixteen of them, and some of them are about projects of this kind, so... it’s interesting, but, there as well as project, not actions, I mean not structured actions that the commission does, it’s just the result of our goal, and then it depends on the different countries, the different situation and so on. So it’s not something that we do systematically, but it happens of course.”<sup>391</sup>

All the interviewees from the Commission were aware of the diversity of groups, but the range of intersectional consequences of gendered realities in society posed a challenge in ex-ante and strategic assessment of larger initiatives. Some analysts explicitly acknowledged the importance of multi-variable analysis to get the *full picture* and avoid making false or over-simplified correlations:

“From a statistical point of view—[...] I’m a trained statistician—I would always include other factors, otherwise you would identify differences between gender and you would have a very high variance of the error term and this is due to other factors which are not covered explicitly in the model. That’s for sure.”<sup>392</sup>

Analysts were alert to the fact that there is discrimination on multiple grounds and that gender itself is a multi-dimensional category. According to the interviewees, all horizontal issues ideally will get attention, and gender-specific analysis will entail a multi-dimensional and multi-variable analysis, just as gender will be mainstreamed into analyses of other forms of discrimination: “If you have one on gender you will refer to multiple discrimination, and how that is affected. But if you have one on Roma or migrants you will also address gender in there.”<sup>393</sup>

However in practical terms, an intersectional, multi-variable analysis—splitting sex-disaggregated data even further (or sex-disaggregating diversity data)—does not yet seem to be the state of the art in current IA research, which prevents the actual employment of intersectionality in IA analyses. Some interviewees even found the issue of diversity in GIA a “very general, or an abstract question.”<sup>394</sup> To date, discrimination on multiple grounds is still predominantly conceptualised as target-group specific and is not mainstreamed in other assessments:

“Of course there is a... lot of cross-cutting issues and there is an interrelation between the different grounds of discrimination and gender. That’s obvious. I cannot understand your question, because there is no... in fact it is too specific, because there is no IA of such initiatives. If there is a legislation again, depends on what you are speaking about, if there is a development of legislation regarding discrimination, yes then of course the gender aspect will be integrated into the analysis [...].”<sup>395</sup>

**391** | EU10, Interview.

**392** | EU12, Interview.

**393** | EU19, Interview.

**394** | EU20, Interview.

**395** | EU23, Interview.

Some of the main reasons given for not undertaking multi-variable analysis were the complexity of real life cases, limited tools, and lack of awareness of the practical consequences of various gendered positions in the different European societies:

“I have not really thought this through, I have thought about our programmes and how to evaluate them better. But in general I would probably say yes, it has some influence from other factors, but a practical relevance of how to evaluate policies is then not so clear. [...] Ok, yes. The one thing that certainly at the EU level comes to mind when hearing the term ‘diversity’ and its relation to gender analysis is that the degree of gender problem dimensions vary hugely from country to country in Europe and may be completely different, also concerning the experience of women on the labour market. Or the word gender analysis itself may raise completely different associations for people from Malta than from Finland for instance. So, yes, in that sense certainly it makes a difference where people come from and what their other identities are.”<sup>396</sup>

Here the interviewee addressed an important point: gender is culturally embedded and must be understood in the national context.<sup>397</sup> And within the category of *gender*, there are differential factors influencing the realities of men and women. It was evident from the interviews that European national diversity has served as a way to develop an understanding of gender as a multi-dimensional category.

In general, Commission analysts see the need for an extension of analysis beyond the category of gender in order to obtain target-group-specific results. They identified the need to look into interrelated issues in order to sharpen the gender lens:

“I think that, well, we have some work to do—this is my personal opinion—to create more links, conceptual links, and also institutional links within our institution between, among the different cross-cutting issues that we have. Good, I give an example: we have a cross-cutting issue—for instance child rights, or for minorities and gender—I would say these issues are very much interrelated. You can talk about discrimination against girls and gender issues that affect child rights, or the role of indigenous women etc.”<sup>398</sup>

In the interviews it became clear that the acceptance of a GIA as a tool for understanding complex realities could benefit from strengthening the diversity framing inherent in the assessment.<sup>399</sup> There are, however, some obstacles to doing

**396** | EU20, Interview.

**397** | As researched with the method of critical frame analysis by the QUING project (Dombos 2012). The interdisciplinary and international project team found different policy frames of gender equality “as intentional and unintentional interpretations of the political reality and the policy issues under consideration,” fostering comparative discursive-sociological learning (Lombardo/Forest 2012, 231).

**398** | EU11, Interview.

**399** | As e.g. described by Philine Erfurt in order to resolve resistance against the strategy gender mainstreaming (Erfurt 2007). The GIA tool already draws attention to the heterogeneity of women and men: “Gender differences may be influenced by other structural differences, such as race/ethnicity and class. These dimensions (and others, such as age, disability, marital status, sexual orientation) may also be relevant to your assessment.”

so. In times of increased streamlining of assessment under a single, integrated IA, diversity framing in the Commission is now addressed as part of fundamental rights and non-discrimination framing. In 2011, this resulted in a new stand-alone tool and operational guidance for taking account of fundamental rights in Commission impact assessment.<sup>400</sup> There are two problems with this approach: First, the new tool is introduced alongside the Commission's process, which also addresses gender issues under Article 23 of the EU's Charter of Fundamental Rights, and second, the existing GIA tool is still in place. Because of these two factors, the fundamental rights and diversity framing is decoupled from gender in IA, and a competing tool not linked to the gender lens is established. Thus GIA is even more of an orphan tool. This has happened despite the fact that the enlargement of the gender lens was neither recent nor merely strategic, as is sometimes thought. On the contrary, the gender lens has been built into instruments of gender research from the start, emphasising that women and men need to be addressed in their diversity.<sup>401</sup>

In effect, the strategy of gender mainstreaming cannot be realised through the Fundamental Rights guidance for three reasons: 1) Ambiguous wording—The Guide states that “rights, freedoms and principles can be of relevance to **all Commission activities and EU policies**,”<sup>402</sup> but the Commission neglected to also highlight the word “*can*”, which basically renders all analyses discretionary. 2) The analysis is reactive with regard to discrimination—it is rights—rather than outcome-based; it is triggered by case-specific endangerment of individuals or groups as rights holders; and it does not proactively address underlying structures and systemic inequalities. 3) Gender mainstreaming is not named as a guiding principle,<sup>403</sup> although gender equality is mentioned in the context of the gender pay gap.<sup>404</sup>

Because the tool was so recent when the interviews were conducted, none of the interviewees was aware of it yet. To them, diversity and non-discrimination seemed even harder to implement than gender, due to issues of data collection and data security. As in Canada, policy officers had reservations about collecting data considered private, such as belief, sexual orientation or ethnic background. In some EU member states, there can even be reluctance to collect data on national traditions, legal privacy protection and historic trajectories:

“I give the example of France: France is probably the strongest example where it is a matter of pride and identity that nobody is ever asked—even anonymously—about [...] private matters. If I go to [...] the United Kingdom, you fill in your name and address and telephone number,

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(European Commission, Directorate-General Employment, Equal Opportunities Unit DG 5 1997/1998, 3).

**400** | European Commission 2011c.

**401** | E.g. by the former German GenderComptenecyCentre (Bundesregierung 2003).

**402** | European Commission 2011c, 5. Emphasis as in original.

**403** | In the instrument Unit C.1 Fundamental Rights and Rights of the Child in DG Justice is named as the resource and support unit for conductors of a Fundamental Rights IA (European Commission 2011c 3).

**404** | European Commission 2011c, 17. Then again, a couple of pages later the example of a closing gender pay gap given, sending a subtext message of equality between women and men as not being so bad (at least as it used to be) (European Commission 2011c, 22).

and on the back [...] they will ask you whether you see yourself as white, black, Asian, half-black; whether you see yourself as Christian, Muslim, whatever; what your sexual orientation is. All of those are asked. They say 'It's voluntary, but we would like you to do it,' and most people fill it in, automatically, [...] just on the other side of the channel into France, it would be illegal—I think—and cause a scandal."<sup>405</sup>

Other concerns of data collection for GIA include unequal access, the potential for uneven quality, and distortion in the evidence sample. In addition, diversity framing is a double-edged sword. On the one hand it makes it more acceptable to consider gender inequality in analysis; on the other hand it makes gender analysis seem outdated or non-sufficient.

In conclusion, the Commission has recognised the need for more precise analysis going beyond the category of gender. However in its development, the existing GIA tool was not extended to incorporate other dimensions nor was it honed to address other fundamental rights. Instead a competing tool decoupled from GIA was created.

#### **4.4.1.3 Challenges: “We Are Not Meant to Look Out for Gender, Gender Is With DG Justice”**

A main challenge to the successful implementation of GIA lies in the role of the EU's equality machinery and equality units. The main support unit for gender was transferred from DG Employment, Social Affairs and Inclusion to DG Justice, Fundamental Rights and Citizenship (JUST). DG Justice's “D. Equality” unit consists of four sub-divisions, two of which are concerned with gender equality (D.1 and D.2).<sup>406</sup> D.1 “Equal treatment legislation” is in charge of safeguarding adherence to existing legislative initiatives and for developing and drafting new legislative initiatives with direct gender relevance. D.2 “Gender equality” is tasked to mainstream gender into all the Commission's policies and activities. D.2 carries this far-reaching responsibility across the Commission with a total of nine policy officers and one assistant policy officer. Ex-ante and ex-post impact assessments represent only a small part of their work.

The ex-ante analysis of gendered effects of the Commission's legislative and programming activities is done by intra-service IA steering groups, which cooperate with other Directorates-General concerned. These steering groups also spearhead and develop IAs from within whichever Directorate-General is central to the issue at stake. They may also consult the DG Justice's D.2 gender unit if they deem the IA appraisal to be in any way gender relevant. The gender experts of DG Justice are invited to comment on and feed into the analysis. It is also possible for them to approach Directorates-General and analysts on a specific IA, if it has been identified as having gender relevance in the annual work programme and if it was previously

**405** | EU18, Interview.

**406** | DG Justice D3. is responsible for people with disabilities and D.4 for Roma and general issues of non-discrimination. This section is also based on paraphrased statements of DG Justice as participating in the interview sample. At this single occasion, I deviated from the coded interview verbatim citation in order to guarantee for confidentiality.

announced as part of the roadmap, but only with approval of the Impact Assessment Board.<sup>407</sup>

Equality support units or gender experts do exist in other Directorates General, but their responsibilities are usually limited to specific programming activities, and they are not typically linked into a particular IA and evaluation unit. With the exception of DG Employment, with its long tradition of in-house gender capacity, the Directors General mainly turn to DG Justice when the need arises for gender expertise in IA.

The assigned responsibility of DG Justice's gender experts for gender questions has led other Directorates General to assume that they do not need to take gender into account for themselves: this, despite the fact that IA is a duty in each individual Directorate-General and that gender mainstreaming is everyone's duty. "We are not meant to look out for gender, gender is with DG Justice."<sup>408</sup> With such misperceptions, DG Justice's D.2 "Gender equality" faces a challenging task to raise awareness on gender mainstreaming in other Directorates General.

In cases where DG Justice's gender experts are required to engage in an analysis, they battle with a lack of resources and the short timeframe for conducting the IA. They usually do not conduct the analysis themselves, but take an advisory role. They have little control over how their expert advice is applied in further stages of the analysis. The gender experts of DG Justice also try to check ex-ante IAs ex-post to see if gender was in fact integrated. When they participate only later in the process, they often find it hard to alter the IA in meaningful ways after the Directorate-General and the steering group have adopted the IA design. On two occasions, they even commented that the data in the Impact Assessment Board's opinion was not sex-disaggregated, but they see this exercise as rather pointless, since it is not the time to revise the IA when the proposal has already been drafted. In most instances, gender experts are unable to influence the analysis after the fact.

#### **4.4.1.4 Facilitation: "That We Assume That All Policies are Gender Neutral Unless Someone Points out That They Are Not"**

Ex-ante and ex-post gender analysis can be perceived as "two sides of the same coin,"<sup>409</sup> and both have benefits. On the programme level, it is often ex-post that an assumption of neutrality makes way for the realization that measures can have unintended gendered effects. At the policy level, ex-post analysis can also be used to evaluate compliance with gender equality requirements in general and the GIA duty in particular. Not since Jill Rubery and Colette Fagan's analysis of GIA in employment policies,<sup>410</sup> has the effectiveness and quality of GIA in the

**407** | Needing the prior approval of the Impact Assessment Board is an internal procedure, not codified anywhere to my knowledge. It was mentioned in the interviews. It seems to have been established due to the fact that when services are putting the proposal together, they also have to design the IA. Being approached proactively by for instance DG Justice's gender experts would equal revealing a methodological weakness and interference, which no DG would presumably only accept top-down from the quality management board and not from another equal DG.

**408** | EU16, Interview.

**409** | Centre for European Law and Governance; Jean Monnet Centre of Excellence 2014, 6.

**410** | Rubery/Fagan 2000.

Commission's IA system been evaluated. But the Commission does evaluate the overarching strategy of gender mainstreaming in programmes where gender equality has been enshrined as a crosscutting principle. In such evaluations, however, the IA system is not included. There are, however, some loopholes in the policy cycle. Ex-post evaluations of programmes do not usually investigate whether GIA has been applied in an ex-ante fashion:

"We have a gender monitoring study, we have topical-wide gender monitoring studies and a synthesis report, that covers also the management of the [name of the] programme which is our main instrument for policy making outside, but directly speaking, in the most narrow sense, we can't talk about impact assessment, it has not been published, there is no such thing yet."<sup>411</sup>

Evaluations and monitoring studies conducted as part of the policy cycle start with the actual programme design, its objectives and monitoring requirements. If gender is not included from the start, ex-post controlling instruments will not be able to pick up on the gender relevance:

"If the policy or the programme they are interested in has gender mainstreaming at the origin, yes, of course: all the information will be gender mainstreamed as well. If it hasn't from the beginning, no, the information won't be gender mainstreamed."<sup>412</sup>

The Directorates-General are aware of the far-reaching mandate for and consequences of applying or not applying the principle of gender mainstreaming to policy or programme making. However, evaluations can be and are an entry gate for gender equality, even if gender was not among the primary concerns of programming:

"That we assume that all policies are gender neutral unless someone points out that they are not. Concerning the evaluation unit, there I see a bit more openness to include gender issues at least in an ex-post fashion in tracking: whether our financial programmes really benefit both men and women in adequate shares."<sup>413</sup>

When asked why gender was not more widely mainstreamed in evaluations, the gender experts cited a lack of oversight over general practices in their respective Directorate General:

"If there is a thematic evaluation, I would be the one to manage that contract. If there is a thematic question on evaluations within the DG, I'm the one to answer that. But if there is an invitation to participate in a committee for an evaluation from another DG and we can see some equal opportunities or gender quality relevance I would go to participate. But the IAs here... if they are equal opportunity regulation-related, I'll take some. But if they are on other policy areas other people would take them... and I cannot look at all of them, so I cannot answer for all of them."<sup>414</sup>

**411** | EU24, Interview.

**412** | EU10, Interview.

**413** | EU20, Interview.

**414** | EU19, Interview.

It is clear that, even when gender experts are present in a Directorate General, work overload and demand for support from other Directorates without gender expertise prevent the implementation of the mainstreaming strategy from being a success. Oversight and accountability are both lost.

The following case studies, taken from current EU programming evaluation practice, flesh out the interview statements and how gender mainstreaming practices could be facilitated ex-post by evaluation.

Case 1: Although the default state is still to assume that financial policies and programmes are gender-neutral, evaluation officers sometimes feel the need to justify differing implications for European women and men as taxpayers—which is equal to addressing gender budgeting concerns through the back door. One such fiscal meta-evaluation is the 2012 study on all programming activities under The *Multi-annual Financial Framework 2014-2020 From a Gender Equality Perspective*<sup>415</sup> executed by the European Parliament—as a non-Commission activity—and requested by the Committee on Women’s Rights and Gender Equality (FEMM) of the European Parliament:

“First the Fundamental Rights and Citizenship Programme for 2007-13 had a mid-term evaluation which, even though the programme clearly states equality between women and men among its objectives, did not include any particular information on the impact the programme generated on the specific issue. The evaluation was carried out at more general level [...] positively evaluating the projects’ outcomes [...]. The lack of clear ex-ante requirements to include the gender impact in the past Regulation of the Programme resulted in a failure to collect the substantial information that is needed to prepare a gender impact assessment.”<sup>416</sup>

Apparently, general evaluators do not always follow up rigorously on the mainstreamed gender equality objectives formulated in programmes. In this particular case, the ex-ante GIA was missing, and the evaluation lacked concrete, gender-related indicators and outcome expectations against which to measure the programme success. At the very least, the evaluator should have remarked on the lack of data, benchmarking, and activity for the gender equality programme objective. Here, as in numerous other cases, the subordinate status of gender, accompanied by a lack of gender expertise, proved harmful for effective implementation of and controlling for gender mainstreaming. As a result, the implementation of gender mainstreaming remained incomplete and incongruent; the “exercise has revealed that the gender perspective is far from being assumed in all policies, at all levels and at every stage of the policy making process.”<sup>417</sup>

Case 2. Another example regarding evaluation of gender mainstreaming in policy and programme making is the ex-post evaluation of the EU’s *Cohesion Policy Programmes* (2000-2006), which were assessed in 2009 in the ex-post study

**415** | European Parliament, Directorate General for Internal Policies, Policy Department C: Citizenships’ Rights and Constitutional Affairs 2012.

