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The right-wing opposition to "gender" in the light of the ambiguity of the meaning of the term in EU documents

Eszter Kováts – Elena Zacharenko*

ABSTRACT

Recent years have seen a rise in prominence – at both national and European levels – of anti-gender movements and parties. While actors using this rhetoric can be found across most EU member states, anti-gender rhetoric represents government policy in a few East-Central European countries, bringing these objections to the European level. In this article, we analyse and interpret this ECE-led state opposition to 'gender' by examining the diversification of the meaning of this term at EU level, including a shift from a structural to an individualist one, which we argue lends empirical credibility to the anti-gender rhetoric of right-wing populist parties. Based on interviews with EU stakeholders in the European Commission, European Parliament and EU-level civil society, as well as on the analysis of European Commission documents and Council Conclusions, we track the use of the term 'gender' and the definition which has been attached to it. We conclude that these changes result at least in part from feminist taboos and neoliberal tendencies within feminist theory arriving to the EU polity. We believe that the shifts around the concept of gender on the progressive side shed light on the popularity of the anti-gender discourse and of the right-wing itself.

Key words: anti-gender movements, gender identity, LGBT, EU, right-wing populism, East-Central Europe

Introduction

The idea of this paper originated as an initial observation made in the course of following EU politics in recent years, that several understandings of the term gender were used in various documents and by various actors. In formulations like the gender pay gap or gender parity, as well as in many tools

such as the Eurobarometer surveys,[1] gender is used as synonymous to sex, referring simply to men and women.[2] The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) and some EU documents, like the European Commission's 2020-2025 Gender Equality Strategy, define gender as '*the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men*' (CoE, 2011a; EC, 2020b). In other documents we see another type of definition, according to which gender is '*people's internal perception and experience of maleness and femaleness, and the social construction that allocates certain behaviours to male and female roles which vary across history, societies, cultures and classes*' (EC, 2012a). In the latter case, gender is interpreted less as a social structure or a set of roles assigned to males and females, but rather as a separate phenomenon altogether, as a felt sense of identity. This observation, as well as the right-wing opposition to the term itself, prompted us to investigate the issue systematically. In this article we attempt to answer the following questions: (1) if and how has the definition of the term *gender* shifted or diversified in EU documents and (2) if and how is this diversification of meanings related to the right-wing opposition to *gender*?

In our paper we analyse European Commission documents and Council Conclusions from 1996 to 2021 to track the use of the term *gender* and the definition which has been attached to it over the years. We further conducted interviews with EU stakeholders from the European Commission, the European Parliament and EU-level civil society on how they define *gender* and whether they see changes or diversifications to its use, and if yes, how they interpret these changes. We discuss these results in the context of the EU's neoliberal approach to gender equality as well as the growing pressure of the anti-gender rhetoric at EU-level, pushed predominantly (but not only) by the Hungarian, Slovak and Polish governments in the Council of the EU, and their MEPs in the

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[1] See for example: Eurobarometer, March 2021, Future of Europe, https://europa.eu/eurobarometer /api/surveys/detail/2256/smo; Eurobarometer, February 2021, Standard Eurobarometer 94 – Winter 2020-2021 – Public Opinion in the European Union, https://europa.eu/eurobarometer/api/surveys/detail/2355/smo, both accessed 16 June 2021

[2] We are aware of the fact that we can hardly talk about a coherent EU practice when it comes to this use of the terms, and it may rather reflect the difficulties of ensuring methodological coherence in the course of data collection for the Eurobarometer surveys, which integrate data compiled by national statistical authorities from 27 different countries, differing epistemological communities and at times using differing definitions.

European Parliament. We also interpret the results through the lens of critical feminist theories, namely ones that point to hegemonic understandings within feminist theory: the intersectionalist call for a rainbow coalition, including the trends to merge the agendas of sexual orientation and gender identity pursued by LGBT organisations with the feminist one, as well as the call to close progressive ranks because of the strengthening of the right.

The article is structured as follows: first, we lay down our underlying theories: a) the main approach of the EU's gender architecture in the context of its origins rooted in competitiveness issues and its growing connections to other, economic goals; b) the neoliberalization of feminist causes and theory, including how hegemonic discourses affect theorizing and possible biases; c) the right-wing resistance to gender equality and the concept of gender since the emergence of the anti-gender movements. These theoretical puzzles lay the ground for the subsequent analysis of key texts of the European Commission (EC) and the Council of the EU as well as the interviews we conducted with stakeholders invested in gender related issues to trace the differentiation of meanings and even a possible shift in meaning. After explaining the methodology and the choice of the sample we carry out the analysis. In the final part we reconnect the empirical part to the theoretical puzzles to provide a tentative explanation for this shift of meaning and the salience and possible resonance of the right-wing frames. We believe that our empirically founded theoretical analysis can be a contribution both to the literature on anti-gender politics as well as the gender equality policy of the EU. While drawing from the established literature, we build upon theoretical insights of lesser-known East-Central European scholars too, aiming to counteract the frequent experience of ECE scholars of providing only the national data to ready-made theoretical frameworks of Western scholars in comparative projects, which means also including applying theory from the West to data from the East (as Czech scholar Hana Havelková put it: "Western Theory, Eastern Reality", Havelková, 1996, pp. 244). We join those critical scholars who think not only that different and situated theoretical tools might be necessary to grasp different (e.g., East-Central European) contextual realities, but also, that theories from the margins of Europe can contribute to better understanding of phenomena of the countries of the core.

