

Developing Anti-Discrimination Law in Europe

The 25 EU Member States compared

November | 2006

For Diversity



Against Discrimination

An initiative of the EU

THE EUROPEAN NETWORK OF LEGAL EXPERTS IN THE NON-DISCRIMINATION FIELD



Developing Anti-Discrimination Law in Europe

The 25 EU Member States compared

Prepared by Mark Bell, Isabelle Chopin and Fiona Palmer
for the European Network of Independent Experts in the non-discrimination field

November 2006
(based on information current to 1 February 2006)

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The Action Programme has three main objectives. These are:

- 1. To improve the understanding of issues related to discrimination*
- 2. To develop the capacity to tackle discrimination effectively*
- 3. To promote the values underlying the fight against discrimination*

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Preface

In a great many European countries anti-discrimination legislation was reviewed and changed during the last couple of years. This major and unprecedented operation was set in motion with the adoption of two pieces of European legislation in 2000, namely the Racial Equality Directive and the Employment Equality Directive. How these Directives were transposed into national law of the 25 Member States is described in a series of country reports prepared by the European Network of Legal Experts in the non-discrimination field. This Network is established and managed by human european consultancy and the Migration Policy Group on behalf of the European Commission.

The reports were written by independent national experts in each Member State. The information was provided in response to questions set out in a template format which closely followed the provisions of the two Directives. The Network's scientific board, ground co-ordinators (experts on the Directives' five discrimination grounds) and content manager read and commented on various drafts of the reports. The writing process also benefited from comments made by lawyers of the European Commission. Member States were also given an opportunity to comment on the final draft of which they made minimal use. The 25 reports cover the many changes to national law, the putting in place of enforcement mechanisms and the adoption of other measures and they contain information current as of 1 February 2006. As such, they are a valuable source of information on national anti-discrimination law, a source which will be updated on an annual basis. The reports can be found on the Commission's website at http://europa.eu.int/comm/employment_social/fundamental_rights/policy/aneval/legnet_en.htm#count

This comparative analysis, prepared by Mark Bell (University of Leicester), Isabelle Chopin and Fiona Palmer (Migration Policy Group) compares the information set out in these country reports in a format mirroring that of the country reports themselves and draws some conclusions from the information contained in them.

The Network will continue to monitor changes in national anti-discrimination policies and law and report on them in the bi-annual European Anti-Discrimination Law Review. The updated reports will be published in the course of 2007.

Piet Leunis
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November 2006

Executive Summary

1. Anti-discrimination law in most Member States goes beyond the requirements of European law in some way, whether with regard to the grounds of discrimination that are prohibited by law, the scope of protection or the competencies of the specialised equality body. However, there are still considerable gaps in many Member States.
2. Whereas prior to transposition of the Racial Equality Directive (2000/43/EC) and Employment Equality Directive (2000/78/EC) many EU Member States provided protection against discrimination through a patchwork of – largely declaratory – equality clauses in a series of legislative instruments, most now have adopted more visible specific anti-discrimination legislation. Most Member States have transposed the Directives through civil and labour law; a minority also through criminal law. Core legislation still has to be adopted in two Member States.¹
3. Most Member States have incorporated all the grounds of discrimination included in the two Directives in their national anti-discrimination legislation. Although there were initial difficulties, sexual orientation is now present in most national legislation. Most Member States have chosen not to define the grounds of discrimination in their implementing legislation. A considerable number of Member States chose not to restrict new anti-discrimination laws to the grounds found within the Directives. In addition to expanding the list of prohibited grounds of discrimination, various countries made this a non-exhaustive list by adding a phrase such as 'or any other circumstance.'
4. The great majority of Member States have introduced legislation that expressly forbids direct and indirect discrimination, harassment and instruction to discriminate. Moreover, in most cases, the definitions provided in national legislation are very similar to the definitions found in the Directives. Many states have essentially reproduced the text of the Directives on these core concepts.
5. Implementation of the Employment Equality Directive's provision on reasonable accommodation is patchy. Where national provisions exist, these vary considerably between those which provide a basic duty, with little elaboration on how this should be implemented, to states with more extensive guidance on its practical application.
6. On the whole, protection against discrimination on any of the Directives' grounds in the Member States is not conditional on nationality, citizenship or residence status. In the majority of Member States, both natural and legal persons are protected against discrimination. There is more variation in national rules on who is to be held liable for discrimination, particularly when it occurs in the workplace.
7. While a majority of Member States seem to meet the material scope of the Directives, there are still significant gaps. In some countries transposition only affects the private sector. A common omission is self-employment. Four Member States (the Czech

¹ Just before going to print legislation transposing Directives 2000/78 and 2000/43 was finally adopted by the German Parliament in August, several months after the cut-off date set for this publication. Luxembourg also adopted legislation transposing the 2 directives in October 2006. Sexual orientation was included among other grounds of discrimination in Latvia following the amendment of the Labour Code of September 2006. This legislation will be considered in the next edition of Developing Anti-Discrimination Law in Europe in 2007.

Republic, Estonia, Malta and Poland) still have to transpose the Racial Equality Directive in all the fields outside employment. On the whole, protection against discrimination in goods and services is restricted to those available to the public. A variety of ways of distinguishing publicly available goods from privately available goods have emerged. A number of countries provide for the same scope of protection for all grounds, thereby going beyond the Directives.

8. The exceptions to the principle of equal treatment permitted under the Directives have largely been taken up in national law. In some instances it is suspected the exceptions are wider than the Directives allow. Most Member States provide for positive action measures to prevent or compensate for disadvantages linked to one of the discrimination grounds.
9. All States combine judicial proceedings – according to the type of law, civil, criminal, labour and/or administrative - with non-judicial proceedings. Some non-judicial proceedings are of general applicability but provide an effective forum for discrimination cases, whereas others have been established especially for discrimination cases as an alternative dispute resolution procedure to the normal courts. Whereas most Member States now provide for a shift in the burden of proof in discrimination cases, there are suspected inconsistencies with the Directives' provisions in a number of Member States. The same can be said for the prohibition of victimisation. Whether sanctions applied in Member States meet the test of "effective, proportionate and dissuasive" must be considered on a case-by-case basis. However, few country experts currently predict the sanctions and remedies in their country will comply with this standard.
10. Almost all Member States now have equality bodies or have given the functions to be carried out by such bodies to an existing body such as a national human rights institute. A high proportion of bodies are competent not only for racial and ethnic origin discrimination but also other grounds. The functions of specialised bodies go beyond those listed in the Racial Equality Directive in many countries. It remains to be seen whether all bodies will be able to carry out the independent functions required by the Directive.
11. Few Member States are considered to have adequately transposed the Directives' requirements to disseminate information on discrimination laws, to promote social dialogue and encourage dialogue with non-governmental organisations. Often these tasks fall to the specialised equality body. There appear to be more instances of structured dialogue for disability than the other grounds of discrimination.
12. Few countries have systematically ensured all existing legal texts are in line with the principle of equal treatment. In most countries the repeal of discriminatory laws will follow a finding of discrimination by the courts, or possibly an equality body recommendation. Legislation which can lead to the annulment of discriminatory clauses in contracts or collective agreements, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations is more common among the Member States.
13. Across the EU the most pressing issue is the proper application of national anti-discrimination laws and the active enforcement of rights in practice.



chapter 1

Introduction

The objective of this report is to compare and contrast the anti-discrimination laws in the 25 EU Member States, as comprehensively described in the updated country reports written by the European Network of Legal Experts in the Non-discrimination Field and summarised in this publication. Trends and commonalities between various countries in the implementation of the Racial Equality Directive (2000/43/EC) and Employment Equality Directive (2000/78/EC) are identified. The grounds of discrimination listed in the Directives – racial and ethnic origin, religion and belief, age, disability and sexual orientation – will be considered individually and collectively. It should be recalled throughout that the purpose of this report is to provide an overview of national laws across the EU: for detailed and nuanced information about the law in a particular country, readers are invited to refer to the comprehensive country reports. These reports have been updated and contain information current as of 1 February 2006.²

It goes beyond the scope of this report to assess the extent to which Member States have fully complied with the Directives or to assess the legislative impact of the European Directives on the laws of the Member States, although it may be used as one of the instruments for making such an assessment. In the transposition process ambiguities in the Directives became apparent which this report will not seek to clarify, although, where appropriate, this report makes some suggestions to that effect.

The Racial Equality Directive had to be transposed into national law by 19 July 2003 in the 15 'old' Member States and by 1 May 2004 in the 10 new Member States, the date of their accession to the EU. The Employment Equality Directive had to be transposed by 2 December 2003 in the 'old' Member States and by 1 May 2004 in the new. By now therefore, clear pictures are beginning to emerge of the implementation of the Directives and the areas in which Member States are going beyond EC law requirements. Conformity with, suspected non-conformity with, and instances of surpassing of the Directives requirements will all be analysed in this comparative exercise.

17 of the 25 Member States have generally, if not fully in some instances, transposed the two Directives into their national law: Belgium, Cyprus, Denmark, Finland, France, Greece, Hungary, Ireland, Italy, Lithuania, the Netherlands, Portugal, Slovenia, Slovakia, Spain, Sweden and the United Kingdom. The Czech Republic, Estonia, Latvia, Malta and Poland have partially transposed the Directives but significant legislation is still missing, primarily in relation to the scope of the Racial Equality Directive beyond employment (Article 3(1)(e)-(h)). Core implementing legislation still has to be transposed in Germany and Luxembourg, where the adoption of general anti-discrimination legislation is pending. A handful of Member States still have until 2006 to transpose the disability and age provisions, where they notified the European Commission that they would take advantage of the optional additional three years for transposing these provisions (Article 18 Directive 2000/78). These are Belgium, Germany, the Netherlands, Sweden and the UK for age, and France for disability.

² http://europa.eu.int/comm/employment_social/fundamental_rights/policy/aneval/legnet_en.htm#coun

As a first observation, a number of different transposition methods can be identified among the Member States:

Anti-discrimination Acts which more or less reproduce the Directives	Cyprus (2 Acts), Greece (1 Act for both) and Italy (2 decrees)
Anti-discrimination Acts covering more grounds than the Directives	Austria, Belgium, Finland, Ireland, Hungary, Netherlands, Slovakia
Combination of multi-ground anti-discrimination Acts and single-ground Acts	Denmark, Netherlands, Sweden
Several pieces of single-ground anti-discrimination legislation	United Kingdom
Combination of specific legislation and employment act	Slovenia, Latvia
Combination of specific legislation, labour and penal codes, some administrative law	France, Lithuania, Portugal
Directives transposed in much wider general Act	Spain
So far only transposed in employment law	Estonia, Czech Republic, Malta, Poland
Transposition still pending	Germany ³ , Luxembourg

A second observation about methods of implementation may be made with regard to age discrimination in particular. The transposition of Directive 2000/78 with respect to age discrimination has presented some special challenges, by comparison with the other grounds, because the great majority of Member States did not have existing general legislation against age discrimination, and had not had a great deal of debate about how such legislation might affect their existing law and practice about access to employment for young and older workers and about retirement from employment for older workers. Two contrasting patterns or models can be identified as to the way in which Member States have chosen to confront those special challenges, though it should be stressed that these are only broad stereotypes, within which significant variations occur.

