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EQUALITY AND NON-DISCRIMINATION
CONSIDERATIONS IN ESTONIAN NATIONAL
DEVELOPMENT PLAN 2004 - 2006

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ABSTRACT

The present paper shows how considerations of equality and non-discrimination are taken into account in the “Estonian National Development Plan for the implementation of the EU Structural Funds Single Programming Document (SPD) 2004 – 2006”. The goal of the study is twofold. In the theoretical part, the author shows how the scope of equality considerations in one particular program can be assessed. In the practical part, the author employs particular assessment framework to particular program – the Estonian SPD, and analyses his findings. The study gives an overview of European anti-discrimination policy’s legal and theoretical framework, describes the extent of the use of equality and non-discrimination considerations in programming and implementation of Structural Funds in Europe, and examines the reality and possibilities for integrating equality and non-discrimination considerations into the implementation of Structural Funds in Estonia.

The theoretical part shows that the scope of anti-discrimination legislation has increased in the European Union in recent years. Together with legal initiatives, there is a growing recognition of the fact that practical realization of anti-discrimination legislation should be accompanied by certain non-legislative measures. One of these measures is the integration of equality and non-discrimination considerations into public policy making and planning. These developments have found reflection in the practice of Structural Funds administration. The issue of gender equality as a pioneering domain was an obligatory subject for the Structural Funds management for almost ten years. New issues (such as ethnic minorities, people with disabilities etc.) emerge in the management agenda as new vulnerable groups fall within the widening scope of anti-discrimination legislation.

Examining the extent of the use of equality and non-discrimination considerations in programming and implementation of Structural Funds in Estonia, I found that the scope of the use of equality and non-discrimination considerations in programming and implementation of Structural Funds in Estonia corresponds with requirements of the EU regulations. Up to the present, as it is shown in the example of gender equality, Estonia

follows the European pattern observed in the first part of my study - the concepts of equality and non-discrimination, once adopted in legislation then became integrated in public administration and policy planning. Up to now, the promotion of gender equality was driven rather by external factors than by domestic initiative. Beside that, it was keeping a “low profile”, doing the most necessary things only.

But will non-discrimination, once implemented in the domain of gender equality, advance into other domains too? The Structural Funds administration in Estonia is not especially enthusiastic about equality mainstreaming. The probability that it will develop its own standards higher than standards demanded by the EU regulations is very low. At the same time, the anti-discrimination policy is a dynamically developing domain. In my opinion, it is not relevant to compare the implementation of the SPD to any kind of ideal-type picture. The study shows the administration’s willingness to consider minority problems; even in the situation where no legal obligations to do it were present. I conclude that Estonia will follow the European lead integrating non-discrimination into administration of Structural Funds.

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Chapter 1

INTRODUCTION

There is growing concern among human rights activists and legislators around the globe about the link that exists between membership of minority community and access to development opportunities. A number of studies reported that minorities are often excluded from equal participation in development processes. Minorities (racial, ethnic, linguistic, on the ground of sex, disability, age, etc.) face specific challenges, which, if not taken into account, will hinder their effective participation in mainstream development. This fact is not often recognized by administrators and politicians responsible for the elaboration and implementation of development programs. According to some studies, there is a significant difference in approaching development between law and human rights professionals on the one hand and administrators on the other (Riddell 2002). Many administrators remain ignorant of aspects of human rights in development programs. This ignorance and, sometimes, denial to integrate equality and non-discrimination considerations into development programs lead to reinforcement of discrimination and further social exclusion of vulnerable groups (Tomaševski 2000).

The principles of non-discrimination are recognized and actively supported by the European Union. European Union's anti-discriminative legislation is considered to be among the most advanced in the world. Anti-discriminative directives¹ are the part of Community *acquis* and all Member States are obliged to transpose them into national legislation. Beside that, there is a growing recognition of the need to supplement legislative measures with concrete anti-

¹ Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, [2000] OJ L180/22, and Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, [2000] OJ L303/16.

discriminative policies. At the same time, a number of reports present evidence that discrimination on the ground of race and racial acts have increased in recent years².

The European Commission in the “Green Paper on Equality and Non-Discrimination in an Enlarged European Union” presented in April 2004, invites all relevant stakeholders to take part in consultation exercise finding out how EU can continue and reinforce its efforts to combat discrimination and promote equal treatment of vulnerable groups. The scope of the consultation is fairly broad. The Commission stimulates the discussions on the topic of design and implementation of practical measures to tackle discrimination, public awareness campaigns, measures to improve data collection, monitoring and analysis, etc. Special attention is paid to the elaboration of measures that would provide integration of equality and non-discrimination considerations into public policies, implementation of EU funding instruments³ and public procurement procedures⁴.

Estonia, as a Member State and a country actively involved in the process of European integration, participates in the development and implementation of European anti-discrimination policy. Several measures for better protection of vulnerable groups were

² This opinion is expressed in the annual report of Jandl et al. (2003) “Migrants, Minorities and Employment”, European Union Monitoring Centre (2003) “Report on Racism and Xenophobia in the EU”, and the European Opinion Research Group EEIG (2003) report “Discrimination in Europe”.

³ The example of it is the European Commission (2000) “Mainstreaming Equal Opportunities for Women and Men in Structural Fund Programmes and Projects”.

⁴ See, for example European Commission (2001) “Interpretative Communication of the Commission on the Community law applicable to public procurement and the possibilities for integrating social considerations into public procurement”, Brussels, 15.10.2001, COM (2001) 566 final. See also the Commission’s Tender No VT/2002/36 “Study on the use of Equality and Diversity Considerations in Public Procurement”.

undertaken in the country recently. However, the recent initiatives⁵ of European Commission and obligations to transpose the EU anti-discrimination directives constitute a demand for further development in this field. The legislation is not the only sphere, where anti-discriminative measures need to be introduced. Estonia, among other Member States, needs to find a way to integrate equality and non-discrimination considerations into public policies and decision making processes. Estonia is a beneficiary of EU Structural Funds. The process of implementation of Structural Funds gives opportunity to observe and assess how equality and non-discrimination concerns are integrated or can be integrated into this particular segment of public policy and what impact it can have.

The aim of the present paper is to clarify the scope of considering equality and non-discrimination in the “Estonian National Development Plan for the implementation of the EU Structural Funds Single Programming Document (SPD) 2004 – 2006”. In order to achieve this goal the present study:

1. gives an overview of the legal and theoretical framework of anti-discrimination policy,
2. examines the extent of the use of equality and non-discrimination considerations in the programming and implementation of Structural Funds in Estonia, and
3. analyses the possibilities for integrating equality and non-discrimination considerations into the implementation of Structural Funds in the light of the theoretical discussion and demands of EU legislation.

There are a number of studies on the issue of integration of non-discrimination concerns in public policies. Katarina Tomaševski (2000) explores development policies of major bilateral and multilateral donors from the viewpoint of minority rights in these policies. Roger Riddell (2002) examines the links between membership of a minority community and access to development opportunities. Margot Salomon and Arjun Sengupta (2003) argue

⁵ In addition to the *Green Paper*, see also Council Decision 2003/578/EC on guidelines for the employment policies of the Member States and European Commission’s (2004) “Third Report on Economic and Social Cohesion”.

that an introduction of the right to development is an obligation of the state toward minorities. In addition to these rather general and human rights oriented studies, there are a number of studies related to the theory and practices of equality mainstreaming⁶. The goals of the present study are in line with some studies initiated by the European Commission⁷.

The study is organized in the following manner. Chapter 2 is of descriptive and exploratory character providing a framework for a better understanding of the issues of tackling discrimination. Chapter 3 describes how Estonia's legislation and management of Structural Funds address equality and non-discrimination issues. Proceeding from the theoretical discussion on values of equality, laws and practices employed to combat discrimination, and taking into account the findings presented in Chapter 3, Chapter 4 of the study analyzes at what extent equality considerations were taken into account in the implementation of Structural Funds in Estonia. Certain conclusions, drawn from this study together with an opinion on the perspectives of anti-discrimination policy in Estonia in implementation of Structural Funds, are presented in Chapter 5.

⁶ See, for example, Council of Europe (1998) "Report on Gender 'Mainstreaming'", Rona Fitzgerald's (2002) and the University of Edinburgh (1998) reports.

⁷ For example, a study on the use of equality and diversity considerations in public procurement tendered by the Commission (Tender No VT/2002/36).

Chapter 2

OVERVIEW OF LEGAL AND THEORETICAL BACKGROUND

This chapter focuses on the concepts of non-discrimination and equal treatment. Section 1 provides precise definition of basic terms used in the paper. Section 2 gives an overview of legal and theoretical framework of the concepts. Section 3 describes the measures employed to tackle discrimination and to provide equal treatment to different vulnerable groups. The theoretical discussion is concluded by Section 4.

2.1 Definitions

The axis of the present study is concepts of minority, discrimination and equal treatment. These concepts go through all the discussion and analysis. There is a multitude of different definitions of these concepts, each of them emphasizing different angles of the subject. In order to make the terminology used in the present paper commonly intelligible, I feel obliged to specify the precise definitions in the very beginning of the study.

The present study is dedicated to the subject related to the European legislative background. That is why I use the terms in the meanings attributed to them in European context that seems to be the most logical way. For the purposes of the present study I use the term **discrimination** in the meaning of manifestations of direct and indirect discrimination as they are defined in anti-discrimination legislation of the European Union⁸. Namely:

⁸ Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, [2000] OJ L180/22, and Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, [2000] OJ L303/16.

- **direct discrimination** shall be taken to occur where one person is treated less favorably than another is, has been or would be treated in a comparable situation on grounds of sex, racial or ethnic origin, religion or belief, disability or age.
- **indirect discrimination** shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a particular sex, or persons of a particular racial or ethnic origin or persons having a particular religion or belief, a particular disability, or a particular age at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

The term **equal treatment** as it used in the present study refers to the situation where no direct or indirect discrimination based on the grounds of sex, racial or ethnic origin, religion or belief, disability or age is present.

There is no universally accepted definition of **minority** and the term is interpreted differently in different circumstances. According to the definition of Encyclopedia Americana (EA 19: 207), a minority is a distinguished group of people which has lower social status, prestige, access to power and resources compared to the majority in that particular society. The term is used to refer to people of a different ethnos, religion, culture, language, lifestyle or any characteristic, provided this group maintains a certain sense of common identity. The term usually, but not necessary, refers to a group that is outnumbered by persons who do not belong to it. The term is also employed to refer to segments of society which experience particular disadvantages or face the treat of marginalization due to origin, class, disability, gender, age or other factors. In this case the term is used as a synonym for a vulnerable, or disadvantaged, group. The use of the term in the present study refers to the last instance.

2.2 Legal and theoretical framework

I think it is necessary to explore the legal and theoretical base of the concepts of non-discrimination and equal treatment before examination of the area of Structural Funds management. This provides us with understanding of the nature of the necessity to implement these concepts in public administration and particularly in the area of Structural Funds.

2.2.1 Legal background

The concepts belong to the domain of human rights legislation. They are the integral parts of fundamental rights and values that form the bedrock of today's international community. The right to non-discrimination and the principle of equality are recognized by the Universal Declaration of Human Rights and a number of other international documents⁹. The European Convention for the Protection of Human Rights and Fundamental Freedoms contains provisions on non-discrimination. The provisions were recently reinforced by the amendment of Protocol 12, which expresses the resolution of signatories to take further steps for the promotion of equality.

History shows a certain pattern in the development of these concepts. The process, first driven by international community, starts from international human rights legislation, proceeds to transposition of the norms into national legislation and to implementation of them into practice. The practical implementation usually involves, first of all, special initiatives (like stimulation of public discussion, awareness raising campaigns, etc.), then it comes to designation of specialized bodies aimed to fight against discrimination and, finally, to integration of non-discrimination and equality considerations into public administration and decision making process. The last step has taken forms of "mainstreaming" or

⁹ The most significant of them are the UN Covenant on Civil and Political Rights, the UN Convention on Economic, Social and Cultural Rights, the UN Convention on the elimination of racial discrimination, and International Labor Organisation's Convention No 111.

“representative bureaucracy” or “affirmative action” etc.¹⁰. Effective implementation of equality legislation depends on the commitment of national authorities, active support and involvement of civil society and complementary support of non-legislative measures (*Green Paper* 2004).

Why non-legislative measures are necessary? Minority and majority do not have the same situation, needs, and recourses. The presence of these structural differences can hinder the effectiveness of anti-discrimination legislation (Fitzgerald 2002; Hendriks 1995). In order to overcome structural inequalities and make equality legislation work, certain positive measures and better policy targeting are necessary (Epstein 1999; Waddington 2001; Cardinali 2001). Equality and non-discrimination should be considered at the very beginning of the policy making process. It may have crucial impact on the success of the policies. Policies that appear minority neutral may with closer scrutiny turn out to affect majority and minority differently.