1. Theoretical background

1.1 Gender equality in service of neoliberalism in the EU

The EU's normative efforts in establishing equality between women and men date back to 1957, when the principle of 'equal pay for equal work' was enshrined in the Treaty of Rome establishing the European Economic Community, the predecessor to the EU. Rather than intending to eradicate gender inequalities, this clause was included to prevent unfair wage competitions between the member states (Arribas – Carrasco, 2003; Lewis, 2006). Later, the EU's competences on securing equality between women and men have both expanded and shifted due to the introduction of binding directives in the field of equal pay, equal treatment in the labour market and in social security, as well as several rulings of the European Court of Justice (ECR 1978, 1365, in van der Vleuten, 2007, pp. 123). The appearance of the concept of *gender* in EU documents dates to around the time of the 1995 World Conference on Women in Beijing (Abels – Mushaben, 2012), which also defined 'gender mainstreaming', i.e., streamlining efforts for the equality between women and men across all policy areas.

Some scholars argue that the EU as a normative actor has been largely successful in enhancing equality between women and men, notably in domains like equal pay and non-discrimination in access to social security (van der Vleuten, 2007; Kantola, 2010). However, we align with those who are more critical and stress that due to the historic and political context of their emergence, EU gender equality policies have primarily been a means of ensuring economic and labour market optimisation (e.g., Lewis, 2006; Ostner, 2000). Stratigaki (2004) illustrates this by describing how the concept of the 'reconciliation of working and family life', has been co-opted by the European Commission in the 1990s, undermining its feminist potential by shifting the meaning of the original concept to fit into the prevailing political and economic priorities in the EU (cf. Lombardo et al., 2009). Elomäki (2015) demonstrates how EU institutions have used argumentation on the benefits of gender equality to promote economic growth objectives, hence altering the concept itself, and excluding any aspects of it that cannot be subjugated to market principles.

The question of gender equality itself became a prominent means to liberalise and flexibilise employment markets in the 1990s, as EU social policies became subsumed to neoliberal market demands (Young, 2000). In East-Central Europe, the economic policies applied in the 1990s as part of the

enlargement process resulted in the worsening of labour conditions, the lowering of wages and structural unemployment and the subsequent increase in gender inequality (e.g., Fodor, 1997; Pascall – Kwak, 2005). If women were being made more equal to men through the EU's efforts, it seems that it was only "at the cost of being equally exploited within the neoliberal system of global capitalism" (Young, 2000, pp. 95).

1.2 Neoliberalization of the concept of gender[3]

Feminist theoreticians appropriated the term gender from sexologists and psychiatrists in the 1970s (Scott, 2013, pp. 63). However, for them *gender* used to denote the power structures in a given society between men and women, and the differential opportunities and constraints accrued from being born either male or female, thus taking the sex binary for granted.

> "Gender was about women and men, about how the traits attributed to each sex justified the different treatments each received, how they naturalized what were in fact social, economic, and political inequalities, how they condensed varieties of femininity and masculinity into a binary system, hierarchically arranged." (Scott, 2013, pp. 66)

However, instead of the meaning of gender being settled over time, it has proliferated and "[acquired] multiple and conflicting meanings (…) in the course of its relatively recent adaptation from a grammatical reference to a term denoting the social relations of the sexes" (Scott, 2013, pp. 65). More recently, it is increasingly becoming conceptually synonymous with gender identity: identifying or not with being born male or female, having the privilege or not to have one's 'sex assigned at birth' and 'felt sense of gender identity' in line. This is mediated through the Butlerist turn (Butler, 1990), namely the questioning of the clear-cut separation of sex and gender, and is apparent in much of the current trans and gender-queer scholarship (e.g., Bettcher – Styker, 2016; Green, 2006) and activism (ILGA Europe, 2021) – and as we will show below, increasingly in European polity (EC, 2012a; EC, 2020b). This approach, however, has very little in common with the constructivist meaning and the critique of the hierarchical social structures between men and women to which for instance Scott was referring to. It also blurs the fact that the gendered oppression we observe today is not a response to our identities but to how

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[3] A more in-depth presentation of these arguments can be found in Kováts 2022 (forthcoming).

society identifies us: "The gender structure bifurcates and stratifies people as women and men regardless of whether or not they self-identify as such" (Risman et al., 2019, pp. 183).

The ongoing diversification and shift of meanings of gender (Olson, 2012; Scott, 2013; Stock, 2019) fits the neoliberal age neatly. This is not surprising: knowledge and ideas are not free-floating but also products of their times. Their critical or emancipatory character cannot be solely assessed upon their claim of having it, but requires reflection, also because emancipatory claims can subsequently be incorporated into exploitative systems and ideologies (Boltanski – Chiapello, 1999; Fraser, 2009). Feminist and leftist claims, terms, interpretations of the causes of inequalities, and the transformations thereof are also founded in their times, conditioned by the broader political-economic relations they are embedded in.