One response consists of direct or nearly direct enactment in national legislation of the age discrimination provisions of the Directive, without elaborate adaptation to existing practice or detailed amendment of existing legislation. The examples were given above of Anti-discrimination Acts which more or less reproduce the Directives in Cyprus, Greece and Italy, and with regard to age discrimination in particular we could add Denmark, Austria, Slovakia and Slovenia. Underlying this response we can perhaps discern a preference for partly deferring the process of detailed adaptation of existing law and practice so that it can be resolved by judicial adjudication and subsequent interaction between the Member State and the Community organs.

³ As mentioned in footnote 1 legislation was adopted in August in Germany and in October in Luxembourg. This legislation will however not be considered in this edition of Developing Anti-Discrimination Law in Europe.

A contrasting response consists of engaging in a more elaborate legislative debate within the Member State as to how the age discrimination requirements of the Directive might be fully and immediately integrated with the existing law and practice of the Member State. The resulting legislative debate tends to be a difficult and complex one, and that serves to explain the instances cited above of Belgium, Germany, the Netherlands, Sweden and the UK, where those Member States have taken up the option of extra time to implement the age discrimination requirements in particular.

On the whole, most Member States have transposed the Directives through civil or labour law, with a minority having also introduced or amended criminal law provisions, e.g. Belgium. While in some countries a 'patchwork' of anti-discrimination provisions in various pieces of legislation still exists, e.g. Latvia, this method has largely been replaced by more general anti-discrimination provisions and legislation.

Ensuring the Directives are transposed across all of a Member State's territory and by all tiers of government with relevant competences has been the reason for delays in several Member States. The UK was delayed in its transposition in Gibraltar. Finland was found by the European Court of Justice to have failed to fulfil its Community obligations by omitting the Åland islands from its transposition of Directive 2000/43.⁴ The Commission also initiated action against Finland, Germany, Austria and Luxembourg for failure to transpose Directive 2000/78⁵ In this respect, Luxembourg was found to be in breach of its EC Treaty obligations for its failure to transpose Directive 2000/78 by the European Court.⁶ In Austria, while federal legislation entered into force on 1 July 2004, one of the nine provinces still has to enact legislation. In Belgium, although almost all regions and communities have now adopted anti-discrimination legislation, significant gaps remain due to continuing discussion among the Regions and Communities concerning their competence to adopt procedural rules, such as on sanctions, *locus standi* for associations and the burden of proof. The German Federal States still have to implement the Directives; they have been waiting for the Federal Parliament to adopt anti-discrimination legislation before they embarked upon their own transposition process.

This report will now look in turn at the main substantive issues in both Directives: the grounds of discrimination, the definition of discrimination, the reasonable accommodation duty, the personal and material scope of the law, exceptions to the equal treatment principle and positive action, remedies and enforcement, equal treatment bodies and implementation and compliance issues.

⁴ Case C-327/04 *Commission v Finland*, 24 February 2005. Luxembourg was also found to have infringed Community law on the same day for failing to transpose Directive 2000/43, Case C-320/04 *Commission v Luxembourg*. The Court of Justice has since found Germany (Case C-329/04) and Austria (Case C-335/04) to have infringed Community law for failing to transpose Directive 2000/43.

⁵ Case C-43/05 *Commission v Germany*, application of 3 February 2005, Case C-133/05 *Commission v Austria*, application of 21 March 2005 and Case C-99/05 *Commission v Finland*, application of 24 February 2005.

⁶ Case C-70/05 *Commission v Luxembourg*, judgment of 20 October 2005.



chapter 2

The grounds of discrimination

The Racial Equality Directive and the Employment Equality Directive require the Member States to forbid discrimination on the grounds of racial or ethnic origin, religion or belief, disability, age and sexual orientation. The Directives do not contain any definition of these grounds. This section examines how the Member States have incorporated the different grounds of discrimination into national law. This poses issues such as whether to include additional grounds beyond those mentioned in the Directives; whether to provide a definition of each ground; and how to address discrimination based on assumed characteristics or because of association with persons possessing certain characteristics. In addition, this section will highlight the main issues arising in respect of each ground during the implementation process.

Most Member States have chosen not to define the grounds of discrimination in their legislation designed to implement the Directives. A small group of countries have either included statutory definitions or provided definitions in accompanying documentation, such as in an explanatory memorandum accompanying the legislation. This includes: Austria, Ireland, the Netherlands, Sweden and the UK.

A. Which grounds are included?

Most Member States have included all the grounds of discrimination found within the Directives in their national anti-discrimination legislation (or in draft laws designed to implement the Directives). There are no examples of racial or ethnic origin and religion or belief being excluded from anti-discrimination legislation. Although there were initial difficulties, sexual orientation is now present in most national legislation. Latvia remains an exception, with no express reference to sexual orientation in national law. Nevertheless, in 2005 a district court interpreted the anti-discrimination provisions as implicitly covering sexual orientation in a case where a gay man was refused a position as a school teacher.⁷

Member States were able to request a delay in implementing the disability and age provisions of the Employment Equality Directive until 2 December 2006. Many chose not to exercise this option or have now completed the process. Sweden has yet to adopt legislation on age discrimination. Germany and Luxembourg have yet to adopt any new legislation in response to both the Racial Equality and Employment Equality Directives, however, in both states draft laws have now been published.

A considerable number of Member States chose not to restrict new anti-discrimination laws to the grounds found within the two Directives. Where states decided to go further than the minimum requirements, they faced two choices: which additional grounds to specify and whether to make the list of prohibited grounds non-exhaustive. In terms of grounds explicitly mentioned within national legislation, there is a very wide range of grounds to be found across the Member States. For example, Slovenia has

⁷ *Maris Sants v Rigas Kulturu Vidusskola*, 25 May 2005.

⁸ Implementation of the Principle of Equal Treatment Act, Official Gazette, no. 50/2004.

prohibited discrimination on the grounds of education and financial status,⁸ whilst Portugal has forbidden discrimination on the grounds of genetic inheritance and family status.⁹

In addition to expanding the list of prohibited grounds of discrimination, various countries made this a non-exhaustive list by adding a phrase such as 'or any other circumstance'. This will permit courts to recognise additional grounds of prohibited discrimination in the future, in a similar manner to the evolving case-law under Article 14 of the European Convention on Human Rights. Non-exhaustive lists are found in Finland, Hungary, Latvia, Poland and Slovenia.

B. Racial or ethnic origin

There appear to be two main issues in relation to the definition of 'racial or ethnic origin'. First, there are debates around the use of 'race' within anti-discrimination legislation. Secondly, there are overlaps with other personal characteristics, such as nationality, language or religion.

Recital 6 of the Racial Equality Directive declares:

'The European Union rejects theories which attempt to determine the existence of separate human races. The use of the term 'racial origin' in this Directive does not imply the acceptance of such theories.'

Some Member States have taken the view that including 'race' or 'racial origin' in anti-discrimination legislation reinforces the perception that humans can be distinguished according to 'race'; whereas there is no scientific foundation for such categorisation. For example, in Austria, the term 'ethnic affiliation' has been adopted in the federal Equal Treatment Act in a conscious decision to exclude the German term '*Rasse*'. The Finnish Non-Discrimination Act refers to 'ethnic or national origin' (section 6(1)), whilst the Swedish Ethnic Discrimination Act refers to 'ethnic belonging' (section 3). In other countries, 'race' has been included in the legislation, but it is qualified. In France, various legal provisions refer to 'real or presumed' (*vraie ou supposée*) race.

One of the areas of ambiguity in the Racial Equality Directive is the extent to which characteristics such as colour, national origin, membership of a national minority, language or social origin fall within the scope of 'racial or ethnic origin'. There are quite divergent approaches within national legislation. Some states have specific and detailed laws on the protection of national minorities, such as Poland or Slovenia. It is often unclear whether the concepts of ethnic/national minority found within these laws will be relied upon when national courts interpret anti-discrimination legislation. Many national laws include, as a minimum, colour and national origin within legislation implementing the Racial Equality Directive. The UK is alone in the view that 'colour' does not fall within the scope of the Directive. Its implementing legislation only covers discrimination on grounds of race, ethnic or national origins¹⁰ Whilst pre-

⁹ Article 23, Labour Code.

¹⁰ Race Relations Act (Amendment) Regulations 2003, S.I. 1626.

existing legislation still forbids discrimination on the grounds of colour and nationality,¹¹ this has not been amended to reflect the requirements of the Racial Equality Directive.

Another difficult boundary concerns racial or ethnic origin and religion. Within the Directives, it is evident that this is an important distinction because the material scope of the Racial Equality Directive is much more extensive than that in the Employment Equality Directive. Nevertheless, national law dating from before the Directives does not always reflect this dichotomy. In the Netherlands, case-law has recognized the possibility for discrimination against Jews¹² and, in certain circumstances, Muslims¹³ to be challenged as race discrimination. In the UK, discrimination against Sikhs¹⁴ or Jews¹⁵ has been accepted as discrimination on racial grounds (specifically, ethnic origin). In Sweden, anti-discrimination legislation previously defined religious belief as part of 'ethnic affiliation'¹⁶ however, this has been amended to render 'religion or other belief' an autonomous ground of discrimination.

A number of common problems have arisen in the process of implementing the Racial Equality Directive. First, the Directive is distinguished by its broad material scope, extending beyond employment to include areas such as education and housing. Yet, several states have not adopted adequate legislation on discrimination outside employment. Notably, this includes the Czech Republic, Estonia, Latvia, Malta and Poland. Secondly, the Racial Equality Directive requires Member States to establish a body or bodies for the promotion of equal treatment; although this is not an obligation within the Employment Equality Directive. There remain several states where a body responsible for racial and ethnic discrimination (and fulfilling the requirements of the Directive) has yet to be created or start to function: the Czech Republic, Malta, Spain and Poland. This is also true of Germany and Luxembourg, but proposals to establish equal treatment bodies have been submitted in these states.

In terms of implementation in practice, Roma segregation in education remains a serious challenge for several states, including the Czech Republic, Cyprus, Denmark, Finland, Greece, Hungary, Poland and Slovakia. Another common issue that arises is the lack of data in many states on the socio-economic situation of persons vulnerable to racial discrimination. This makes it difficult to identify the extent of disadvantage and whether any progress is being made in reducing inequalities.

C. Religion or belief

No Member State has attempted to provide a comprehensive definition of 'religion or belief' within anti-discrimination legislation. Even where a definition does exist, this often leaves a broad scope for interpretation. For example, in Ireland, 'religious

¹¹ Race Relations Act 1976.

¹² Opinion 1998/48, Equal Treatment Commission.

¹³ Opinion 1998/57, Equal Treatment Commission.

¹⁴ *Mandla v Dowell Lee* [1983] 2 AC 548.

¹⁵ *Seide v Gillette Industries Ltd.* [1980] IRLR 427.