A well-known example is public transport. Investments in public transport modernization seem to be equality neutral. But there are substantial differences between men and women in the patterns of how they use public and private transportation. By various reasons of social and economical nature (structural inequalities), women use private transportation (family car) less frequently than men. Consequently, women will gain more from improvements in public transportation. Public transportation also appears to be a vulnerable issue for older people and people with disabilities. The under-representation of these groups (or experts capable to represent interests of these groups) in the planning and implementation process may lead to inadequate realization of the programs and contribute to further exclusion of these groups.

¹⁰ For example, in the United States this development has taken a form of “affirmative action” with strong commitment on the side of government to make civil service representative in terms of race, ethnicity and gender. (Thompson 1999: 227; Shafritz *et al.* 1992).

Taking minority needs into consideration in the public decision making process is seen as a way to overcome the deficit of democracy which leads to a crisis of legitimacy of and trust to government (Mosher 1982). It is also seen as a way to improve the quality of governance (Peters 2001: 89). Bureaucracies are often appealed to become representative institutions in order to straighten democracy and provide inclusive public services (Krislov 1967; Selden *et al.* 1998; SIGMA 1998: 333). But, still, the integration of non-discrimination and equality into the policy making process seems to be a challenging and complicated issue for public administration (Janet 2002; Salomon *et al.* 2003).

How can equality and non-discrimination be taken into consideration in the policy making process? Helpful insights on the issue may be found in the observation of EU's gender equality legislation's experience and its further move toward the better protection of other vulnerable groups. Let us start from a short overview of the recent years' developments.

2.2.2 Recent developments

The European Union tries to be in the avant-garde of international community efforts to implement the principles of non-discrimination. One of the first EU's documents on the issue of equality was the Equal Treatment Directive. The directive issued by the Council of Ministers of the European Economic Community in 1976 required all member states to ensure the principle of equal treatment for men and women in employment and training. The development, stimulated by the directive, has started from the domain of employment (equal pay, gender-sensitive conditions etc.) and later resulted in so-called "gender mainstreaming".

Mainstreaming is a strategy that aims to make gender equality a regular part of policy making process. "Gender mainstreaming" manifested itself in a number of Community initiatives. One of them was the commitment of European Structural Funds to ensuring equal opportunities for men and women. Gender equality was included in a number of so-called "horizontal" priorities – priorities to be observed in every operation funded by the

Funds. This practice started in the 1997 – 1999 funding period and continues in the present time. In Fitzgerald's (2002: 2) opinion, gender mainstreaming "is no longer considered a human resources/employment issue, but a fundamental issue concerning women as economic and social actors and acknowledging the fact that structural inequalities ... result in a different impact on men and women from program intervention". The shift from distinctively legal approach to non-legislative measures is apparent in these developments.

The Equal Treatment Directive and its implementation in the form of "gender mainstreaming", as well as case law of the European Court of Justice, have inspired further developments. The recent initiatives of the Commission related to other vulnerable groups (ethnic minorities, people with disabilities, older people, migrants, etc.) show signs of similar progress. This reveals a certain pattern of development: from declarative to legislative to non-legislative measures. First in a domain of gender equality, then in relation to other vulnerable groups too. Let us see how.

The EU's dedication to the principles of non-discrimination was affirmed in Article 13 of the European Community Treaty in 1999. On the basis of Article 13, the EU has adopted directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (the Racial Equality Directive) and directive 2000/78/EC establishing a general framework for the implementation of equal treatment in employment and occupation (the Employment Equality Directive). The Racial Equality Directive prohibits direct and indirect discrimination, harassment and instructions to discriminate on the grounds of racial and ethnic origin. The directive is applicable in such spheres of social life as employment, training, education, social security, healthcare, housing and access to goods and services. The directive has introduced new definitions and legal concepts such as of direct and indirect discrimination, harassment and victimization. The directive obliges the Member States to establish an independent specialized body to provide independent assistance to victims of racial discrimination. The right to make a complaint through certain judicial or administrative procedures is given to victims of discrimination.

The Employment Equality Directive deals with discrimination in the fields of employment, occupation and training. It bans direct and indirect discrimination, harassment and instructions to discriminate on the grounds of religion, age, disability and sexual orientation. The definitions of discrimination, rights of legal redress and the sharing of the burden of proof are identical to the Racial Equality Directive. The directive obliges employers to make reasonable accommodation to meet the needs of persons with a disability who are sufficiently qualified for the job in question. The directive allows limited exceptions to the principle of equal treatment for cases justified by specific job related reasoning, for example, to preserve the ethos of religious organizations or to allow special schemes to promote better participation of older or younger workers in the labor market.

If the two anti-discrimination directives were based upon the previous experience of the Equal Treatment Directive of 1976, then, in turn, further developments in gender equality legislation took into account innovations introduced by the Racial Equality Directive and the Employment Equality Directive. In 2002, the Council has adopted a new directive on the implementation of the principle of equal treatment for men and women amending the previous one. By doing this, the EU has built a complex, comprehensive and interrelated legal framework that provides the legal base for tackling with different forms and grounds of discrimination. This is important because discrimination often occurs on multiple grounds. All three directives are an inseparable part of *acquis communautaire*. Transposition of the directives into national legislation is obligatory for all Member States. The deadline of transposition for “old” Member States expired in 2003. The acceding countries were required to complement their legislation before 1 May 2004. However, there are a number of shortcomings both in “old”¹¹ and “new” Member states.

¹¹ The European Commission has announced 19.07.2004 that it is taking legal action against Austria, Belgium, Germany, Finland, Greece, and Luxembourg that have failed to transpose two anti-discrimination Directives. The Commission will refer to the European Court of Justice.

2.2.3 Non-legislative measures, including Structural Funds

Those were the developments on the level of legislation. At the non-legislative level, equality issues are reflected in the major political documents of the EU. The Lisbon Strategy (2000) and the European Employment Guidelines (2003) name the increase of employment level of currently underrepresented groups among the main goals of the Community. Special concern is expressed in relation to social inclusion and employment of people with disabilities, ethnic minorities and migrants, and older people. Copenhagen European Council¹² in 2002 has emphasized the fact, that low participation and employment rate of minorities are the result of a number of social and economic factors. The Council encouraged Member States to address the situation of ethnic minorities and migrants in their National Action Plans for Social Inclusion and elaborate strategies to promote the access of people with disabilities to employment, training, education, information society, health care, housing, transport and other services.

In the Green Paper (2004), the Commission gives a general overview of the measures planned to be applied in the frames of European anti-discrimination policy. These are the continuation of measures launched previously, EU Programs in the field of education, training and youth with activities in favor of minorities and research projects on discrimination related issues. Special attention is paid to further elaboration of measures to

¹² Council of the European Union (2003): “Copenhagen European Council 12 And 13 December 2002 - Presidency Conclusions”.

provide integration of equality and non-discrimination considerations into public policies such as the implementation of EU Structural Funds¹³ and public procurement procedures¹⁴.

I have decided to focus on one particular sphere – equality and non-discrimination considerations in the implementation of EU Structural Funds – because, in my opinion, Structural Funds management is a most suitable field for such a study. And this for three reasons at least. First of all, Structural Funds programs cover a wide range of policies related to national development. The study in the domain of Structural Funds gives an opportunity to assess the realization of the right to development¹⁵. Secondly, at least in Estonia, the scope of Structural Funds supported programs is broad enough to provide a comprehensive, holistic picture and to project conclusions onto public administration as a whole. And thirdly, Structural Funds management has some characteristics (separate law, different provisions, rules, procedures etc.) that make it a clearly detached segment of state administration, though integrated in a larger structure. These features, belonging to the larger structure and, at the same time, distinct level of separation and completeness, make Structural Funds management a promising field for research.

¹³ See Article 10 of the draft of European Structural Fund Regulation for 2007 - 2013 funding period presented by the Commission.

¹⁴ European Commission's (2001): "Interpretative Communication of the Commission on the Community law applicable to public procurement and the possibilities for integrating social considerations into public procurement". See also the Commission's Tender No VT/2002/36 "Study on the use of Equality and Diversity Considerations in Public Procurement".

¹⁵ According to UN Declaration on the Right to Development (1986) "the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized" (Article 1.). This section is interpreted as referring to minorities' right to equal participation (1) in process of development and (2) to outcomes of development (Salomon *et al.* 2003).

Summarizing this section I want to emphasize the following moments:

1. The concepts of equality and non-discrimination, once adopted in legislation, grow deeper generating certain non-legislative measures.
2. In Europe, non-discrimination, once implemented in the domain of gender equality, now advances into other dimensions too.
3. Among other non-legislative measures, the integration of equality considerations into the implementation of Structural Funds seems to be a very promising field of research.

The next section gives a systematic overview of measures, which were employed in different countries in order to provide integration of equality and non-discrimination considerations into management of Structural Funds. In order to provide more specific and detailed information, the issue is examined in relation to particular domains: gender equality, ethnic minorities and people with disabilities.

There are other vulnerable groups potentially exposed to discriminatory practices: Roma, religious minorities, older people, immigrants, HIV-positives, sexual minorities etc. Because of a lack of literature dealing with these particular groups in the context of Structural Funds, I do not explore these groups separately in the present study. Some of them - Roma, religious minorities and immigrants – can be considered under the title of ethnic minorities, not withholding the fact that there are significant differences between these groups.

2.3 Equality and non-discrimination considerations in Structural Funds management

Then talking about Structural Funds management, one must realize that this particular domain has often been pioneering in dealing with equality and non-discrimination. There is a considerable amount of literature (reports, studies, project descriptions, “best practices” etc.) about how equality concerns were implemented in Structural Funds supported programs. The lion’s share of these sources is related to gender equality, because gender “mainstreaming” was an obligation for Structural Funds management for a long time and a lot has been done there. Mostly in parallel with gender issues, ethnic minorities and people

with disabilities are mentioned. This part of literature is more fragmented and inconsistent and that because of different reasons. The most obvious one – no general framework was established. If any administrative measure related to people with disabilities and ethnic minorities was implemented, action, study or project undertaken, it was undertaken by local initiative arising from local conditions and resources. But anyway, these sources can provide sufficient input for the development of a certain framework, which could help to assess Structural Funds management performance in Estonia.

2.3.1 Gender equality

The European Commission (2000) promotes “gender mainstreaming” as an approach that does not restrict efforts to promote equality to the implementation of specific measures, but mobilizes all general policies and measures specifically for the purpose of achieving equality¹⁶. Mainstreaming in Structural Funds perspective means that all measures and operations actively take into account their effect on the situations of men and women. It involves all stages of management: planning, implementation, monitoring and evaluation. Programs should be able to demonstrate their impact before, during and after implementation. This applies to programs dealing with public infrastructure and services as well as to programs related to employment, entrepreneurship and training.

Mainstreaming should not be considered just as one of specific initiatives aimed on improvement of situation of minority. These measures are also important and they will be in place also in future (e.g. Community Initiative EQUAL). But these measures alone are not able to overcome structural inequalities. If a particular policy or project is “blind” to structural inequalities, its results can have a disproportionate or restrictive impact on minorities (Ben-Israel 1998). If this happens in development policies, women (as well as other vulnerable groups) may be hindered from equal development opportunities. Thus,

¹⁶ As it has been stated in the Commission’s Communication "Incorporating equal opportunities for women and men into all Community policies and activities" (1996).

principles of equality and non-discrimination should be considered at the very beginning of the planning process. As in the example of public transport, this may have the crucial impact on the success of the policy.

On the base of research of Yeandle et al. (1999: 16) three categories of necessary conditions or “facilitating factors” of equality mainstreaming can be identified:

1. Appropriate structures and systems, together with the values and commitments which underpin them. In other words, a political will, commitment to incorporate an equality perspective into policy development on the side of administration, and involvement of capable social partners are necessary preconditions.
2. Aspects of human relations and interpersonal relationships without which equality mainstreaming is unlikely to work. This refers to the issue of public administration’s culture. To put it differently, mainstreaming takes an “equality aware” administration that shares common understanding and values with respect to the issue with ongoing training and capacity building.
3. The availability of suitable tools and methods which can enable mainstreaming to be professionally and successfully enacted. This point indicates the need to establish sound baseline data, clear target settings and indicators, and develop a comprehensive, responsible and clearly communicated monitoring and evaluation system (Fitzgerald, 2002: 4).

Two documents issued by the European Commission in 2000, “A Guide to Gender Impact Assessment” and “Mainstreaming Equal Opportunities for Women and Men in Structural Funds and Projects”, establish a framework for the implementation of mainstreaming. First step in the process is setting up priority areas and objectives for equal opportunities. The second step in the process is the integration of equal opportunities in the development of plans and documents. Programming documents - Community Support Framework of Single Programming Document (SPD) - should contain at least (1) quantified description of the current situation of minorities, (2) a description of strategy and priorities for equality mainstreaming, (3) appropriate indicators and targets, (4) demonstration of consistency with

other Community policies, (5) an account of the steps taken to consult relevant social partners, (6) an outline of the monitoring and evaluation system and (7) a description of publicity actions planned.