There is a vast feminist critique of current, market conforming trends of feminism that co-opt feminist vocabularies of freedom, self-determination and emancipation, such as the rhetoric of "free choice", a long-standing feminist claim which is now re-signified in neoliberal terms (Budgeon, 2015; Čakardić, 2017). These critiques problematize this as it stops us from reconnecting individual experiences to the structures they are embedded in, obscuring the fact that our individual claims are shaped by the structures we are part of.

Several scholars place the change in the meaning of the concept of gender and the proliferation of non-binary gender identities in the same context: the replacement of the analysis of the gendered material circumstances and exploitations by the critique of cultural norms of differentiation (Soiland, 2011; Risman et al., 2018), hence the individualization of structural inequalities. Rather than seeing categories as instruments to articulate inequalities, queer politics sees the categories themselves – based on exclusions of what *does not* belong to that category – as sources of oppression, blaming differentiation instead of structures (Soiland, 2008). As such, it does not aim to change the system and ends up promoting individual solutions to systemic oppressions: switching between categories or creating new ones (Risman et al., 2018; Salonas, 2018).

1.3 Feminist taboos

Lombardo, Meier and Verloo speak in their widely referenced article about fixing, stretching, shrinking and bending of the meanings of gender equality in the EU realm, and about feminist taboos: they believe that a "shared and

general inclination not to address or question an issue" (2009, pp.106), which can be observed in feminist theory, produces biases. The origin of these blind spots and the unwillingness to address the issues result from the fact that feminist scholars, activists and policy-makers cannot escape hegemonic discourses either. We believe that the shift of meaning of gender is not seen by scholars, or not seen as problematic *because of* such hegemonic discourses.

One of these new feminist taboos seem to us to be the human rights consensus (Kováts, 2018), including the 'rainbow coalition', particularly the alliance of feminist and LGBT causes, and the celebration of diversity. This intersectionalist call for the 'solidarity among all oppressed', called upon by feminist and LGBT lobby groups active at EU level such as AWID, WECF and Transgender Europe,[4] contributes to the failure to see the contradictions in terms and between political goals. Diversity is imagined to be conflict-free, whereas not only are there many potential conflicts among various claims formulated in human rights language (e.g., 'the right to a child' in the case of surrogacy, Mészáros, 2017), but there are also differing understandings of human rights (as evident in the abolitionism vs 'sex work is work' standpoints in the debate on prostitution, Katona, 2017). In light of the heritage of the devastating human rights violations of the 20th century it has become taboo to question any claim that is considered to be based on human rights. Hence it has become a political aim in itself to declare or 'upgrade' political claims to human right status (Geuss, 2013) (like the 'human right to sex', the 'human right to self-identification', including of one's own gender; but also in the right-wing resignification, the 'human right to not have one's religious feelings offended', or the 'human right to life of the embryo', e.g., Miller et al., 2015). The presumed human rights consensus of the progressive side covers tensions among various human rights causes, as well as the embeddedness of human rights among broader economic developments (Moyn, 2017), including EU-wide power relations. That is why this taboo might be exploited by the right (Kováts, 2021).

Another connected taboo is that of the danger of strengthening the right wing. The right is seen as dangerous not only in the solutions it proposes but also in its assessments, and any – even if superficial – agreement on observed

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[4] See for example 'The affirmation of feminist principles', signed by over 500 NGOs in addition to those mentioned, which states: 'We affirm that the realization of the human rights of any one group of persons does not come at the cost of the rights of any others. These shared principles and values have united diverse feminist movements everywhere.' https://www.feministaffirmation.org/, accessed 16.09.2021.

developments is seen as suspicious or 'legitimizing right-wing frames'[5]. This taboo hampers feminist scholars from assessing the reasons behind the popularity of right-wing messages. Any scrutiny of right-wing claims, according to this taboo, falls into the trap of the right: *divide et impera*. We contend that to the contrary: while one can and should remain critical of anti-democratic processes, it is exactly because of the anti-gender forces gaining political momentum that keeping a self-reflexive and ideology-critical position on how feminist ideas are shaped by hegemonic discourses is essential. This is crucial to, on the one hand, not to become paralyzed and reactive, dealing exclusively with what are seen to be politically 'safe' questions, and on the other to assess why the right-wing frames resonate and what lends empirical credibility to those claims (Benford – Snow, 2000, pp. 620; Rawłuszko, 2019).

1.4 Anti-gender politics of the right

Anti-gender politics is a global phenomenon that started gaining strength at the beginning of the 2010s, with roots in the 1990s and 2000s (Kuhar – Paternotte, 2017). Reproductive rights, violence against women, sexual education, LGBT issues, gender mainstreaming, gender studies, supranational organisations (like UN, EU or WHO) and treaties (like the Istanbul Convention) are targeted by social movements and right-wing populist parties. Some of these are old issues (like abortion), others are new (like attacks on Gender Studies). What connects them is that they are now contested for being representative of 'gender ideology', 'gender theory' or 'genderism'.