**416** | European Parliament, Directorate General for Internal Policies, Policy Department C: Citizenships’ Rights and Constitutional Affairs 2012, 142.

**417** | European Parliament, Directorate General for Internal Policies, Policy Department C: Citizenships’ Rights and Constitutional Affairs 2012, 1.



*Effectiveness of Cohesion Policy: Gender Equality and Demographic Change.*<sup>418</sup> In this case, the evaluator found that issues of gender equality were usually mentioned and also considered in the context analysis of most regional strategies, but also found “little further development in the intervention design, implementation and evaluation systems.”<sup>419</sup> The evaluator also drew attention to the fact that, in the majority of cases, few gender-focused selection criteria or monitoring devices had been used and that stakeholder consultation had not played any role in the programme development. Gender impact was not introduced in the overall objective, and “little or no quantitative evidence is available.”<sup>420</sup> The evaluation of the EU’s *Cohesion Policy Programmes (2000-2006)* matches the same deficiencies found with the multi-annual financial framework (2014-2020) programming. In the evaluation’s recommendations, the current lack of de facto implementation of gender equality measures is criticised as not being accompanied by concrete measures and resources. The evaluator formulates a need for raising the textual gender mainstreaming commitments to a practical and more realistic level: “For delivering positive effects on gender equality it is not enough to set this as horizontal principle but to complement this with sound implementing measures.”<sup>421</sup>

Case 3. The absence of gender equality goals in the new *Europe 2020* strategy became evident in another evaluation by the FEMM Committee of *Five National Reform Programmes 2012 Regarding the Pursuit of the Union’s Gender Equality Objectives*.<sup>422</sup> The overall evaluation was targeted at national transposition and was concerned with the new soft governance instrument, the European Semester. The evaluation found:<sup>423</sup> “That the gender dimension has a low profile in all the documents developing the Europe 2020 strategy and the European Semester. None of these instruments sets specific targets in gender equality [...]”<sup>424</sup> Consequently, the EU2020 monitoring mechanisms did not include gender systematically, nor

**418** | Calvo de Celis 2009. The precise scope of the study was to assess the European Fund for Regional Development objective 1 and objective 2 programme interventions in 12 selected regions regarding their impact on fostering gender equality and reaction to demographic change (Calvo de Celis 2009, 2).

**419** | Calvo de Celis 2009, 4.

**420** | Calvo de Celis 2009, 6.

**421** | Calvo de Celis 2009, 10.

**422** | European Parliament; Directorate General for Internal Policies; Policy Department C: Citizens’ Rights and Constitutional Affairs; FEMM Equality 2012.

**423** | The European Semester as a new working method was implemented in 2011 by the EU in order to better coordinate their budgetary and economic policies with the member states in an ex ante fashion, and in line with both the Stability and Growth Pact and the EU 2020 strategy, especially applicable in the euro-zone (European Commission 2011d). In practice, the European Semester are annual and timed ex-ante discussions about EU 2020 key priorities as applicable to national strategies, with which the EU wants to ensure cohesion and smart, sustainable growth. Their results of the discussions need to be represented in national budgets and structural reforms (European Parliament; Directorate General for Internal Policies; Policy Department C: Citizens’ Rights and Constitutional Affairs; FEMM Equality 2012, 18).

**424** | European Parliament; Directorate General for Internal Policies; Policy Department C: Citizens’ Rights and Constitutional Affairs; FEMM Equality 2012, 7.

did their indicator system reflect gender equality outcomes. This is to say that not even EU2020 flagship initiatives or the integrated guidelines engage with gender equality, nor does the team gender equality appear in these documents.<sup>425</sup> In the case of a central strategy like the EU2020, which should have fallen under the integrated IA system, the ex-ante consideration of its equality impacts must have failed or not taken place.<sup>426</sup> Under the integrated approach to IA, the EP is entitled to—and is supposed to—conduct its own supplementary or independent studies. What these cases show, is a continued gender-blindness in policy and programme making on the side of the Commission, despite the presence of integrated IA. The cases also point up the ineptness of the integrated IA in complying with the gender mainstreaming duty.<sup>427</sup>

#### **4.4.1.5 Organisational Capacity: “You Are Asking Something Which Is Not Really in Place”**

The previous sections presented the findings from my interviews about the realities of implementing GIA and other forms of gender analysis in the Commission’s ex-ante IA regime, including challenges and areas for improvement. Interviewees identified another challenge: how to apply GIA in everyday knowledge and practice not just to identify women-specific policies and programming, but also to ferret out hidden biases in seemingly gender-neutral policies.<sup>428</sup> The EU has recognised the need for women-specific and empowering initiatives to counteract systemic disenfranchisement, and such programming is easy to identify from a policy analyst’s point of view:

“We had to check from the gender point of view and there were about thirty... specifically on gender issues, I mean programmes on gender equality or women empowerment. The total amount of programmes and projects which are founded each year is much, much bigger [...]”.<sup>429</sup>

But GIA has not yet reached the point where it is systematically used in policy making for detecting indirect and systemic differentially gendered effects. In this chapter, I sum up the hindering factors for the low organisational capacity.

**425** | European Parliament; Directorate General for Internal Policies; Policy Department C: Citizens’ Rights and Constitutional Affairs; FEMM Equality 2012, 7.

**426** | The study states very clearly that: “Low gender awareness does not sit easily with the key principle of smart, sustainable and inclusive growth.” (European Parliament; Directorate General for Internal Policies; Policy Department C: Citizens’ Rights and Constitutional Affairs; FEMM Equality 2012, 7). The evaluation is also quick in recommending to the member states Portugal (European Parliament; Directorate General for Internal Policies; Policy Department C: Citizens’ Rights and Constitutional Affairs; FEMM Equality 2012, 75) and Great Britain a GIA to all their policies (European Parliament; Directorate General for Internal Policies; Policy Department C: Citizens’ Rights and Constitutional Affairs; FEMM Equality 2012, 87), a prerequisite the EU’s integrated IA system does not live up on the European level.

**427** | As laid out in chapter 4.2.3.

**428** | For an exemplary critique of the lack of gender equality concerns in EU trade agreements and trade IA, see (True 2009).

**429** | EU10, Interview.

Gender-specific policies are relatively easy to sell, because they benefit a target group immediately and directly. Gender-specific policy making is highly visible and can be used by a Directorate-General as well as those responsible for the IA report or policy draft to position themselves within departmental activities. (Similar bureaucratic logics were also mentioned in the Canadian interview sample.<sup>430</sup>) Unravelling hidden gender discrimination, on the other hand, is neither easy (not even with solid gender expertise) nor immediately rewarding. Instead of being invested with time, care and resources, gender questions in the integrated IA are often neglected, not answered with the adequate expertise and depth, or left out entirely: “They skip this issue.... because it’s not easy... the qualitative assessment, which should be done, and is not easily done. So usually it’s not included or is included very superficially.”<sup>431</sup>

The qualitative *misfit* in a quantitative meta-analysis is yet another hindering factor in conducting gendered analysis. All horizontal clauses are difficult to operationalise as cross-cutting issues and also to substantiate using sex-disaggregated data as their evidence based. As a consequence, they are often given only lip-service: “So there is a bit of a tendency to put this in the cross-cutting issues, that’s just a few words, so they would add something in that paragraph and then—you know—get away with it.”<sup>432</sup>

Another factor hindering gendered analysis is, oddly enough, the sense that gender findings are ubiquitous: “When you say that everything is gender relevant that means that nothing is ‘really’ gender relevant.”<sup>433</sup> A sense of urgency is lacking, especially if no monitoring or follow-up mechanisms are attached. In the light of the interviewee’s comments, it is not surprising that gender analysis is not yet part of everyday practice or knowledge. As in Canada, a lack of gender competency was noted in the European interviews, along with strategies of resistance. Some participants, especially when trying to underline their theoretical support for and openness to questions of gender equality, revealed a dissociation from the idea of gender in their assessments:

“It’s a shame that we still have to talk about that. In my eyes it should be absolutely natural that differences in gender or differences between cultures, nations, sexual orientation and so on are naturally taken into account when it’s relevant, or if it’s relevant. [...] I hate these general approaches when by definition gender or sexual orientation or nationality or cultural differences are taken into account. There are topics where it’s absolutely irrelevant, and for the others it should be natural, and we spend too much time on such issues. For me... I do not care whether a colleague is male or female. The only thing I care is whether he or she does a good job.”<sup>434</sup>

The invocation of relevance yet again reduces gender equality to a human resources issue and demonstrates a limited understanding of indirect or systemic discrimination. The “general approaches” that set out to inquire about hidden,

**430** | See chapter 3.4.

**431** | EU10, Interview.

**432** | EU11, Interview.

**433** | EU16, Interview.

**434** | EU12, Interview.

systemically rooted inequalities were seen as irrelevant and a waste of time, whereas more specialised approaches targeting easy to identify direct discrimination enjoyed full support across the spectrum of interviewees. Another interviewee stated:

“GIA [...] raises general questions about gender policies and how to promote them. In this respect, one of my biggest concerns is always that gender issues are normally seen as women’s issues only, or to a large extent, so giving men the feeling that they can also contribute, is something that is interesting and important to keep in mind in the future. And to point out that in some particular areas GIA may not only reveal problems for women, but may also reveal in certain areas problems where the role distribution or certain policies are not so ideal for men either. But this is a philosophical question and perhaps goes beyond the question of GIA.”<sup>435</sup>

To parse this multi-layered statement: institutionalised sexism is perpetrated by systems as well as individuals partaking of the systems, and consequently can only be addressed through doubly reflexive efforts. To make GIA relevant for a wider spectrum of policy and programme analysis, the challenge is to communicate how men and societal structures at large are involved and can and will profit from a more nuanced gendered ex-ante analysis via GIA. One way to move forward is to attach incentives to institutional and personal processes of self-reflection, symbolised by the implementation of the GIA tool. According to neo-liberal logic, resources and remuneration represent acknowledgement and importance and can act as drivers of change:

“But there isn’t an incentive. There have been discussions in inter-service groups on gender equality for [...] giving incentives, but—to my knowledge—there’s never been any agreement on that, or any incentive given. On the contrary the discussions about everyone knowing in theory that it is an obligation, but a lot of people not really embracing it, having time for it feeling that they have to do it.”<sup>436</sup>

This citation illustrates that Eurocrats and representatives of the various Directorates-General in the Commission’s inter-service group are aware of the role that incentives could play in stimulating more GIA practice, as mandated by the political commitment to the gender mainstreaming strategy and put into their hands as responsible civil servants. But instead of living up to their responsibility and trying to overcome resistance to GIA—a response to innovation that is well documented in bureaucracy research—they pardon inaction and silently join the ranks of those who doubt the relevance and purposefulness of the tool.

GIA missed out on the exposure granted to the later integrated guidelines, where the Secretariat General “Participates in the development, informs the other DGs about the existence of the tool, sends and disseminates the tool to all the other DGs [...]”<sup>437</sup> It would now, therefore, be an incentive if the Secretariat General were to officially endorse GIA as an IA tool. An interviewee suggested: “Make reference to the tool in the trainings, put it on the web, make it as part of the annexes that this

**435** | EU20, Interview.

**436** | EU19, Interview.

**437** | EU26, Interview.

[need to apply GIA, A.S.] is the case. [...] I mean there is much more endorsement, visibility, which helps to make the guidance used.”<sup>438</sup> The unwillingness to offer even such soft incentives or to apply penalties for ignoring GIA has a macro-systemic impact: Political decision makers, in turn, have little incentive to exert pressure for progress in gender equality. On the programme level, the trend seems to even be moving away from gender mainstreaming:

“Basically it [gender mainstreaming, A.S.] was dropped [...]. So there has been no penalisation or no incentive to keep it or to encourage [people, A.S.] that benefit from the [...] funding to develop or implement gender action plans or IA or to integrate gender in their [activities, A.S.].”<sup>439</sup>

For the most part, the relevant actors were aware of the shortcomings of gender analysis. In fact, when asked if there were any penalties for not applying GIA or for not deepening the gender analysis as part of the integrated guidelines, they said they were glad that it was not in place since “otherwise we would be in jail.”<sup>440</sup> Why is it that the GIA tool has not been taken seriously and implemented in a crosscutting fashion in the past? Because according to MacRae, it would cause discomfort and a fear of losing competitive edge in economic terms: “Indeed, it is not difficult to see how DG Competition could have answered both of these questions [of the GIA tool, A.S.] in the negative with relation to the deregulation of the airline industry.”<sup>441</sup>

Why GIA plays a subordinate role in policy IA is often explained in terms of the subordination of gender issues to economic interests. This mimics the overarching conflict between equality and growth that the EU faces in its political strategies. So, can you really not have it all—sustainability, prosperity *and* gender equality? Interestingly, in the interviews, the gender experts were convinced about the transformative powers of gender mainstreaming, with GIA as its instrument—if implemented right. They saw its potential for policy change; they also observed and participated in its first success stories. Their immediate experiences, no matter how frustrating and disillusioning, did not tempt them to answer the question on the future of gender in IA in a negative way. Although departmental and governmental loyalties must be factored in, the fully anonymous status of interviews did give the experts the freedom to express their opinions impartially.

Ideally, gender equality is a shared responsibility between the DGs spearheading the initiative and assessment, the DG Justice gender equality support unit, and other Directorates-General concerned. The interviews confirmed that in theory the Directorates-General are aware of their political duty and obligation to fulfil gender mainstreaming. In practice, however, even when they are called upon to carry out their duty through ex-post evaluation, as the following statements show, they reject the responsibility by off-loading assessments to the gender experts in DG Justice and other policy and impact areas:

**438** | EU26, Interview.

**439** | EU25, Interview.

**440** | EU24, Interview.

**441** | MacRae 2010, 169.

“I mean, well it’s not shattering news and it’s no news in the public domain either, it’s just how we could do better in mainstreaming, meaning taking it into account gender dimensions in all the things that we do, which is a standard transversal policy. All the DGs have to do that. So we do not really assess impact as we do not initiate ground-breaking policies in terms of gender. We do not decide really what we are going to do in terms of [policy field of the DG] as far as gender is concerned, this is a consolidated exercise with DG JUST master-minding the whole thing in terms of inter-service consultation and inter-service groups. So it would not make sense that we would start our own little thing on gender.”<sup>442</sup>

In denying the possible far-reaching effects of their “own little thing on gender,” which indeed could be “ground-breaking,” some Directorates-General delegate the responsibility for GIA to DG Justice and the inter-service consultations. Interdisciplinary and interdepartmental exchange is appreciated as general point of orientation, but comes late in the process and has only an indirect link to the actual IA. Gender expertise within the IA and evaluation units of DGs seems to not to be institutionalised and is often relegated to an individual dealing with another horizontal issue or to one who seems open-minded in general:

“Within each DG there might be [...] a colleague that has a lot of experience on environmental issues or... or a good culture, and they may be more aware of different gender impact in their field [...]. So that’s why you have always inputs from different DGs and inter-service groups on gender that we may discuss [...].”<sup>443</sup>

What becomes clear from this quote is that gender is seen as the *other* in IA. Expertise for gender is attributed to the ones who are already the *odd ones out* in a department, ones that, in this case, do not deal with environmental issues primarily. These individual represent a different “culture,” a deviation from the norm. In turn, this signifies that the normative culture is not gendered, and gender equality concerns have not yet been integrated as part of everybody’s business, everybody’s thinking, everybody’s knowledge. Although in this citation, the *other* culture is perceived as beneficial and not rejected, the process of *othering* gender expertise bears little room for emancipatory, transformative effects, because it remains “deeply in the shadow.”<sup>444</sup>

In most Directorates-General one sees everything from resistance to simple ignorance vis-à-vis GIA or gender in IA: “My DG doesn’t normally include much on gender aspects explicitly into the ex-ante IA.”<sup>445</sup> While some policy and programme Directorates General claim to readily adopt a gender perspective (“within our DG I don’t think we have great resistance”<sup>446</sup>), it remains unclear to what extent. It is quite common, to *other* the gender obligation and to move it outside the realm of responsibility. If gender is considered at all it is more likely in some policy areas than in others: “It depends on which policy area, but there are some policy areas,

**442** | EU16, Interview.

**443** | EU19, Interview.

**444** | Spivak 1999, 274.

**445** | EU20, Interview.

**446** | EU19, Interview.

just one of many things they have to do and they may not be that interested in really looking in... differences of impact on women and men [...].<sup>447</sup>

While time pressure and workloads are similar across Directorates General, and the integrated IA guidelines are applicable to all of them, in some policy areas gender is not considered central enough to play a role in assessment. The gender mainstreaming manual,<sup>448</sup> for example, might be a useful and accepted tool found in DG Employment, but other Directorates have not yet seen the relevance of the GIA tool for their line of work. It could be the fault of the instrument itself, e.g., not being specific enough; it could also be the lack of gender expertise among staff that prevents insight into the relevance of gender. Therefore, having staff experienced in gender *and* the policy field *and* the central gender equality machinery is crucial for instrument up-take and the quality of analysis:

“But it doesn’t mean that no one else from another DG will not have an input on gender. Other DGs like DG Enterprise or REGIO also have people in charge of these issues within their evaluation units, within their policy units, and they will bring their own point of view, because they are more aware of gender issues in their own policy areas.”<sup>449</sup>

However the question must also be asked: What happens if staff with all the right expertise are placed in a less than receptive group or Directorate?