¹⁶ Section 3, Ethnic Discrimination Act 1999.

belief' includes 'religious background or outlook'.¹⁷ Several states provide further guidance on the meaning of 'religion or belief' in explanatory documentation accompanying the legislation. In Great Britain, this states that courts and tribunals may consider a number of factors when deciding what is a "religion or belief" (e.g. collective worship, clear belief system, profound belief affecting way of life or view of the world).¹⁸ In Austria, the explanatory notes to the federal Equal Treatment Act state 'for a religion there are minimum requirements concerning a statement of belief, some rules for the way of life and a cult. Religion is any religious, confessional belief, the membership of a church or religious community'.¹⁹ Recent case-law in the Netherlands has interpreted religion as a belief in a higher authority, such as God.²⁰

The term 'belief' has also been the subject of debate surrounding its meaning. In particular, some Member States have sought to limit this concept. In the Netherlands, the term *levensovertuiging* [philosophy of life] has been adopted because this had already been interpreted through case-law. It includes broad philosophies, such as humanism, but it does not extend to any view regarding society. Similarly, the Austrian guidance states: 'Belief is a system of interpretation consisting of personal convictions concerning the basic structure, modality and functions of the world; it is not a scientific system. As far as beliefs claim completeness, they include perceptions of humanity, views of life, and morals'.²¹ These definitions seek to associate belief with wide-ranging philosophies, as opposed to mere opinions about specific issues. Political opinion finds itself in a grey area. Some political beliefs might be construed as philosophies on life, such as communism. At the same time, others are less comprehensive in nature; for example, a person's view on the appropriate level of taxation. Significantly, many Member States have also included political opinion as a prohibited ground of discrimination. This includes: Cyprus, Czech Republic, Denmark, Estonia, Finland,²² France, Hungary, Italy, Latvia, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovenia, Spain, UK (Northern Ireland only).

Finally, it should be noted that definitions of 'religion' are commonly found outside anti-discrimination law. This can typically arise in laws concerning the application of the freedom of religion or in laws regulating the relationship between the State and organised religions.

Most of the controversies around the implementation of the religion or belief provisions of the Employment Equality Directive centre on the extent of any exceptions provided for organised religions (e.g. churches) and organisations with an ethos based on religion or belief (e.g. religious schools). The Directive provides a rather complex exception in Article 4(2), which permits such organisations to make requirements relating to employees' religion or belief in narrow circumstances. This is examined in more detail later in this report. Some states have provided exceptions that clearly go beyond the strict terms of the Directive or which remain ambiguous (e.g. Greece, Ireland, Italy, Slovakia).

¹⁷ Section 2(1), Employment Equality Act 1998-2004.

¹⁸ Para. 9, Explanatory Notes on the Employment Equality (Religion or Belief) Regulations 2003.

¹⁹ Nr. 307 der Beilagen XXII. GP - Regierungsvorlage - Materialien.

²⁰ Opinion 67-2005, Equal Treatment Commission.

²¹ Ibid.

²² The Non-Discrimination Act (no. 21/2004) refers to 'opinion', whereas the Penal Code includes 'political orientation'.

There is evidence that case-law arising since the adoption of the Directives has highlighted controversies around employee dress-codes and religious requirements. Some of these cases have been brought under other legislation, such as human rights laws, but they indicate that manifestation of religious beliefs through dress is likely to be a key issue in the practical implementation of the Directive. Such cases have been recorded in Belgium, Denmark, France, Germany, the Netherlands, Sweden and the UK.

D. Disability

Unlike the other grounds of discrimination, there is a proliferation of definitions of disability within national legislation. This can be attributed to several factors. First, most Member States provide certain welfare benefits for persons with a disability. Naturally, there needs to be a relatively detailed definition of who will be eligible for such entitlements. Elsewhere, national legislation often includes quota schemes that require employers to employ a certain proportion of disabled persons.²³ Again, it is necessary to define disability in order to clarify which workers could be treated as falling within the quota. Although there are consequently many examples of definitions of disability within national legislation, it is less common to find a specific definition of disability within anti-discrimination legislation.

Where anti-discrimination legislation defines disability, there are a number of common elements:

- Time requirements: permanency or duration of the impairment;
- Level of impairment: thresholds concerning severity;
- Current status: treatment of past, present and future impairments.

With regard to time requirements, an impairment may be required to exist for a certain period of time in order to be treated as a disability. In both Austria²⁴ and Germany,²⁵ an impairment should last for more than six months. In the UK,²⁶ the impairment should last for more than one year. In contrast, other states require the impairment to be indefinite in duration (Cyprus,²⁷ Sweden²⁸).

In some states the impairment is required to reach a certain level of seriousness; this is sometimes classified by a percentage threshold. For example, in Luxembourg, the 2003 Law on Disabled Persons applies to those with a more than 30% reduction in working capacity.²⁹ In Germany, protection is currently limited to those with severe disabilities. This is where a person's ability to participate in working life is reduced by 50%, or where the disability is more than 30% if the person cannot find employment as a

²³ These typically permit employers to take alternative actions, such as making contributions to a State fund for disabled persons.

²⁴ Section 3, Disability Equality Act 2005.

²⁵ Section 2, Social Code IX and Section 3 Disabled Equality Law.

²⁶ Section 1(1), Disability Discrimination Act 1995.

²⁷ Law 127(I)/2000.

²⁸ Section 2, Disability Discrimination Act 1999.

²⁹ Law 51/2003 on Equal Opportunities.

result. Another means of assessing the seriousness of the impairment is by reference to the person's ability to perform certain functions. In Malta, the law refers to 'major life activities'³⁰ and in the UK, 'normal day-to-day' activities.³¹

Finally, there is divergent practice on whether disability includes past or future impairments. Irish legislation covers grounds of discrimination that previously existed, as well as grounds that may exist in the future.³² Dutch law covers 'an actual or assumed disability or chronic disease',³³ thereby protecting (for example) a person who previously had cancer but no longer experiences any symptoms.

Given the variety of laws discussed above, it is not surprising to discover that the definition of disability is one of the main issues arising in the implementation of the disability provisions of the Employment Equality Directive. This is now giving rise to case-law. For example, the Equal Treatment Commission in the Netherlands recently held that the concept of disability should be interpreted broadly and this would include someone with whiplash following a car accident.³⁴ A Spanish court has made a preliminary reference to the Court of Justice on whether disability includes a person dismissed following a period of sick leave.³⁵

One of the most significant innovations within the Employment Equality Directive is a duty on employers to provide reasonable accommodation to enable access to work for persons with a disability. As discussed later in this report, this provision has been implemented in a very uneven fashion across the Member States. Some states have omitted the concept from national law (e.g. Estonia, Italy and Poland). In many other states, the concept remains ambiguous and it is not clear what the legal consequences are where an employer does not provide a reasonable accommodation (Greece, Hungary, Latvia, Lithuania and Slovenia).

E. Sexual Orientation

Very few states have defined sexual orientation within anti-discrimination legislation. Irish equality legislation defines sexual orientation as 'homosexual, heterosexual or bisexual orientation'.³⁶ In the same vein, UK legislation refers to 'a sexual orientation towards (a) persons of the same sex, (b) persons of the opposite sex, or (c) persons of the same sex and of the opposite sex'.³⁷ Some German legislation uses the term 'sexual identity' rather than sexual orientation.

³⁰ Equal Opportunities (Persons with Disability) Act 2000.

³¹ Section 1(1), Disability Discrimination Act 1995.

³² Section 6(1)(a), Employment Equality Act 1998-2004.

³³ Art. 1(b), Act of 3 April 2003 concerning the establishment of the Act on Equal Treatment on the grounds of disability or chronic disease, Staatsblad 2003, 206.

³⁴ Case 234-2005.

³⁵ Case C-13/05 Chacón Navas v Euresit Colectividades SA. Official Journal 19.3.2004/C 069/16. The Advocate-General's Opinion is pending.

³⁶ Section 2(1), Employment Equality Act 1998-2004.

³⁷ Regulation 2(1), Employment Equality (Sexual Orientation) Regulations 2003, S.I. 1661.

A further issue concerns discrimination against same-sex couples. The explanatory notes to the Austrian federal Equal Treatment Act specify that less favourable treatment of same-sex couples in comparison to unmarried opposite-sex couples is unlawful sexual orientation discrimination.³⁸ A different approach has been adopted in Finland: the Non-Discrimination Act contains a non-exhaustive list of grounds. In the first case concerning discrimination against a job applicant because she was in a same-sex relationship with another woman, the Administrative Court held that being in a same-sex relationship was an autonomous ground of discrimination.³⁹ Although not enumerated in the legislation, this was implicitly covered.

Many of the difficulties encountered in implementing the sexual orientation provisions of the Employment Equality Directive relate to the breadth of any exceptions applying to employers with a religious ethos (see the section above on religion or belief). These exceptions are sensitive because some employers may be hostile to homosexuality because of religious beliefs. Another key issue relates to partners' benefits and the extent to which national law permits employers to limit work-related benefits to those employees who are married (e.g. a pension entitlement for a surviving spouse). National practice varies greatly in this area and it is related to national family law, in particular national laws on recognising same-sex partnerships. In many states, this issue has not been directly addressed in legislation and it remains a question for national courts to resolve (e.g. Greece, Portugal and Slovakia).

In the majority of states, there are few or no examples of cases of sexual orientation discrimination being brought before the courts. The most significant levels of case-law can be found in the UK and the Netherlands. There are regular complaints to the Sexual Orientation Ombudsman in Sweden, some of which result in court cases. In Ireland, a small number of cases of sexual orientation discrimination are brought each year to the Equality Tribunal. Isolated court cases on sexual orientation discrimination are reported in Hungary, Latvia, Spain, Belgium and Finland. Issues around confidentiality may deter some individuals. Moreover, in some states the wider political climate remains openly hostile to equality for lesbians, gays and bisexuals (e.g. Poland and Latvia).

F. Age

Age is generally assumed to be an objective characteristic with a natural meaning and hence it is not defined. Whilst broad exceptions exist in relation to this ground of discrimination, the Irish Employment Equality Act seems to be alone in restricting its entire application to 'persons above the maximum age at which a person is statutorily obliged to attend school':⁴⁰ In a similar fashion, the Danish government has introduced a bill in Parliament which would restrict the scope of the existing anti-discrimination legislation. The Bill would permit different treatment of persons under 18 years old.⁴¹

³⁸ Nr. 307 der Beilagen XXII. GP - Regierungsvorlage – Materialien.

³⁹ Vaasa Administrative Court, 27.8.2004, Ref. No. 04/0253/3.

⁴⁰ Section 6(f)(3).

⁴¹ Bill L98.

The implementation of the age provisions of the Employment Equality Directive remains work in progress. Article 6 of the Directive permits justification of both direct and indirect age discrimination. Most Member States have decided to exercise this option. As a consequence, there remains very substantial uncertainty across the Member States as to which forms of age discrimination will be treated as justified by national courts. In *Mangold v Helm*,⁴² the Court of Justice provided an early indication that directly discriminatory practices need to be carefully scrutinised by national courts. Indeed, there are already various examples of age discrimination cases in several Member States. These illustrate the diversity of laws and practices falling within the scope of the Directive. In Belgium, the Court of Arbitration held a maximum age limit of 75 for members of Church Councils to be unlawful discrimination.⁴³ In the Netherlands, the Hague Court of Appeal held the absence of minimum wage regulation for 13 and 14 year olds to be unlawful discrimination.⁴⁴

In many states, it appears that the introduction of legislation on age discrimination was not accompanied by a wider review of age requirements in other legal instruments. In particular, many states did not engage in a thorough analysis of the justification for compulsory retirement ages. National practice varies greatly in this area, ranging from no national compulsory retirement age (e.g. Czech Republic) to states which permit compulsory retirement by public and private employers at a specific age (e.g. Italy). These issues are examined further in section 6.G of this report.