The right-wing populist parties have been vocally anti-gender on the EU level: blocking or attacking reports on sexual and reproductive health and rights,[6] and against homophobia and discrimination on grounds of sexual orientation and gender identity;[7] and mobilising public support and by collecting

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[5] See for example: AWID, 2021, Trojan horses in human rights spaces: anti-rights discourses, tactics and their convergences with trans-exclusionary feminists, https://www.awid.org/news-and-analysis/trojan-horses-human-rights-spaces, accessed 16.09.2021; a recent interview with Judith Butler in The Guardian, who likened gender-critical feminists to anti-gender actors. https://www.theguardian.com/lifeandstyle/2021/sep/07/judith-butler-interview-gender, accessed 20.09.2021, some sections were deleted later on, they can be found here: https://www.patreon.com/posts/55912898.

[6] For example the Estrela report on Sexual and Reproductive Health and Rights, (2013/2040(INI)), https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2013-0426+0+DOC+XML+V0//EN, accessed 21.09.2021

[7] For example the Lunacek Report on the EU Roadmap against homophobia and discrimination on

signatures for two European Citizens' Initiatives (ECI), one opposing abortion[8] and the other same-sex adoption and marriage.[9] In the recent years, there is also activity at the highest governmental levels in the Council of the EU: since 2018, Poland, Slovakia and Hungary have blocked the adoption of Council Conclusions on the basis of their inclusion of the term *gender*[10] or agreed only on the condition of attaching an addendum clarifying that where the conclusions refer to it, it will be interpreted as 'equality between women and men' (Council of the EU, 2019; Council of the EU, 2020).

Some argue that what we are witnessing is old wine in new bottles: well-known anti-feminism and homophobia under the guise of the new language of 'gender ideology'. This would be a 'cultural backlash': a "resistance to progressive social change, regression on acquired rights or maintenance of a non- egalitarian status quo" as a European Parliament resolution[11] interprets this concept. We agree with those who think that the phenomenon goes beyond the 'old' and that we need to acknowledge that we are facing a new phenomenon which has some continuities with old struggles but cannot be reduced to them (e.g., Kuhar – Paternotte, 2017).

Using the term anti-gender politics comes with pitfalls such as using the opponents' own terms or reproducing the false binary that if they are *against*, then we would be *for* gender. Strictly speaking, feminists are the ones fighting against gender, i.e., against the fact that our sexed bodies result in social and hierarchical consequences. Nevertheless, we opt to use this term due to its relative advantage compared to other terms in use, like anti-feminism: the fact that it is highlighting what is new and the centrality of the term *gender*. We emphasize however that there are not only two camps (progressives vs conservatives) in the discussion of these issues.

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grounds of sexual orientation and gender identity (2013/2183(INI)), https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2014-0009+0+DOC+XML+V0//EN, accessed 21.09.2021

[8] See https://europa.eu/citizens-initiative/initiatives/details/2012/000005_en, accessed 21.09.2021

[9] See https://europa.eu/citizens-initiative/initiatives/details/2015/000006_en, accessed 21.09.2021

[10] Politico, 7 December 2018, Hungary and Poland say no to LGBTIQ, accessed 22 June 2020

[11] European Parliament resolution of 13 February 2019 on experiencing a backlash in women's rights and gender equality in the EU (2018/2684(RSP)) http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2019-0111+0+DOC+PDF+V0//EN, accessed 20.09.2021

2. Methodology

Our inquiry consisted of two data sources. First, we put together a sample of primary sources in which the term *gender* is used in and compared the definitions explicitly attributed to it or interpreted its implicit meaning should a definition not be provided. The materials consist of EU legislative and policy acts, as well as selected background documentation from the period of 1996 to 2021. We chose documents that are (1) directly relevant to the policy area of gender equality: the European Commission's strategies, communications, action plans and roadmaps on gender equality; (2) selected Council Conclusions which refer to gender in the context of gender equality; (3) relevant European Commission directives as well as background documents on topics where a reference to or definition of 'gender' was assumed to be likely: violence against women and girls (VAWG)/sexual and gender based violence (SGBV) and LGBTI rights and equality. The list of the analysed sources can be found in the annex.

While the analysis of policy documents provided us with the broad categorisations of the use of the term gender in EU polity, it did not show if players active in this field also perceived a diversification of meanings and if yes, how they assess this. Therefore, to deepen our understanding and to validate our textual analysis, we conducted a total of seven interviews with nine individuals working on women's rights, gender equality and LGBT issues in EU policy from EU institutions and lobbying organisations between February and April 2021. The interviews lasted 30-60 minutes and were conducted via videoconferencing tools, due to measures related to the Covid-19 pandemic. The institutions and actors cover all relevant bodies that have potential impact on definitions and policies in EU gender equality policy. The interviews were semi-structured, centring around three questions: 1) how the interviewees define the term gender, 2) whether they see a diversity of meanings or a change in the definition at EU level in the past years, 3) if so, how they assess this diversity or these changes. Given the high sensitivity and conflictuality of the topic, interviewees asked us to keep them anonymous, withholding not only their names, but also the organisations they represent. As we were not investigating dynamics between institutions, this does not hamper the interpretation of the results. Therefore, we assigned each interview a number and will quote them by those.