During the management of the programs balanced partnership should be built with government equality organizations, relevant civil society organizations and networks, relevant research institutions and experts. This would ensure knowledge and skills in equal opportunity issues. The forth step is the elaboration of selection criteria and procedures for projects and actions ensuring comparability of project proposals. Monitoring of Structural Funds progress against equal opportunity targets is a requirement of Structural Funds regulation¹⁷. Thus, the monitoring system should enable the collection and analysis of sex-disaggregated data. The Annual Monitoring Reports, presented during the program implementation, should contain information of the progress against equality indicators. The progress against equality indicators are to be assessed in mid-term and ex-post evaluations of the program. Special attention is paid to publicity and information dissemination activities, which should ensure that the equality approach is promoted and target populations are informed.

There is a rather positive attitude towards the progress and results of gender mainstreaming at the side of the Commission. In a situation where new vulnerable groups emerge on the agenda the Commission tends to employ measures somewhat similar to the measures used in gender policy addressing "newly" emerged issues. This tendency (transition from "gender mainstreaming" to "equality mainstreaming") is apparent in the Commission's *Green Paper*. Thus, it is feasible to apply the mainstreaming approach in relation to other minorities.

¹⁷ Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds, [2003] OJ L161/01.

2.3.2 Ethnic minorities

Everyone who deals with the issue of ethnic minorities in the European context will face two interrelated problems. First of all, the universal definition of “ethnic minority” is not established. Legislations of different countries provide different definitions and, as a result of this, in a number of countries minorities are not recognized as separate and distinct groups (Riddell 2002). Partly as a result of this, there is a big variety in national statistic systems on minorities between states (EUMC 2003: 15).

The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities provides key perspectives for understanding the issue of minority rights in relation to development programs. Article 2 of the declaration proclaims that “persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live”. In order to fulfill this right in practice, states are obliged to consider appropriate measures to ensure that persons belonging to minorities may participate fully in the economic progress and development in their country.

There were some attempts to establish a model of how ethnic minority considerations may or must be taken into account in development programs. Generally, these models resemble more or less the “mainstreaming” approach as it was described in relation to gender “mainstreaming”. They include establishing a set of criteria for monitoring and evaluation of particular projects’ and a whole program’s impact on minorities, and making certain descriptions toward design of procedures related to planning and administration of development program. Janet (2002) systematizes those measures and instruments in accordance with the goals they are intended to achieve, as to measure participation of minorities in the program planning process; assess the impact of the program (or project) on the well-being of minority communities; assess the capacity-strengthening efforts of the program (or project); assess the program (or project) effectiveness in dealing with the issue of discrimination.

Ethnic minorities are an emerging, though not entirely new, issue for Structural Funds management. At the present moment, consideration of ethnic minorities is not an obligation for Structural Funds administration. This dimension has received significantly less attention than gender issue. But it may be included into a number of “horizontal” priorities in the next funding period (2007 - 2013), as it is seen from the draft of European Structural Fund Regulation for 2007 - 2013 funding period presented by the Commission in July 2004 (Article 10). In previous years, some specific programs were implemented in the frames of the Community Initiative EQUAL. There were a number programs and projects aimed at ethnic minorities in the domain of European Social Fund and some attempts to take ethnic minorities into consideration in investment programs of European Regional Development Fund¹⁸ (Fitzgerald 2002). But a holistic approach, as in the case of gender equality, was not in place.

Another aspect related to the issue of ethnic minorities is migration. According to the Commission’s report “The social situation in the European Union 2003”, migration has been the main component of population change in the EU since 1989. In 2000, around 5% of the EU population were non-nationals. In 2001, the annual migration rate was 3.1 per 1 000 population, which constitutes around 74% of total population growth. The issue of migration and the situation with employment among migrants may become an obligatory issue to take into consideration and to report during the implementation of Structural Funds in the 2007 - 2013 funding period (as seen from Article 10 of the Draft of European Structural Fund Regulation for 2007 - 2013 funding period).

¹⁸ See, for example, Muriel Mackenzie’s equal opportunities’ good practice guide “Equality in practice - making it work” (2004), prepared for Scottish Structural Fund programs.

2.3.3 People with disabilities

Traditionally, people with disabilities were considered a non-productive part of society. This attitude has manifested itself in, for example, the use of the term “invalid” in reference to a person with a disability. The attitude has changed after the Decade of Disabled Persons (1983-1992) that was proclaimed by the United Nations. About 2000 people with disabilities have participated in the Decade’s final conference in Vancouver to discuss their problems. Before, these kinds of discussions were a prerogative of experts or functionaries, not the disabled themselves (Degener 1995). This signifies the turning point in attitudes towards persons with disabilities from a “medical” paradigm towards a “social” paradigm.

In the “medical” paradigm, the disability is a personal problem, attributed to the person’s physical or psychological conditions that do not conform to the demands of the environment. In the “social” paradigm the disability is conditioned by dynamic relations between the person and the environment. The disability is seen as a product of the person’s context (or immediate environment) including its physical structures (the design of transport, buildings, etc) and its social constructions (beliefs, prejudices, etc.), which lead to discrimination against disabled people (Bolderson *et al.* 2002). Thus, the adjustment of physical, social, economic and cultural environment can minimize the impact of physical or psychological conditions of the person to this person’s life (Waddington 2001).

Any anti-discrimination policy can use one of two approaches: anti-discrimination (or equal treatment) and preferential treatment. The anti-discrimination approach means non-discrimination in respect of a disability in comparison with the situation of those who are not disabled. The preferential treatment approach identifies areas where disability leads to disadvantage for the group concerned and improves the situation by positive measures. The case of people with disabilities clearly shows why preferential treatment may be a necessary precondition to ensure non-discrimination. Discrimination may occur as a result of strictly equal treatment as well as a result of unequal treatment. Often, the denial to respect the special needs of people with disabilities leads to discrimination (Hendriks 1995). The preferential treatment (or *reasonable accommodation* in terms of the Employment Equality

Directive), is acceptable when this serves a legal and just reason. In the light of the Employment Equality Directive, reasonable accommodation is not seen as a kind of charity, but as a right of people with disabilities.

In the domain of Structural Funds, the needs of disabled people were taken into consideration by funding projects related to promoting accessibility of public services, training and working facilities, and transportation for people with disabilities (i.e. reasonable accommodation). In some countries, (e.g. Netherlands) the consideration of disabled people in the project proposal gives the applicants certain preferences during the project selection and appraisal process.

Two documents issued by the European Commission provide a vision for further development of European anti-discrimination policy in regard to people with disabilities. In the “Equal opportunities for people with disabilities: A European Action Plan”, the Commission highlights priorities such as access to employment, lifelong learning to support and increase employability and personal development, new technologies to empower people with disabilities and therefore facilitate access to employment, and, finally, accessibility to the publicly built environment to improve participation in the work place and integration into the economy and society.

The Commission’s view on the problem is expressed in the “European Union Disability Strategy”. In the main focus of the Strategy are the full participation of people with disabilities and mainstreaming disability in policy formulation. In the document, the Commission declares its commitment to consider the needs and rights of people with disabilities in the creation or modification of its policies and pays particular attention to disability aspects in its socio-economic programs and projects. The Commission recognizes the right of the people with disabilities to be involved in the planning, monitoring and evaluation of changes in policies, practices and programs.

2.4 Conclusion of the theoretical part

Summing up the theoretical part certain main aspects must be emphasized. First of all, the scope of anti-discrimination legislation has widened in the European Union in recent years. Starting in 1976 with the Equal Treatment Directive related to gender equality issues, the European Union has adopted the Racial Equality Directive and the Employment Equality Directive in 2000. These directives have established a general framework for the prevention of discrimination on the grounds of racial and ethnic origin, religion, disability, age and sexual orientation. Secondly, together with legal initiatives, there is a growing recognition of the fact that practical realization of anti-discrimination legislation should be accompanied by certain non-legislative measures (Fitzgerald 2002). One of these measures is the integration of equality and non-discrimination considerations into public policy making and planning. This may help to overcome structural inequalities and make equality legislation work (Epstein 1999; Waddington 2001; Cardinali 2001).

These developments have found reflection in the practice of Structural Funds administration. The issue of gender equality as a pioneering domain was an obligatory consideration for the Structural funds management for almost ten years. New issues (such as ethnic minorities, people with disabilities etc.) emerge in the Structural Funds management agenda as new vulnerable groups fall within the widening scope of anti-discrimination legislation. Structural Funds still lack universally agreed framework for assessment of integration of equality considerations related to ethnic minorities and people with disability into its procedures. But, at the same time, the studies related to the implementation of minority rights to development together with the experience of “gender mainstreaming” in Structural Funds management give sufficient amount of material to propose a certain framework that can be used for this sort of assessment.

Proceeding from three facilitating factors brought by Yeandle et al. (1999: 16) and taking into account the experience of “gender mainstreaming¹⁹” and measures to promote minority rights to development as they were summarized by Janet (2002), the framework for assessment should include:

1. Assessment of a broader legislative and administrative context, which should cover at least:
 - a. An overview of appropriate legislative acts and
 - b. Activities of specialized equality body (-ies).
2. Assessment of the integration of equality and non-discrimination into the planning process and programming documents, which should cover the following topics:
 - a. Descriptions of minorities’ related problems (base-line),
 - b. Strategy and priorities addressing minority situation,
 - c. Equality related indicators and targets,
 - d. Level of engagement of relevant social partners,
 - e. Publicity measures.
3. Assessment of the implementation process, which should cover the following topics:
 - a. Decision making procedures and selection criteria,
 - b. Involvement of relevant social partners,
 - c. Performance of monitoring system,
 - d. Actual allocation of the funds.

This framework is flexible enough to provide an opportunity to examine the use of equality and considerations in relation to different vulnerable groups to suggest certain measures for

¹⁹ As it is defined in “A Guide to Gender Impact Assessment” and “Mainstreaming Equal Opportunities for Women and Men in Structural Funds and Projects” issued by European Commission in 2000.

further integration of the equality consideration into Structural Funds administration and to forecast Structural Funds implementation's potential impact on the situation of minorities.

Estonia is not an exception for the processes described above. As a Member State of the European Union, Estonia is obliged to transpose EU's anti-discrimination legislation. As a beneficiary of Structural Funds, Estonia is obliged to act consistent with EU's "horizontal policies", equal treatment's promotion being one of them. The next chapter examines the extent of the use of equality and non-discrimination considerations in the programming and implementation of Structural Funds in Estonia.

Chapter 3

EQUALITY AND NON-DISCRIMINATION IN ESTONIA AND IN IMPLEMENTATION OF STRUCTURAL FUNDS

For the purpose of examination of Estonian legal and political context, Estonian legislation and basic documents on equality related governmental policies are analyzed in this chapter. In examination of the Structural Funds domain, the main sources of data, basic material of this study, is the programming document for the implementation of Structural Funds in Estonia: “Estonian National Development Plan for the Implementation of the EU Structural Funds - Single Programming Document 2004–2006”, and its “Programme Complement”. My position as a civil servant whose job is directly related to the Structural Funds has provided me with an access to information related to the implementation of the SPD. It has also facilitated access to officials responsible for the implementation of the SPD in different ministries and allowed me to get necessary information, comments or explanations from the first hands.

The structure of this chapter follows the framework established at the conclusion of the theoretical part. Following this framework, the first section of this chapter gives an overview of Estonian legislation and analyzes recent developments in the domain of gender equality as well as the situation of ethnic minorities and people with disabilities in Estonia. The second section provides an assessment of the integration of equality and non-discrimination into Structural Funds planning process and programming document. The third section of the chapter explores what can be a presumable or actual impact of Structural Funds implementation on the situation of minorities in Estonia and how the impact can be measured if such a measurement is possible.

3.1 Equality and non-discrimination in Estonia

It is logical to start with a description of the situation of equality and non-discrimination with an examination of the legal background and the constitution. Article 12 of the Estonian Constitution explicitly prohibits discrimination. The wording of Article 12 is open-ended, making it applicable to new vulnerable groups and to all spheres of public life. The Estonian Penal Code bans activities that provoke hatred or violence on the basis of nationality, race, colour, language, origin, religion, political opinion, sex, financial or social status (Article 151). The Penal Code criminalizes violations of the principle of equal treatment: violation of equality (Article 152), genocide (Article 90), and crimes against humanity (Article 89). Other laws, e.g. Law on Employment Contracts (Article 10), Law on Employment Service (Article 6), Law on Wages (Article 5), Law on Cultural Autonomy of the National Minority (Article 3), the Code of Civil Procedure (Article 6), support the principle of equal treatment in relation to their particular domains. Besides that, Estonia is a signatory to the majority of international treaties aimed at combating discrimination. The functions of a specialized equality body are assigned to the bureau of Legal Chancellor.