Even interview participants from amenable Directorates could not show evidence of successful mainstreaming. Interviewees occupied with policies labelled as *soft* were confident that a cross-cutting and integrated implementation of gender concerns would work—but were unable to point to individual IAs with particular gender aspects: “I know that my colleagues are very well aware of the important policy issues for us, and they would pick up on that.”<sup>450</sup> In some cases, it was not clear whether a full-fledged GIA had ever been conducted: “I have a bit of difficulty to answer precisely your questions, because in fact I think you are asking something which is not really in place [...].”<sup>451</sup> Due to the integrated approach to IA, since 2002 gender has been treated as one of the impact areas, which possibly makes Directorates less willing to conduct separate assessments with a specific gender focus. Each Directorate-General makes a decision about the assessment of its non-legislative initiatives (action plans, expenditure programmes, negotiating guidelines) as part of the Commission’s annual work programme.<sup>452</sup> Non-policy and programme making Directorates do find it hard to render GIA applicable to their institutional duties and *hard* policies.

Another question was raised by the interviews: Do the Directorates have sufficient gender competency to carry out their IA responsibilities. Unlike Canada, where all interviewees were able to make the distinction between employment equity and

**447** | EU19, Interview.

**448** | European Commission; Directorate-General for Employment, Social Affairs and Equal Opportunities 2008a.

**449** | EU19, Interview.

**450** | EU19, Interview.

**451** | EU23, Interview.

**452** | In practice only some elements of the work programme are subject to IAs (European Commission 2016a).

GBA, most European interviewees who were not gender experts regarded gender as mainly a human resource issue or pertaining to women-specific policy making. The inconsistent gender competency raises doubts about the policy capacity in the 19 policy and programme making Directorates when identifying and designing their IAs. The Commission is still walking on experimental terrain with its IA approach in general, as can be seen in the following statement:

“At the start the IAB [...] requested to have an IA of the strategy, so I did it, it was very difficult [...]. So and then when we presented that IA to the IAB there they discovered that in fact that the subject of the strategy was in fact not a subject that could, ok, which... is,... should call for an IA. So they cancelled that IA.”<sup>453</sup>

Not every initiative lends itself equally well to ex-ante, and apparently assessments can be (and are) stalled, if found dissatisfactory for whatever reason. IAs are still mostly applied to legislative initiatives, and even IA literature zooms in on Regulatory Impact Assessment (RIA) when talking about IA in general. There often is no clear distinction in terminology between IA and RIA.<sup>454</sup> Harmonising the EU’s IA system and processes would give the option to insert a mandatory and more specific gender mainstreaming duty (via GIA), but this is a broad topic, ranging from names of assessments, to tools and methods, to data collected and received from member states, and harmonising gender mainstreaming in IA is currently last in line.

Another question raised was about capacity for integrated IA in the Directorates. From the participant’s statements, it became clear that existing gender tools were either not used or only sometimes used when the gender assessment and IA was not conducted in-house. While the Commission is bound to increase its in-house assessment capacity and strives to conduct most IAs in-house, the common approach to complying with requirements for conducting gender-sensitive assessment still seems to be contracting specific gender analyses out-of-house to external consultants, which raises questions of harmonisation and quality management:

“For example, there was a preliminary study to an IA for [title of the study, A.S.]. We don’t know what sources to go to, but we contacted a company to do it for us, and they propose a methodology [...] and we discuss it [...] and they do some field work [...] and they tell us what methodology they can use, because they see what there is and what they can do. So again, it’s not us, we are not experts in doing the actual work, we are just managing processes.”<sup>455</sup>

The task of the Commission’s employees is thereby limited to calling for proposals, establishing the terms and conditions of contracting, evaluating offers, and appraising and accepting the research itself. This limited role is due to lack of time, staffing resources, as well as the lack of gender expertise in the Commission. But the quality management duty of research remains in-house, which also requires gender expertise; off-loading the gender duty does not exculpate the EU from building in-house capacity for gender. The Commission tries to avoid contracting

**453** | EU23, Interview.

**454** | Compare chapter 1.4.

**455** | EU19, Interview.



research out as far as possible due to fears about partiality and independence of research. It is doubtful, however, whether internal research would produce more impartial results, since politics are always at work, and pressure on the preferred policy options is exercised on *all* actors and comes from multiple angles for multiple reasons (politicians, senior management, lobby groups, academia, media, and citizens). As mentioned before, politics are inescapable, and independent analysts might actually be less visible and accessible to lobby groups. Contracting GIAs out to knowledgeable experts does make good policy sense as long as the internal gender expertise in the Commission is not mainstreamed in all policy areas, which does not yet seem to be a realistic scenario for the time being:

“I mean not necessarily the person in charge of gender issues is a gender expert, in the majority of the cases it is not the case, so there is a lot of very good willingness, I mean very positive attitude to these issues among our colleagues, but of course there should be more background and knowledge available in order to push further [...]”<sup>456</sup>

#### **4.4.2 Responsibilities: “You Need a Strong Institutionalised Framework”**

The previous sections of this chapter laid out important issues with regard to the (non-)implementation of GIA. The following sections examine the framework needed to support increased tool up-take. The most critical parts of the framework are gender equality or gender action plans, which are useful and widely applied to foster gender mainstreaming implementation and its tools.<sup>457</sup> According to Julia O'Connor, gender action plans are “key pillars”<sup>458</sup> in engendering policy making and are needed to re-configure traditional policy processes through the incorporation of GIA.<sup>459</sup>

A second critical parts of the framework are the gender action plans of the EU<sup>460</sup> as a whole, and of the Directorates.<sup>461</sup> These are designed to encourage a more comprehensive practice of gender mainstreaming and GIA application: “Gender action plan is starting a little bit to make up for this, because there is a reporting obligation, so this is something a bit more binding, but it’s just the first step.”<sup>462</sup>

Introducing specificity and precise expectations into these gender action plans, combined with reporting duties and accountability, increases goal-oriented support for gender equality, both among staff and in the Directorate-General as a whole:

“In this gender action plan there are tasks, objectives and indicators for the period 2010-2015, and we are supposed to indicate how much we progress towards those objectives every year, so will oblige plenty of [employees, A.S.] who probably didn’t care enough about

**456** | EU10, Interview.

**457** | Baer 2005a; Schneider et al. 2005.

**458** | O'Connor 2005, 27.

**459** | O'Connor 2005, 41.

**460** | European Commission 2010b.

**461** | E.g. DG DEVCO (European Commission 2010e).

**462** | EU11, Interview.

gender issues to take this more seriously. We are supposed to report on that, so they have to know what it is about and this will be a tool, an extremely useful tool for us.”<sup>463</sup>

At present, duties for reporting gender mainstreaming instruments such as GIA under the current EU gender action plans are not yet specific enough in terms of goals, timelines, responsibilities and results. They also do not address the parameters of how to redefine policy goals precisely and in a way that embraces equality goals and outcomes between women and men as an overarching policy objective that “cross-cuts all policy areas and achieves an embedded status such as economic competitiveness has in the present context.”<sup>464</sup> One interview participant remarked on the need for specificity and hoped for less rhetoric and more action, triggered by mandatory requirements that would be stated in both gender action plans *and* IA strategies: “There is a lot of talking and maybe less doing and maybe something should be compulsory, but with very clear guidelines, if it should really happen for real, instead of just talking about it a lot.”<sup>465</sup>

Making GIA compulsory and formulating gender action plans with precise implementation frameworks, equality targets, and indicators are the right steps in the right direction; but what if the targets they set are missed time and again? How best to ensure that not just the minimum gender mainstreaming clause is present? In short: How can gender mainstreaming be more effective? The interview findings suggest that complete transparency about the expectations of when to implement GIA, by whom, and for what reason would help foster its application. Gender units are seen as beneficial in providing guidance, but beyond the unspecific regulative frameworks established in the EU Treaty and Charter of Fundamental Rights, such internal gender experts rely on parameters set out in Commission roadmaps. This gives the units political clout and top-down support in their Directorates. Interviewees felt a high degree of influence on specific gender action plans, “because even if it is only on paper, you can’t imagine how useful it is, because in a big institution—I mean—to have a policy or to have even a single word in.”<sup>466</sup> The importance of top-down support and political will on the ground can hardly be overstated:

“I think you need first clear institutional rules of when and why, you need a strong institutionalised framework or network or experts (there is a lacking as well), and I think they need to be inside, because—I mean—as an outsider you do not get any idea of what is happening within the department, so what kind of policies they are developing, so you need to have a sort of team within each department which is constantly checking what kind of policies are in the pipeline and would be interesting or necessary to do a GIA.”<sup>467</sup>

Linking insider gender expertise with departmental processes of policy development and ex-ante assessment with outside, overarching equality goals, closes the policy cycle, but requires a high degree of coordination and transparency. Although

**463** | EU10, Interview.

**464** | O'Connor 2005, 41.

**465** | EU19, Interview.

**466** | EU11, Interview.

**467** | Conny Roggeband, Interview.

bureaucratic culture is often perceived as more protectionist of policy fields than accommodating—a concept coined in positive terms as selective perception<sup>468</sup>—I do not entirely share the pessimistic outlook on the problematic practices of cooperation.<sup>469</sup> But cooperative coordination of policy within one Directorate-General and policy area as well as across DGs and policy areas is not unknown to administrative processes and actors, especially not on the European level with its many soft coordinative governance modes.

According to interviewees, well-established administrative routines such as action plans can be used to align and regulate cooperative practices in order to frame expected gender equality outcomes and implementation modes. Femocrats and other sympathetic staff could then proceed with GIA implementation and take action on behalf of gender equality. A truly systematic top-down approach to GIA implementation via gender action plans, coupled with IA strategies and processes, is, however, still missing.<sup>470</sup> The still separate quality management, reporting systems, and architectures should be better coordinated (i.e. better coordination is needed between the Impact Assessment Board<sup>471</sup> versus. the Institutional Mechanisms for Gender Mainstreaming<sup>472</sup>; Impact Assessment Board reports vs. progress reports on the equality between women and men; and architectures of IA and evaluation units in individual Directorates and the Secretariat General vs. equality units D1 and D2 at DG Justice<sup>473</sup> and the European Institute for Gender Equality<sup>474</sup>). The point was raised in one of the interviews that while it was true that the Impact Assessment Board should consult gender experts, the Secretariat General should also consult gender experts on the terms of reference of studies launched to support preparation of an IA. This would help render the studies gender sensitive and avoid shortcomings in methodology and/or disaggregated data:

“If it was politically supported, I think we should have a system where the unit dealing with gender equality is much more consulted and integrated in the preparatory work to the different commission proposals [...] to suggest improvements regarding gender equality much, much before the proposals are put in inter-service consultation.”<sup>475</sup>

**468** | Veit 2010. The concept is explained in more detail in chapter 1.5.2.

**469** | See Zimmermann and Metz-Göckel's critique in 1.5.2.

**470** | A recent exception is the EU's 8th research framework programme Horizon 2020 (Sánchez de Madariaga 2013), under which: “The gender dimension is explicitly integrated into several topics across all sections of the Horizon 2020 Work Programme. In these cases, applicants will describe how sex and/or gender analysis is taken into account in the project's content. Sex and gender refer to biological characteristics and social/cultural factors, respectively. Topics with an explicit gender dimension are flagged, to ease access for applicants.” (European Commission 2013d, 2). See also (European Commission 2013e).

**471** | As explained in subsection 4.1.3.4.

**472** | As explained in subsection 2.5.1.

**473** | See sub-chapter 4.4.1.2.

**474** | See sub-chapter 4.3.2.

**475** | EU23, Interview. The inter-service consultation (Consultation Inter Services—CIS) is coordinated via the internal database CIS-Net (Grüner 2011, 143).

Introducing gender expertise as early as possible into the IA process was identified by interviewees as beneficial in gender mainstreaming and GIA literature. This responsibility could be placed with the Secretariat General. For instance, if a reminder of the gender equality mainstreaming duty (and other cross-cutting principles like sustainability) were to be inserted in the *Commission's Rules of Procedure*,<sup>476</sup> then the Directorates-General would be prompted to examine gender relevance and to consult with gender experts early on. Placing the responsibility at the Commission level would also spur accountability for fundamental values by the Commission's legal services, which would monitor the texts of legislative proposals for legal compliance.

The Secretariat General would certainly not feel inclined to address such changes without general "political support" from the Commission itself. This "political support" needs to come from the top levels of administration and could be best expressed by aligning gender equality strategies with law making procedures and also with IA roadmaps. The legal mandate for this is already in place in the Treaty: "We have the article 8, which asks for the integration of gender equality and the promotion of gender equality in all union's activities. And this is the whole starting point [...]."<sup>477</sup> Having gender action plans and/or gender quality goals in all other forms of institutional self-commitments, such as roadmaps, strategies etc., is not only legally mandated, but effective. When gender action plans are in place, interviewees attested to visible improvements:

"Often we get as an evaluation [...] something that is called an action plan has to be developed. And in an action plan the operational unit, which is the owner of the evaluation, has to... provide responses to the recommendations done [...] by an external contractor. [...] But from what I know, from the action plan [...] they introduced a paragraph in which they said 'particular consideration has to be paid to gender balance of applicants for [a particular initiative, A.S.]' and it was taken as one of the criteria for selection [...] for the next round. The next round actually showed better numbers and the one following that one showed even better numbers as with regards to gender balance [...]."<sup>478</sup>

The interviewee quoted above talks about "numbers" as a way to measure balance or imbalance. Addressing these issues through head counting is certainly not the end goal, but it is a valid starting point for setting equality goals, and some interviewees voiced hope that the trickle down effects of representation—especially in the top ranks—would in turn translate into more gender sensitive policy making: "Since Ashton came into place, came into her position she, the number of head female, female heads of delegations has increased."<sup>479</sup> Annesley and Gains have identified the "core executive" as the "locus of power," where substantive representation could in fact make the difference needed.<sup>480</sup> Both researchers also find it surprising

**476** | The rules of procedure of the Commission (C(2000) 3614) are based on Art. 249 TFEU and emphasise in Art. 12 the importance of pre inter-service consultation policy alignment already in the drafting phase (European Commission 2000b, 4).

**477** | EU23, Interview.

**478** | EU13, Interview.

**479** | EU11, Interview.

**480** | Annesley/Gains 2010.

that “studies on women’s substantive representation [...] have not examined this institution”<sup>481</sup> (i.e., the top echelons of public administration in its executive function). But gender action plans should address not only quotas for employees, including female policy analysts in IA and evaluation, as the European research framework has successfully done in research teams; even more importantly, they should heighten and demand proof of gender expertise among IA analysts,<sup>482</sup> because:

“We, in charge of gender mainstreaming in the commission, should be trained better on how to make the gender impact assessment. This is not always true, I mean not necessarily the person in charge of gender issues is a gender expert, in the majority of the cases it is not the case, so there is a lot of very good willingness, I mean very positive attitude to these issues among our colleagues, but of course there should be more background and knowledge available [...].”<sup>483</sup>

#### 4.4.3 Training: “I Still Have Plenty of Things to Learn”

One way to ensure that gender mainstreaming works is to deliver gender trainings<sup>484</sup>. Academic training of bureaucratic staff is usually centred on the disciplines of law, administration studies, financial and economic studies, and, to a lesser extent, political and social science, environmental and sustainability studies, and some specialised technical and engineering studies. Gender expertise is usually not part of these study programmes, which means that is uncommon in public administration and under-represented in IA and evaluation unit members. Hiring practices give preference to candidates with technical, financial, economic planning and modelling experience. Employees with a social science background make up a small part of the overall staff, and very rarely, university educated gender studies graduates are hired as permanent members of staff. As a consequence, basic gender competency<sup>485</sup> is missing and needs to be inserted via advanced training; it needs to be *embedded* in the organisation by being *embodied*. Ideally, such trainings ought to fulfil a double function: First, to equip policy and programme analysts with the

**481** | Annesley/Gains 2010, 909. For Annesley and Gains, the executive is a gendered institution concerning relationships, rules, recruitment and resource allocation, shaping opportunities and constraints, also available to femocrats attempting to influence public policy making from a gendered perspective. They would welcome women’s participation at least to critical mass, such as e.g. in the current EU research framework Horizon 2020, where: “The Commission is committed to reaching the target of 40 per cent female participation in its advisory structures and it will ensure that gender differences are reflected in the content of calls for proposals, and in evaluation processes, where appropriate.” (European Commission 2011e, 13)

**482** | I.e. Horizon 2020 now lists gender trainings for research teams, applying for funding, as eligible costs and demands a person with gender expertise to be summoned on the scientific board (European Commission 2013d).