3. Analysis
3.1 Different meanings

In the foundational legal texts of the EU, the Treaty on the European Union (TEU, 2012) and the Treaty on the Functioning of the European Union (TFEU, 2012) the word *gender* does not appear: they speak of equality between men and women.

The term was introduced into EU documentation when the concept of gender mainstreaming became adopted as an approach in EU policy. A 1996 EC communication on incorporating equality between women and men into all Community policies and activities states that: "it is necessary to promote equality between women and men in all activities and policies at all levels. This is the principle of 'mainstreaming.' 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)" (EC, 1996). The concept of 'gender equality' as a replacement term for equality between women and men slowly became widespread after that: the European Commission's 2006-2010 roadmap and its 2010-2015 strategy on this issue contained 'equality between men and women' in the name and used 'gender equality' as a synonym in the body of the text. The EC only switched the titles to refer to 'gender equality' in its 2016-2019 Strategic Engagement, upgraded in 2020 to a Gender Equality Strategy.

One can distinguish three interpretations or approaches in the documents we analysed that follow a rough chronology, although there have been overlaps between time periods.

I.   No definition, but from the context it is clear that 'gender equality' means 'equality between men and women', and *gender* is synonymous with sex.

For example, the EC 2016 Strategic Engagement for Gender Equality 2016-2019 does not contain a definition of the term and only uses *gender* as part of the construct 'gender equality'. From the use of the term, this can be interpreted to mean 'equality between women and men': the document opens with a statement from the then Commissioner Věra Jourová that 'this strategic engagement to gender equality 2016-2019 marks a new phase in our efforts to

promote equality between women and men' (EC, 2016, pp. 5). Discussing the gaps in challenges in achieving gender equality, the document compares areas in which it considers women are performing less well than men (economic activity, employment, proportion of decision-making posts), etc.

This is also the case when gender equality is referred to in the Work-Life Balance Directive (EC, 2017). Although no definition is provided, it is clear that when the Directive talks about gender in the context of the 'gender pay gap', the 'gender employment gap' and the 'gender pension gap' – all areas where it states that women are worse off as compared to men – it refers to the (in)equality between women and men.

Historically the EC used to talk about equality between women and men and in past years (…) moved to gender equality, not really because of a difference in definitions but because language has moved on in the field and the concept of gender equality more holistically expresses the societal context. [Interview 3]

I do have the impression that for many people, they do not understand the difference between 'gender equality' and 'equality between men and women', for people it is still quite interchangeable. [Interview 2]

II.   *Gender* in the structural sense, defined as gender roles assigned to women and men by society. This definition also understands the concept of 'gender-based violence' as violence which affects women at the hands of men because of unequal – gendered – power relations in society.

For example, the EC Strategy for Equality between Women and Men 2010-2015, defines gender as 'the social relations between men and women. It refers to the relationship between men and women, boys and girls, and how this is socially constructed' (EC, 2010, p.38). This definition is in line with that of Article 3(c) of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention): 'the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men' (CoE, 2011, Art 3.c).

The EC's external Gender Action Plan II for 2015-2019 presents a variation between the first and second meaning, as while it does not contain a definition of *gender* and refers to gender equality as equivalent to 'equality between women and men' ("equality between men and women is at the core of values of

the EU and enshrined in its legal and political framework. The EU is at the forefront of the protection and fulfilment of girls' and women's rights and vigorously promotes them in its external relations" EC, 2015, pp. 2), it also states that "gender stereotypes that disadvantage girls and women are a serious obstacle to gender equality" (ibid, pp. 6) demonstrating an awareness of the socially constructed concept of gender.

The Istanbul Convention definition is very important to us, CEDAW general recommendation 28 article 5[12] is very important, but these are the only legal instruments that define gender. There is no European law that defines gender. We are in a very tricky situation: we cannot say that it has acquired a different meaning, because the legal meaning has never been established in the first place in the EU law. [Interview 1]

It goes beyond the biological differences of men and women and takes into account the social context and the different roles of men and women. (…) We do not have a definition (…) gender is the social expression of biological sex (…). [W]e reference the Istanbul Convention [Interview 3]

[Gender] reflects the social constructions and roles of women and men, as included into the Istanbul Convention [Interview 4]

Gender as a social construct connected to your sex but as an explanatory tool of the relations between men and women and the hierarchy. We have never considered it to be independent of your sex. [Interview 6]

A conflation arises when gender is used interchangeably with sex (first meaning) and at the same time a social construct (in terms of the Istanbul Convention, second meaning). This is noted in several interviews and is attributed to the fact that in English, gender has been established as synonymous with sex.[13]

What I see (…) in [my organisation], sometimes gender is used interchangeably with sex. It is really a fusion – the same [people] would say that they understand gender as defined in the Istanbul Convention and would go on