At first view, it seems like Estonia has the basic anti-discrimination legislation and structures. At the same time, Estonia still does not comply with the requirements of the Racial Equality and Employment Equality Directives. Taking the anti-discrimination legislation as such, the only domain covered by special anti-discrimination law is gender equality. The Gender Equality Act was adopted in April 2004. The Gender Equality Commissioner was appointed in October 2005. In 2002 The Ministry of Justice prepared the Draft Law on Equality and Equal Treatment (Draft 1198 SE) that was supposed to transpose requirements of the Racial Equality Directive into Estonian legislation. The draft has been submitted to the Parliament in October 2002, but in 2003 the Constitutional Committee of the Parliament decided to suspend the readings of the Draft. The bureau of the Legal Chancellor has developed certain guidelines on how to file complaints in the case of discrimination. But still very few complaints were filed. Some crucial issues – how the burden of proof is to be shared, compensation of legal costs etc. – aren't regulated till now.

Several measures for the better protection of vulnerable groups have been undertaken in the country recently. The most significant among them is the process of integration of gender mainstreaming into a number of public policies, including the implementation of Structural Funds. The government's program "Integration into Estonian Society 2000 – 2007"²⁰ provides framework for measures aimed on overcoming disparities between ethnic communities. Special documents aimed on further integration of people with disabilities and the elderly were adopted. These are "General Concept of Disability Policy of Estonia" and "National Concept on Elderly Policy".

At this point, a more detailed description of the situation with minorities in Estonia is necessary. This will provide a broader perspective for further discussion about administrative measures employed in Structural Funds management. Following the pattern already used in this study, I start the description with the domain of gender equality.

3.1.1 Gender equality

As it was said above, gender equality is the only domain covered by a specific anti-discrimination law in Estonia. Women constitute 54%²¹ of Estonian population. The main issues where gender equality needs to be promoted in Estonia are access to power structures and decision making, economic inequalities, specific problems in education and public health system, gender-related stereotypes in media, domestic violence and traditional attitudes toward patterns of work-place and family behavior of men and women. The clearest manifestation of inequality is salaries and wages. For equal work women get lower retributions than men. In Estonia this difference goes up to 25% and growing. At the same time, the share of women in the labor market in Estonia (58,8%) is higher than the target level proclaimed by European Union (57%).

²⁰ The State Programme "Integration in Estonian society 2000-2007".

²¹ Source: Statistical Office of Estonia (ESA).

The lack of access to power structures manifests itself in women's low participation in public administration. The share of women at the lower levels of state administration is quite large, but it is much lower in the higher echelons of power. The share of females among managers is 4%²². Women constitute 28% of elected members of local representative bodies. Among town mayors only 5% are women²³. Thus, women participate in the decision making process less than it is appropriate for a democratic state. Until very recent time, differences between situations of men and women were not taken into account in budget and policy planning on both local and national level. Nowadays, the necessity of including analysis of a decision's impact on situations of men and women in decision making process finds recognition at different levels of public administration. This is, partly, thanks to efforts undertaken by the Gender Equality Department created recently in the structure of the Ministry of Social Affairs. The main goal of the Department is to plan and design gender equality policy and measures, and to coordinate the implementation of them.

3.1.2 Ethnic minorities

According to the 2000 census, 32,1 % of the population of Estonia is of non-Estonian nationality (see Table 1.). The large share of non-Estonians in the population is one of the characteristic features of Estonia. During the 50 years of the Soviet period the share of non-Estonians among the population increased from the pre-war figure of 12% to 38,55 % in 1991. In the beginning of the 1990s, more than 100,000 former immigrants from the former Soviet Union republics and their descendants left Estonia. The share of non-Estonians decreased to 32.1% in 2000 ²⁴.

²² Source: Ministry of Social Affairs (2004) Estonia Today: Women and Men – Equal Rights in Estonia, [http://www.sm.ee/eng/HtmlPages/Mehed-naised/\\$file/Naised-Mehed.pdf](http://www.sm.ee/eng/HtmlPages/Mehed-naised/$file/Naised-Mehed.pdf)

²³ Source: Ministry of Social Affairs, <http://www.sm.ee/est/pages/index.html>

²⁴ Source: Estonian Institute (2002) Ethnic Issues in Estonia, http://www.einst.ee/factsheets/factsheets_uus_kuju/ethnic_issues_in_estonia.htm

According to Lauristin (2002), in the case of Estonia, it is correct to speak about two major groups divided by linguistic characteristic. Despite very diverse ethnic composition of the population, it would be correct to talk about these two groups. The presence of Estonian-speaking majority and Russian-speaking minority is recognized on the state level. About 1/3 of the population speaks Russian as a native language. Russian-speakers live in compact communities in Tallinn and the industrial cities in the north-eastern part of Estonia (Narva, Kohtla-Järve, Sillamäe). They form a distinct social group that is weakly related to the society and culture of Estonia. The competitiveness of the non-Estonian population on the labor market is low with unemployment rate about 2 times higher than that of Estonians (accordingly 15,2% and 7,3%)²⁵. For non-Estonians the main constraint is insufficient knowledge of the state language and their dwelling in regions with high structural unemployment.

Table 1. Ethnic composition of the population

<i>Ethnic nationality</i>	<i>Per 10,000 inhabitants</i>	<i>2000</i>
Total population	10 000	1 370 052
Estonians	6 790	930 219
Russians	2 563	351 178
Ukrainians	212	29 012
Byelorussians	126	17 241
Finns	86	11 837
Jews	16	2 145
Tatars	19	2 582
Germans	14	1 870
Latvians	17	2 330
Poles	16	2 193
Lithuanians	15	2 116
other nationalities	67	9 410
unknown	58	7 919

Source: Statistical Office of Estonia 2004. Population Census data, 31 March 2000.

²⁵ According to data presented in “National Action Plan for employment 2004”.

3.1.3 People with disabilities

People with disabilities constitute a significant share of population in every society. In Estonia app. 67 000 persons were officially registered as beneficiaries of the state's disability pension on 1st January 2000²⁶. This number does not reflect all persons with disabilities. According to some studies, there are up to 200 000²⁷ persons, who do not work or work part time due to disability from long-term illness in Estonia. The employment rate of people with disabilities or people with long-term illness is three times lower than the average employment rate (26% vs. 62,6%)²⁸.

The General Concept of Disability Policy of Estonia defines one of the objectives of the state in relation to people with abilities as the creation of equal opportunities. The Concept, which is based on the principle of equal rights, states that needs of all people are of equal importance, that these needs must serve as a starting point of government planning and that all resources available must be used in a way which provides equal opportunities for all people. Domains where the equal opportunities must be safeguarded are employment, education, medicine, social services, culture, family life, leisure and sports etc. A number of measures planned to be undertaken in order to provide equal opportunities for people with disabilities. For example, in the domain of employment certain changes in attitudes and personnel policy of employers shall be promoted. More and more children with disabilities study in regular schools. Curricula, modified to comply with special needs, are employed for teaching of children with arrested development.

An aspect of extreme importance in providing equal opportunities for peoples with disabilities is access to environment, services, information and documentation. The state

²⁶ Ministry of Social Affairs (2003) „Enhancing Employment Opportunities for People with Disabilities in Estonia”.

²⁷ National Action Plan for social inclusion.

²⁸ National Action Plan for employment 2004.

recognizes its responsibility to take into account special needs of people with disabilities in planning of public facilities including educational, sports' and leisure facilities, objects of culture, public transportation etc.²⁹. Modern info-technologies have opened new dimensions of public life – e-governance, e-services. The Estonian state takes obligation to guarantee compliance of public sector web-sites with WAI (WAI – *Web Accessibility Initiative*) standards. This dedication covers both the modification of IT solutions used for public web-sites as well as the adaptation of physical environment of public internet places.

3.2 Equality and non-discrimination in Structural Funds planning process and programming documents

The programming document for the implementation of Structural Funds in Estonia is “Estonian National Development Plan for the Implementation of the EU Structural Funds - Single Programming Document 2004–2006” (hereafter *SPD*). The document starts with a general description of economic situation, provides outline of a strategy of development, defines a set of priorities and goals, and lists measures to be employed to fulfill the priorities. The document also includes a description of the implementation process, financial figures and assessment of the consistency of the strategy with community and national policies.

For the assessment of integration of equality and non-discrimination into Structural Funds planning process and programming document, I suggested examining the following topics:

1. Descriptions of minorities' related problems (base-line) in programming document,
2. Strategy and priorities addressing minority situation,
3. Equality related indicators and targets,
4. Level of engagement of relevant social partners,
5. Publicity measures.

²⁹ General Concept of Disability Policy of Estonia.

3.2.1 Descriptions of minorities' related problems in the programming document

The fact that the authors of the programming document are well aware of the minorities' related problems can find some proof at the very beginning of the document. Disparities in the unemployment rates of Estonians and non-Estonians, and men and women are mentioned in a summary of socio-economic situation. Disabled people are mentioned in the list of Estonian labor market's risk groups.

The description of the current situation (base-line) in Estonia is to be found in the first chapter of the programming document. This includes description of the economic situation in general, description of basic socio-demographic characteristics, overview of current environmental issues, analysis of differences in regional and local development, and an overview of development prospects. The part of the chapter dedicated to economical situation in Estonia lacks any mention of minorities' related issues. As it is to be expected the next part, the description of socio-demographic situation, gives a number of references to our subject. The relatively large share of non-Estonians among the population is mentioned as one of the characteristic features of Estonia (SPD, p. 83). The regional and social aspects of this characteristic are emphasized. A set of governmental policies implemented in regard to non-Estonians is described.

More information about the subject is to be found in the subchapter giving a general overview of labor market (*ibid.*, pages 91 – 101). In this part, attention is paid to the disparities in levels of unemployment of Estonians (10,4%) and non-Estonians (16,9%), to the structural characteristics of unemployment and to the causes of unemployment among ethnic minorities (*ibid.*, p. 99). In relation to the issue of gender equality the relative share of men (52%) and women (44%) among the unemployed is mentioned. At the same time the authors of the document point out what women are mostly concentrated in fields with wages lower than the average and the number of women in higher positions is considerably smaller. Wages received by women are $\frac{1}{4}$ lower than wages of men. 15,1% of men are in a managerial position with this indicator for women being 8,6%. The share of entrepreneurs among men was 10,2% with the respective share among women 4,6%. The data in some of

the tables is gender disaggregated (*ibid.*, p. 97). The subchapter contains a brief mention of disabled people and their situation on the Estonian labor market.

In the subsequent subchapter the situation of vulnerable social groups is discussed in relation to governmental policies aimed at tackling poverty and social exclusion (*ibid.*, pages 105 – 108). Vulnerable groups are mentioned in the description of the most immediate policy priorities for Estonia in relation to tackling poverty and social exclusion. In the following chapters, ethnic minorities (non-Estonians) are mentioned in relation to disparities in the development of Estonian regions in a chapter on local and regional development (*ibid.*, pages 123 – 134).

3.2.2 Strategy and priorities addressing minority situation

The second chapter of the programming document gives a description of the strategic basis of the development plan and the third chapter provides specific details on priorities and measures employed. An overall objective to be achieved in Estonia is defined in the second chapter as “fast, socially and regionally balanced sustainable economic development”. To achieve the overall objective the following four subordinate objectives (or priorities) are defined:

1. Increasing and using the potential of the labor force in Estonia in a more effective way (Human Resource Development);
2. Increased competitiveness of enterprises and employment (Competitiveness of Enterprises);
3. Balanced and sustainable economic and social development of rural areas (Agriculture, Fisheries and Rural Development);
4. Establishing infrastructures that support sustainable and balanced economic development (Infrastructure and Local Development).

Alongside with these four priorities, a number of specific objectives are to be followed in the implementation of the program on a horizontal basis. These so called „horizontal objectives” are established to provide consistency of the program with community and

national policies in accordance with the Communication of the Commission: The Structural Funds and their coordination with the Cohesion Fund, Guidelines for programs in the period 2000-2006. Horizontal objectives are connected with environmental and regional development, information society development and promotion of gender mainstreaming. Objectives expressed in terms of horizontal indicators are to be pursued and measured in every priority and every activity funded by the Structural Funds. Thus, equal opportunities for women and men in a form of gender mainstreaming are pursued in the implementation of all measures. A more precise description of gender equality related indicators and targets are brought out in the next part.

Minorities at whole are mentioned often in the parts of the programming document related to the Human Resource Development priority, which is founded through European Social Fund (ESF). First of all, the commitment to take into account the necessity to promote equal opportunities for all in accessing the labor market with particular emphasis to those exposed to risk of social exclusion is expressed. Disability and belonging to ethnic minority are named among other specific risks. Besides mentioning in relation to the strategy, objectives and goals of programming document, minorities' needs are reflected in descriptions of measures and eligible operations, and descriptions of criteria for projects selection. This forms the logical structure of the programming document: projects and activities must be coherent with strategy and must contribute to achievement of the development plan's objectives. Table 2 presents the list of measures that contain minorities' related issues in descriptions of measures and eligible operations.