**483** | EU10, Interview.

**484** | For a definition of gender training, see chapter 1.5.3.2.

**485** | For a definition of gender competency as a process of wanting, knowing and being enabled to implement gender perspectives in work routines see sub-chapter 1.5.3.2.

capacities to recognise the gendered aspects and consequences of their particular field of expertise; and second, to familiarise them with the workings, techniques and full potential of GIA as a gender mainstreaming tool:

"I think the importance of training is important, as I already pointed out. It's important to show how the gender analysis can actually help to improve policies. Because otherwise it may remain an abstract, additional, just an administrative or research burden."<sup>486</sup>

"I think to have trainings that would be very good and I think it would be good that gender trainings are compulsory for the people developing policies, but it's not the case."<sup>487</sup>

There are "quite a few [...] general training[s] about IA and [...] quite a few more specific trainings on the different part of the IA, such as risk analysis, problem definition, consultation with stakeholders and so on."<sup>488</sup> However, despite the demand for them, GIA-specific trainings do not exist in the Commission: "GIA tool no. That does not exist;"<sup>489</sup> "we didn't get specific training on this subject;"<sup>490</sup> No training on the tool gender impact assessment, I've got many different trainings on gender equal opportunities issues intra-organisationally."<sup>491</sup> Not even gender experts said they had been trained on tool implementation: "No I had only training in the commission on gender mainstreaming, which was a pilot session some time ago before it's been established, but I didn't have a training on gender impact assessment as such, no."<sup>492</sup> Only more general trainings on gender mainstreaming are offered. The EU follows a non-standardise approach to gender training, resulting in an absence of coherence and a lack of direction and quality management of trainings. The Directorates-General offer internal trainings in various formats, which might touch on specific policies or initiatives, but no Directorate has mentioned GIA being the sole focus of trainings yet:

"Every year there is a specific basic training on gender issues, and another one which is more advanced, let's say, usually focussing on a specific topic [...]. So the two, they were twice two days of training, in which about twenty colleagues [...] came to attend, and in addition we organised online courses [...]."<sup>493</sup>

"Now, we have also inside seminars in which we look at the best way to really do the job in terms of gender with external experts outside the house, people from the European Women's Lobby, experts etc. This happens on a very informal basis, I mean we get ten people, 20 people in a room, we have invitations, not really structured, and it is effective. That's how far we go. [...] we also have lunch time conferences open to the general staff of [name of the DG, A.S.], in which we present achievements, difficulties, methodology in terms of thinking about women while we work."<sup>494</sup>

**486** | EU20, Interview.

**487** | EU23, Interview.

**488** | EU26, Interview.

**489** | EU13, Interview.

**490** | EU21, Interview.

**491** | EU18, Interview.

**492** | EU22, Interview.

**493** | EU10, Interview.

**494** | EU13, Interview.

“The course is only a one day course because otherwise it is too long and people have no time to apply to it. And so, not it’s not like a real development of an example.”<sup>495</sup>

In situations where gender trainings do not zoom in on policy IA, the question must be asked whether IA trainings do cover gender equality, since gender is included in the integrated guidelines. The Impact Assessment Board mentions trainings on social impacts in its annual report on, e.g., in DG Mobility, Traffic, Energy and DG Internal Market and Services, but it is not clear whether such trainings contain gender equality aspects or modules. Here the empirical evidence suggests little training: “I was involved also in courses on IA in general, but there the gender aspects are not so developed.”<sup>496</sup>

Training on direct and indirect implications of gender difference in policy fields such as finance, budget, infrastructure, economy, tax, environment and sustainability have proven to be a continuous challenge. When the Impact Assessment Board claimed that quality management for IAs has significantly improved since 2007,<sup>497</sup> it made no claim for a corresponding increase in gender competency. Interviewed gender experts voiced the need for further education and training, especially on the technicalities and relevance of GIA: “I mean, I’ve been working on gender issues for, well they are eight years now, but I’m not a gender expert, so I still have plenty of things to learn.”<sup>498</sup>

Most often demanded by the interviewees was the skill to establish gender relevance in specific policies and programming through GIA. This demand is usually satisfied with relevant case studies. Since gender mainstreaming and its instruments are still in the pilot stage and not yet implemented across the board, the lack of relevant cases threatens to start a vicious cycle: policy analysts feel unable to implement GIA because they do not know how it was implemented successfully before in their area. The lack of relevant case studies can be overcome in two ways: First, by collecting all existing cases in a GIA or gender-in-IA analysis library, with comments on quality shortcomings; second, by enabling inter-institutional exchange on good practices:

“Learning from positive examples from other institutions or other organisations, getting technical expertise or trainers from DG EMPL, DG JUST, the Gender Institute or [...] other institutions would help a lot. Yes, I think learning from positive examples that show that these things are not just academic exercises where you perform an additional analysis pro forma, but that this can reveal weaknesses in policy making. Learning from these positive examples would help us to improve our policies and to create the effectiveness and make it more effective to reach the full target audience that we want to reach.”<sup>499</sup>

In the short term, such concrete examples and models of best practice render the otherwise invisible gender divide visible and can encourage new IA practices. So

**495** | EU23, Interview.

**496** | EU23, Interview.

**497** | European Commission 2013b; European Commission 2012d; European Commission 2011b; European Commission 2009d; European Commission 2008b.

**498** | EU10, Interview.

**499** | EU20, Interview.

far, the Commission has not yet undertaken a gender analysis practice library, but the European Institute for Gender Equality has recently created a database for gender training that aims to disseminate resources, like toolkits, training manuals, guidelines and exchange of good practices. The European Institute for Gender Equality calls gender training on gender mainstreaming a priority area of its work, and it coordinates a thematic network on gender training and releases information on practices and quality of gender trainings.<sup>500</sup> However, it targets member states' practices more than the in-house situation of the Commission in its attempt to create communities of practice.<sup>501</sup>

For the Commission, the interviewees stressed the importance to have custom-tailored trainings to their specific needs as analysts in the specific context of the EU's integrated IA. The following quotation sums up all the relevant problems with gender trainings for policy analysts on the ground:

"I contacted a couple of experts on gender issues and they told me well first of all I should read their 250 pages guidelines and then they would set up a full cycle of seminars starting from my learning needs... but as gender issues are only one item under the social impact assessments and social impact assessments are only one part of the item under all the other IAs that we have to do, or other the long list of IA aspects we have to look at, it's simply impossible to do a long cycle of five seminars to define exactly what my learning needs are for gender issues. We need something practical that inspires people, basically if they have three hours to study a topic, they should know roughly what could be done and what kind of resources, for instance external consultants, would need to implement this: Would the consultants need to dedicated two weeks of, full-time people working on it, or could it be done in three days, or could it be done only in six months? There is a lot to be learned."<sup>502</sup>

The double role of public servants—as IA practitioners and research quality managers, responsible for financial accountability as well as content—will need to be addressed in trainings. But in the end, only continued practice will render the gender perspective a routine part of policy and programme making and analysis: "So training would be on a one-to-one basis to experienced colleagues, especially in the first years, and then participation in conferences or seminars."<sup>503</sup> The gender experts involved in commissioning or designing trainings were occupied with questions of how gender becomes less *learned* and more *native* to public servants. Commission gender experts want to win not only the minds, but also the hearts of people, setting in motion a process of personal change through reflection on unconscious bias and stereotypes:

**500** | European Institute for Gender Equality 2012b; European Institute for Gender Equality 2012a.

**501** | European Institute for Gender Equality 2012b; European Institute for Gender Equality 2012d; European Institute for Gender Equality 2012c.

**502** | EU20, Interview.

**503** | EU19, Interview.



"Generally people work much more on an intuitive basis. So what we hope to do is to increase their awareness of the need to consider women and men, gender aspects of their policies [...]."504

"It changes our colleagues, not stereotypes. It changed the mind of our colleagues: after making the training and being... starting using the checklist, they start see things differently. But we cannot challenge the stereotypes in general [...]."505

Although gender trainings are unable to change societal norms and universal stereotypes, they do strengthen individual reflexive moments, there are envisioned to eventually tip-over the overall departmental culture. Depending on the starting point of participants concerning gender knowledge, as well as biases and values based on personal experiences, trainings should also address different sub-groups and touch upon intersectionality. A one-fits-all approach, will most likely not deliver the desired results, because, according to the European Institute for Gender Equality, the challenges are paramount: gender trainings need to develop gender-blind or even gender-traditionalist participants into not only gender-aware, but gender-redistributive civil servants who will be able to work independently with the existing gender analysis tools.<sup>506</sup> Such far reaching tasks are not always completed successfully. When one interviewee was asked whether the participant was aware that GIA as a policy tool existed and whether the interviewee had attended a specific training, the response was as follows:

"No. On gender issues yes, of course: we have a mandatory training for [occupied position, A.S.], in which I have participated, and—in brackets—I found it very ridiculous. Even the trainer said it's ridiculous. At the end the women defended the men in this group, it was a very bizarre exercise and... and I'm not aware of this tool."<sup>507</sup>

Here, the question remains unresolved whether mandatory trainings can have the intended effect in an overall environment of cultural rejection or depreciation of gender knowledge. Such strong statements as given by the interviewee, however, represent a minority of the sample. The majority of interviewees appreciated the chance to further their education and were grateful for the benefits of trainings: "Yes, yes! I profited as soon as I arrived, I profited [...]."508 Others also saw the natural limits of trainings; they managed to provide basic information "very helpful to raise awareness,"<sup>509</sup> and incited curiosity about the topic, but "creative ideas, [...] will probably not be gotten in a training course, will be gotten by reading or by coming in contact with creative thinkers."<sup>510</sup>

In my interview sample, it became evident that existing training practices on the Commission level are not able to deliver on GIA-specific knowledge or on gender mainstreaming's far-reaching educational goals due to the infrequency

**504** | Anne Havnør, Interview.

**505** | EU10, Interview.

**506** | European Institute for Gender Equality 2012e, 10.

**507** | EU12, Interview.

**508** | EU10, Interview.

**509** | EU20, Interview.

**510** | EU18, Interview.

of trainings and a lack of coherence and quality management. Consequently, the practice of gender trainings needs to be both expanded and more nuanced, a finding also shared by the European Institute for Gender Equality.<sup>511</sup> Gender trainings need to focus on the specific application of gender mainstreaming tools such as GIA, which will call for differentiated expertise on the part of the trainers. A combination of expertise in gender, technologies, the development of instruments, and policy will be required. Quality assurance of gender trainings is new, and some standardisation of trainer qualification, methodology and delivery of training would be beneficial.<sup>512</sup> Standardisation of content as envisioned by the European Institute for Gender Equality,<sup>513</sup> however, does not appear to be the right path for the diverse policy contexts. The interviewees demanded regular trainings tailored specifically around IA instruments, policy fields and their function in order to make gender expertise and GIA practice sustainable.

#### 4.4.4 Resources: “That’s [...] a Very Theoretic Question”

Gender mainstreaming instruments need to be implemented in a cross-cutting fashion in order to be effective, which requires (wo)man-power and time equalling resources. Half-hearted, non-effective gender mainstreaming cannot deliver the hoped for equality results and is therefore inefficient, also in budgetary terms. EU institutions are aware of the fact that gender equality is not budget-neutral, as a briefing note of the European Parliament states: “In order to be effective gender mainstreaming needs to be operationalised and supported through predictable funding and allocations. Otherwise it runs the risk of being side-lined at the expense of other, seemingly more urgent, goals.”<sup>514</sup> In evaluating the 2006 European IA Guidelines,<sup>515</sup> the Network of European Environment and Sustainable Development Advisory Councils considered it a high priority for all IA activity in general to:

“Provide (i) better resourcing for the execution of Impact Assessment by the DGs (time, people and funding); (ii) dedicated resources and training for inter-service co-operation at all stages of assessment; (iii) resources for the wider engagement of civil society, where appropriate; and (iv) full and adequate resources for quality control [...]”<sup>516</sup>

Gender mainstreaming instruments, such as GIA, need to be promoted as just another part of good governance through IA resources; however, none of the

**511** | European Institute for Gender Equality 2012b, 7. For instance, the GIA training of the city of Vantaa for selected members of staff involved in preparing budgets was named as one example of good practice (European Institute for Gender Equality 2012b, 8). No Commission example was given.

**512** | European Institute for Gender Equality 2012a.

**513** | European Institute for Gender Equality 2012b, 9-11.

**514** | European Parliament, Directorate General for Internal Policies, Policy Department C: Citizenships' Rights and Constitutional Affairs 2012, 166.

**515** | European Commission 2006a.

**516** | Network of European Environment and Sustainable Development Advisory Councils 2006, 5.

interviewed participants was able to state the amount of money spent on gender mainstreaming in general or on gender in the IA system in particular.

“We don’t have any assigned budget for this or staff or anything like that. We have a general heading for administration and this internally is split over many fields, including ex-ante IA, including ex-post evaluation, including gender aspects and so on, but there is no clear cut percentage of the budget that goes into that.”<sup>517</sup>

“That’s very general and a very theoretic question, because so many people work on IAs, on roadmaps, on policies and so on, but I think to quantify this [...]”<sup>518</sup>

None of the interviewed participants was willing to state whether the resources for gender in IA were sufficient or not. Some felt that even specifying resources for gender analysis—a first step towards gender budgeting—would be counter to the very idea of gender mainstreaming:

“Your question is about gender budgeting [...] a lot of people have talked about it for a long time and this never materialised, because it’s run contrary to the idea of mainstreaming. If you see you have so much money coming, to do gender, that means all the rest of the money can go freely about its own business.”<sup>519</sup>

Even in the case of successful mainstreaming it is impossible to attach a financial value to individual labour: “So a part of this the work is of course not me or my colleague, it’s them, but it’s a part of their general activity [...] that’s why I cannot really estimate it, but it’s mixed with all developments.”<sup>520</sup> The reference to “them” is an indication of how little is known about the effort that goes into gender mainstreaming; it is not clear what is undertaken and what resources are being used. Like all horizontal issues, spending on gender mainstreaming remains a black box, and with it, gender in the integrated IA remains invisible as well.<sup>521</sup> Funding for gender- or women-specific programming was the only financially traceable measure:

“We have funding for gender equality, women empowerment... For instance we will launch now a call [...], nothing on IA: it’s about funding projects for the empowerment of women, so... nothing specifically on IA.”<sup>522</sup>

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**517** | EU24, Interview.

**518** | EU25, Interview.

**519** | EU14, Interview.

**520** | EU21, Interview.

**521** | One example for prying open the black box—though outside the IA system—is the European Social Fund (ESF), demonstrating that spending on gender could be measured. In its Synthesis Report on the gender equality objective during the 2007-2013 funding period, compared to the 2003-2006 funding period, the report noted a 34 per cent decrease in the funding of gender equality initiatives due to a less central role of a gender equality objective in the funding regulations and more reliance on gender mainstreaming (GHK Consulting Ltd./Fondazione G. Brodolini 2011, 84-87).

**522** | EU10, Interview.

"The Commission is not alone in facing this problem. Gender analysis tool application remains "a matter of experimentation that needs the necessary human and financial resources as well as authority."<sup>523</sup>

It is evident that the first steps in implementing gender mainstreaming have not yet been completed, let alone the mechanism for tracking its instruments. The need not only to allow extra time, but also to allocate money to foster gender analysis has been emphasised. Offering additional external incentives, instead of a legal obligation often perceived as punitive, should be considered. In the Dutch context, Conny Roggeband has reported on the idea of creating a special gender analysis experimentation fund, but the idea has not been taken up:

"One thing we talked about in the very early stage was experimental money, so there would be a small budget available for doing experiments with gender impact assessment, so the department could apply for a small subsidy of using it [...] but again, it was hardly used, this experimental money. It was not a lot either, but it was not used. So that's interesting."<sup>524</sup>

With gender included in the new IA system, interviewees were unable to identify the actual number of hours or percentage of staffing available for a gender analysis. Staff capacity in IA and evaluation departments was not visibly marked, and gender experts and educational backgrounds could not be retrieved from the Commission's directory website. Based on estimates in the interviews, the number of staff responsible for gender equality issues in general varied from zero ("In terms of staffing there is no one in the DG who would do, who would be responsible for doing internally GIA. And so it would be always contracted out."<sup>525</sup>) to a few working hours per week ("I think we have one about person-hour per week at maximum for the gender."<sup>526</sup>) to ten staff members (as reported by interviewees in the Directorates General.<sup>527</sup> In most cases gender experts were not full-time employees and were responsible for more than gender:

"Shooting from the hip, I would say that we have [three names, A.S.] part-time and myself. But we don't do just gender. Part of the gender equality strategy is multiple discriminations."<sup>528</sup>  
 "Oh no, it's not full-time. I mean she is half-time and my full-time is for the coordination of all the work among the domains I mentioned [...]. So for me it's 10-15% if you want."<sup>529</sup>

In a sample of nine Directorates General, respondents came up with the following estimate of staff working on gender issues for five Directorates (see the following table 24).