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[12] "The term „gender" refers to socially constructed identities, attributes and roles for women and men and society's social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women. This social positioning of women and men is affected by political, economic, cultural, social, religious, ideological and environmental factors and can be changed by culture, society and community." https://www.refworld.org/docid/4d467ea72.html, accessed 21.09.2021

[13] Historically, in legal contexts, this has been done in order to prevent associations with sexual intercourse (Case, 1995).

to say: 'my gender, your gender in passports…' so they clearly mean sex. They are confused, they are applying two definitions at the same time. (…) No one was paying attention to this before we questioned. And when we questioned in 2018 it was like: are you asking people what is their social construct? (…) I think it was going more in [an LGBT activism] kind of direction where it can be either sex or gender, it's the same. (…). I noticed that at the moment, sex and gender is used interchangeably, in most EU documents. Maybe not so much at the level of law – European Directives are not adopted every year. [Interview 1]

A problem we will always have will be translation into different languages for example, so the word gender is very well established in the English language but in some languages, you don't have a literal translation so maybe that is an interesting side of the debate – for someone who has English as their second language they are not aware of these dimensions. I think, as an English learner – the word gender is a lot more established than sex for example. [Interview 2]

Gender [used to be] synonymous with sex except it sounded better and was used internationally – for a reason of course, because sex does not capture the discrimination as much as gender does: based on roles, status in society. In that sense the EU just followed. [Interview 7]

III.   Synonymous with or related to gender identity.

Since 2012 on and in the most recent documents one can observe a shift: while *gender* continues to be used as per approaches 1 and 2, some documents also start to use it as synonymous with 'gender identity'. This can be observed prominently in the latest EC Gender Equality Strategy for 2020-25, which refers to the definition of gender from the Istanbul Convention, but supplements it with a footnote explaining that 'where women or men are mentioned, these are a heterogeneous categories (*sic*) including in relation to their sex, gender identity, gender expression or sex characteristics' (EC, 2020b, pp. 2).

The first example we found for this approach is the EC's 2012 report 'Trans and intersex people, Discrimination on the grounds of sex, gender identity and gender expression' which states that: "gender refers to people's internal perception and experience of maleness and femaleness, and the social construction that allocates certain behaviours to male and female roles which vary across history, societies, cultures and classes. (…) Gender identity refers to each person's deeply felt internal and individual experience of gender" (EC,

2012a, pp. 12-13). While there is mention of social construction of the roles, there is simultaneous suggestion that this somehow refers to individual perceptions and experience. In its 8 March 2021 statement ILGA Europe for instance says that: 'while gender is a social construct which varies from society to society and can change over time, the current understanding of gender is hierarchical and produces inequalities between those who identify as man and those who identify as woman, between those who fit into the binary norms and those who do not' (ILGA Europe, 2021).

There are more than two genders (…), the word "gender" already implies that there are different genders, that there is a variety of ways that people can identify [Interview 2]

Depending on who [you are] talking to, gender equality [as opposed to equality between women and men] can be closer to LGBTIQ equality topics [Interview 3]

The division between gender and gender identity is constructed [Interview 5]

Gender refers to broad realities, so it captures for example lesbians, transwomen, transmen [Interview 7]

Another confusion emerges when the first and third meanings are used interchangeably. This is the case in the LGBTIQ strategy 2020-2025 of the European Commission (EC, 2020d). Sometimes the term is used in the meaning of sex (e.g., in formulations like same-gender attraction, for gays and lesbians), other times as synonymous with gender identity, e.g., in formulations about "discrimination based on sexual orientation and gender". This formulation might be due to the new trend to define sexual attraction in terms of gender identity instead of biological sex (according to which gays would be male-identifying people attracted to other male-identifying people) (Stock 2021).

We understand that LGBTIQ strategy should be read in tandem with the gender equality strategy but it is using 'gender' in a different way. (…) Eastern European countries say we can only talk about sex but progressives only want to say gender, they want to stay in line with the Istanbul Convention but do not use it in ways that are in line with the Convention's definition. In the LGBTIQ strategy there are references to 'gender' that should be 'sex' or 'sex and gender'. [Interview 4]

A version of this conflation is observed in documents referring to gender-based violence as violence directed at an individual because of their gender or gender identity, rather than because of unequal – gendered – power relations in

society. This can be observed within the EU's Directive on Victims' Rights, also as early as in 2012 ("violence that is directed against a person because of that person's gender, gender identity or gender expression or that affects persons of a particular gender disproportionately, is understood as gender-based violence", EC, 2012b, Rec. 17). 2016 statements made by the then European Commissioner for Justice, Věra Jourová also take this approach ("EU acquis already recognises that gender-based violence is violence that is directed against a person because of that person's gender, gender identity or gender expression", EP, 2016). This echoes the language contained in the explanatory report of the Istanbul Convention ("following non-discrimination grounds which are of great relevance to the subject-matter of the Convention: gender, sexual orientation, gender identity", CoE, 2011b, pp. 9) and the legal opinion of the Network of Legal Experts for the EC (2016) ("the Istanbul Convention, Article 4 provides that it must be applied to all victims without discrimination on a wide range of grounds, including (...) gender identity" EC, 2016, pp. 40). In 2020, the European Commission opened a call for proposals on the renewed iteration of its programme for combatting violence against women; this call however widens the previous focus to provide funding for projects designed to prevent gender-based violence defined as above: not in a sense of the origins of the violence (gendered – patriarchal – structural), but in terms of who is affected (based on gender, gender identity or gender expression), shifting the focus from structures to individuals, from patriarchal norms towards the oppression of all presumed genders (EC, 2020a). This also demonstrates that the issue of widening definitions and policy focus impacts resource allocation: when the meaning of a term is stretched, then the same amount of money might be allocated to a broader area, leaving fewer resources compared to previous definitions. This is not the first such stretching: "the expansion of the issue of violence against women to violence against women and children or to domestic violence often involved the distribution of the same resources over a larger number of target groups and less attention paid to women" (Lombardo et al., 2009, pp. 110).