G. Assumed and associated discrimination

Discrimination can sometimes occur because of an assumption about another person, which may or may not be factually correct; e.g. that a woman is a lesbian. Alternatively, a person may face discrimination because they associate with persons of a particular characteristic; e.g. a non-Roma man may be denied admission to a bar because he is with friends who are from the Roma community. In many states, the application of discrimination law to these scenarios is not definitively resolved within the legislation and it will depend on future judicial interpretation. This includes Austria, Belgium, Cyprus, Denmark, Finland, Italy, Latvia, Malta, Poland, Slovenia and Spain.

Ireland provides a rare example where legislation explicitly forbids discrimination where a ground is 'imputed' to exist and discrimination due to association.⁴⁵ As mentioned earlier, in several states, the legislation refers to 'real or presumed' race (e.g. France), or to a disability that existed in the past or which may exist in the future (Netherlands). The Disability Equality Act adopted in Austria in 2005 extends protection to relatives caring for disabled persons.

⁴² Case C-144/04, judgment of 22 November 2005.

⁴³ Judgment no. 152/2005, 5 October 2005.

⁴⁴ JAR 2005, 98, 24 March 2005.

⁴⁵ Section 6(1)(b), Employment Equality Act 1998-2004.



chapter 3

The definition of discrimination

The Racial Equality and Employment Equality Directives identify four forms of prohibited discrimination: direct, indirect, harassment and instructions to discriminate. In taking an overview of Member States' implementation of the Directives, this is an area where considerable progress is evident. The great majority of Member States have introduced legislation that expressly forbids each of these four types of discrimination. Moreover, in most cases, the definitions provided in national legislation are very similar to the definitions found in the Directives. Many states have chosen essentially to reproduce the text of the Directives on these core concepts. This section will examine the regulation of each type of discrimination across the national legal systems.

At the outset, it should be noted that although Member States may be described as following the definitions found in the Directives, there are often slight differences between the actual text of national legislation and that within the Directives. Given the frequent absence of case-law interpreting the legislation, it is difficult to assess whether small differences in language are matters that will be resolved through purposive judicial interpretation or whether there are substantive gaps in national implementation. For example, in Belgium,⁴⁶ the test for justifying indirect discrimination does not mention the need to show that the provision, criterion or practice is *necessary*, whereas this is explicit in the text of the Directives.⁴⁷ Nonetheless, all national courts are under a general obligation 'to interpret their national law in the light of the wording and purpose of the Directive'.⁴⁸

A. Direct discrimination

Most Member States have adopted legislation that reflects closely the definition of direct discrimination found within the Directives. There are several common elements:

- the need to demonstrate less favourable treatment;
- a requirement for a comparison with another person in a similar situation, but with different characteristics (e.g. ethnic origin, religion, sexual orientation);
- the possibility to use a comparator from the past (e.g. a previous employee) or a hypothetical comparator;
- direct discrimination cannot be justified.

These elements can be generally found in legislation in: Austria, Cyprus, Denmark, Estonia, Finland, Germany (draft law), Greece, Italy, Ireland, Latvia, Lithuania, Luxembourg (draft law), Malta, Portugal, Slovakia, Slovenia, Sweden and the UK. It should be noted that this legislation does not necessarily apply to the full material scope required by the Directives and it may co-exist with other legislation containing different definitions of direct discrimination. In some states, for example, anti-discrimination legislation in civil law is complemented by criminal law provisions against discrimination. Some criminal law statutes are more general in their definition of discrimination. For example, in Finland, section 11(9) of the Penal Code [rikoslaki (391/1889)] defines discrimination as 'putting a person into a manifestly unequal position or into a substantially worse position than the others, without an

⁴⁶ Art. 2(2), Federal Law of 25 February 2003.

⁴⁷ Art. 2(2)(b), Directives 2000/43 and 2000/78.

⁴⁸ Case 14/83, *Von Colson and Kamann v Land Nordrhein-Westfalen* [1984] ECR 1891.

acceptable reason.⁴⁹ Moreover, most states have taken advantage of the opportunity foreseen in Article 6 of the Employment Equality Directive to permit justification of direct discrimination on the ground of age.

In the Czech Republic, anti-discrimination provisions can be found scattered across a wide range of legislation. In some cases, the definition of direct discrimination is close to that in the Directives. In France and the Netherlands, direct discrimination is forbidden but it is not further defined in legislation. There is, however, pre-existing case-law in the Netherlands that would suggest that the concept of 'direct distinction' used in national legislation is similar to the definition of direct discrimination found within the Directives.

With regard to comparators, the laws in Spain⁵⁰ and Hungary⁵¹ do not expressly permit the use of a past or hypothetical comparator. In Ireland, the requirement for a comparator has been elucidated through case-law. Indeed, this appears to be the only Member State where case-law has considered in detail who the appropriate comparator can be in cases of age discrimination. The comparator here appears to depend heavily on the facts of the case. In *Perry v Garda Commissioner*,⁵² the dispute concerned a voluntary retirement scheme. By comparing the situation of a hypothetical 59 year old and a 60 year old, it was revealed that the 59 year old would receive an additional payment of around EUR 7,618. In other cases, a greater difference of age between the comparators has been required.

B. Indirect discrimination

A large proportion of Member States have introduced a definition of indirect discrimination that generally reflects the definition adopted in the Directives. This includes the following states: Austria, Belgium, Cyprus, Denmark, Estonia, Finland, Germany (draft law), Greece, Hungary, Ireland, Italy, Latvia, Luxembourg (draft law), Malta, Portugal, Slovakia, Slovenia, Spain, Sweden and the UK.

As with direct discrimination, France has not included a detailed definition of indirect discrimination in national legislation. In the Netherlands, the legislation defines indirect discrimination - Article (1)(c) of the amended Equal Treatment Act – but this definition is very different to the definition given in the Directives. There is, however, a significant body of Dutch case-law interpreting the concept of indirect discrimination in a manner similar to that required by the Directive. In the Czech Republic, there are anti-discrimination provisions scattered across a range of laws and these contain various definitions of indirect discrimination.

The Directives define indirect discrimination by reference to provisions, criteria or practices that put persons of a particular racial or ethnic origin, religion or belief, age, disability or sexual orientation 'at a particular disadvantage when compared with other

⁴⁹ See also the definition of discrimination in the Belgian Law of 30 July 1981 criminalising certain acts inspired by racism and xenophobia.

⁵⁰ Art. 28(1)(b), Law 62/2003.

⁵¹ Art. 8, Equal Treatment and the Promotion of Equality of Opportunities Act 2003.

⁵² DEC-E2001-029. Available at: <http://www.equalitytribunal.ie/>

persons.⁵³ The 'particular disadvantage' threshold takes a variety of forms in national legislation and it is difficult to assess at this stage whether these accurately reflect the approach in the Directives. In Hungary, indirect discrimination occurs if a provision 'puts individual persons or groups with characteristics specified in Article 8 [the prohibited grounds] in a significantly disproportionately disadvantageous situation compared to a person or group in a comparable situation.'⁵⁴ In Latvia, legislation refers to measures that result in 'adverse consequences' rather than 'particular disadvantage'.⁵⁵ The approach in Lithuania is to examine whether measures create any discriminatory *advantages*. Indirect discrimination occurs where measures 'which are formally equal, however, in implementing or adapting them, an actual restriction of the use of rights or the providing of privileges, priority or advantage for persons of a certain age, certain sexual orientation, disability, racial or ethnic origin, religion or beliefs can, do, or might emerge'.⁵⁶

The Directives anticipate a comparison between the effect of the measure on persons of a particular ethnic origin, etc. and its impact on other persons. Again, national law varies in the approach taken to the comparison required for establishing indirect discrimination. Polish law requires the measure to cause detriment for all or a significant number of employees belonging to the particular group of persons.⁵⁷ In the UK, the most common definition of indirect discrimination requires evidence that the measure placed at a disadvantage the individual complainant, as well as the group to which he or she belongs.⁵⁸ In Ireland, reference to a hypothetical comparator is not permitted in complaints of indirect discrimination in remuneration.⁵⁹

C. Harassment

Harassment is defined in the Directives as unwanted conduct related to (racial or ethnic origin, religion or belief, disability, age, or sexual orientation) with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.⁶⁰ The majority of Member States have adopted definitions of harassment that appear similar to that contained in the Directives. This includes: Belgium, Cyprus, Czech Republic (various laws), Finland, Germany (draft law), Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg (draft law), Malta, the Netherlands, Poland, Portugal, Slovenia, Spain and the UK.

⁵³ Art. 2(2)(b), Directives 2000/43 and 2000/78.

⁵⁴ Art. 9, Equal Treatment and the Promotion of Equality of Opportunities Act 2003.

⁵⁵ Art. 29(6), Labour Law.

⁵⁶ Law on Equal Treatment 2003.

⁵⁷ Art. 18, Labour Code.

⁵⁸ For example, section 1(1A) Race Relations Act 1976.

⁵⁹ Section 29, Employment Equality Act 1998-2004.

⁶⁰ Art. 2 (3).

In some Member States, the definition of harassment seems more restrictive than that found in the Directives. This is most obvious in Estonia, where harassment is defined as:

'where unwanted conduct or act, either verbal, non-verbal or physical, takes place against a person in a relationship of subordination or dependency ...'⁶¹

This would seem to exclude protection from harassment by other workers of a similar rank, or from those who are in more junior positions whereas the Directives do not restrict the prohibition of harassment to actions of more senior workers. Furthermore, the Directives refer to 'unwanted conduct ... with the purpose or effect of violating the dignity of a person.'⁶² This suggests that harassment may occur even where the victim's dignity has not been violated, if this was the purpose of the conduct. In contrast, laws in Austria⁶³ and Sweden,⁶⁴ require that the victim's dignity was actually violated. The other element to the definition of harassment in the Directives is that the conduct creates 'an intimidating, hostile, degrading, humiliating or offensive environment' (emphasis added).⁶⁵ The Italian legislation substitutes the word 'or' for 'and', thereby making this a cumulative test and an apparently higher threshold for the complainant to satisfy.⁶⁶ A recent case at the Czech Supreme Court has confirmed that harassment does not need to be directed at a specific individual; it is sufficient that it contravenes the dignity of a group.⁶⁷ This concerned a legal challenge to the presence in a restaurant of a statute with the slogan 'go and get the Gypsies'. Similarly, under Finnish law, harassment takes place when the dignity or integrity of a person or a *population group* is violated.⁶⁸

The Directives do not provide specific rules on how to determine whether the conduct is such as to violate a person's dignity or to create an intimidating, etc. environment. Several states have sought to clarify this in their national legislation. In Slovakia, reference is made to treatment 'which that person can justifiably perceive' as harassment.⁶⁹ This is understood to place the emphasis on the perception of the victim, although courts may also take into account a reasonableness standard. In the UK, a combined objective and subjective assessment of the conduct is required by the courts and tribunals:

'conduct shall be regarded as having the effect specified ... only if, having regard to all the circumstances, including in particular the perception of B [the victim], it should reasonably be considered as having that effect.'⁷⁰

⁶¹ Art. 10(4), Law on Employment Contracts.