**523** | Holvoet/Inberg 2012, 10.

**524** | Roggeband, Interview.

**525** | EU22, Interview.

**526** | EU19, Interview.

**527** | DG Justice with its ten members of staff in its D.2 equality unit (according to the EC's directory) is not included. DG Justice is also not included in the following table.

**528** | EU14, Interview.

**529** | EU21, Interview.

*Table 24: Estimated Staffing Resources for Gender Equality in Individual Directorates-General as Part of the Interview Sample (Number of Staff)*

	No. of full time staff for gender	No. of part time staff for gender	Additional <u>hours</u> per week for gender mainstreaming other staff
DG A	3	2	
DG B	2	1	
DG C	10		
DG D		1	4
DG E	1		2
<b>Total No.</b>	<b>16</b>	<b>4</b>	<b>6</b>

These statistics are based on estimates and not specifically pertaining to gender analysis, but they show how small the institutional support for gender equality appears to being general (with the exception of one Directorate-General), rendering actual expert support for GIAs very unlikely. Another model could be to employ staff with knowledge about gender in the IA and evaluation unit, without assigning them hours specifically for working on gender. I did not, however, come across any such situation in the interviews. And sometimes the IA and evaluation units had very slim working capacities indeed. When asked whether there would be a gender support unit in a Directorate General, one respondent replied: “Well you know, in my unit no. Because we are two colleagues who are doing the whole work on IA and evaluation.”<sup>530</sup> The general lack of staff is mentioned as a reason why gender mainstreaming has not yet been satisfactorily implemented and why talking about a budget for GIA or gender in IA would mean discussing overall budget inadequacies:

“Especially with the very strong limitations of what we can do in terms of the mandate, staff resources—budget not really being the prime concern. We are understaffed, this is the main concern I would say. We are understaffed and we could do much more maybe with an impact that would be reflective of the number of people that you put at task of your previous questions—we haven’t been there yet. Yes if it is confidential.”<sup>531</sup>

Although such lines of argument can be interpreted as a way to avoid discussions on the need for more gender resources, the concerns ought to be taken seriously, as they represent day-to-day reality in a lean, modern bureaucracy that is experiencing pressure from New Public Management efficiency and financial austerity:

“A clear commitment from my own hierarchy that this is important and that resources in the sense of time, for instance two or three hours per week could be invested in it. Or if I’m told, try to minimise the workload then well, this is one thing.”<sup>532</sup>

**530** | EU22, Interview.

**531** | EU16, Interview.

**532** | EU 20, Interview.

In an environment of general scarcity, gaining enthusiastic commitment from staff is difficult when they are not backed by resources and there is no clear top-down communication that GIA and gender mainstreaming are a required part of the job. In the course of the interviews, most participants—even gender experts themselves—found it hard to grasp the intent of my questions on staffing and resources. In many instances they thought I was actually driving toward a discussion on employment equity. The following excerpt represents a common reaction to questions about resources and budget for gender and GIA:

A.S.: In your DG is there any [...] are there resources, like financial resources, like in form of hours of staff or budget allocated to gender or gender impact assessment...?

EU19: I'm not aware of that [...]. I am not sure about that.

A.S.: But your position was...

EU19: I think there has been talk about doing that within the Commission, but I don't know if that is being done...

A.S.: Ok...

EU19: You would have to contact the human resources to ask that. I think you could contact the DG Human Resources [...] Instead of contacting just our HR contact the DG HR, or you contact DG Justice, their Gender Equality Unit first: they would guide you on how to find out about that, who the person is... I keep some basic statistics on gender, but then I... how many women on management level, I've seen something like that, but I couldn't... I wouldn't be able to tell you more...

A.S.: No, I was more trying to find out how many hours of work maybe you have as a person or other colleagues...

EU19: On gender?

A.S.: ...On gender

EU19: ...On the gender work!

A.S.: Exactly!

EU19: Oh, I don't know it has been calculated anywhere... I don't think so."<sup>533</sup>

Such a confused response to this seemingly straightforward question about resources was not unusual during the interviews. The confusion could possibly be attributed to problems of communicating in a foreign language (English). But given that there were very few communication problems otherwise, such a hypothesis seems likely. It seems more likely that participants were taken aback by the questions because they found it surprising that any money would be spent on gender mainstreaming or gender in IA, let alone that there would be registering and monitoring.

The difficulty of tracking budget and staff allocated to GIA, gender in IA or gender mainstreaming highlights one of the main weaknesses of implementing gender mainstreaming in the Commission: The absence of gender budgeting<sup>534</sup> that would help Directorates, with their various policy sub-fields and duties,

**533** | EU19, Interview.

**534** | With respect to gender budgeting, one interviewee already offered a counter-argumentation strategy: "A lot of people have talked about it for a long time and this never materialised, because it's run contrary to the idea of mainstreaming. If you see you have so much money coming, to do gender, that means all the rest of the money can go freely about its own business." (EU16, Interview).

strategically plan and monitor resources spent on gender. The field of development cooperation could provide a useful model here. In development cooperation projects many Western countries, including Canada and the EU, use a gender marker, which provides an expression of effort and resources allocated to gender (including GIA activities) and therefore serves as a gender mainstreaming instrument.<sup>535</sup> Because resources are known, gender is brought from a vague, undefined position in the background to a concrete, evidence-based position in the foreground. In the realm of GIA, a similar tracker or gender marker could be introduced in the IA system and, depending on the gender relevance, additional budget and time could be allocated to the assessment.

#### 4.4.5 Knowledge: “An Indicator As Such Doesn’t Say Much”

Good data is required but not sufficient for GIA. Indicators by themselves don’t tell the story of disparate impact or result in better policy. Gender expertise is essential to getting the right data and interpreting it accurately. Inserting expert gender knowledge into the Commission’s IA practice would not only help in better policy design, but would also circumvent politically motivated resistance to gender mainstreaming. Easy to obtain sex-disaggregated data can be the deciding factor in whether to employ gender analysis—or not. Fortunately, gender statistics are now an integrated part of the EU’s statistics; “if possible,” sex-disaggregated data is collected in “all subject areas.”<sup>536</sup> Easy to obtain sex-disaggregated data can be decisive for the inclination to employ gender analysis, or not. Sex-disaggregated data collection enables the statistical offices to calculate, for example, the gender pay gap, the division of paid and unpaid labour, demographic and social statistics and education.<sup>537</sup> Childcare and health are also part of DG Eurostat’s (DG ESTAT) statistical equality indicators. Today Commission officials are able to consult many sources on gender effects of policy and programme making:

“A lot of progress is being achieved on the EU level with those data for instance by DG ESTAT and the services can find a lot of data on the DG ESTAT website.”<sup>538</sup>

“So we have regular reports for instance we have a report on women in the crisis, women in the life-long learning, women in the unemployment and all those types of information. We have DG ESTAT which is developing a lot of data related to gender and there is a website where you can find those data that could be used by anybody in the Commission or outside the Commission. And we have, as I mentioned earlier for instance, a database on women

**535** | Holvoet/Inberg 2012. I.e. in the German development aid, the percentage of legislation being subject to GIA was introduced as a conditionality indicator for receiving German development aid (Deutsche Gesellschaft für Technische Zusammenarbeit GmbH 2008, 13).

**536** | It is noteworthy that in the Commission’s Statistical Compendium, unlike with all other modules, the legal basis to disaggregate data by sex is neglected to be given (European Commission; Eurostat 2008, 65). For sex-disaggregated data as the basis for gender mainstreaming, see chapter 1.4.1.3.

**537** | European Commission; Eurostat 2008, 22; 25; 62; 236.

**538** | EU23, Interview.

in decision-making and so on. [...] And we can also launch, if we want, specific studies on gender aspects that could be used for an IA.”<sup>539</sup>

The Directorates-General also generate new data when necessary to close data gaps, or they can ask DG Eurostat to provide supporting data. Such specific studies are typically linked to information required for specific IAs (“we are launching specific studies always linked to an IA.”<sup>540</sup>). DG Eurostat provides sex-disaggregated data and separate statistics for the development of policies and programmes, but is not involved in the interpretation of data.

Data for use in analysis is available from a number of other studies and indexes. Among many studies on gender disparities, the “She Figures”<sup>541</sup> is the most prominent; in fact, it is sometimes called the gender data “bible.”<sup>542</sup> It provides statistics and indicators with a focus on women in science and research, but also includes other issues such as horizontal and vertical segregation of the labour market, work-life balance, innovation and mobility. It strives to offer “pan-European harmonised statistics” and “to build a base of gender-disaggregated data available at the EU-level,” which would enable cross-national comparative research and interpretation of data.<sup>543</sup>

Another recent initiative is the Gender Equality Index<sup>544</sup>, introduced in 2013 by the European Institute for Gender Equality. This Index is a regularly and routinely updated resource on aggregated equality indicators for all EU countries.<sup>545</sup> Although it is a step forward in terms of comparability of country specific gender data, my interview respondents felt that it had limited use for IA—that it was too much on the meta-level and not specific enough for particular IAs on the Commission level. Aggregated indexes are typically coarse grained and are often of little use for detailed policy questions.

There are great differences in availability and reliability of data among the member states, and these differences only increase when the data is multi-variable.<sup>546</sup> As in Canada, data disaggregated by sex as well as other factors or grounds for discrimination is difficult to obtain. As a result, qualitative studies become the choice for IA, but their use conflicts with the EU’s preference for quantitative—even monetised—analysis under the integrated IA approach:

**539** | EU23, Interview.

**540** | EU23, Interview.

**541** | Since 2003, the She Figures are published every three years. After 2003, 2006 and 2009, they have recently been launched in their fourth version (European Commission; Directorate-General for Research and Innovation; Directorate B—European Research Area; Unit B.6—Ethics and Gender 2013).

**542** | EU25, Interview.

**543** | As mentioned in the Commission IA for the proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (European Commission; Directorate-General for Research and Innovation; Directorate B—European Research Area; Unit B.6—Ethics and Gender 2013, 14).

**544** | European Institute for Gender Equality 2013a.

**545** | European Institute for Gender Equality 2013a.

**546** | European Commission 2008c, 11; 59.



“What we always recommend is at least to have the first analysis, when... it depends which type of policy and so on, it’s very difficult to answer just like that, but... of course the first step is always the same to have the analysis of the problem which considers the gender issues and for instance which looks at the data broken down by sex, to see if there is differences. I guess you know that, to see whether there are differences between women and men and then if there is any significant difference to try to address those differences in developing the policy and so on. This is why one asks as a minimum requirement to always have the data broken down by sex. Even if the thing is not always the case.”<sup>547</sup>

Regarding data, a lack of gender expertise in individual DGs endangers the correct execution, the collection and interpretation, as a first step. For engendering the problem framing,<sup>548</sup> the sex-disaggregation of data is the basic requirement in IA. But in order to become transformative, gender savvy experts in the field are needed to also ask the *right* questions and then to interpret the data *right*, as the following example illustrates:

“I was involved in the quality support mechanism, and so I had provided advice many times on programmes dealing with [policy area, A.S.], especially supported through the society, but also dealing with minority issues, so not directly on gender... [...] my comments were that [...] there was a potential impact on gender that was not emerging from the [...] note or—I mean—on the first project outline [...]. There was no sex-disaggregated data... Even if based on other documents, [...] or the background data [...] we already knew that there were relevant gender issues.”<sup>549</sup>

From this statement it is clear that gender experts are critical to the process, not only for paying attention that the right data is collected, but also for contextualising and interpreting the data. This integral role, however, has not generally been recognised. Although the preference of the Commission is to conduct IA studies in-house to strengthen the analytic capacity of Directorate evaluation and IA units, gender expertise is not yet seen as an integral part of that capacity. Gender knowledge and expertise for IA studies can be acquired by contracting out, but in-house expertise is needed to manage these contracts. For example, expertise is required to manage the terms and conditions of contracts to ensure that consultants are obligated to execute a gender analysis—which they often are not:

“We commission external consultants to provide input and then certainly we screen or feed this input into our policy analysis or our IA analysis of the commission IA or the commission evaluation. But let’s put it that way: If consultants are not asked to this analysis, and we do not have in-house the expertise to do it better than the external consultant, than if this topic [gender equality, A.S.] is not included in the list of things to be done by the contractor, it means this topic will not be looked at. So, let’s put it that way, it’s almost a necessary condition to ask external consultants to look at these things, if we want anybody to look at these things.”<sup>550</sup>

**547** | EU23, Interview.

**548** | See sub-chapter 1.5.3.

**549** | EU11, Interview.

**550** | EU20, Interview.

When contracting IA studies out, the Commission should run a basic GIA relevance test to influence the design of contract requirements. But sufficient in-house capacity on gender equality is also needed to write up the terms and to oversee contracting. The selection of capable research institutions is yet another area where analysts with gender expertise should be empowered to identify bidders capable of *doing the job* in a gender sensitive way. But these outside experts must be managed with in-house expertise:

“Even if it’s direct management, we promote the recruitment of experts on certain fields, so we would get experts on that field to advise us on. So we are not going to write up an IA completely by ourselves, we launch preparatory studies. We need to know about the types of impact in more detail, [...] we recruit experts to do the analysis for us. So we do more the management, the administration where we can make sure that some experts have collected and analysed information, and we put it neatly together in a report that would make sense to us and would be understood by decision makers.”<sup>551</sup>

This citation highlights another role of policy analyst: that of policy advisor. This is a critical role. Even if an external study, or more typically, a series of studies for larger policies, picked up on gendered effects, it is left to the Commission to frame the policy problem and its solutions for policy makers. In practice, the framing of gender disparities is often placed in competition with other discriminatory aspects. When data interpretation takes place under a paradigm of direct discrimination, structural and systemic (indirect) factors get overlooked and are interpreted as gender-neutral with no effect on the direct discrimination. Thus, gender disparities are “explained away” by other reasons:

“We are able now to have statistics on a number of proposals that would have some relevance in terms of gender, but also in terms of racism, in terms of disability etc. We have to be very very cautious with those statistics, because sometimes you may find a gender imbalance that can be explained away because of socio-economic reasons and not discrimination. We are working on that base of discrimination we are not working on the sociology of gender. We act and we need act when there is a discrimination, which is based on... on gender, gender-based violence etc. and things like that.”<sup>552</sup>

Knowledge of concrete forms of direct discrimination seems to obstruct the view of systemic components of oppression. What the above citation reveals is an insufficient understanding of social and economic systems as being deeply gendered and as sources of indirect discrimination. The truth is that statistics often hide more than they disclose, and such an approach to testing for gender relevance will most likely not result in indicators that will foster gender equality. And it will certainly not bring about the transformative shift so desperately hoped for by feminist scholars.

As we have seen, the very “first analysis” that checks for gender relevance is far from trivial and requires a high degree of gender competency in the specific policy field. Interviewees agreed on the usefulness of providing data in a disaggregated manner that emphasised the importance of data interpretation. Sex-disaggregated

**551** | EU19, Interview.

**552** | EU16, Interview.

data as the “minimum” can only be regarded as the first step and needs to be followed by an informed interpretation of data that will result in an integration of objectives and performance indicators.<sup>553</sup> Establishing gender indicators or mainstreaming gender in other indicators during the IA appraisal is not seen as the end but rather a means for data interpretation:

“I think we always talk about indicators, in general a lot of attention is drawn to indicators. But an indicator as such doesn’t say much, you always have to have interpretation of the indicators and just thinking about a set of indicators to reflect and open the issue [...] ok it’s nice—but it won’t tell anything until you do analysis and until you provide interpretation of indicators, because numbers as such say nothing. So I would not put that much emphasis in indicators.”<sup>554</sup>

Even an interpretative effort that includes gender in IA performance indicators, as this quote suggests, does not always come to the right conclusions. In order to overcome personal, educational, and institutional limitations, multi-disciplinary teams with gender experts on board are best suited for solving research problems. In addition to employing gender-sensitive tools like GIA, interdisciplinary IA research in teams can counter the effects of limited data interpretation—a corrective measure mentioned in the interviews. In sum, sex-disaggregation of data collection has improved overall, but some problems with data availability remain, especially in multi-variable studies disaggregated by sex and additional factors. The most critical issues at the EU level, however, are interpreting the data with a background of sufficient field-specific gender expertise and integrating qualitative data sets in quantitative IAs.