3.2 3.2 Right-wing resistance
This diversification of meanings has been noted by right-wing populist forces: this is evident in the letter sent by conservative NGOs to the Secretary General of the Council of Europe to protest the shift of meaning of the term 'gender-based violence' to include violence on the basis of 'gender identity,' which refers to the same documents as those mentioned above: the legal

opinion of the network of legal experts and Commissioner Jourová's answer to a Parliamentary Question.[14] While the authors of the letter declare their commitment to "the implementation of mechanisms that do indeed protect women and girls from violence", the ambiguity of meaning is provided by them as the reason for their suggestion to change the term 'gender equality' to 'equality between men and women'.

At the level of EU decision making, the opposition to *gender* has at times resulted in a lack of unanimity required to adopt Council Conclusions. Since 2018, Poland has blocked the adoption of Council Conclusions on the basis of their inclusion of the term on at least three occasions: in October 2018, blocking Council Conclusions on the state of human rights in the EU,[15] in December 2018 blocking conclusions on gender equity in the digital era[16] and in October 2020, blocking conclusions on artificial intelligence.[17] Hungary has also rejected Council Conclusions on the same basis at least twice.[18] In 2019 and 2020, Poland demanded an addition to Council Conclusions documents clarifying that 'where the conclusions refer to gender equality, Poland will interpret it as equality between women and men.' (Council Conclusions, 2019);[19] Slovakia did the same in reference to a document in 2020 ('the Slovak Republic (...) interprets the concept of "gender" in the text as a reference to sex and the concept of "gender equality" as reference to the equality between men and women', Council of the EU, 2020). The formulation of these objections is important, as they highlight that the opposition lies with the use of the term *gender* itself. It clarifies that these governments are – at least at the discursive level – not opposed to women's rights or women's equality to men, of which they are often accused of by feminist activists.

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[14] Letter to Secretary General of the Council of Europe, Mr. Thorbjørn Jagland from 333 NGOs from 9 Member States of the Council of Europe, https://www.irs.in.ua/files/publications/Letter-to-Secretary-General-of-CoE-Thorbjorn-Jagland.pdf

[15] Politico, 12 Oct 2018, Brussels Playbook, accessed 04.11.2020

[16] Politico, 7 December 2018, Hungary and Poland say no to LGBTIQ, accessed 22.06.2020

[17] Euractiv, 26 Oct 2020, Poland rejects Presidency conclusions on Artificial Intelligence, rights, accessed 03.11.2020.

[18] Agence Europe, 12 June 2020, Hungary opposes conclusions on impact of long-term care on work-life balance, accessed 22.06.2020; 444, 26 Oct 2020, 45 percen át vitatkoztak Európa vezetői Orbánnal a "gender" szóról, accessed 03.11.2020.

[19] Council of the EU, 2020, Gender-Equal Economies in the EU: The Way Forward: Statement from Poland, accessed 21.06.2020

Discussion of the results and Conclusion

The systematic analysis of the documents and the interviews confirmed our initial observation that in EU policy making, there is currently a parallel use of three meanings of gender. One cannot therefore safely state that the right wing misunderstands or misrepresents the concept of gender. Instead, it rightly highlights the ambiguity, and takes one definition of gender – which is indeed in use – that it treats as problematic, and claims that anything formulated in terms of gender (be it VAWG or 'gender equality') would lead to the proliferation of gender identities. The fact that some of the actors indeed pursue the goal of stretching the meaning of *gender* to include gender self-identification, hence trans and non-binary gender identities, lends empirical credibility to the right-wing claim that *gender* is about individual determinations of one's own gender identity.