Table 2. Minorities' related issues in descriptions of measures and eligible operations

Measure 1.1: Educational System Supporting the Flexibility and Employability of the Labour Force and Providing Opportunities of Lifelong Learning For All (ESF)

General objective of the measure is defined as "human resource development and increased competitiveness of the labor market by providing training, improving the educational system and the conditions for lifelong learning". One of the specific objectives of the measure refers directly to the issue of equality. This objective is "Ensuring equal opportunities for accessing education". It would be logical to expect any specific indication to equality related activities in the list of measure's eligible operation, but there is no one of this kind.

Measure 1.3: Inclusive Labour Market (ESF)

The main objective of the measure is “a more extensive and efficient prevention and alleviation of unemployment and, thus, poverty and social exclusion, and enhancing social inclusion”. Facilitating access to employment of the most excluded from the labor market is among the specific objectives of the measure. Information of different aspects of minorities’ related activities in the description of this measure is very detailed. The authors of the description start with assumption that “Implementation of different active labor market measures is of great importance to all the unemployed, but especially for risk groups such as young people, the long-term unemployed, disabled people, elderly people and ethnic minorities.”

For facilitating access to employment of those who are the most excluded from the labor market the measure provides support for such complimentary labor market services as rehabilitation, socialization and workplace adaptations, alternative ways of working (e.g. sheltered jobs, assisted jobs, activity centers), provision of care services and facilities for dependants etc.

The role of non-governmental organizations especially those who is dealing with different risk groups (such as young people, the long-term unemployed, disabled people, elderly people, ethnic minorities and others excluded from the labor market) in implementation of the measure is strongly emphasize in the text. Among eligible operations of the measure are following items directly related to equality issue:

- Developing rehabilitation programs targeted at enhancing employability of disabled people and providing for rehabilitation services;
- Adjusting workplaces in order to meet the needs of the disabled and older workers;
- Providing labor market related Estonian language training in order to support the integration of persons with insufficient knowledge of Estonian to the labor market;
- Establishing and developing sheltered workshops and assisted jobs for the severely and profoundly disabled people;
- Diminishing the barriers for women in entering/returning to the labor market that include supporting women’s entering and return (from maternity leave) to the labor market, and subsidy for employers who employ mothers with small children;
- Accompanying measures in the provision of services to beneficiaries (e.g. day-care for children or dependent disabled adults and elderly);
- Training of staff of employment services and other services supporting inclusion to the labor market to enhance their capacity of analyzing local labor market situation as well as the knowledge, skills, potential and needs of the clients. Training courses will pay special attention to vocational counseling free of gender stereotypes.

Measure 4.3: Modernization of Infrastructure for Vocational and Higher Education (ERDF)

In the list of eligible operations of the measure, which is constructing and renovating of facilities of vocational and higher education and youth counseling centers, needs of disabled peoples (“adapting buildings to meet the needs of disabled people”, “taking into account access for young people with special needs”) are mentioned.

Measure 4.4: Reorganization of the hospital network (ERDF)

Description of eligible operations mention that measure supported large scale investment projects (renovation of hospitals) will include issues like “new handicap toilets, new elevators, ramps to main entrances, leveling out differences in floor levels to make improvements for handicapped people”.

3.2.3 Equality related indicators and targets

According to Annex IV of Commission Regulation (EC) No 438/2001, a member state must collect and provide information on achievement of cross-cutting monitoring and evaluation indicators (usually called horizontal indicators) for every supported project. These are the location of the project, the environmental impact of the project, and the impact of the project on the gender equality situation. In addition to it, the Commission requires that impact of projects on employment should be estimated throughout the measures³⁰. Also, considering the importance of the information society development policy, projects' contribution to the development of information society shall be monitored.

The whole set of horizontal indicators is established in the Programme Complement. Seven indicators are to be monitored across the Program (see Table 3).

Table 3. **Horizontal indicators of the Estonian SPD.**

1. Geographical location of the project: (a) urban, (b) rural, (c) not delimited;
2. Impact of the project on environment: (a) has the environment as its main focus, (b) is environment-friendly, (c) is environmentally neutral;
3. Impact of the project on gender equality in general: (a) has gender equality as its main focus, (b) is positive in terms of gender equality or (c) is neutral;
4. Impact of the project on gender equality: (a) promotes equal integration with the labour market, (b) promotes equal participation in education and training, (c) promotes entrepreneurship of women, (d) promotes reconciliation of work and family life, (e) impact on gender equality at the labour market is not identifiable;
5. Impact of the project on information society development: (a) contributing to the development of information society, (b) neutral;
6. Jobs created by the end of project (gross): men/women;
7. Jobs safeguarded by the end of project (gross): men/women.

Source: Programme Complement of Estonian National Development Plan for the Implementation of the EU Structural Funds - Single Programming Document 2004–2006.

³⁰ Commission Working Paper 3: Indicators for Monitoring and Evaluation: An indicative methodology.

Measures can contribute to the achievement of horizontal objectives or they can have a neutral impact. Corresponding references are presented in descriptions of every measure. If a particular measure has a certain impact on a given horizontal objective, a more detailed description of the expected impact is given. Intermediate bodies are to establish relevant application and reporting forms that would ensure collection of the data.

As it is seen from the list above, four out of seven indicators are related to gender equality. An overview of the measures' descriptions shows that 7 out of 27 measures are supposed to have positive impact on gender equality. 19 other measures are declared to have neutral impact on the issue. In one case the gender dimension is not applicable.

3.2.4 Level of engagement of relevant social partners

Social partners can be engaged in the programming process at the stage of preparation of the SPD. 114 different organizations and administrative bodies were involved in the preparation of Estonian SPD. Together with 12 ministries and government's offices, non-governmental organizations, associations, universities and research institutions were involved in planning process. Surprisingly, only two of them can be considered representatives of minorities. These are Estonian Rural Women's Association (involved in the process through the Ministry of Agriculture) and Estonian Chamber of Disabled People (engaged by the Ministry of Social Affairs).

3.2.5 Publicity measures

According to Commission Regulation (EC) No 1159/2000, the Managing Authority of SPD is responsible for the implementation of due information and publicity activities. Communication and publicity action plan prepared by Managing Authority is a part of Programme Complement (p.116). Taking into account the presence of Russian-speaking language minority in Estonia, dissemination of information materials in Russian language would play a very important role. Another aspect of the problem is making information

available for people with specific disabilities e.g. blindness. This is especially important in the case of EQUAL initiative. The plan itself contains no mention of necessity to canalize SPD related information to specific minority groups. However, publication of brochures about SPD priorities and objectives and all four priorities in Estonian, Russian, English is named among publicity actions in Annex 3 “Structural Funds Related Communication Outline for 2004” of Programme Complement.

3.3 Equality and non-discrimination considerations in implementation of Structural Funds and its presumable or actual impact on the situation of minorities in Estonia

The SPD was launched after Estonia’s accession to the EU on 1st May 2004. At the present moment the SPD was implemented for a period of less than one year. This makes assessment of the actual impact of the SPD on minorities nearly impossible. However, it is possible to follow certain patterns in the implementation process and make a reasonable conclusion on the potential impact of SPD in relation to minorities. Drawing from conclusions of the theoretical part, the observation should cover such topics as decision making procedures and selection criteria, involvement of relevant social partners, performance of monitoring system, and actual allocation of the funds. Taking into account differences in the ways the SPD addresses different minorities, it is reasonable to explore separately each minority group in question.

3.3.1 Gender equality

In the case of gender issue, decision making procedures and selection criteria as well as involvement of relevant social partners are supposed to be in order to contribute to the improvement of the gender equality situation. For example, the principle of balanced participation of men and women is to be followed in the SPD’s and measures’ monitoring committees. In accordance with Article 35 of Council Regulation (EC) No 1260/1999 the SPD Monitoring Committee is set up to steer the progress of the SPD. Among the functions of the Monitoring Committee are confirmation of Programme Complement and approval of monitoring indicators and selection criteria for the operations financed in each measure. The

Monitoring Committee can also propose to the Managing Authority adjustments in order to improve management of assistance. The members of the Monitoring Committee are representatives of the Intermediate Bodies and socio-economic partners (employees' and employers' associations, local government unions, regional authorities, agricultural producers' organizations and non-governmental organizations). The partnership principle together with the principle of balanced participation of men and women must be followed in setting up the Monitoring Committee. At the moment, there are 15 representatives of government bodies and 8 representatives of socio-economic partners in the Monitoring committee. Present partner organizations can not be recognized as representatives of any minority group. Regarding the implementation of the principle of balanced participation of men and women, there are 23 men and 20 women out of 43 persons (together with substitute members) in the Committee. The share of women is higher among substitute members (14 out of 20) and is lower among permanent members (6 out of 23). Monitoring committees of single priorities and measures also have substantial impact on the implementation of single measures. Decisions of measures' monitoring committees influence application and projects selection procedures, for example, by setting up annual action plans for measures. Measures' and priorities' monitoring committees are not obliged to follow the principle of balanced participation of men and women.

Gender-related considerations are mentioned among criteria for projects selection in very small number of measures. Promotion of gender equality, development of regions with high unemployment is credited in measure 1.2. Project proposals which have impact on gender equality are preferable in measure 1.3. Projects where the representatives of both genders are included, according to the actual need, will be given a preference in measure 1.4.

The SPD monitoring system is designed in such a way as to provide opportunities to follow certain indicators related to gender issues. The indicators are available on all the levels of the SPD: projects, measures, priorities and the SPD itself.

As it was said before, 7 out of 27 measures are declared as having a positive impact on gender equality. 19 measures are declared to have a neutral impact. In one case the gender

dimension is not applicable. In regard to the actual allocation of the funds, 25 % (2 421 064 869 EEK) of funding is allocated for measures with positive impact on gender equality.

3.3.2 Ethnic minorities

Current regulations do not oblige administrators of Structural Funds to take into account ethnic minorities related issues in the design of procedures. No selection criteria directly address ethnic minorities. However, ensuring equal opportunities for socially disadvantaged groups for accessing education is credited during project proposal selection in measure 1.1. Measure 1.3 “Inclusive labour market” supports operations that provide labor market related Estonian language trainings contributing to the integration of persons with insufficient knowledge of Estonian to the labor market. Measure’s 4.3 projects’ selection criteria also contain reference to minorities. Projects developed in order to increase the social inclusion, specially aimed at the youth will be given a preference in measure 4.3. No ethnic minorities’ organizations are involved in the work of monitoring committees. The monitoring system does not allow disaggregating data according to ethnicity or language characteristics. Neither were ethnic minorities’ related indicators developed. All this makes the study of the implementation of equality related considerations in the SPD difficult.

In my opinion certain insights can be found in assessing the actual allocation of the funds. But, taking into account the diversity of Structural Funds supported measures; this kind of analysis is not applicable for all the measures.

3.3.3 People with disabilities

Existing regulations do not require ensuring participation of representatives of disabled peoples’ organizations in the implementation of Structural Funds. No selection criteria directly address people with disabilities. As in the case of ethnic minorities, selection criteria of measures 1.1 and 4.3 can be interpreted in favor of people with disabilities. Estonian Chamber of Disabled People has participated in the preparation of the SPD and participates in the monitoring committee of measure 1.3. The monitoring system does not allow

following SPD's implementation data in regard to people with disabilities. No relevant indicators were established.

A number of measures indirectly address interests of people with disabilities. For example, measure 1.3 "Inclusive labour market" funds operations aimed at "...supporting work capacity and employability of the most excluded from the labor market through rehabilitation and re-socialization provisions". It also supports employment aid, including creation of subsidized, assisted or sheltered jobs and accompanying services (like day-care for children or dependent disabled adults and elderly). Selection criteria of measures 1.1 and 4.3 - ensuring equal opportunities for socially disadvantaged groups for accessing education and increasing the social inclusion – can be interpreted in favor of people with disabilities.

At this point, it is not possible to follow how the actual allocation of the funds will contribute to the situation of people with disabilities in Estonia. For example, measure 1.3 funds adjusting workplaces in order to meet the needs of the disabled. Measure 4.3 supported infrastructure projects shall provide necessary facilities for the free movement of disabled people.

Chapter 4

ANALYSIS

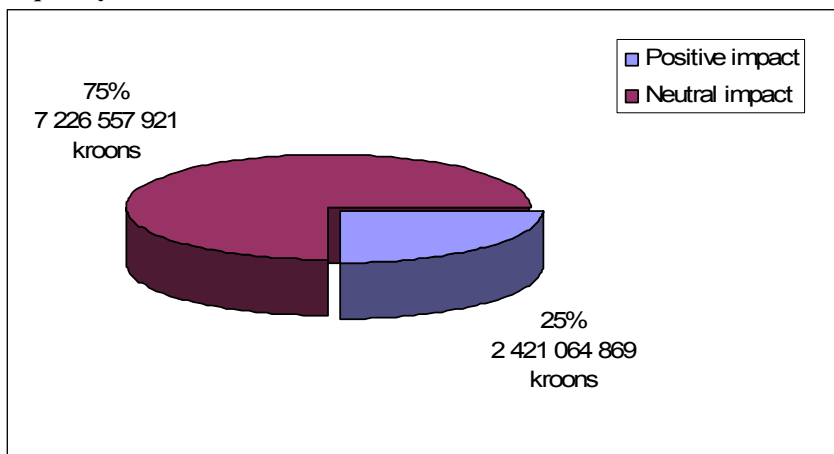
In the previous chapters I have given an overview of, mostly European, anti-discrimination policies' legal and theoretical framework and described the extent of the use of equality and non-discrimination considerations in the programming and implementation of Structural Funds in Estonia. Now it is time to take a look at how Estonian practice corresponds to general European framework and to examine the scope of considering equality and non-discrimination in the implementation of Structural Funds in Estonia.