Last but not least, communication—or knowledge transfer—is crucial for the success or failure of the inclusion of sex and gender in IA. Non-bureaucratic, accessible language is key to the integration and translation processes and essential both for internal team communication and for communicating assessment results to a wider public. In communicating IA results, for instance, the Commission’s IA guidance emphasises the necessity to express IA results clearly in brief and concise reports with a maximum of 30 pages and a maximum ten page summary:<sup>555</sup> “The report should be **written in clear and simple language**. A non-specialist reader should be able to follow the reasoning and understand the impacts of each of the options.”<sup>556</sup>

It is worth remembering, however, that these 30 pages contain a deeply complex, often highly aggregated, integrated assessment of combined economic, ecological and social effects, of which gender aspects constitute a minor part. Simplicity has its downsides: it may actually be an obstacle to concise scientific representation

**553** | At performance indicator level, gender mainstreaming mostly stops at monitoring participation in i.e. programmes: “On the annual basis, we have this data on what you would call, call the head counts, on the participants.” (EU24, Interview).

**554** | EU14, Interview.

**555** | IA reports and summaries can either be written in French, English or German, but IA summaries have to be translated into all official EU languages (European Commission 2009a, 10).

**556** | European Commission 2009a, 9. Emphasis as in original.

and may not grant gender analysis the space it might deserve. Restraints on space and language can lead to tainted interpretations of complex research findings. Here lies the danger expressed in the opening statement by Norman Glass, Director of the British National Centre for Social Research: “Knowing things that are not so is worse than knowing nothing at all.”<sup>557</sup>

#### 4.4.6 Accountability: “Monitoring Is the Only Way to Check It”

Accountability for GIA and its quality management is old news to the EU: The Commission’s first comprehensive GIA progress report was issued in 1998<sup>558</sup> and was followed by the 2002 Advisory Committee on Equal Opportunities for Women and Men’s “Opinion on the Implementation of Gender Mainstreaming in EU Policies.”<sup>559</sup> And in 2000 Rubery and Fagan identified GIA as a central and crucial instrument of the wider gender mainstreaming strategy in a EU commissioned study.<sup>560</sup> Since then, however, there has been no systematic follow-up action, such as focused implementation, or routine reporting on gender mainstreaming in IA. Neither the annual gender equality reports<sup>561</sup> nor the statements of the different EU gender equality bodies, such as the Gender Equality Dialogue, document or account for gender in IA implementation practice. But documents such as the 2010 Progress Report do point to policy and programme making that is devoid of gender sensitivity and to the absence of systematic GIA in the aftermath of the financial and economic crisis:

“In order to limit the negative repercussions of the economic crisis on the equal participation of women and men in the labour market, policy makers have to build their policy responses on a gender-sensitive analysis of the labour market as well as systematic gender impact assessments and evaluations.”<sup>562</sup>

Until recently, the mainstreaming of gender in IA was not subject to systematic reporting or quality management requirements under the current EU gender equality architecture—this even though the European Parliament did call for more reliable sex-disaggregated data and assessment, and also for monitoring “the cross-cutting nature of gender equality in all policies.”<sup>563</sup> The Parliament has repeatedly identified special areas of concern, such as gender effects of pension systems or the financial and economic crisis, and has called for a specific gender

**557** | United Kingdom 2006, 52.

**558** | Commission of the European Communities 1998.

**559** | Advisory Committee on Equal Opportunities for Women and Men 2002.

**560** | Rubery/Fagan 2000.

**561** | As in the last three reports (European Union; DG Justice 2013; European Commission 2012f; European Commission; Directorate-General for Employment, Social Affairs and Equal Opportunities; Unit G.1 2010).

**562** | European Commission; Directorate-General for Employment, Social Affairs and Equal Opportunities; Unit G.1 2010, 11.

**563** | European Parliament; Committee on Women’s Rights and Gender Equality 2012, 15.

assessment.<sup>564</sup> But its activities have been limited to contracting studies on gender equality in key policy areas<sup>565</sup> and providing supplementary assessments on initiatives that were treated as neutral under the Commission's IA but later deemed gender relevant by the Parliament.<sup>566</sup> These efforts, however, are but a bandage on a bleeding wound. As the Canadian GBA practices show, ex-post or parallel quality management performed through the challenge function of the central agencies is an indispensable step in encouraging gender-sensitive ex-ante IAs.

The European case leaves open questions with regard to controlling for gender in IA practices and quality management, or by locating gender in IA tools and practices. As pointed out before, the first initiative since 2000 to monitor gender analysis practices in the Commission and the member states, was initiated by the European Institute for Gender Equality in 2012<sup>567</sup>, but not yet fully published.<sup>568</sup> The EU debate on the quality of gender assessments is only in its beginnings,<sup>569</sup> and has not yet led to formulating core tool quality criteria for gender mainstreaming tools.<sup>570</sup>

Gender analysis is generally missing from IA reporting. For example, an *Evaluation of the Commission's IA System for the Secretariat General of the Commission*,<sup>571</sup> published by Evaluation Partnership Limited in 2007, examined 20 single IAs and six IA case studies, but only attested for social impacts in general.<sup>572</sup> Similarly, the Impact Assessment Board's annual reports 2007-2011 do not explicitly mention gender analysis, subsuming it under the social impacts.<sup>573</sup> There is also little data on the number of gender-relevant IAs. This is generally due to the decentralised execution of IAs and a gap in control by the Impact Assessment Board. The Board controls for Social Impact Assessment in general, which is to be found in only a third of all integrated IAs.<sup>574</sup> The low occurrence is approved by the Board, since many IAs are concerned with financial market regulations, where it sees no or little

**564** | For example in its 2011 gender equality report (European Parliament; Committee on Women's Rights and Gender Equality 2012, 9).

**565** | European Parliament 2014.

**566** | European Parliament, Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs 2012; European Parliament; Directorate General for Internal Policies; Policy Department C Citizens' Rights and Constitutional Affairs 2013; European Parliament 2014.

**567** | European Institute for Gender Equality 2014c, 9. In 2011-2012 the EIGE declined repeated interview requests on GIA in the EU for the purpose of this study.

**568** | Partial results on member states only were disclosed in (European Institute for Gender Equality 2014a, 23-26; European Institute for Gender Equality 2014b, 59-65).

**569** | European Institute for Gender Equality 2014c.

**570** | See quality criteria as established in

**571** | The Evaluation Partnership 2007, 8-9.

**572** | The Evaluation Partnership 2007.

**573** | See the results of a document screening of these five annual Impact Assessment Board's reports in subchapter 4.4.6.3.

**574** | For example, in the 2010 annual Impact Assessment Board's report, the board states that of the 66 IAs examined, 83 statements of which 18 were concerned with re-tabled IAs (Europäische Kommission; Ausschuss für Folgenabschätzung 2011, 4).

connection to social or environmental impacts.<sup>575</sup> Of interest for general questions of quality management is also the fact that only 13 per cent of all IAs make use of ex-post evaluations and their data, which leaves a policy cycle gap of 87 per cent in the concluding step in an IA: feeding back the results of old programmes and policies into new initiatives.<sup>576</sup>

A later study on the quality management of Commission IAs, as conducted by Oliver Fritsch, Claudio Radaelli, Lorna Schrefler and Andrea Renda in 2012,<sup>577</sup> paints a somewhat conflicting picture. After analysing 251 Commission IAs dating from 2005-2010, they deemed that “the EU assesses social impacts almost as often as economic impacts.”<sup>578</sup> But although the authors state that they also inquire into the status of gender in the integrated IA, their study is silent on the actual occurrence of gender impact assessment. They conclude that while economic and cost-related assessments have achieved a high level of sophistication in quality, “assessments of environmental or social impacts, policy options, or policy objectives”<sup>579</sup> have yet to be lifted to that level. Overall they attest to a progressive improvement in the quality of assessments, which they attribute to institutional learning and regulatory oversight.

The European Court of Auditors offers some interesting insights into quality management of IA, although it does not specifically control for gender equality. In its screening of 12.000 documents issued by committees, working groups of the European Parliament and the European Council between 2004 and 2009, only five were devoted to discussion of IAs.<sup>580</sup> Irrespective of their gendered effects, quantifiable or monetised assessments of social impacts were included in only 12 per cent of the documents, and only 23 per cent included benefits of planned policies or programmes.<sup>581</sup> Concerning ex-post evaluation, the European Court of Auditors found that evaluations of public interventions were rarely implemented. Such findings demonstrate the limited reach of IA in general and bring to ground the high-flying expectations of many feminists and gender mainstreaming experts with regard to GIA in particular.

Accountability can be exercised by multiple actors. External institutions such as the media, with its “litigation and audit explosions,”<sup>582</sup> lobby and special interest groups, and even individual citizens demand to be treated as stakeholders, and, in these times of fast communication and Internet democracy, are increasingly emerging as accountability actors.<sup>583</sup> Internal actors include civil servants in senior management and the analysts themselves who are made accountable. It should

**575** | Europäische Kommission; Ausschuss für Folgenabschätzung 2011, 16.

**576** | The Evaluation Partnership 2007, 8-9.

**577** | Fritsch et al. 2012.

**578** | Fritsch et al. 2012, 9.

**579** | Fritsch et al. 2012, 10.

**580** | European Court of Auditors 2010, 21.

**581** | European Court of Auditors 2010, 38.

**582** | Bovens 2005, 203.

**583** | Bovens 2005. For instance, in the absence of an internal systematic evaluation of the considerations of gender aspects, there is an external study on the practices of including gender equality concerns in EU funded research projects and research content (Lipinsky/Samjeske 2012).

be noted, however, that analysts in their role of conducting IAs are located rather low in the administrative hierarchy and are subject to low levels of professional accountability due to the scientific rigor of IAs. But their research is not exempt from accountability, which is exercised by peer analysts in multi-disciplinary teams, the IA steering group, and the Impact Assessment Board.

Accountability can also be achieved in other ways. Bovens and other public administration researchers see new forms of horizontal accountability on the rise, with answerability concentrated on the meso level of the government agency.<sup>584</sup> At the same time, public policy analysts, as members of bureaucracy, rather than being independent researchers, are subject to the same mechanisms of hierarchical and administrative accountability. Such multi-sites of governance form a contextual matrix<sup>585</sup> that can be used to establish accountability for GIA.

Accountability for the IA system merits discussion here. The issue is that IA is far removed from accountability due to its science-based orientation.<sup>586</sup> IA experts, such as Andrea Renda, have therefore sought to strengthen the accountability of the Commission's IAs.<sup>587</sup> According to Renda, the Common Approach to IA has failed to make IAs accountable for their scientific quality and soundness, and he argued for a strong need to establish some form of external oversight,<sup>588</sup> which now has been realised through the Impact Assessment Board. The Board's role in quality assurance was later deemed very successful by Renda and his colleagues Oliver Fritsch, Claudio Radaelli and Lorna Schrefler of the influential IA think tank Centre for European Policy Studies.<sup>589</sup> Participants in my interviews noted the quality management function of the Board, which placed accountability for gender issues in the Commission's ex-ante assessments. But they also emphasised that a multiplicity of players is (or could possibly get) involved:

"Normally, it is the Sec Gen [Secretariat General, A.S.] which is responsible to check the quality of evaluation, as they are checking the quality of IA. And normally, it is up to them to check if the gender aspects are included [...]. In each DG also there is normally a gender correspondent who is supposed to ensure that the gender aspects are well integrated by the other units in that DG. So, normally it is a chain of persons, it depends, which services and if there are a lot of gender aspects in the policy."<sup>590</sup>

According to the interviews, the Commission's hierarchical and professional mechanisms of accountability, which include the Impact Assessment Board, the Secretariat General, the heads of the Directorates-General and their internal gender

**584** | Bovens distinguishes also between vertical and horizontal accountability in a pluralistic accountability regime (Bovens 2007, 196-200). For a more detailed discussion of the underlying concepts of accountability, see chapter 1.5.4.

**585** | Bergsteiner/Avery 2006, 6.

**586** | See also Peter Alcoin's analysis of institutional characteristics that diminish Parliament's ability to hold Ministers and Officials accountable for their actions (Aucoin 2006).

**587** | Renda 2008.

**588** | Renda 2008.

**589** | Fritsch et al. 2012.

**590** | EU23, Interview.

experts, and the gender experts in DG Justice, do not seem to function smoothly with regard to gender impacts. One of the inventors of GIA calls for explicitly assigning a gender analysis challenge function: “I believe [...] if it wasn’t checked at the end of the line, if it was not undertaken, then it would have to be sent back to the relevant service. Somebody would have to check this at a higher level and the service.”<sup>591</sup> To date, gender experts have not been consulted routinely on IA proposals and are therefore excluded from the IA system—especially in remote policy fields not associated with gender equality at first glance:

“If it is an IA on specific legislation regarding gender equality, there ok often we launch a study to draft the IA. So there is external expertise included in that case. The problem is always when it is just, not just, but when it is gender issues to be promoted into another policy. There you have a review time available because either way, when an IA is launched or if a study is launched, it should be part of the time plans. But it’s not always the case. It’s very rare I think. In fact we should be [...] to improve the system, I think that we DG JUST or Sec Gen [Secretary General, A.S.] should take care of the terms of reference of the studies which are launched to support the preparation of the IA.”<sup>592</sup>

It is not just about allowing extra time and resources for GIA; it is about inscribing the demand for a gender analysis (and consequently gender expertise) into all procurement contracts of consultation services. Only in this way can GIA be elevated from invisibility to a desirable and financially rewarding aspect of quality assurance. Coupled with this would be the demand for gender expertise on the side of the bidders.

#### **4.4.6.1 Accountability Through Consultations: “Sometimes I’m Looking at Who Has Answers, But [...] Nobody Asked Me That”**

Micro-level forms of horizontal and peer accountability can be extended by the processes of consultations embedded in IA. In subchapter 4.2 of the integrated IA guidelines, stakeholder consultations are called a “treaty obligation”<sup>593</sup> and a compulsory part of the information collection process. The Commission calls consultation a “dynamic process.”<sup>594</sup> The consultation process concerns basically all segments of the IA, such as the definition of the problem, objectives and policy options or impacts. It can accompany the comparison of policy options or the assessment of costs and benefits.<sup>595</sup> Analysts are free to incorporate deliberative elements, but some sort of consultation is always obligatory. It is most useful if it comes early: “It comes at a preparatory stage... for an IA, so it’s before you start to write it, when you have like an outline in your head. You’ll launch specific ones and opened consultations, so you can launch both.”<sup>596</sup>

Consultation can take many forms, such as an open public meeting or a session with a few specialised stakeholders. The minimum standards in the IA guidelines

**591** | Anne Havnør, Interview.

**592** | EU23, Interview.

**593** | European Commission 2009a, 18-20.

**594** | European Commission 2009a, 19.

**595** | European Commission 2009a, 19.

**596** | EU19, Interview.



require that “all affected stakeholders”<sup>597</sup> and “all relevant target groups”<sup>598</sup> be consulted—which indirectly imposes an obligation to ensure participation of women’s organisations in all initiatives, because, in the end, impacts on the population affect both men *and* women. In reality, no such effort has been visible, although proactive outreach to stakeholders is recommended. The consultation guidelines do not give advice on how to choose between contradictory inputs from stakeholders in developing IA policy options. In fact, this is yet another point where bias can be introduced into the process.