⁶² Art. 2(3), Directives 2000/43 and 2000/78.

⁶³ § 21(2), Equal Treatment Act 2004.

⁶⁴ Sexual Orientation Discrimination Act 1999, Equal Treatment of Students at Universities Act 2001, Discrimination Prohibition Act 2003.

⁶⁵ Art. 2(3), Directives 2000/43 and 2000/78.

⁶⁶ Legislative decree, 9 July 2003, no. 215 (Gazzetta Ufficiale no. 186, 12 August 2003); legislative decree, 9 July 2003, no. 216 (Gazzetta Ufficiale no. 187, August 13, 2003).

⁶⁷ *František Krosčén v Bohema Travel*, 30 June 2005, Cdo 1630/2004-156.

⁶⁸ Section 6(2), paragraph 3 Non-Discrimination Act (21/2004).

⁶⁹ Section 2(5), Anti-discrimination Act, no. 365/2004.

⁷⁰ For example, section 3A, Race Relations Act 1976.

Another area left open by the Directives is the responsibility of the employer for acts of harassment caused by other workers or by third parties, such as customers. In many states, employers can be held liable for the actions of their workers to a varying degree. Some Member States have chosen to place employers under a specific duty to take action to prevent and redress harassment in the workplace. For example, in Finland, when an employer becomes aware of harassment in the workplace, there is a duty to investigate and to take measures to end the conduct.⁷¹ A similar duty exists in Sweden, but this extends beyond employees to include universities in respect of their students.⁷² In France, Article L122-52 of the Labour Code creates an obligation on the part of the employer to take all necessary measures to put an end to harassment in the workplace. In the UK and Ireland, there is no express duty on employers to take action to prevent harassment. Nevertheless, employers will not be held liable for harassment committed by their workers if they can demonstrate that they took 'reasonably practicable steps' to prevent this occurring.⁷³

It is important to note that an overlap may exist between harassment as an element of anti-discrimination law and other legal provisions combating harassment in general. The latter, sometimes described as moral harassment, not only includes discriminatory harassment, but also harassing behaviour without any discrimination element (e.g. bullying). In Belgium, harassment is unlawful both within anti-discrimination legislation, but also under specific legislation against moral and sexual harassment.⁷⁴ In France, harassment is not specifically included within legal provisions on discrimination, but instead it is dealt with in legislation on moral and sexual harassment. Moral harassment is defined as 'repeated acts which result in a degradation of working conditions such as to alter one's benefit of one's rights or dignity, to alter one's physical or psychological health or to jeopardise one's professional future.'⁷⁵

D. Instructions to discriminate

The Directives contain a provision stating that 'an instruction to discriminate ... shall be deemed to be discrimination'.⁷⁶ A similar provision has been included in the national legislation of the great majority of Member States, with a small number of exceptions.

In France, there is no specific provision making instructions to discriminate unlawful. However, general legal principles on complicity and liability may produce similar effects. The person acting on instructions to discriminate may commit an offence. In a recent case, unlawful discrimination was found where an estate agent refused to rent accommodation to people with surnames of 'foreign origin' following instructions from the owner.⁷⁷

⁷¹ Section 28, Occupational Safety and Health Act, no. 738/2002.

⁷² Art. 6, Equal Treatment of Students at Universities Act 2001.

⁷³ Ireland: section 15(3), Employment Equality Act 1998-2004; UK: e.g. section 32(3), Race Relations Act 1976.

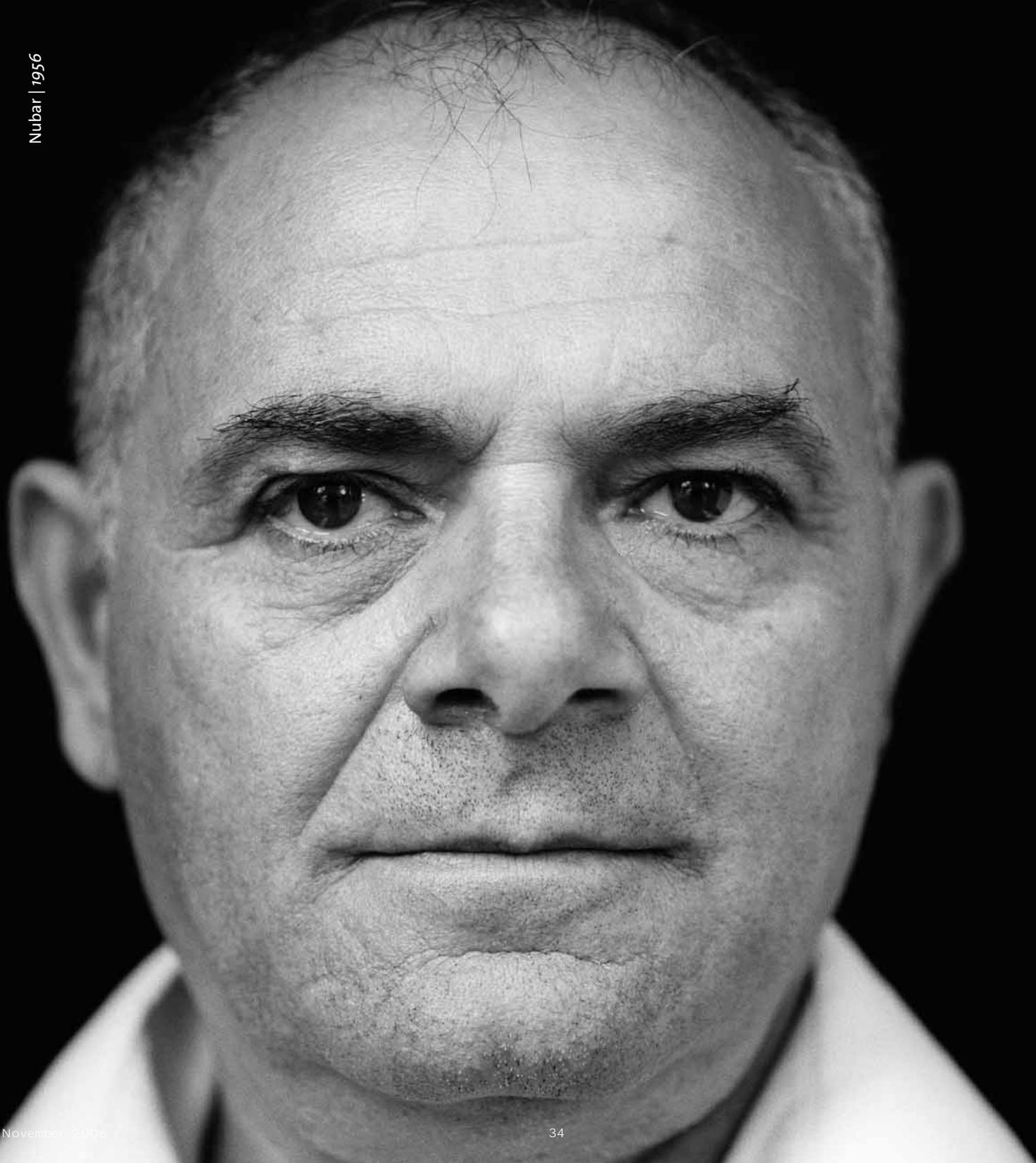
⁷⁴ Loi du 11 juin 2002 relative à la protection contre la violence et le harcèlement moral ou sexuel au travail, *Moniteur belge*, 22 June 2002.

⁷⁵ Law of 17 January 2002.

⁷⁶ Art. 2(4), Directives 2000/43 and 2000/78.

⁷⁷ Court of Cassation, Criminal Chamber, 7 June 2005, no. 04-87354.

In the UK, the legal situation is complex. Instructions, pressure and inducement to discriminate are unlawful acts within anti-discrimination legislation covering race, disability and religion (Northern Ireland only). Enforcement of the provisions on race and disability in Great Britain is, however, reserved to the relevant equality bodies: the Commission for Racial Equality and the Disability Rights Commission. An individual victim cannot bring an action to challenge instructions to discriminate. Moreover, new legislation on discrimination on the grounds of sexual orientation and religion or belief does not include any specific provision forbidding instructions to discriminate.



chapter 4

The reasonable accommodation duty

The Employment Equality Directive places employers under a duty to 'take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer.'⁷⁸ This obligation did not previously exist in the majority of Member States and it represents one of the more novel elements of the Directives. This may be reflected in the patchy implementation of this part of the Employment Equality Directive.

The reasonable accommodation duty has not been included in national legislation in Estonia, Italy and Poland. In Hungary, the legal duties are stronger in respect of persons already employed than those in respect of persons seeking employment.

The following states have legal provisions that approximate to the reasonable accommodation duty found within the Directive: Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Ireland, Latvia, Lithuania, Luxembourg (draft law), Malta, Netherlands, Portugal, Slovakia, Slovenia, Spain, Sweden and the UK. These vary considerably between those which provide a basic duty, with little elaboration on how this should be implemented (e.g. Lithuania), to states with more extensive guidance on its practical application (e.g. the UK). In general, there is very little case-law in this area, so it is difficult to anticipate how the key concepts will be applied in practice.

Whilst the definition of the duty varies, it is commonly subject to the limitation that it should not create a 'disproportionate burden' for the employer: Austria, Belgium, Cyprus, France, Germany, Ireland, Latvia, Lithuania, the Netherlands, Portugal, Slovakia and Spain. In Malta, a reasonable accommodation should not unduly prejudice the operation of the trade or business run by the employer.⁷⁹

The preamble of the Directive provides an indication of the criteria to be taken into account in determining the reasonableness of a particular accommodation. Recital 21 identifies three issues to consider and these are often included in national legislation or case-law:

- the financial and other costs entailed: Cyprus, Finland, France, Germany, Ireland, Malta, Spain, the UK;
- the scale and financial resources of the organisation or undertaking: Austria, Cyprus, Finland, Ireland, Malta, Slovakia and the UK;
- the possibility of obtaining public funding or any other assistance: Austria, Cyprus, Finland, France, Germany, Ireland, Malta, the Netherlands, Portugal, Spain, Slovakia and the UK.

In some states, there are additional criteria included in the national legislation. For example, in Malta, it is relevant to consider the number of employees requiring the accommodation.⁸⁰ In Cyprus, the financial situation of the state can be taken into account in cases against the state, as well as the socio-economic situation of the disabled person.⁸¹ In the Netherlands, the legislation does

⁷⁸ Art. 5, Directive 2000/78.

⁷⁹ Art. 7(4), Equal Opportunities (Persons with Disability) Act, 2000.

⁸⁰ Ibid.