It is very important to keep in mind that I do not pursue the goal of comparing Estonian practice to some kind of an ideal-type picture. Anti-discrimination policy is a dynamically developing domain. It is interconnected with a number of socio-political processes, which are defined by time and place. This study is dealing with the present situation and present understanding of the problem in the context of contemporary European Union. Under the name "general European framework" I mean a set of legal and theoretical concepts as well as practices now present in the European Union. What I try to do first is to assess which moments in the implementation of the SPD comply with the contemporary European framework and which do not. The second step of the analysis is to distinguish whether the observed mismatch is substantial or just formal, determined by peculiarities of the situation in Estonia without undermining the principles of anti-discrimination in their currently accepted form. The way and the scope of equality considerations are implemented in the Structural Funds administration in Estonia follows the pattern observed in Estonian equality related legislation. In parallel with Estonian legislation, the only one among other vulnerable groups that is regulated and monitored officially in the SPD is gender equality. I start my analysis from this domain. I will discuss aspects related to programming of the SPD first, and then proceed to the implementation phase and potential impact of the SPD on the situation of minorities.

4.1 Gender equality in the Estonian SPD

The Estonian SPD contains the descriptions of gender related problems and the strategy and priorities of addressing the situation of women. The system is set up in compliance with the guidelines of European Commission. Gender equality related indicators and targets are officially established. These indicators cover the assessment of overall impact of any single project as well as a number of more specific topics: equal integration with the labor market, equal participation in education and training, entrepreneurship of women, reconciliation of work and family life. The two most practical indicators are the gender distribution of numbers of jobs created and safeguarded by the end of a project. The progress toward these indicators and targets is to be monitored during the implementation of the SPD and is to be evaluated after the implementation. The gender issue is mentioned among criteria for projects' selection in 3 measures under the "Human Resources Development" priority. 7 out of 27 measures are supposed to have positive impact on gender equality. These 7 measures constitute 25 % (2 421 064 869 EEK) of total Structural Funds funding (See Figure 1.).

Figure 1. Actual allocation of the funds in regard to gender equality issue



Beside sheer financial aspect – distribution of resources in favour of a certain group will surely empower this particular group – I would like to emphasize another important aspect of the SPD implementation. Namely, continual consideration of the gender issue in the implementation of the SPD, monitoring, evaluation of the program against gender related indicators – all this contribute to the integration of gender equality into broader

administrative context. It contributes to the creation of certain habits among Estonian civil servants, project managers and projects' personnel as well as among managers of organizations-beneficiaries of the Structural Funds. The idea that consideration of gender equality is a regular part of public policy making and public planning process will be planted in the minds of managers and specialists. It is quite realistic to expect that some of them will also become accustomed to the habit of applying gender perspective in everyday work. Taking into account the scope and the volume of the SPD, which embraces almost all spheres of governments' intervention, from trainings for unemployed to reconstruction of road network and lasts for years, the impact of the SPD on the promotion of gender equality will be rather huge. I think it is justified to interpret gender equality mainstreaming in the frames of the SPD as a practical exercise for the Member States. In this sense, the SPD will probably have a big impact on the well-being of this particular "minority".

Beside all these positive things, one particular moment of the SPD planning and implementation seems to be underachieved. Namely, relevant social partners – representatives of relevant NGO's and umbrella organizations – are represented in the steering committees of the SPD insufficiently. Only one women's organization - Estonian Rural Women's Association – was involved in the programming process and this organization can hardly be counted for a representative of Estonian women.

There is a variety of women's organizations in Estonia. However, it is not clear who can effectively represent interests of women as a whole in the implementation of the SPD. The Estonian Rural Women's Association that was involved in the SPD programming process were engaged by the Ministry of Agriculture in order to represent not only gender, but rather rural or regional dimension.

After examining this case I have come to the conclusion that the lack of social partners can be determined by general development of the civil society or so called "third sector" in Estonia. Quite often there are no relevant representative bodies to deal with in case of minorities. Even if there are organizations that are supposed to be representative bodies of

minorities, they can be apt to two kinds of foes. First of all, they often lack capacities to fulfill their representative role. In this case, their engagement in the process has a negative impact or slowly but certainly ceases to exist after a while. Secondly, quite often there is a number of competing NGO's (often related to different political powers) claiming to be representatives of certain group. In this case the engagement of one of them can bring political and administrative complications without any guarantee of giving any substantial input in the process.

In the case of gender equality, the crucial partner of the Ministry of Finances was the Ministry of Social Affairs, more precisely the department of gender equality of the latter Ministry. The department plays a central role in the promotion of gender equality in Estonia. It was actively involved in the preparation of the Gender Equality Act. The department is a body responsible for elaboration and coordination of gender equality policy in Estonia. The staff of the department has often been publicly credited as people with competence, integrity and passion, who actually contributed the most to the initiation and promotion of Estonian gender equality policy. At the present moment, due to specific qualities of the people working in the department, its belongingness to the Ministry of Social Affairs only amplifies its role as a promoter and advocate of gender equality. In this sense, the department can be considered as the best choice to represent gender equality during the programming and implementation of the SPD. In this sense, I feel myself at liberty to conclude that the gender equality domain is represented very well in the SPD programming and implementation, even though women's NGO's are not formally represented in the SPD's various steering committees.

Beside that aspect of institutionalized representation, the aspect of actual (physical, if you wish) presence of minority representatives in decision-making bodies need to be mentioned here. The SPD's Monitoring Committee follow the principle of balanced participation of men and women, though in a way that in a strange manner point out one of the problems in the domain of gender equality, namely, under-representation of women in the higher echelons of management.

4.2 How the SPD addresses interests of ethnic minorities

In parallel with Estonian legislation, which lacks specific law on ethnic minority anti-discrimination, the SPD and its implementation process have no formal regulation on the issue how interests of ethnic minorities should be addressed. And it is of no surprise because current regulations of the European Commission do not oblige administrators of Structural Funds to take into account ethnic minorities' related issues in the design of procedures. At the same time, the programming document contains a base-line description of the situation and specific problems of non-Estonians in Estonia. The issue, properly described revealing its regional and social aspects, is mentioned as one of the characteristic features of Estonia.

The SPD does not establish any strategy of its own to deal with the situation of non-Estonians, but follows the framework established in the state program "Integration into Estonian Society 2000 – 2007" that is a doubtful advantage. The program has often been publicly criticized for being "an assimilation program" or "a language study program". However, the program complies with the suggestions of the Copenhagen European Council of 2002 and this arrangement can be accepted as sufficient. The SPD contains no non-Estonians' related indicators and targets. Both particular projects and the whole program are not supposed to be monitored and evaluated against the dimension of ethnic minority. Thus, ethnic minority related issues are not taken into account in the design of planning and administration process. However, certain references that can be interpreted in favor of ethnic minorities can be found in the description of eligible operations and selection criteria of measures under "Human Resources Development" priority.

As one can expect, no organization that could be credited as representative of ethnic minorities was participating in the programming process. The same is true also for the implementation of the SPD. Certainly, the situation with non-Estonians' NGO's is much more grievous, than in the case of women's organizations. There is a number of competing NGO's claiming to be representatives of non-Estonians in Estonia. Quite serious rivalry goes not only by political, but also by international lines. This variety includes organizations oriented to different local political parties as well as to different international players (e.g.

the Russian government's supported "compatriots" movement vs. the Moscow (city) government's supported organizations). As it can be expected, there is a deeply rooted tension between these organizations that makes it impossible to engage them in any policy formulation process.

At the same time, there is a credible body able to perform functions of representation of non-Estonians in Estonia. The Presidential Round-Table on Minorities has acquired sound reputation both in Estonia and abroad³¹. Involvement of the Round-Table as a social partner on behalf of ethnic minorities would be a wise and appropriate step.

In Estonia, the majority / minority status is related mostly to linguistic characteristics: Estonian-speaking majority and Russian-speaking minority (Lauristin 2002). That is why such publicity measures as the publication of SPD related materials and conduction of publicity activities at least in Russian (I do not mention Byelorussian, Ukrainian or other ethnic minorities' languages here) seems to be of crucial importance.

The field of education provides rare opportunity to assess the allocation of resources of the SPD in relation to minority issue. As it was said before, in Estonia the majority – minority borderline is related mostly to language (Lauristin 2002). At the present time, there is a clear distinction between predominantly minority and predominantly majority educational institutions. This distinction can be made on the ground of language of instruction. There is a division of curricula on curricula with Estonian as a language of instructions and curricula with Russian as a language of instructions. This division allows us to define the share of minority students at almost any particular school and to see what amount of funding was allocated for Estonian-speaking students and Russian-speaking students separately. A similar approach was used in Meier et al. (1998) study of redistributive consequences of representativeness in the field of education. Meier et al. (1998) research proves that

³¹ See, for example "Implementation of the Framework Convention for the Protection of National Minorities by Estonia" <http://www.coe.ee/?op=body&id=78> (20.04.2005).

distribution of funds among schools can be examined from the minority rights' perspective, because it influences the situation of minorities directly. It needs to be mentioned here that there is a certain share of minority students who study in curricula with Estonian as a language of instructions, but almost no Estonian students in Russian curricula. It must be also taken into account in the assessment of distribution of funding.

It is not relevant to try assessing all the SPD in relation to Estonian- / Russian-speaking students. For the purposes of this exercise, I take a measure aimed directly on investments in the education infrastructure - measure 4.3: Modernization of Infrastructure for Vocational and Higher Education (ERDF). The measure fits another criterion relevant for this exercise. While other measures' resources have their application and project selection process still going on, decisions about the allocation of the measure 4.3's resources in one particular domain - vocational education - have already been made.

The objective of the measure is improving the quality of infrastructure of vocational and higher education. In the last decade, upgrade and development of the infrastructure (buildings, teaching aids and technical devices) of state-owned vocational schools and institutions of higher education have not been taken into account. Facilities, equipment and tools are mostly worn out and not used in enterprises for which the labor force is being trained. Upgrade of infrastructure of vocational education will have a huge impact on competitiveness of students on the labor market. Because of outdated facilities and changes in labor market demands, many vocational schools are on the edge of survival. Getting Structural Funds for the renovation of infrastructure would guarantee further development of schools as well as local municipalities and regions where the schools are located.

ERDF support for measure 4.3 equals 437 265 000 EEK. According to governmental decree, the share allocated for vocational education is 301 712 000 EEK. The same decree allocates amounts of funding to 10 vocational schools (see Table 2.). In the year 2004, there were 29 589 students in vocational schools, 19 756 (66,8%) of them studying in curricula with Estonian as language of instruction and 9 833 (33,2%) in curricula with Russian as

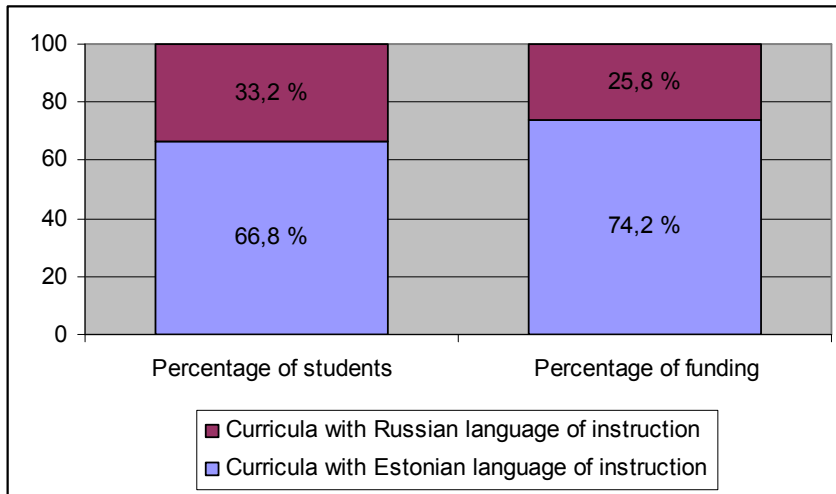
language of instruction. Analysis of data presented in Table 2 shows that 74,2% of ERDF funding allocated by decree goes for Estonian curricula and 25,8% - for Russian curricula. The proportion of funding is 7,4% out of balance compared to the proportions of students studying in different languages (Figure 2).