To facilitate IA consultation, the use of web-based e-consultation tools such as “Your Voice in Europe”<sup>599</sup> and “SINAPSE”<sup>600</sup> is encouraged. “Your Voice in Europe” does not require registration; it is available to anyone and offers open consultations arranged by policy area and target groups. Participation usually takes the form of filling in on-line questionnaires.<sup>601</sup> SINAPSE is another free public service provided by the Commission. It was created to give the Commission’s policy makers a set of consultation methods, such as networking of advisory bodies, support to expert groups, ad-hoc/public consultations and e-debates. Through the tool *e-Communities*, SINAPSE enables members and organisations with a common interest (such as an IA) to share information and opinions.<sup>602</sup>

The 2009 integrated guidelines do not make it clear when to use which consultation tool, although they state that open public consultations must be published on “Your Voice in Europe. “The fact that “Your Voice” is called the Commission’s “single access point for consultation”<sup>603</sup> can be misleading, given the existence of SINAPSE. The result could be a two-tier system of open consultation (“Your Voice in Europe”) and restricted or priority access (SINAPSE). One problem with open consultations is that there may be little control over who responds to the call for participation: “Stakeholders’ consultations are run by an operational unit that prepares the initiatives, the concrete initiatives [...]. [They] have very little influence [on] who is actually going to answer [...].”<sup>604</sup> Commission’s civil servants are aware of the requirement to ensure that the consultation process is inclusive with regard to women, but since participation is voluntary, they may be faced with situations where no women’s organisations actually join the stakeholder pool:

“Yes, we have a sort of obligation to include different stakeholders, and usually the women associations and government agencies or whoever exists. I mean, all the kind of entities which exist in the different countries, [...] are involved in the decision making processes, so yes. [...] who is to involve the different stakeholders. They had clear instructions to have diverse participation, so... I’m sure they check, they do their best to involve as much women

**597** | European Commission 2009a, 19.

**598** | European Commission 2009a, 20.

**599** | European Commission 2015e.

**600** | European Commission n.d. b.

**601** | European Commission 2015e.

**602** | European Commission n.d. b.

**603** | European Commission 2009a, 20.

**604** | EU13, Interview.

as men, even if sometimes it's not easy because—of course—sometimes there are no women associations or there are no women in associations [...].”<sup>605</sup>

When “it's up to them to decide”<sup>606</sup> whether or not to participate, gender equity in consultation cannot be assured by the EU. According to the interviewees, so far no women's organisation has complained about gender imbalance or about not being able to contribute to the content of IA consultations. The truth is, however, that the thought of preparing meaningful input to a meta-level consultation covering the whole EU might overwhelm an underfunded, slimly resourced national or regional women's organisation. But the challenge remains for Eurocrats to monitor consultations for gender:

“The consultations are open to everyone, and yes, some of them have responded, but whether this is a complete coverage, this is impossible for us to do, because quite frankly, we don't know what kind of organisations there are in the 27 member states, I mean sorry [...].”<sup>607</sup>

Proactively reaching out to women's organisations before a consultation is considered could benefit IA design and would help make analysts aware of all the relevant players and interested parties in their field. It would therefore make sense for the IA steering group to ask gender experts for support in planning consultations. At this point, such out reach is not happening. Gender experts: “Are not involved before to launch those consultation and... sometimes I'm looking at who has answers, but it is very time consuming and nobody asked me that in addition. It is not properly integrated, I must say.”<sup>608</sup>

Not being asked for advice on the IA consultation process, gender experts are not able to give input on appropriate consultation methods or stakeholders that could influence the process. In practice, consultation processes are often launched and administered by third parties within the Commission, outside the IA steering group. Some Directorates-General have decided to collaborate on a permanent level with external advisory groups of gender experts in the field. These experts set the general policy or programming agenda of the Directorate from a gender equality perspective, but they do not give advice or consult specifically on individual IAs. One interviewee interpreted this dialogue with gender expert networks outside the Commission as a substitute for deliberation on specific IAs and felt absolved from paying attention to gender mainstreaming in IA consultations:

“Because gender is such a transversal mainstreamed item, you can find it all over the place and [...] we, we do get out of DG [name of the DG] to lend expertise and to discuss [policy field of the DG] related items with a gender dimension. You see. Your question, if I may translate it, do we have on-going stakeholder consultation on [policy field of the DG] and gender here [...].”<sup>609</sup>

**605** | EU10, Interview.

**606** | EU19, Interview.

**607** | EU24, Interview.

**608** | EU23, Interview.

**609** | EU16, Interview.

But the downward IA accountability provided by consultations relies heavily on the legitimacy of those consultations with regard to target group participation. The external advisory networks, typically composed of academics and experts, not civil society organisations, can help establish crucial links to relevant stakeholders in the member states. They need to be better integrated into the IA system. At present, institutional funds and funded expertise remain unused for formulating consultation advice.

In my interviews, it became clear that gender mainstreaming in IA stakeholder consultation has not yet been realised. Nor has it been recognised as a relevant field of action, even though numerous academic publications in the field of governance and policy studies have identified participation of the feminist and women's movements as an integral part of quality assurance in policy making.<sup>610</sup> According to some feminist scholars, the "lack of gender specificities and concrete articulations"<sup>611</sup> is one of the weaknesses of existing processes of democratic deliberation. It is also an intersectional challenge to the assumed homogeneity of target groups.<sup>612</sup>

Commission policy analysts find it impossible to guarantee for equity in consultation processes. In spite of the demand for comprehensive consultations, target groups or under-represented stakeholders may or may not have an affinity for a particular policy field or policy traditions:

"Probably, I think also that it depends on the sector in which the programme is done. [...] because they probably consult women more easily, women associations if it's a programme in the education, in health sector, for instance, than for a programme—let's say—in infrastructure or—I don't know—energy."<sup>613</sup>

Outside of IA consultations, some Directorates already monitor gender equity in stakeholder input to programmes, although there is still no strategic approach to involving women's organisations directly or in a more proactive and targeted fashion:

"I mean we do a lot of stakeholder consultations. The most recent one was done in the context of the preparation of [name of the programme], [...] which triggered an enormous interest, I mean by our standards, with more than 1,300 responses to a questionnaire and over 700 position papers received. To be perfectly honest, I'm not aware that in this process we had any particular—how should I say—attention or focus on gender. It's also fair to say that the vast majority of the replies to this consultation came from organisations, so it's not, so to speak, a gender issue in the direct sense. We also try for other consultations, just take the interim evaluation of [name of another programme], where we did some gender statistics, where we ended up with something like 32-33 per cent which is, ok, below our target, but better than the participation average in the [name of yet another programme] which is around

**610** | Krizsan/Lombardo 2013; QUING 2011a; Lombardo/Rolandsen Agustín 2011; Squires 2007.

**611** | Lombardo 2009, 324.

**612** | Squires 2007; Walby/Armstrong 2010.

**613** | EU11, Interview.

20 per cent. We don't have any, let's say, very elaborate strategies, to increase the female participation in the stakeholder consultations."<sup>614</sup>

Head-counting is not a reliable way of monitoring equity, since the Commission has not way of knowing how many women and men have been part of individual submissions unless the figures were provided directly by feminist or women's organisations. A process to proactively identify and encourage women's or feminist organisations to participate in the IA consultations has not been attempted; and setting one up might be seen as problematic since it would require country-specific knowledge of all relevant local players in the specific policy field. Currently, there are no resources or infrastructure for setting up such an inclusive and strategically guided gender mainstreamed consultation process under the IA regime.

Since no feminist stakeholder has yet noted the absence or underrepresentation of women's organisations in the process, it may be that women's organisations have not yet discovered IA consultations as means of democratic deliberation. Their more usual intervention is a demand for GIA to be conducted.<sup>615</sup> If the Commission is not actively made aware of that there is room for improvement in consultation practices, it seems unlikely that change towards more equity and better integration of gender concerns is underway. The Dutch international development specialists Nathalie Holvoet and Liesbeth Inberg have made observations about the need for strong gender demand to change such situations. Although their comments pertain to non-state actors, they apply to state-actors alike:

"Non-state actors such as civil society organisations are often pointed at as an important mechanism of 'downward' accountability. However, it is naive to assume that the gender dimension or gender actors will be automatically taken on board in the accountability exercises [...]. It necessitates the presence of a strong 'gender demand' side [...]."<sup>616</sup>

Such a "gender demand" is not yet present in European IA deliberation. On a micro-level, gender demand could be created through a stronger inter-service pre-consultation process, but external women's organisations would also need to respond.

#### **4.4.6.2 Controlling for Gender Impact Assessment: "We Did Work Informally, You Know Networking"**

Together, women's organisations and internal gender experts can play a much more active role in making policies and programmes accountable to gender by working to influence IA design and objectives through consultations and delivering gendered evidence that would otherwise not be sought or that might be overlooked. But such an influential role remains an ideal. The Impact Assessment Board in its latest report raised concerns about quality in the IA process. The Board found it "disappointing that so many impact assessments fail to properly integrate views and report them in an unbiased way" mainly due to "weaknesses in the collection" and

**614** | EU24, Interview.

**615** | E.g. the European Women's Lobby in its statement on economic policy governance (European Women's Lobby 2011).

**616** | Holvoet/Inberg 2012, 6.

non-transparent presentation of stakeholders comments.<sup>617</sup> A similar concern has been voiced by gender experts: They have a chance for input to single IA initiatives during the IA planning stage, but they have no means of following up on how their input influences the design and outcome of final analysis:

“We can ask our colleagues to improve the situation, to improve the planning of the programme. Usually they agree with us, usually they comply with what we require. Of course there is a designing level, and then we won’t have any more the picture of the situation until the end of the project. So we won’t be able to check if it really would have been [...]”.<sup>618</sup>

On the meso level, there is also the question of whether coordination and oversight of IAs should be exercised by DG Justice or the Impact Assessment Board. In theory, DG Justice should have the chance to examine planned IAs in order to establish possible gender relevance, to contact the Directorate-General in charge, and to intervene. In practice, the gender experts of DG Justice—like the State of Women Canada—are not fully informed about IAs in the pipeline or when they are launched. In addition, the gender mainstreaming unit within DG Justice currently consists of only ten people. The unit has neither the time nor the analytical capacity to exercise this quality watchdog function; that is reserved to the Impact Assessment Board.<sup>619</sup>

Moving accountability for GIA ahead in the direction of controlling for its application, could take many forms. The most binding form would be to communicate the GIA tool application as an obligation in the IA process. Initially, when the tool was designed, the developers themselves had intended to make its use obligatory, but did not succeed in their efforts. They then turned to external actors to raise awareness of the tool in the attempt to create some form of support and bureaucratic accountability:

“This is maybe something I should not say, because this is not the way you should work, but we did work informally, you know networking, involving the European’s Women’s Lobby and the Women’s Committee in Parliament—not very closely, but there were links and contacts. Because we needed somewhat, what you can call... to push from several corners to move things.”<sup>620</sup>

As the former chapters demonstrate, such attempts to establish more binding forms of administrative support for GIA were unsuccessful. As long as peer-accountability is not exercised due to a lack of (assumed) political and peer support, it is even more important to establish clear accountability trajectories for gender across the policy cycle, including ex-ante IAs and ex-post evaluations.<sup>621</sup> Controlling for the implementation of ex-ante GIA or proper gender analysis in the integrated IA is—as in Canada—not taking place. Thus, it might be assumed that a demand for exhaustive and even compulsory GIA implementation would come up against

**617** | European Commission 2013b, 26.

**618** | EU10, Interview.

**619** | See following chapter 4.4.6.3.

**620** | Anne Havnør, Interview.

**621** | Compare chapter 1.4.3.

resistance in today's Commission bureaucracy as well, especially since the EU is pushing for an integrated approach. Making GIA mandatory (and with support of gender experts) in environmental and economic IAs is, however, an effective way to assure mainstreaming in the current IA system.

Another way to ensure accountability in GIA application is to surrender all policies and programmes, including the ones that have been deemed gender-neutral in their ex-ante IAs, to another (or first) parallel gender check in the interim evaluation phase.<sup>622</sup> This check at the close of the policy cycle may uncover gendered effects that might not have been predictable, but that surfaced in the implementation phase. Such an approach—an obligatory ex-post gender check for the equal participation of women and men—was put forward by the one interviewee:

"[...] [E]x-ante is more difficult to do, because it is more linked to the varying implementation of the action rather than to the design. Because the design of the actions they are neutral in this respect, because they are not focussing specifically on gender issues. It's rather that there should be some bias in the implementation when it comes to the gender representation, then we could look mid-term at how can we compensate for this, could we do anything further to improve the situation."<sup>623</sup>

The accountability mechanism of evaluation on delivery could serve as an entry gate for a gender analysis, even if performance indicators were not gender sensitive to begin with:

"It seems quite relevant, but actually they haven't had really a proper monitoring—in the current programming too. They are kind of first generation of [initiatives, A.S.], they haven't done it enough and they are not really monitoring it. Their monitoring system is to be established already now for the future perspective after 2013."<sup>624</sup>

If a first evaluation shows a policy or programme to be gender-neutral or gender insensitive, a compulsory ex-post gender check could be performed. After the first, gender-insensitive generation of policies and programmes, there then could be a second generation that would be gender aware. After a successful relevance check—an in-depth GIA would test for rights, resources, norms and values and how the respective programme or policy could not only prevent unequal treatment, but actually actively "promote equality between women and men."<sup>625</sup> The parallel application of GIA could trigger organisational learning and is a way to monitor for gendered effects. As such, monitoring for gender mainstreaming would entail two steps: monitoring for ex-ante implementation of GIA and monitoring programmes and policies a second time, by making sure GIA is used at least in parallel ways to evaluate at policy and programme implementation. Some Directorates have seen the necessity for monitoring for gender equality in their programming: "The monitoring is the only way to check it... But not all programmes are monitored, so

**622** | Compare the start of this chapter 4.4.6.

**623** | EU13, Interview.

**624** | EU22, Interview.

**625** | European Commission, Directorate-General Employment, Equal Opportunities Unit DG 5 1997/1998, 5.

we hope that what we require is implemented, but we have no way to check and eventually penalise them if they don't."<sup>626</sup>

And some Directorates have incorporated systems for overall monitoring, such as the Result Oriented Monitoring, into their operations:

"'Result Oriented Monitoring', ROM. System, which is our overall monitoring system [...]. We have framework contracts with external experts that are in charge of monitoring. Basically all our projects, all our financial initiatives, they take a sample every year, a representative sample of both large programmes or small projects implemented by NGOs or... all types of programme, and they do short mission, like one-week mission, to do the monitoring during implementation. So this is the general system, they have standard checklists to fill. Now, one year ago our unit was in charge of developing a gender sensitive ROM methodology and used the same checklist that the monitors have to fill, and we—in a way—reformulated some of the benchmarks, the indicators that they used to make them gender-sensitive. And we created a training programme out of it."<sup>627</sup>

These efforts might be transferable to policy design and implementation as well, for example, to provide accountability of externally conducted research or to audit gender analysis practices, as is done in Canada.

#### **4.4.6.3 The Role of the Impact Assessment Board: "I Have Never Seen That the IAB Requests Something on Gender Equality"**

If IAs are not deemed sufficient according to the current quality standards, they will not be accepted by the Impact Assessment Board. Currently, there are no penalties against inadequate individual IAs other than non-acceptance by the Board. As one interviewee said, there is "no sanction for anything other than the comment from the IAB. So if the Impact Assessment Board accepts the IA, it is ok."<sup>628</sup> The Impact Assessment Board is headed by the Deputy Secretary General responsible for Better Regulation and acts as quality control body of the Commission's IAs.<sup>629</sup> Questions of quality assurance precede the Impact Assessment Board and begin with reformulating guidance documents: Should gender issues be taken into consideration in the SIA section of the IA guidelines or does gender mainstreaming also demand the consideration under economic and environmental impact?

"We had this discussion when we were adopting the commission strategy, there was this discussion with the services if we should go for something a bit more binding, but... it was decided not to have it. Because, ok how to say, it is still very difficult to justify the need of having gender equality integrated everywhere, because the fact that it could improve the overall efficiency and effectiveness of the policies is not always so well understood."<sup>630</sup>

**626** | EU10, Interview.

**627** | EU11, Interview.

**628** | EU23, Interview.

**629** | For a more detailed discussion of the Impact Assessment Board's role, see chapter 4.1.3.4.

**630** | EU23, Interview.

There were also questions about procedures for the inclusion of gender concerns in existing quality management routines, as voiced by one study participant: “I think also that the guidance should be clearer and also, ok, that for instance in the scrutiny of the IA it is more compulsory to address a gender issue. All those types of things would improve the system.”<sup>631</sup>

The role of the Impact Assessment Board was basically to provide top-down approaches for “improvement of the system.” At the time my interviews were conducted, however, the Board had not yet raised any concerns about the inclusiveness of IA proposals regarding gender equality: “I have never seen that the IAB requests something on gender equality.”<sup>632</sup> And there are as yet no consequences for ignoring the gender dimensions in current integrated IAs.

Although the opinions or judgements of the Board that accompany an IA draft are not binding, they do have an authoritative function and require a response. Where there are serious quality concerns, the Board requests resubmissions.<sup>633</sup> Such processes provide internal accountability for GIA by reminding analysts of their gender mainstreaming duty under the integrated IA. Theoretically, the Board could also demand proof that at least a GIA relevance check had been conducted. If special gender relevance was found, the Board could recommend implementation of the stand-alone GIA tool in addition to the integrated IA.<sup>634</sup> The Board could also ask that gender-insensitive IAs be submitted as a special case. Such pro-gender interventions would be especially valuable in light of the failure of existing guidelines to give a clear and contradiction-free orientation.

In order to overcome the lack of gender mainstreaming in IA, the Impact Assessment Board should be the central body—like the Central Agencies in the Canadian context—that creates a “demand” for GIA and/or gender mainstreaming in the integrated IA by ensuring scrutiny from an *informed* gender perspective. The current practice of nominating heads of Directorates-General (formerly five, but nine since 2011) to the Impact Assessment Board for a period of two years<sup>635</sup> is not advantageous to bringing gender (back) on the map. They could and should be aided by the gender experts present in the Commission’s structure, whether members of the DG Justice gender equality unit or consulting tool specialists in the ranks of the European Institute for Gender Equality. Or they could reach for gender researchers in academia or from various external networks.