⁸¹ Section 9(2), Law 127(I)/2000.

not specify how to make the assessment of reasonableness, but the explanatory memorandum proposed that it is judged by reference to whether the measure is: (a) appropriate, (b) necessary and (c) proportionate in respect of the employer. In Sweden, the employer is under a duty to do that which 'may reasonably be required'⁸²

Whether failure to provide a reasonable accommodation is to be treated as a form of unlawful discrimination is often an area of ambiguity within national legislation (e.g. Cyprus, Hungary, Latvia, Slovenia). In Greece, a breach of the duty is not treated as discrimination. In Lithuania, the duty is theoretically enforceable by an individual, but this has not yet been tested in court.

In France, a failure to meet the duty is unlawful discrimination; it is not specifically treated as either direct or indirect discrimination. In Sweden, failure to provide a reasonable accommodation is linked to the concept of direct discrimination. If a reasonable accommodation can remove the effects of a person's disability, then it will be direct discrimination for the employer to take their disability into account.⁸³ In contrast, failure to provide a reasonable accommodation is treated as indirect discrimination in Austria,⁸⁴ Slovakia⁸⁵ and Spain.⁸⁶ Alternatively, in the UK, failure to provide a reasonable accommodation is defined as a specific form of discrimination.⁸⁷

There are very few examples of reasonable accommodation duties applying beyond the ground of disability. In Sweden, there is a duty on employers to adopt active measures to make the workplace more inclusive of persons with different ethnic and religious backgrounds.⁸⁸ In Spain, reasonable accommodation duties arise in respect of certain religions which have concluded Co-operation Agreements with the state (evangelical religions, Judaism, Islam). These agreements make provision for accommodating religious holiday requirements and respecting different rest days. Although the reasonable accommodation duty is limited to disability in Irish law, case-law from the Equality Tribunal has implied a duty on employers to make accommodations for migrant workers. In *Campbell Catering v Rasaq*,⁸⁹ the Labour Court emphasised the need for extra steps to be taken when migrant workers were the subject of disciplinary proceedings in the workplace. The employer needed to ensure that the worker understood the situation and had adequate facilities to prepare their defence to any complaint.

In Flanders, the definition of reasonable accommodation found in the Employment Equality Directive is incorporated into the law, but it has not been restricted to the disability ground.⁹⁰

⁸² Section 6, Disability Discrimination Act 1999.

⁸³ Sections 3 and 6, Disability Discrimination Act 1999.

⁸⁴ Section 7c, Act on the Employment of People with Disabilities.

⁸⁵ Section 7, Anti-discrimination Act 2004.

⁸⁶ Art. 37.3, Law 13/1982 on the social integration of the disabled (as amended).

⁸⁷ Section 3A(2), Disability Discrimination Act 1995.

⁸⁸ Section 4, Ethnic Discrimination Act 1999.

⁸⁹ ED/02/52, Determination No. 48, 23 July 2004.

⁹⁰ Art. 5(4), Decreet houdende evenredige participatie op de arbeidsmarkt, 8 May 2002.



chapter 5
The personal and material scope
of national provisions

A. Personal scope

The Racial Equality Directive and Employment Equality Directive are applicable to all persons. This implies that national anti-discrimination laws should apply to all persons on a Member State's territory irrespective of whether they are EU or third country nationals. On the whole, protection against discrimination on any of the Directives' grounds in the Member States is not conditional on nationality, citizenship or residence status.⁹¹

Recital 16 of the Racial Equality Directive states that it is important to protect all natural persons against discrimination and that Member States should also provide, where appropriate and in accordance with their national traditions and practice, protection for legal persons where they suffer discrimination on grounds of the racial or ethnic origin of their members. The Employment Equality Directive does not have an equivalent recital, however there is no reason why both natural and legal persons should not be understood under the term 'persons' in that Directive as well. In most countries both natural and legal persons are protected against discrimination. Where the law does not expressly distinguish between the two, this is assumed, as for instance in Latvia and Greece. Legal persons remain categorically unprotected in Lithuanian and Swedish law,⁹² and in Austria the wording of the legislation implies that protection against discrimination is provided for natural persons only, while in Estonia local legal tradition implies that only natural persons can be recognised as victims of discrimination.

Neither Directive indicates whether the Directives should be understood as making both natural and legal persons liable for discriminatory acts. Nor do they provide who exactly should be held liable for discriminatory behaviour. This issue is discussed above in relation to harassment. The question of liability is particularly relevant in cases of discrimination in employment, as often the employer carries responsibility for the actions of his or her employees, for example for discrimination against a client or for harassment by one employee against another. In Ireland⁹³, the Netherlands⁹⁴ and Sweden, the anti-discrimination legislation is directed at employers and usually the person who actually acted in a discriminatory way cannot be held personally liable. In contrast, in Lithuania and Spain liability for discrimination is personal and only the person who has acted in a discriminatory way is liable under the law, not the employer or service provider.

⁹¹ In France the principle of equality is applicable to non-nationals unless the legislator can justify a difference in treatment on the basis of conditions of public interest, cf Constitutional Council, January, 22, 1990, 296 DC, R.F.D.C. no. 2 1990, obs Favoreu.

⁹² In Sweden this issue is currently being considered by a public Discrimination Investigations Committee.

⁹³ Most provisions of the Irish Employment Equality Act 1998-2004 are aimed at the employer and no clear provision is made to enable actions against the perpetrator(s) of discrimination. Exceptions are section 14 of the Act, which refers to liability being imposed on the person responsible for procuring or attempting to procure discrimination, and section 10 which refers to liability being imposed on a person who displays discriminatory advertising.

⁹⁴ Dutch legislation in the field of employment is directed towards employers, employers' organisations, organisations of workers, employment offices, public job agencies, professionals, training institutions, schools, universities etc.

It is less common to make employers liable for the actions of third parties such as tenants, clients or customers who discriminate against their employees. In Portugal, for instance, employers and services providers can only be held liable for actions of third parties where a special duty of care is imposed by law or where a special relationship can be established, for example sub-contractors⁹⁵. Similarly, in the Netherlands, records of Parliamentary debates are thought to make clear that the Dutch legislator did not intend the anti-discrimination legislation to be enforceable against a colleague or a third party on the basis that there is no contract or relationship of authority between the parties.⁹⁶

Trade unions and other trade or professional organisations are not usually liable for the discriminatory actions of their members.

B. Material scope

Article 3(1) of both Directives lists the areas in which the principle of equal treatment must be upheld. Four sections are common to both Directives and therefore all five grounds of discrimination: conditions of access to employment, self-employment or an occupation, including selection criteria and recruitment; access to all types of vocational training and guidance, including practical work experience; employment and working conditions, including dismissals and pay; and membership or involvement in workers' organisations, employers' organisations and professional organisations. The Racial Equality Directive extends the scope of protection against discrimination on the grounds of racial or ethnic origin to social protection, including social security and healthcare, social advantages, education, and access to and the supply of goods and services that are available to the public, including housing.

The relationship with constitutional provisions is complex. In the majority of Member States constitutional equality guarantees apply generally, thus theoretically covering the material scope of the Directives in at least the public sector. However it is highly unlikely that constitutional provisions alone sufficiently transpose the Directives. Where Protocol 12 to the European Convention on Human Rights, which contains a general prohibition of discrimination by the State on an open number of groups, is applicable in national law, e.g. Cyprus and Finland, the scope of national law is broad, at least in relation to the public sector (in Cyprus Protocol 12 has general application beyond public law). In terms of concrete legislative provisions, however, most countries are far more restrictive and exhaustively list the areas in which the discrimination legislation applies.

The respective country experts in the European Network of Legal Experts in the non-discrimination field are generally satisfied that the scope of the Directives is met in Austria (with the exception of some provincial legislation), Cyprus, Denmark, Finland, France, Hungary, Ireland, Italy, the Netherlands, Portugal, Slovakia, Slovenia and Spain. The scope of Belgian law remains

⁹⁵ Article 617(2) of Labour Code.

⁹⁶ Explanatory Memorandum to the Act on Equal Treatment on the ground of Age in Employment, Occupation and Vocational Training (Act on Equal Treatment on the ground of Age in Employment), Second Chamber of Parliament, 2001-2002, 28 170, nr., 3, p.19.

incomplete because of gaps in the regions' and communities' legislation (with regard to vocational guidance and training and protection in employment for the personnel of the Regions and Communities and education).

To fulfil the Directives' requirements, national anti-discrimination law must apply to the public and private sectors, including public bodies. Not all Member States currently meet this requirement. In Malta, the Directives have been implemented in employment legislation for the private sector only; only more general provisions in the Constitution and European Convention Act apply to the public sector. The same is broadly true of Estonia. But, as is pointed out in Latvia where equal treatment in the civil service is also only covered by the Constitution, even if the equal treatment principle applies, the norms for enforcement such as the burden of proof are lacking. Amendments to apply the same protection as is available under the Latvian Labour Law to civil service relationships have been drafted. In Portugal the equality and non-discrimination provisions of the Labour Code currently apply to both private employment and public sector employees and will continue to do so until different specific regulations are adopted for the latter (Article 1(2) of Law 35/2004).

In contrast, in Hungary not all private actors are covered by the Equal Treatment Act of 2003. The Hungarian legislator took a unique approach among the EU Member States, in that it does not enumerate the fields falling under its scope, but instead lists the public and private entities which must respect the requirement of equal treatment in all their actions. These are mostly public bodies and include state, local and minority self-governments, public authorities, the army, the police, prison services, border guards, public foundations and associations, bodies providing public services, schools and universities, persons and institutions providing social and child protection services, museums, libraries, private pension schemes, voluntary mutual insurance schemes, health service providers, political parties and other organs funded by the central budget (Article 4). Four groups of private actors are listed (Article 5): (i) those who offer a public contract or make a public offer; (ii) those who provide public services or sell goods; (iii) entrepreneurs, companies and other private legal entities using state support; and (iv) employers and contractors.

Equality must be guaranteed in all sectors of public and private employment and occupation, including contract work, self-employment, military service and statutory office. A number of countries fall short of this protection. Military service is not included in the scope of Latvia's or Greece's legislation transposing the Directives, while in the Netherlands, the Age Discrimination Act does not yet apply to military service (it must do by 1 January 2008 at the latest). In the Czech Republic, Estonia, Greece, Latvia, Lithuania, Malta, Portugal, Sweden and the United Kingdom, self-employment and/or occupation are not fully covered. Maltese law does not apply to military personnel or to persons who work or perform services in a professional capacity or as a contractor for another person where the work or service is not regulated by a specific contract of service. With respect to persons who hold statutory office, the Act will only apply if the person concerned has a contract of employment.

Estonian law only applies to employment contracts, and as a result does not regulate the work of those working under other arrangements including the self-employed and public officials. Similarly, Czech law does not yet apply to self-employment, occupation or contract work and applies only partially to public employment. In the Netherlands the term "liberal profession" has been used instead of self-employment and will have to be broadly interpreted in order to guarantee that not only doctors, architects etc. are covered, but also freelancers, sole traders, entrepreneurs etc.