Table 3. Vocational schools and ERDF funding allocated with number of students divided by language of instructions (2004)

<i>Vocational School</i>	<i>ERDF funding allocated by the decree (in EEK)</i>	<i>Number of students</i>	<i>Number of students with Estonian language of instruction</i>	<i>Number of students with Russian language of instruction</i>
Kuressaare Vocational School	34 518 000	943	943	0
Luuva Forestry School	24 800 000	428	428	0
Narva Vocational Training Centre	49 935 000	2 530	0	2 530
Pärnu County Vocational Education Centre	40 000 000	1 306	1 280	26
Tallinn Polytechnic School	8 540 000	1 514	1 145	369
Tallinn School of Service	17 851 000	1 311	740	571
Tallinn Centre of Vocational Education	30 077 000	1 582	677	905
Tartu Vocational Education Centre	40 000 000	3 114	3 108	6
Türi School of Technology and Rural Economy	21 438 000	526	526	0
Võru County Vocational Education Centre	34 553 000	662	662	0
Total	301 712 000	13 916	9 509	4 407

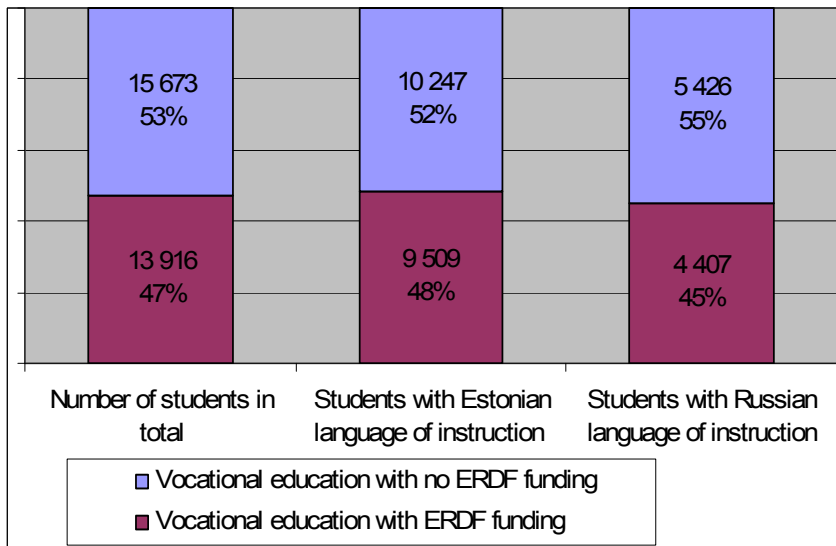
Source: Estonian Government's 6th may 2004 decree nr 344-k

Figure 2. Balance between funding and language of instruction



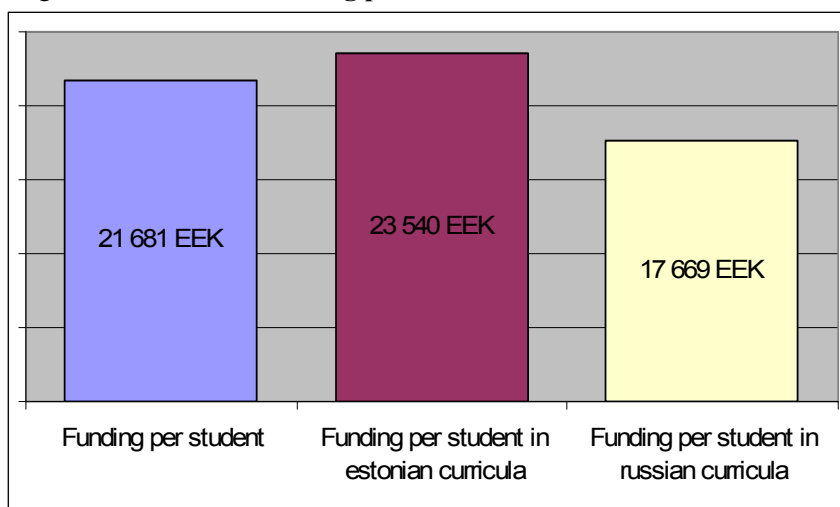
At the same time, an analysis of what share of students benefit from Structural Funds in vocational education as whole and in Estonian and Russian curricula separately shows that if in the vocational education as a whole 47% of students benefit from Structural Funds, then corresponding figures for Estonian and Russian curricula are 48% and 45% (see Figure 3).

Figure 3. Students benefiting from Structural Funds funding



Yet another analysis about the amount of funding per student shows that whereas in vocational education as a whole the amount of funding per student equals 21 681 EEK, the corresponding numbers for Estonian and Russian curricula are 23 540 EEK and 17 669 EEK (see Figure 4). Funding per student in curricula with Estonian language of instruction is by 33% bigger than funding per student in curricula with Russian language of instruction.

Figure 4. Amount of funding per student



The figures above show that there is a certain disproportion in the allocation of Structural Funds. However, some aspects must be taken into account considering these results. As I already mentioned before, the current Structural Funds regulations do not oblige Estonia to take ethnic / linguistic minority into account in decision making. But, as it is seen from the figures above, the misbalance between funding and language of instruction is rather marginal (7,4%). The difference between the shares of students benefiting from Structural Funds in Estonian and Russian curricula is also minor (3%). In my opinion, it can be neglected taking into account that some Russian-speaking students study in curricula with Estonian language of instruction and in benefit from Structural Funds this way.

The most striking difference is observed in the amount of funding per student (33%). Partly it can be explained by the current situation in the Estonian vocational education as a whole, where Russian-speaking students are concentrated in a limited number of vocational

institutions in Tallinn and Ida-Viru County. In this case further pursuit of equal redistribution would conflict the principle of regionally balanced development.

4.3 How people with disabilities are considered in the SPD

As it was said before, the Structural Funds regulations do not require disability related equality to be specially considered in the implementation of Structural Funds. It is of no surprise; the Estonian SPD does not establish any specific monitoring indicators or selection criteria that would address people with disabilities directly. The monitoring system does not allow following SPD's implementation data in regard to people with disabilities.

At the same time, the Estonian Chamber of Disabled People has participated in the preparation of the SPD and participates in the measure 1.3 monitoring committee. A number of measures indirectly address interests of people with disabilities. The most significant of them is the measure 1.3 "Inclusive labour market". This measure funds operations aimed on "...supporting work capacity and employability of the most excluded from the labor market through rehabilitation and re-socialization provisions". It also supports employment aid, including creation of subsidized, assisted or sheltered jobs and accompanying services. Selection criteria of measures 1.1 and 4.3 can be interpreted in favor of people with disabilities.

In existing SPD, it is not possible to assess how the actual allocation of funds contributes to people with disabilities. For example, measure 4.3 supported infrastructure projects shall contain adjustments ensuring free access for disabled people. All infrastructural projects must comply with the demands of the Building Act and related secondary legislation which oblige builders to consider special needs of people with disabilities. But all these adjustments will be made in the frames of large scale infrastructure projects. The costs of these works are hardly separated from other costs even within a single project, not mentioning the whole measure. This makes assessment of how much people with disabilities benefit from actual allocation of the funds impossible.

Assessing the Estonian SPD against the four priority-areas established in the “Equal opportunities for people with disabilities: A European Action Plan”, the SPD is doing well in three priority-areas, but holds back in one. The SPD addresses the problem of equal access to, and retention in, employment, provides lifelong learning to support and increase employability and personal development, and helps to ensure accessibility of the public built environment. At the same time, little or no attention was paid to the domain of new technologies which may empower people with disabilities and therefore facilitate access to employment. It would be logical to expect measures related to the development of new technologies³² to at least mention the problems of people with disabilities in their descriptions. But no such reference can be found in the measures’ descriptions.

³² These are measure 2.1: Business Development (ERDF), measure 2.2: Business Infrastructure Development (ERDF) and measure 2.3: Promotion of Research, Technology Development and Innovation (RTDI) (ERDF)..

Chapter 4

CONCLUSIONS

The present study gives me an opportunity to make certain conclusions about the implementation of equality considerations in Estonian legislation as a whole and in the particular domain of the Structural Funds.

Even though the Estonian Constitution explicitly prohibits discrimination and a number of other laws contain anti-discrimination regulations, the only domain covered by a special anti-discrimination law is gender equality. This indicates that Estonia does not comply with the requirements of the Racial Equality and Employment Equality Directives.

The scope of the use of equality and non-discrimination considerations in the programming and implementation of Structural Funds in Estonia is determined by requirements of the EU regulations. In parallel with Estonian legislation, the only domain that is regulated and monitored officially in the SPD is gender equality. In this sense, Estonia follows the pattern observed in the first part of my study - the concepts of equality and non-discrimination, once adopted in legislation, grow deeper generating relevant responses in other spheres of public administration.

In the example of the Structural Funds these responses (or measures) are integration of gender perspective into programming documents, inclusion of relevant social partners into the policy-making and monitoring process, balanced participation of men and women in steering committees, inclusion of gender-related considerations in the criteria for projects selection, gender equality related indicators in the monitoring system. These moments show that the implementation of the SPD in Estonia match contemporary European framework at least in the domain of gender equality. At the same time, the way these measures were implemented shows that the process was driven more by external (demands of the EU regulations) rather than by domestic (initiative of civil society) factors. Gender

mainstreaming still keeps a “low profile”, fulfilling compulsory obligations without any perceptible enthusiasm. Maybe this is a reason why no “best practices” in the gender domain are yet observed. The activities of a specialized gender equality body, which contribute a lot to raising gender awareness of administrators, are a sign of positive development that can produce real understanding of the problem.

In Europe, non-discrimination, once implemented in the domain of gender equality, now advances into other dimensions too. The present study reveals that Estonia follows the same pattern. Even though there is no specific law on ethnic or linguistic minorities and the activities of the bureau of Legal Chancellor are rather nonexistent, certain moments show that ethnic minorities are considered in the implementation of the Structural Funds. For example, the programming document contains a description of the situation of the ethnic minority as well as basic elements of strategies to address minority situation, especially in relation to labor market. The analysis of distribution of funding between Estonians and non-Estonians in the example of measure 4.3 shows that the observed disproportion is rather marginal and can be neglected. This indicates that the interests of ethnic minorities are considered in the implementation of the Structural Funds by Estonian administrators’ own initiative, even though there is no direct obligation of such kind from the European Commission, no related indicators were established and no relevant social partners were involved.

As in the case with ethnic minorities, there is no specific legislation concerning equal opportunities of disabled people beside certain provisions in different laws (for example, Employment Contract Act). The Estonian SPD does not establish any specific monitoring indicators or selection criteria that would address people with disabilities directly. At the same time, Estonian Chamber of Disabled People has participated in preparation of the SPD and participates in the monitoring committee of measure 1.3. A number of measures address interests of people with disabilities indirectly. The main spheres where people with disabilities may be supported by the Structural Funds are labor market (necessary accommodations, sheltered jobs etc.) and education (physical access to facilities, specially developed curricula etc.). It is not possible to assess how the actual allocation of the funds

contributes to people with disabilities. Surprisingly, no attention is paid to the domain of new technologies which may empower people with disabilities and therefore facilitate access to employment and public services and information.

There is a tendency to relate problems of people with disabilities with the sphere of employment and education only. In the case of people with disabilities, the SPD implementation restricts itself with the set of matter-of-course measures. However, discrimination against people with disabilities affects them in a number of ways. A broader understanding of the problem and its relation to the development plans are necessary to compensate disadvantages disabled people face in Estonian society.

Up to the present, as it can be seen in the example of gender equality, Estonia follows the European pattern observed in the first part of my study - the concepts of equality and non-discrimination, being adopted in legislation then integrated in public administration and policy planning. Up to now, the integration of equality considerations was driven rather by external factors than by domestic initiative. Beside that, it was keeping “low profile”, doing the most necessary things only. Will non-discrimination, once implemented in the domain of gender equality, advance into other domains too?

The anti-discrimination policy is a dynamically developing domain. In my opinion it is not relevant to compare the implementation of the SPD to any kind of ideal-type picture. The Structural Funds administration in Estonia is not especially enthusiastic about equality mainstreaming. The probability that it will develop its own standards higher than standards demanded by the EU regulations, is very low. At the same time, the study shows the administration's obedience to the rules and willingness to consider minority problems; even in the situation where no legal obligations to do it were present. In my opinion, Estonian administration is ready and willing to follow the European lead in non-discrimination.

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KOKKUVÕTE

Käesolev töö vastab küsimusele, kuidas ja mil määral võrdõiguslikkuse ja võrdse kohtlemise põhimõtted on võetud arvesse struktuurifondide programmdokumentis „Eesti riiklik arengukava Euroopa Liidu struktuurifondide kasutuselevõtuks - ühtne programmdokument 2004–2006” (edaspidi *riiklik arengukava*) ja selle rakendamise protsessis.