To further explore the question of whether gender should be structurally integrated or subordinated, I decided to look onto actual assessment practice and its quality management. I studied the yearly reports of the Impact Assessment Board

**631** | EU23, Interview.

**632** | EU23, Interview.

**633** | As a latest development, the Impact Assessment Board is critical of the lower rate of acceptance practices of its recommendations in its opinions in IAs, as expressed in a higher resubmission rate, calling its qualitative assurance purpose and authoritative function into doubt (European Commission 2013b, 13).

**634** | Which is already practice regarding e.g. operational guidance on assessing impacts on micro-enterprises or operational guidance for assessing impacts on sectoral competitiveness (European Commission 2013b).

**635** | European Commission 2013b.



since its foundation around 2007 until 2011.<sup>636</sup> On no occasion in these documents did the Board mention gender effects (or the lack thereof) in reporting on the quality of the overall Commission's IA system. This finding of an absence of gender effects is similar to findings for the Commission's integrated IA system, where gender is in a subordinate position<sup>637</sup>: in an evaluation of 20 single IAs and six IA case studies in 2007, no gender aspects could be found.<sup>638</sup> I also performed an additional randomised content screening of 19 individual IAs conducted by the Commission in 2011, including their respective Board opinions, according to key terms (sex, gender, women, men, equality, equity, equal, discrimination).<sup>639</sup> Of 19 IAs, eight mentioned gender equality and five general fundamental rights/non-discrimination issues—most of them in passing without real assessment of their effects.

The Boards' opinion found one instance in which a lack of assessment of fundamental rights/non-discrimination was attested for as an area of improvement for the overall assessment. At no instance, the Impact Assessment Board picked up on any possibly missing gender issues. Of the eight IAs that raised a form of gender dimension in the assessment text, the relevant aspects were found again in only three of the final recommendations, albeit not on the indicator level. All three case studies remained very general in their recommendations to e.g. include women's empowerment in programming, just emphasised the important role of women in development or stressed the need to pay attention to the disaggregation of users of cultural venues by gender, age group, educational attainment and income level. In none of these three IAs it was visible that a full-fledged, evidence-based GIA was conducted and the level of assessment did not seem thorough at this quick glance (i.e., statistical or other evidence on the gender effects was rarely cited).

These findings indicate that even if the Board's capacity for interrogating IAs on their gender equality effects is in place, it is not evident to the outside observer. There is also no evidence in the annual reporting on whether and how often external gender experts were invited to the Board meetings.<sup>640</sup> Even though there could be a trickle-up effect from having gender experts or representatives from the Directorates-General on the Board, there is no indication that gender equality concerns have ever been considered by the Impact Assessment Board or the Commission's IA quality management system.<sup>641</sup> Thus far, as the interviews suggest, the Impact Assessment Board has not made use of existing gender expertise within the Commission to hold IA practices accountable to gender: "Yes [the gender experts, A.S.] should be consulted by the Impact Assessment Board that would be good. But it's not the case."<sup>642</sup>

**636** | European Commission 2008b; European Commission 2009d; European Commission 2010a; European Commission 2011b; European Commission 2012d.

**637** | For the concept of subordination in the EU's integrated IA, see chapter 4.2.3.3.

**638** | The Evaluation Partnership 2007.

**639** | For methodological explanation about the conducted key word screening, see subchapter 2.4.4.

**640** | European Commission 2012c, 5.

**641** | The role of gender in the IA quality management of the EU is elaborated in chapter 4.1.3.4.

**642** | EU23, Interview.

The entry points for gender expertise in IA quality management are manifold and go beyond the ex-post quality management process of the Impact Assessment Board: In the preparatory stage of IAs, gender experts could already be present during the meetings of the Board Chair and could be visiting the management teams of the Directorates General.<sup>643</sup> In such meetings, the focal points of policy coherence (such as reducing regulatory burdens) could be determined, and awareness of gender issues in the up-coming IAs could be raised. An additional step toward integrating gender in the Commission's IA system would be to hire gender experts in the Secretariat General's regulatory policy and IA unit to support the Impact Assessment Board's quality assurance process. This would place the experts closer to the institutional spine of IA quality management, where they could be included in routine (and not special) modes of consultation. Asking the gender question from an informed position, across all impact areas, and not subsuming gender under the social impacts<sup>644</sup> should be standard.<sup>645</sup> Policy consistency and coherence<sup>646</sup> starts here.<sup>647</sup>

#### **4.4.6.4 The Role of the European Institute for Gender Equality: "I Know Their Work, But It's Almost by Accident"**

The relationship of the European Institute for Gender Equality as it pertains to the European Commission's IA system has not been fully clarified. It operates as an independent agency, mostly outside the DG structure, in an advisory and capacity building role, with the European member states as its target audience. It was not part of the Institute's mandate to transfer its policy capacity and equality expertise to support GIA or gender in IA analysis on the Commission level.<sup>648</sup>

None of my interview subjects has yet worked with or consulted the Institute with regard to gender in IA. This may be because the DG's policy analysts are not sufficiently aware of the Institute or its function as an EU-wide resource centre for gender equality (although mainly geared towards the member states). When seeking advice, IA analysts typically remain within the DG structure of the Commission. Some respondents felt the Institute should publicise its mandate, GIA expertise and advisory capacity more widely and more clearly within the organs of the EU.<sup>649</sup> "I

**643** | European Commission 2013b, 11.

**644** | After raising concerns about the quality of economic assessment, with reducing the administrative costs and impacts on small and medium sized businesses (SMEs), "improving the assessment of social impacts was the second most frequently issued recommendation (64 %) and this has risen from 2011 indicating that the need to strengthen the quality of the analysis for social impacts, such as on employment levels, is a growing concern." (European Commission 2013b, 18-19).

**645** | Especially in the light of the "relatively higher percentage" (European Commission 2013b, 19) of IAs on health, consumer or justice issues, the obligatory gender question is inevitable in order to achieve equitable outcomes.

**646** | European Commission 2013b, 9.

**647** | Compare gender mainstreaming quality criteria for tools as in 1.6.

**648** | See chapter 4.3.2.

**649** | See the exhaustive EIGE's gender mainstreaming website (European Institute for Gender Equality n.d. c).

know the European Institute for Gender Equality, I know their work, but it's almost by accident, because I know some of the people there."<sup>650</sup>

In fact, the scope of the European Institute for Gender Equality could be widened to become an additional support unit for the IA process, co-ordinating with DG Justice, which by itself is not properly resourced to support the whole Commission IA System. The European Institute for Gender Equality has the required competencies to advise EU member states and the Commission's institutions with regard to gender analysis tools, their sophistication and implementation. At this point in time, however, the links between the Commission's IA system and the European Institute for Gender Equality as the state feminist actor seemed dysfunctional with regard to IA and policy advice, for reasons that could not be explored within the scope of this research.<sup>651</sup>

#### 4.4.6.5 Summary

It is evident that neither the gender equality architecture nor the general quality management bodies control visibly, in a routine, systematic fashion for gender equality governance in and through the Commission's IA system. Moreover, social IA remains the weakest streamlined IA component in the integrated approach, and the possible gender aspects of it are not accounted for. The potential of closing of the policy cycle by performing evaluations and monitoring remains mostly unused. As the literature and document review demonstrates, the implementation of gender in the Commission's IA system and policy cycle is incomplete. Benchmarking gender in IA, policy cycle and equality governance, I found that the central actor in quality management of IA, the Impact Assessment Board, remains silent on the gender in IA implementation gap, which raises questions concerning the used or unused potential for coordinating with extra-Commission equality actors and specialists within the Institute, while internal gender equality expertise is limited. As a consequence, the current European equality architecture, especially the European Institute for Gender Equality, does not seem to play a role in IA quality management—despite the fact that developing and improving methods of ex-ante and ex-post gender analysis are for instance included in the mandate of the European Institute for Gender Equality.

### 4.5 SUMMARY: “IT DOESN'T MAKE A CRITICAL MASS FOR US TO [...] ANSWER ON THIS”

The starting point of my research was the basic hypothesis that an integrated gender lens is more likely to be applied than an additional stand-alone policy tool, since it is already part of the administrative *Eurocratic* IA process. By doing so, the Commission has made a (albeit limited) gender perspective mandatory for all assessments. Gender as a power structure is now part of a dominant frame of analytical questions. At the same time, the Commission has disempowered the

<sup>650</sup> | EU18, Interview.

<sup>651</sup> | An interview request in 2011 was declined twice by EIGE. For a short discussion of the equality architecture of the EU and the role of EIGE based on document analysis, see subchapter 4.3.1.

gender mainstreaming strategy by limiting gender equality questions to the social impact areas of its integrated IA. There, gender equality is not linked to economic or environmental impact areas; instead it is subsumed under social impacts. Since the gender questions in the integrated IA guidelines were directly taken from the GIA tool, GIA was even, in a certain sense, made *complicit* in enabling this process of subordination and de-gendering other impact areas.

We can conclude that gender as part of the integrated IA process does play a role in the Commission's policy and programme advice, albeit submerged. As put by one interviewee: "It doesn't make a critical mass for us to... answer on this."<sup>652</sup> The overall state of gender in the Commission's IA system is marginal and still far removed from what Verloo called "possibly revolutionary."<sup>653</sup> The empirical analysis confirmed the hypothesis that GIA as a stand-alone tool was never really adopted and was essentially abandoned before it could become effective, which has contributed to the subordination of gender in the Commission's integrated IA. Leaning on Hawkesworth's concept,<sup>654</sup> I have identified these subtle technocratic processes of burying gender aspects and keeping explicit gender tools at the margins of IA that may be called *practices of subordination*.<sup>655</sup> I observed a *European experiment in subordination*, and indeed a double subordinate status in which gendered aspects are to be found in the Commission's IA tools: a) subordinated within the guidelines of the Commission's integrated IA and b) subordinated as the *orphan tool*<sup>656</sup> GIA.

Groupist diversity aspects in analysis are represented in a concurring tool (fundamental rights IA), while the potential for actual intersectional appraisals is not ascribed to GIA. Intersectionality in general is difficult to operationalise even in the integrated IA, due to its compartmented nature and problems with data availability. However, the: "complex interferences between inequalities do not necessarily require complex new policy instruments or measures,"<sup>657</sup> they rather mandate a more serious engagement with already existing, streamlined add-on tools, fit for intersectional implementation, like GIA.

Although the DG Employment GIA stand-alone guidelines<sup>658</sup> and gender mainstreaming manual<sup>659</sup> as well as the Commission's integrated IA guidelines state that DGs are required to consider the relevance of gender and to carry out in-depth GIAs, there has not been one case study identified in which gender was mainstreamed as one of the central objectives in a policy outside of gender-specific policies and the structural fund's programming. In the absence of oversight, due to the subordinated status of gender aspects as part of the social IA element of the

**652** | EU11, Interview.

**653** | Verloo 2013, 904.

**654** | In correspondence to her attested scripted practices of subordination of feminist knowledge about feminisation in mainstream policy discourses (Hawkesworth 2010).

**655** | Sauer 2010c.

**656** | The IA community speaks of the "orphan tool problem," when an IA instrument does not produce uptake beyond its scientific publication (Helming et al. 2011, 26).

**657** | Verloo 2013, 902.

**658** | European Commission, Directorate-General Employment, Equal Opportunities Unit DG 5 1997/1998.

**659** | European Commission; Directorate-General for Employment, Social Affairs and Equal Opportunities; Unit G.1 2008.

integrated IA, the EU's quality management has not, to date, been effective with regard to the fundamental right of gender equality. This ineffectiveness could not be counter-acted by the numerous Commission's equality actors in the DGs or the overall EU system due to a lack of mandate and institutionalised access to the IA system. The involvement of these actors was arbitrary as well. I found the EU's gender equality governance to be detached from the common approach to IA (with the exception of the gender unit at DG Justice), and a lack of coordination between the various gender equality governance players. This situation makes it difficult to provide good policy advice from a gender perspective. A possible answer to these challenges would be to introduce gender controlling in and via the IA system.

Scholars attribute this implementation gap mainly to a *softness*,<sup>660</sup> which is not binding and has never been officially endorsed across all the DGs of the Commission. One Commission employee highlighted how important it would be as a first step for the Secretariat General to officially endorse GIA as an official DG-wide IA instrument, to be uploaded on the IA webpage when the process of authorising of the SIA guidelines is described:

"The endorsement of the guidance by the SecGen [SG] and by the other DGs. So it was recognised as the main tool for assessing social impacts in the IA system. And that wasn't in force [before, A.S.]. Because otherwise it's hard in a way to sell your tool as a DG tool to the other DGs in charge of IA."<sup>661</sup>

The sales problem is worsened by a "lack of effective enforcement mechanisms."<sup>662</sup> As the interview results show, the absence of gender mainstreaming from the integrated IA guidelines, in combination with the voluntary gender blindness of the DGs, leads to the result that "gender assessments will rarely be viewed as necessary."<sup>663</sup> As a consequence and as MacRae has put it:

"Liberalization wins out against gender equality without any actual competition. The gendered realities emerging from these policies hardly represent the idealistic picture painted by the European Commission of a polity based on the equality of men and women."<sup>664</sup>

While the Commission's IA system is still struggling with the all-encompassing mainstreaming mandate, European women are still waiting for delivery on gender mainstreaming's promise of "systemic change in policy structures."<sup>665</sup> While the Commission's institutions and networks are quick to scrutinise member states for ignoring IA duties,<sup>666</sup> the Commission does not hold itself and its own administrative

**660** | Kantola 2010b, 125-126. For soft vs. hard instruments, see chapter 1.4.1.

**661** | EU26, Interview.

**662** | Kantola 2010b, 126. Compare also chapters 1.3 and 1.5.4 on the sales logics of gender mainstreaming under the NPM paradigm.

**663** | MacRae 2010, 169.

**664** | MacRae 2010, 169.

**665** | Kantola 2010b, 126.

**666** | On the basis of an Estonian national IA system audit that attested a poor state of the art (Estonia; National Audit Office 2011), the European Network of Legal Experts in the Field of Gender Equality noted that: "Special attention should also be given to gender

institutions and legislative processes accountable for gender equality in ex-ante IA. Notably, the subordination of the GIA tool and gender in the Commission's integrated IA guidelines has resulted in an almost complete institutional memory loss with regard to the existence and technicalities of the tool. Gender in the Commission's integrated IA system is not being mainstreamed in the tool set up, but rather it is integrated in the social IA sub-division. Tool design has as much influence on application realities as institutional backing; therefore the integrated IA guides need to be revised to ensure gender mainstreaming in all impact areas.<sup>667</sup>

Today's gender analysis practice and capacity leave ample room for improvement. My qualitative analysis of the interviews demonstrated a lack of awareness, analytical capacity, time, individual and political will, and technical capability to streamline gender into the analysis, all of which hinder the ability of the Commission's IAs to delve deeper into gendered effects. Therefore overarching gender equality strategies and IA roadmaps should be aligned and more binding. What became also evident is how gender analysis shares many of the obstacles commonly occurring in the EU's IA system, such as the unsolved questions of integration, quantification, monetisation or data harmonisation with the member states. Equally, the area of IA quality management is in general still in its initial and therefore developing phase, offering a window of opportunity to devote attention to gender concerns within the Impact Assessment Board answerability framework. The degree of transparency that would result from publishing all IAs and Board opinions would add to the overall accountability.

An increase of gender competency among public servants in general, and IA analysts in particular, and the introduction of organisational incentives (i.e., in-depth, full-fledged gender analysis as an example of good practice in IA) and sanctions (e.g., letters returned for missing gender analysis from the IAB) would certainly lead to improvements, but they would not be sufficient by themselves. The general default *neutral* setting in bureaucratic policy IA cannot be overcome via the integrated method unless GIA also gains official recognition and prime exposure as an IA tool and accountability is tightened to control for its implementation. Only this would reset the default to *gendered*.

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impact assessment. The legislative impact assessment must give explicit consideration to questions of gender equality. A list of areas which are subject to attention (social consequences, the effects on national security, on international relations, the economy, the environment, regional development and organising the work of state agencies and local government agencies and other direct or indirect consequences) today are too broad and more precise categories for analysis should be mentioned in a new Government Regulation." (European Network of Legal Experts in the Field of Gender Equality 2012, 51).

**667** | This tool gap seems wide-spread in IA tools. I.e. the international LIAISE research project, evaluating EU funded research on sustainability IA, examined 203 EU funded research projects, designing IA tools. Only six times "gender quality, equality treatment and opportunities, non-discrimination" were included as targeted impact areas in those sustainability IA tools (Podhora et al. 2013, 85-89).