Other identified gaps in protection in the employment field include the lack of reference to 'working conditions' in Swedish law: only 'employment conditions' are expressly included, implying a more limited scope covering conditions which are regulated by an employment contract but not the circumstances in which work is carried out. The government has dismissed amendment proposals arguing that the protection is enough to implement the Directives. Latvian law does not prohibit discrimination on the grounds of age, disability or sexual orientation in vocational guidance or training in civil service. Lithuanian legislation does not cover membership of or involvement in employers' and employees' and professional organisations, in Estonia there are no special provisions regarding access to membership of workers' organisations, and in Latvia, the membership and involvement of professional organisations is omitted.

As already noted, the Czech Republic, Estonia, Latvia, Malta and Poland have yet to adequately transpose the Racial Equality Directive beyond the employment sphere. In Latvia however, a new Law on Social Security prohibits differential treatment on the grounds of race in the field of social protection within the public sphere. Services provided by the private sphere are not covered. The law similarly prohibits discrimination on grounds of race as far as social security and social services provided by the state are concerned. Unclear is whether access to housing is covered and also the extent to which such services provided by private actors are covered. Other laws ensure racial discrimination is outlawed to some extent in education, but not in access to goods and services. In Ireland it is questionable whether social protection, social advantages and education are covered by the scope of the Equal Status Act 2000-2004. Lithuanian law does not cover social protection or social advantages.

Article 3(3) of the Employment Equality Directive provides that the Directive's scope does not extend to 'payments of any kind made by state schemes or similar, including state social security or social protection schemes'. This exception is not found in the Racial Equality Directive, which in contrast lists 'social protection' in its scope (Article 3(1)(e)). Some Member States have reproduced Article 3(3) of the Employment Equality Directive in their anti-discrimination legislation, e.g. Finland, Greece and Cyprus. However, in all of these countries it is likely other laws would protect against discrimination in social security and healthcare. Relying on Article 3(3), the Italian Decree transposing Directive 2000/78 provides that its content shall be without prejudice to the provisions already in force relating to social security and social protection, however the Immigration Act 1998 protects also against religion and nationality discrimination in this area. Other Member States have not expressly included Article 3(3) in their legislation, but nevertheless do not appear to protect against discrimination in social protection on other grounds than racial and ethnic origin, e.g. Malta and Portugal.

In Luxembourg the new composite bill drafted to transpose the Directives uses the exact wording of the Directives in terms of the material scope, including the exception in Article 3(3) of the Employment Equality Directive. It prohibits discrimination based on all grounds in all areas covered by the Directives.

The term “social advantages” is mostly left undefined in national legislation. In the Netherlands it is observed by the government in the Explanatory Memorandum to the General Equal Treatment Act that this notion must be interpreted in the light of ECJ case law rendered in the context of Regulation 1612/68 on free movement of workers.⁹⁷ In the Dutch government’s view, the notion of social advantages refers to advantages of an economic and cultural kind which may be granted by both private and public entities. These may include student grants, public transport reductions and reductions for cultural or other events. Advantages offered by private entities are, for example, reductions for entry to the cinema and theatre.

In Sweden discrimination related to education is only prohibited in higher education.⁹⁸ However, a bill is currently before Parliament which, if introduced will prohibit discrimination on grounds of sex, ethnic origin, religion or other belief, sexual orientation and disability and other degrading treatment of children and school pupils. The bill applies to pre-school facilities, school-age childcare, primary and secondary school and municipal adult education. It will also cover pupils who are harassed or have their dignity violated by other pupils or the school’s personnel.

In the majority of Member States issues arise in relation to discrimination in education of children from racial and ethnic minorities. Of particular concern is the segregation of Roma children which constitutes one of the most widespread manifestations of discrimination against Roma. There are Roma in all Member States with the exception of Luxembourg and Malta. In the Czech Republic, Hungary, Slovakia, Poland and Latvia a disproportionate number of Roma children attend remedial ‘special’ schools for mentally disabled children and are thereby segregated from the mainstream school system and receive an inferior level of education which affects their life-chances.

Segregation of Roma also occurs in some mainstream schools by virtue of the existence of segregated classes. This is the case in Denmark, Finland, Greece, Hungary, Latvia, Poland, Slovenia and Slovakia. In Poland there are a number of segregated “Romani classes” or Remedial Classes” which follow a special curriculum. The initial aim of the classes was to teach children Polish for three years to enable them to follow the standard curriculum, but in practice all Roma pupils were directed to the classes irrespective of their language ability. In Slovakia “zero-grade” classes have been established for children who are not expected to be able to absorb the standard curriculum as a result of the social and linguistic environment they come from. Such classes have however only been implemented in schools with Roma pupils. In Finland Roma are more often channeled into special education classes

⁹⁷ E.g. ECJ Case C-261/83 *Castelli* of 12 July 1984 and Case C-249/83 *Hoecx* of 27 March 1985, as referred to in the Dutch explanatory memorandum to the EC Implementation Act, Second Chamber of Parliament 2002-2003, 28 770, nr. 3, p.15.

⁹⁸ 2001 Student at Universities Act, on grounds of ethnic origin, religion or belief, sex, sexual orientation and disability.

than other pupils. The UK and France have legislation expressly prohibiting segregation in schools between persons of different racial or ethnic groups but harbour concerns about *de facto* segregation arising as result of residential patterns.

There are only a few instances where segregated classes have been challenged under the national legal systems. In Denmark the local municipality of Elsinor set up segregated classes for Roma children justifying their decision on the basis of attempting to ensure their regular attendance at school. This was found to be illegal by the European Commissioner for Human Rights and the Complaints Committee of the Danish Institute for Human Rights. The municipality has since dismantled the classes and allowed the Roma children back into ordinary classes. In Finland there has been one case where *de facto* segregation in a school was successfully challenged. In Greece intervention of the Ombudsman was necessary to ensure public authorities in the Peloponnese provided temporary classrooms for Roma children who had been excluded from a school on the basis that the building facilities were insufficient.

In many Member States including Belgium, Cyprus, Finland, Lithuania and Poland school absenteeism and disproportionately high drop out rates are serious issues among the Roma, Sinti and Traveller communities. In Lithuania a survey conducted by the Human Rights Monitoring Centre found that the majority of Roma children do not attend school.

In a large number of Member States residential patterns also lead to a high concentration of Roma children (e.g. Cyprus, Hungary, Slovakia), or children of particular ethnic minorities (e.g. UK, France and the Netherlands) in certain schools, resulting in so-called 'ghetto schools'. These schools follow the same curriculum but the quality of the education and material conditions of the buildings is often inferior. Some states are considering attempts to try and remedy this form of *de facto* segregation. In the Netherlands many school boards or local governments have designed or want to design plans to ensure a spread of children from different cultural backgrounds across all schools through the use of housing and education policies to prevent the emergence of "black or ghetto schools."

There have been several attempts by governments to address the segregation of Roma pupils.⁹⁹ In Hungary the experience has been that measures aimed at the integration of socially disadvantaged pupils and students strongly promote the integration of Roma students without raising the difficulties stemming from problems of definition and identification and without intensifying potential ethnic tensions.

The Racial Equality Directive prohibits discrimination concerning access to and supply of goods and services, including housing, that are available to the public. The boundaries of this prohibition generated debate in many countries, and most Member States do indeed restrict protection to publicly available goods and services. Exceptions are Cyprus, France, Italy, Slovenia and Spain,

⁹⁹ For a discussion of some of these measures, see the section on positive action measures.

where the law does not distinguish between goods and services available to the public and available privately and it is thus presumed to apply to both. A few legislatures provided definitions to delineate the circumstances in which discrimination is prohibited. In Belgium the *travaux préparatoires* of the law clarify that discrimination is prohibited wherever goods or services are offered on the market, in other words, not reserved to a closed circle. Swedish law prohibits discrimination in goods and services, including housing, which are professionally provided, and thus the law does not apply to private transactions, for example where a private individual refuses to sell a flat to an individual on the ground of one of the characteristics listed. A Swedish governmental committee is currently considering whether private individuals should be covered by the 2003 Prohibition of Discrimination Act and will report on its work on 31 January 2006.

The Finnish Non-Discrimination Act covers the “supply of or access to housing and movable and immovable property and services on offer or available to the general public other than in respect of relationships between private individuals.” Thus for example bank and insurance services, transportation services, repair services, and the selling and hiring of premises for business are covered. Significantly, the *travaux préparatoires* provide that the powers of the European Community and the basis of the Directives have to be taken into account when interpreting this provision. Legislation for the aspects falling under jurisdiction of the Åland Islands prohibits discrimination in the “professional” (not strictly private) provision of goods and services, including housing. Portuguese law provides that private associations have the right to reserve goods and services only to their members. Neither Slovenian nor Latvian law expressly cover housing.

Many Member States have maintained the diverging scope of the two Directives, only expressly outlawing discrimination in social protection, social advantages, education and goods and services available to the public in relation to racial and ethnic origin discrimination. However, a number of Member States provide the same protection also for other grounds of discrimination, if not all grounds, going well beyond the requirements of the Directives. The following illustrates areas in which Member States exceed EC law provisions:

- Whereas in Austrian federal legislation the distinction between the two Directives’ scope is maintained, in some provincial legislation it is levelled up: the Viennese, Carinthian and Burgenland Anti-discrimination Acts protect against discrimination in social protection, social advantages, education and goods and services including housing on all of the Directives’ grounds (in Vienna not disability). As the provinces are extremely important landlords, this is a very significant regulation.
- In Belgium all grounds of discrimination are legislated equally in the 2003 Federal Law, whose scope includes a series of circumstances not listed in the Directives’ material scope, e.g. access to, participation in and the exercise of any economic, social, cultural or political activity normally accessible to the public.
- The Czech Republic’s draft law provides the same protection for all of the Directives’ grounds.
- Denmark extends the prohibition of discrimination outside employment to religion or belief and sexual orientation.
- The Finnish Non-discrimination Act prohibits discrimination in access to training/education on a wide variety of grounds, including age, ethnic or national origin, nationality, language, religion, belief, opinion, health, disability and

sexual orientation and “other personal characteristics”¹⁰⁰ The Finnish Parliament has passed a motion requiring the government to prepare a new proposal for equality legislation to level up protection across the grounds in terms of scope and enforcement mechanisms.¹⁰¹ New draft legislation is required to take as its point of departure the principle that all discrimination grounds are to be treated equally.

- In France the general principle of equality in public service guarantees equal treatment in social protection for all grounds. Also, all grounds are protected in goods and services, including housing.
- Hungarian law has practically unlimited material scope, treating all grounds of discrimination equally.
- Irish law has equal material scope for 9 grounds of discrimination.
- The scope of the Italian Immigration Act 1998 is open ended and thus in relation to the racial, ethnic, religious and nationality discrimination covers the full scope of the Racial Equality Directive and more.
- In Latvia differential treatment on the grounds of race, colour, gender, age, disability, health condition, religious, political or other conviction, national or social origin, property or family status or other circumstances (sexual orientation as a prohibited ground is not expressly listed) is covered in the field of social protection within the public sphere and social security and social services provided by the state.
- Lithuanian law prohibits discrimination on all grounds in education and goods and services.
- In Slovakian law, the right to health care is guaranteed equally to every person irrespective of religion or belief, marital or family status, colour, language, political or other opinion, trade union activities, national or social status, disability, age, property or other status, including sex, and racial or ethnic origin. The Anti-discrimination Act prohibits discrimination in housing on the grounds of gender, racial, national or ethnic origin. Discrimination in the field of public procurement is also unlawful: the Public Procurement Office can reverse the decision of a contracting authority if discrimination is proven.¹⁰²
- In Slovenia, all of the Directives' grounds and other grounds enjoy protection against discrimination in the field of social protection, social advantages, education and goods and services.
- Spanish law prohibits discrimination in social advantages also on the grounds of religion or belief, disability and sexual orientation.
- In Sweden, discrimination is prohibited in social assistance and social security, including unemployment benefits and health and sickness benefits in kind on the grounds of ethnic origin, religion or belief and sexual orientation. Discrimination in goods and services is prohibited on all these grounds plus disability.