When the populist right mobilizes at the EU level against the concept of gender, it partly opposes old progressive claims, like reproductive rights, or equal rights for same sex couples, as evidenced by their two ECIs. But when they attack the concept itself, they refer to existing documents and developments that merit critical scrutiny. There are two strategies to address these challenges on the progressive side. The active one, which consists in the stretching of the meaning of gender, which is the political goal of LGBT lobby groups, to ensure the rights of trans and non-binary people. The passive one ignores or celebrates the diversity, in the name of the hegemonic 'rainbow coalition', as the presumed natural alliance between feminist and LGBT claims, and suggests that the goals of the two causes have no potential conflicts. An interviewee suggested that any divisions are manufactured by the right:

Division is sought between the LGBTIQ movement part and the women's movement part, with the women's movement being put in a position to disown the LGBTIQ movement. [Interview 7]

We propose a third, ideology-critical approach: instead of reinforcing the taboo stemming from the fear of strengthening the right, we need to look at the developments with a reflexive eye, and – at least in the analytical sense – without considering the right wing. The political consequences which follow this analysis must obviously consider the political landscape, but as scholars we might scrutinize developments: namely to analyse, if and to what extent current feminist and LGBT claims are emancipatory and critical of the status quo, or to the contrary, represent – in the guise of language of choice and self-

determination – a platform for neoliberal or capitalist structures. As one of our interviewees put it:

There is a neoliberal shift we see in progressive society. The hyper-individualization we are seeing results in the re-assessment of gender as identity. Gender identity is an individualized expression of the socially constructed roles we see around us. The underpinning of social construct is there but the concept of individualized gender identity – this muddies the waters. For us, gender is unequal relationships between men and women, but the individualized understanding makes it difficult to have this analysis. (…) [T]here is pressure from the left in terms of neoliberal trends and from the right that we cannot talk about gender at all. [Interview 4]

Based on what we see from our analysis, one can observe an ambiguity: there are at least three meanings of *gender* in use: (1) as a synonym of sex; (2) as a social construct, a set of roles attributed to males and females; (3) as an identity. At the same time, the first meaning is sometimes used interchangeably with the second or the third ones, adding to the confusion. The second, structuralist and the third, individualist definitions are however mutually exclusive: *gender* cannot simultaneously be a social construct and something that originates internally within individuals. As these are current developments, it is hard to interpret them. We suggest, based on theoretical considerations, to interpret this ambiguity as a *shift* from the second, structural one, towards the third, poststructuralist and individualistic one (Mészáros, 2017; Risman et al., 2018; Salonas, 2018).

While this requires further research, at this stage we might attribute these changes to several developments. The first one is the rise in prominence of LGBT lobby groups at EU level (Ahrens – Woodward, 2020, pp. 3), and their closer co-operation with women's rights lobbyists, that increasingly treat their agendas as equivalent and fully compatible. This manifests in formulations such as 'women's and LGBT rights'.[20] Here, the term *gender* makes reference to

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[20] See for example: Online debate with Kira Marie Peter-Hansen MEP and Sylwia Spurek MEP: Can the EU help protect women's and LGBT's rights?, https://www.youtube.com/watch?v=3Y9LybFuu8Y; European Parliament resolution of 11 March 2021 on the declaration of the EU as an LGBTIQ Freedom Zone, Recital M, https://www.europarl.europa.eu/doceo/document/TA-9-2021-0089_EN.html, both accessed 16.06.2021. In academic contexts, one can also find reference to 'women and gender rights', see for example: Global Contestations of Women's and Gender Rights, https://www.uni-bielefeld.de/(en)/ZIF/FG/2020Gender/, accessed 16.06.2021.

women's changing roles, to sexuality untied from social obligations and to various gender expressions and gender identities – uniting the LGBT and feminist causes. The discursive opportunity structure for this alliance is provided by the intersectionalist human rights consensus (and taboo).

Another development that could contribute to the proliferation of the meanings of gender in the EU realm are the poststructuralist changes within gender studies arriving to the polity level. Long-standing feminist claims that women's oppression is based on the differences between the two sets of reproductive biologies is more and more often declared to be outdated or 'biologically essentialist'.

Lombardo and her colleagues (2009) differentiate four processes of how a discourse on the meaning of gender equality is formed: fixing a meaning (establishing it, albeit temporarily), shrinking (e.g., to mean only non-discrimination on legal basis), stretching (broadening the meaning to include other understandings) and bending (towards other goals than gender equality, such as economic growth, Elomäki, 2015). We believe that we are observing a discursive struggle where a possibly hegemonic fight for fixing the meaning of gender in the Butlerist sense of the concept is taking place at the European level. We are also witnessing both a shrinking and a stretching of the concept. A shrinking in a sense that the complex meaning of *gender* is reduced to its part on subjectivities/identities, leading also to a focus away from the origin of inequalities to the persons experiencing them, best exemplified by the changes to the term 'gender-based violence'. It is also a stretching in a sense that it attempts to include into the term of gender equality the 'equality of all genders.'

This seems to be part of a conscious advocacy strategy of actors invested in trans and genderqueer rights, and partly an unseen bias provided by the hegemonic discourse: the imperative of the rainbow coalition, further accentuated by the strengthening of the right. "The way in which policy actors will use or reinterpret a fixed meaning is rather unpredictable in the sense that it can have different effects than the ones expected both from the actors involved in the meaning's elaboration and the actors who engage in challenging this meaning." (Lombardo et al. 2009, pp. 117). One can describe this fight for fixing the meaning as good intentions (inclusion) producing unintended effects with far-reaching implications, such as side-lining analyses about the causes of inequalities, or silencing internal tensions among different epistemic communities, and with that leaving the terrain to the right.

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