Laiema perspektiivi loomiseks annab autor töö esimeses osas ülevaate Euroopa Liidu diskrimineerimisvastase poliitika õiguslikust ja teoreetilisest raamistikust. Autor näitab, et võrdõiguslikkuse ja võrdse kohtlemise põhimõtete integreerimine struktuurifondide praktilisse rakendamisse tuleneb Euroopa Liidu õiguslikust raamistikust. Sellega luuakse alus teema võrdlevaks analüüsiks Eesti oludes. Autor uurib, kuidas võrdõiguslikkuse teema on kajastatud Eesti riiklikus arengukavas ning kuidas arengukava elluviimise mõju vähemustele on integreeritud arengukava planeerimisse ja rakendamisse.

Töö teoreetilises osas näitab autor, et diskrimineerimise vastaste õiguslike regulatsioonide ulatus ja käsitusala on suurenenud Euroopa Liidus viimaste aastate jooksul. Kui varem oli peamine tähelepanu pööratud soolisele võrdõiguslikkusele, siis praegused regulatsioonid kajastavad ka teiste vähemusrühmadega seotud probleeme. Koos õigusliku reguleerimise ulatuse kasvuga leiab laiema tunnustuse veendumus, et õiguslikud meetmed peavad olema toetatud vastavate poliitikate ning administratiivsete meetmetega. Miks need meetmed on vajalikud? Struktuuralsed erinevused vähemuse ja enamuse olukorras pärsivad diskrimineerimisvastase seadusandluse mõju (Fitzgerald 2002; Hendriks 1995). Struktuuralse ebavõrdsuse ületamiseks ning seadusandluse tõhusaks rakendamiseks on vajalikud toetavad meetmed ja poliitikakujundamise protsessi muutmine (Epstein 1999; Waddington 2001; Cardinali 2001).

Võrdõiguslikkuse ja võrdse kohtlemise põhimõtete integreerimine poliitikate ja programmide planeerimisse on üks administratiivsetest meetmetest. Vähemusgruppide

huvide puudulik esindamine poliitika planeerimises sügavdab ebavõrdsust ning suurendab vähemuste tõrjutust. Ning vastupidi, vähemuste huvide esindatavuse edendamine võib suurendada usaldust valitsuse vastu, aidata ületada demokraatia defitsiiti ning parandada otsuste kvaliteeti (Mosher 1982; Peters 2001: 89). Palju autorite arvates on avalik haldus üles kutsutud saama esinduslikuks institutsiooniks, mis tugevdaks demokraatiat ning tagaks kaasava avaliku teenistuse (Krislov 1967; Selden *et al.* 1998; SIGMA 1998: 333).

Võrdõiguslikkuse ja võrdse kohtlemise põhimõtete integreerimine poliitikate ja programmide planeerimisse on leidnud kajastust ka Euroopa Liidu struktuurifondide administreerimises. Sooline võrdõiguslikkus on teemaks, millega peavad struktuurifondide rakendajad arvestama programmide ettevalmistamisel ja rakendamisel juba 10 aastat. Võrdõiguslikkuse teised valdkonnad (nt. rahvusvähemused, puuetega inimesed jms.) on siiaaani pälvinud võrdlemisi vähem tähelepanu. Aga ka need tõusevad struktuurifondide päevakorda vastavalt Euroopa Liidu seadusandluses toimuvatele muutustele. Tulevast struktuurifondide programmeerimisperioodi reguleeriv määrus on hetkel valmimisjärgus. Aga avalikkusele kättesaadavateks tehtud versioonidest on näha, et võrdõiguslikkuse temaatika leiab määruks käsitlust mitte ainult soolise perspektiiviga seoses. Samuti toob struktuurifondide rakendamise praktika liikmesriikides näited sellest, et võrdõiguslikkuse temaatika on aktuaalne fondide administreerimisel.

Nii teoreetiline kirjandus kui ka teiste Euroopa Liidu liikmesriikide kogemus struktuurifondide rakendamisel annab materjali selleks, et pakkuda välja raamistikku võrdõiguslikkuse põhimõtete integreerimise hindamiseks. Lähtudes Yeandle *et al.* (1999: 16) ja Janet (2002) uuringutest ning võttes arvesse Euroopa Komisjoni vastavaid juhiseid³³, väidab autor, et võrdõiguslikkuse põhimõtete integreerimise hindamine peab koosnema vähemalt järgnevatest osadest:

1. Laiema õigusliku ja administratiivse konteksti hindamine;

³³ Vt. "A Guide to Gender Impact Assessment" ja "Mainstreaming Equal Opportunities for Women and Men in Structural Funds and Projects".

2. Võrdõiguslikkuse põhimõtete planeerimisprotsessi ja programmdokumentidesse integreerimise hindamine, mis peab katma vähemalt järgmisi teemasid:
 - a. vähemustega seotud probleemide kirjeldus programmdokumentides,
 - b. strateegiad ja prioriteedid vähemuste situatsiooni parandamiseks,
 - c. võrdsuse edendamiseks seotud indikaatorid ja eesmärgid,
 - d. sotsiaalsete partnerite kaasatus programmi planeerimisse,
 - e. teavitamine.
3. Programmi rakendamise hindamine, mis peab katma vähemalt järgmisi teemasid:
 - a. otsustamisprotseduurid ja projektide valikukriteeriumid,
 - b. sotsiaalsete partnerite kaasatus programmi rakendamisse,
 - c. seire- ja hindamissüsteemi toimimine,
 - d. rahaliste ressursside jaotamine.

Kasutades teoreetilises osas defineeritud raamistikku, analüüsib autor, kuidas võrdõiguslikkuse teema on kajastanud Eestis ning, konkreetselt, Eesti riiklikus arengukavas. Kõigepealt, analüüsib autor teema laiemat õiguslikku ja administratiivset konteksti. Autor leiab, et Eestis toimuvad arengud on sarnased Euroopa Liidu üldise arengusuunaga. Kasvab teadlikkus sellest, et riigi rahandus- ja majanduspoliitika ning raha jaotamine mõjutab enamuse ja vähemuste olukorda ning võib süvendada või siis vastupidiselt vähendada ebavõrdsust. Üha rohkem tunnustatakse vajadust võtta võrdõiguslikkuse põhimõtteid arvesse nii programmide kujundamise protsessis kui ka programmide elluviimise käigus ehk programmide administreerimisel. Sealjuures on kõige olulisemad arengud toimunud soolise võrdõiguslikkuse valdkonnas. Sooline võrdõiguslikkus on ainuke võrdõiguslikkuse valdkond, mille kohta on jõustunud eriseadus. Teised valdkonnad (antud juhul analüüsib autor rahvusvähemuste ja puuetega inimeste situatsiooni) on leidnud käsitlemist riiklike eri strateegiate ja tegevusplaanide näol.

Sellejärel analüüsib autor, kuidas võrdõiguslikkuse põhimõtteid on integreeritud Eestis struktuurifondide planeerimisprotsessi ja programmdokumentidesse. Autor leiab, et võrdõiguslikkuse integreerimise ulatus vastab Euroopa Komisjoni regulatsioonides

ettenähtule. Samaselt Eesti seadusandlusega on ainuke ametlikult reguleeritud ja jälgitav valdkond sooline võrdõiguslikkus. Struktuurifondide puhul on soolise ebavõrdsuse edendamine kohustuslik liikmesriikide jaoks. Samas leiab autor, et teiste vähemusgruppidega seotud probleemide kirjeldus programmdokumentides on küllaldane. Eestis leiab pooldajaid veendumus, et riik oma toimimisel peab rohkem arvesse võtma teiste ebasoodsas olukorras olevate elanikkonna rühmade erihuvid. Osaliselt tuleneb vajadus selle järele Euroopa Liidu regulatsioonide nõudmistest, aga struktuurifondide kontekstis ei ole teiste võrdõiguslikkuse dimensioonide arvesse võtmine liikmesriikidele kohustuslik käesoleval programmeerimisperioodil (2004 - 2006). Programmdokumentides on viidatud riiklikele strateegiatele, mis käsitlevad vähemuste probleemistikku. Samas leiab autor, et on tendents seostada rahvusvähemuste ja puuetega inimeste probleeme ainult tööhõive valdkonnaga.

Peale programmdokumentide analüüsi uurib autor, kuidas võrdõiguslikkuse temaatika on leidnud kajastamist riikliku arengukava praktilises rakendamises. Riikliku arengukava rakendamine algas aasta 2004 suvel ning aastaga omandatud kogemus annab võimaluse teha teatud järeldusi arengukava administreerimise kohta. Autor uurib, kuidas sooline võrdõiguslikkus, rahvusvähemuste ja puuetega inimeste probleemistik on arvesse võetud programmi rakendamise protsessi erinevates osades: otsuste tegemise protseduurides ja projektide valikukriteeriumites, sotsiaalsete partnerite kaasatuses ning seiresüsteemi toimimises. Ühe konkreetse meetme (meede 4.3) näitel analüüsib autor rahaliste ressursside jaotamist eesti keelt kõneleva enamuse ja vene keelt kõneleva vähemuse vahel.

Autor leiab, et soolise võrdõiguslikkuse puhul vastab riikliku arengukava rakendamisprotsess Euroopa Liidu nõudmistele. Seitse arengukava meetmetest, mille raames kasutatakse 25% struktuurifondide rahastamist, peavad edendama naiste ja meeste võrdõiguslikkust. Soolise võrdõiguslikkuse edendamine võetakse arvesse 1. prioriteedi projektide valiku juures. Sooline balanss peab olema järgitud riikliku arengukava juhtkomisjoni ning meetmete juhtkomisjonide koosseisu määratlemisel. Soolise võrdõiguslikkusega seotud indikaatorid on integreeritud arengukava seiresüsteemi.

Kuna rahvusvähemuste võrdõiguslikkuse edendamine ei ole hetkel Euroopa Liidu struktuurifondide kohustuslik eesmärk, ei ole see eraldi eesmärgiks püstitatud ka riiklikus arengukavas. Rahvusvähemuste esindusorganisatsioonid ei osale arengukava erinevate tasandite juhtkomisjonides. Rahvusvähemustega seotud indikaatoreid ei ole jälgitud arengukava seiresüsteemis. Küll aga võetakse mingil määral rahvusvähemuste sotsiaalse kaasatuse edendamine arvesse 1. prioriteedi projektide valiku protsessis. Samas autori tehtud meetme 4.3 „Kutse- ja kõrghariduse ning seda toetava infrastruktuuri moderniseerimine” rahaliste ressursside jaotuse analüüs näitab, et vaatamata sellele, et rahvusvähemusega seotud kriteeriumid ei olnud arengukavasse ametlikult integreeritud ning rahvusvähemuste organisatsioonid ei osale meetme juhtkomisjonis, võetakse rahvusvähemuste huve arvesse ressursside jagamisel. Investeeringute jaotus eestikeelsete õppekavadega ja venekeelsete õppekavadega kutsekoolide vahel ei näita, et vähemus oleks diskrimineeritud.

Puuetega inimeste võrdõiguslikkuse edendamine ei ole struktuurifondide kohustuslik eesmärk. Riiklik arengukava ei kehtesta puuetega seotuid seireindikaatoreid ega valikukriteeriume. Samas oli Eesti Puuetega Inimeste Koda kaasatud arengukava ettevalmistamisse ning osaleb praegu meetme 1.3 juhtkomisjoni töös. Meede 1.3 „Võrdsed võimalused tööturul” on kõige olulisema mõjuga puuetega inimeste situatsioonile. Mitmed meetmed puudutavad puuetega inimeste huve kaudselt. Näiteks on üks meetme 4.3 eesmärkidest kutseõppeasutuste ehitamine ning renoveerimine, sealhulgas „hoonete kohandamine liikumispuudega inimeste vajadustele vastavaks”. Puuetega inimeste kasuks suunatud tegevused on siis suuremate projektide osad ehk võib öelda, et meetmete mõju ei ole otsene. Selle tõttu ei ole võimalik kindlaks teha, kuidas ressursside jaotamine mõjutab puuetega inimeste situatsiooni. Paljude meetme puhul on võrdse juurdepääsu tagamine tööturul, hariduses ja ühiskonnaelus peamine puuetega inimesi puudutav aspekt. Samas on üllatavalt vähe tähelepanu pööratud võrdset juurdepääsu tagavatele uutele tehnoloogilistele lahendustele.

Võttes kokku analüüsi tulemused, teeb autor järelduse, et võrdõiguslikkuse ja võrdse kohtlemise põhimõtete rakendamise ulatus struktuurifondide programmdokumendis ja selle administreerimise protsessis üldjoontes vastab nii Euroopa Komisjoni regulatsioonidest tulenevatele nõudele kui ka Euroopa Liidus toimuvatele arengutele. Nimelt on suur tõenäosus, et võrdõiguslikkuse edendamist, mis rakendus kõigepealt soolise võrdõiguslikkuse valdkonnas, rakendatakse tulevikus ka teiste vähemusgruppide suhtes. Kuigi siia maani oli võrdõiguslikkuse edendamine tingitud pigem välistest teguritest (Euroopa Liidu nõuded), on Eestis sisemisi ressursse ja head tahet jätkata võrdõiguslikkuse edendamist.