¹⁰⁰ The Act has a limiting clause however: section 3 provides that the Act does not apply to the aims or content of education or the education system. According to the *travaux préparatoires*, this takes into account Article 149(1) of the EC Treaty, which states, *inter alia*, that the Community shall fully respect the responsibility of the Member States for the content of teaching and the organisation of education systems.

¹⁰¹ PTK 107/2003 vp, p.7, TyVM //2003 vp.

¹⁰² The details are provided for in Act No. 523/2003 Coll. on Public Procurement.

- In the UK, discrimination on the grounds of race, national or ethnic origin, nationality and colour is prohibited in all forms and levels of education. Religion or belief and sexual orientation discrimination is outlawed in further and higher education. Disability discrimination is outlawed in schools. Discrimination on grounds of disability in goods, facilities and services is prohibited (in Northern Ireland also on grounds of religion or political opinion).
- In Great Britain the Equality Act 2006 prohibits discrimination on the grounds of religion or belief in the areas of access to and provision of education (subject to exceptions), the provision of goods and services, and in the performance of public functions by public authorities (believed to cover social protection, including healthcare and social security). These provisions are expected to come into effect in October 2006. The Act also enables regulations to be enacted to extend the above protection to discrimination on grounds of sexual orientation.
- In Great Britain, from December 2006 public authorities will be subject to positive duties to promote equality of opportunity on the grounds of disability in addition to the existing duty in respect of race. From this date they will have to assess whether their employment policies comply with anti-discrimination law, and whether these policies should be altered to ensure a greater degree of equality of opportunity. There is a positive duty on public authorities in Northern Ireland with a similar effect across all equality grounds.



chapter 6

Exceptions to the principle of equal treatment and positive action

The Directives are based on a dichotomy between direct discrimination, which cannot be justified, and indirect discrimination, which is open to objective justification. Age discrimination is the only exception to this rule; here, direct discrimination can also be justified. This approach has been complied with in most states, however, there are some states where national law continues to permit the justification of direct discrimination (e.g. Belgium, Hungary, Poland). This does not appear to be compatible with the requirements of the Directives.

Whilst the Directives are based on the principle that direct discrimination cannot be justified, this is balanced by the inclusion of some specific exceptions. Some of these apply to all grounds of discrimination (e.g. genuine occupational requirements), whereas some are ground-specific (e.g. employers with a religious ethos). This section will examine the implementation of each of these exceptions.

The Directives also permit positive action to be taken in certain circumstances. This is not an exception to the principle of equal treatment. On the contrary, these are measures which are necessary to ensure 'full equality in practice'. Both the exceptions and positive action are optional elements for national law and practice. States are not required to include any or all of the possible exceptions, nor are they obliged to permit positive action.

A. Genuine and determining occupational requirements

Article 4 of the Racial Equality Directive and Article 4(1) of the Employment Equality Directive allow Member States to 'provide that a difference of treatment which is based on a characteristic related to [racial or ethnic origin, etc.] shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.' The majority of Member States - Austria, Belgium, Cyprus, the Czech Republic, Denmark, Finland, Germany (draft law), Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg (draft law), Malta, Poland, Portugal, Slovakia, Spain, Sweden and the United Kingdom - have chosen to allow for such exceptions to the principle of equal treatment for all grounds covered by the Directives. Many have literally adopted the Directive's wording, but among those Member States which differ from the Directive's wording are many that risk taking the exception beyond what the Directives permit.

For example, Estonia's provision on genuine occupational requirements, which allows employers to make requirements only with regard to age and disability and not the other grounds of the Directives, does not expressly refer to the legitimate aim or the principle of proportionality of the occupational requirement. Poland's provision transposing Article 4(1) is broader than the Directive. This provides that the principle of equal treatment in employment is not violated by non-employment of a person on the basis of one or more grounds listed in the discrimination definition, if it is justified on account of the type of work, working

conditions, or occupational requirements laid down for employees.¹⁰³ Slovenian legislation lists occupational activities in which a distinction on the grounds of religion, sex, age and disability is permitted, including the army, police and judiciary.

Judicial application of the laws will be key for testing the breadth of national exceptions. For example, the substitution of the requirement of 'legitimate objective' with 'reasonableness' in the Italian law has been criticised for being broader than the Directives, but it may well be that the courts will hold the meaning to be the same. Italian law is also criticised for taking the genuine and occupational requirement too far by permitting 'work suitability tests' for the grounds of religion or belief, age, disability and sexual orientation. These remain unaffected by the anti-discrimination law and clearly can be discriminatory in admissions to specific occupations.

France has not included the occupational requirements exception on the basis that the Constitution requires that no provision in French law may create inequality of treatment on the basis of origin. The explanatory memorandum to the Austrian legislation demands that this exception be interpreted narrowly and gives the example of an actor or actress affiliated to a certain ethnic group. It also states that this exception covers health and safety considerations, especially protective provisions regulating a duty to wear uniforms or helmets for reasons of safety.

The Netherlands only provides for the genuine and occupational requirement exception for a person's racial appearance, as opposed to a characteristic related to racial or ethnic origin.¹⁰⁴ However, the exception goes beyond employment situations: the General Equal Treatment Act does not apply 'in cases where a person's racial appearance is a determining factor, provided that the aim is legitimate and the requirement is proportionate to that aim'.¹⁰⁵ The permitted exceptions are exhaustively elaborated in a 1994 governmental decree.¹⁰⁶ Dutch law does not permit such exceptions for religion or belief, disability or sexual orientation. They may be permitted in age discrimination, but this would be treated instead as an objectively justified case of direct discrimination.

¹⁰³ Art. 183b para 2 point 1, Labour Code

¹⁰⁴ Article 2(4)b General Equal Treatment Act, as inserted by the 2004 EC Implementation Act.

¹⁰⁵ Article 2(4)a General Equal Treatment Act, as amended by 2004 EC Implementation Act. Prior to the 2004 amendment employment situations were covered by this general clause.

¹⁰⁶ *Besluit Gelijke Behandeling* van 18 Augustus 1994, Stb 657 (Governmental Decree on Equal Treatment of 18 August 1994, Law Gazette 657): a. The profession or activity of actor, dancer or artist insofar that the profession or activity regards the performance of a certain role; b. Mannequins, models for photographers, artists etc., insofar as requirements can reasonably be imposed upon outer appearances; c. Participation in beauty contests insofar as appearances connected with a person's race, are vital in the light of the contest's aims; d. The provision of services that can only be provided to persons having certain outer appearances.

B. Employers with an ethos based on religion or belief

Under Article 4(2) of the Employment Equality Directive, Member States can maintain national legislation or practices that existed before the adoption of the Directives which allowed churches and other public or private organisations, whose ethos is based on religion or belief, to treat persons differently on the basis of their religion or belief. Such different treatment shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitutes a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos. This exception only allows for different treatment on the grounds of religion or belief, and cannot be used to justify discrimination on another ground, for example sexual orientation.

At the outset, it is important to distinguish between national legislation that does not apply to employment within religious organisations and national legislation which does apply, but provides certain exceptions. In some states, employment by an organised religion (e.g. as a priest) does not fall within the scope of anti-discrimination law, or labour law in general (e.g. Czech Republic, Latvia, Lithuania). In other states, general labour law provisions may apply, but these are balanced with obligations to respect the autonomy of organised religions (e.g. Germany).

When implementing the Directive, not all Member States chose to include the Article 4(2) exception: the Czech Republic, Estonia, France, Lithuania, Slovenia and Sweden. It has not been expressly implemented in Portuguese law, however, it is lawful practice for religious entities to dismiss any worker who does not conform to their professed religion or stated beliefs or religious ethos in general). Austria, Cyprus, Denmark, Germany (draft law), Greece, Hungary, Italy, Ireland, Latvia, Luxembourg (draft law), Malta, the Netherlands, Poland, Slovakia and the United Kingdom do have provisions implementing Article 4(2). In contrast, the Finnish legislator intended Article 4(2) situations to be covered by the more general genuine and determining occupational requirement provision.¹⁰⁷

There are concerns in several states that the exceptions based on Article 4(2) are too wide. The exception in Greek law seems to permit exceptions in respect all persons working for public or private organisations with an ethos based on religion or belief, irrespective of the nature of their activities or the context in which they are carried out. In Italy, the exception appears to apply also to organisations that do not have an ethos based on religion or belief. In Slovakia, the exception for organisations with a religious ethos is believed to be too wide because it allows differences of treatment based on age, sex, religion or belief and sexual orientation. It is also a general exception which religious organisations can apply to any employee, regardless of the nature of the work.

An initial case in Hungary exposed the tensions that can arise between claims based on religious freedom and non-discrimination on grounds of sexual orientation. The Theological Faculty of the Károli Gáspár Calvinist University issued a declaration stating that it did not approve of the education or recruitment of pastors or religion teachers who followed a 'homosexual way of life'. The

¹⁰⁷ Government proposal 44/2003, p. 45

Supreme Court held on 8 June 2005 that it was reasonable to exclude lesbians and gays from theological education given that they might later become pastors.

C. Armed forces and other specific occupations

Recital 18 of the Employment Equality Directive states that the Directive does not require, in particular, the armed forces and the police, prison or emergency services to recruit or maintain in employment persons who do not have the required capacity to carry out the range of functions that they may be called upon to perform with regard to the legitimate objective of preserving the operational capacity of those services. Article 3(4) specifies that Member States may provide that the Employment Equality Directive does not apply to the armed forces in so far as it relates to discrimination on the grounds of disability and age. Member States should thus actively declare an exception for the armed forces on these grounds if they plan to rely on this Article. A few Member States have included an express exemption for the armed forces in relation to both age and disability: France, Greece, Ireland, Malta¹⁰⁸ and the UK. Others have simply maintained age and capability requirements in their regulations on the armed forces without expressly declaring an exemption from the equal treatment principle, e.g. Portugal, Slovenia, and Spain. This exception has not been adopted in Finland, Germany, Hungary, Lithuania, the Netherlands, Portugal or Sweden.

Irish law provides exemptions on the basis of age in respect of the police, prison service or any emergency service.¹⁰⁹ The Czech Republic's laws regulating the armed and security forces (including firemen, customs officers, prison officers and police) do not include the grounds age or disability in their anti-discrimination clauses, implying that such discrimination is permitted. In Slovakia, the Anti-discrimination Act's provisions on disability and age are expressly without prejudice to the regulations on the service of customs officers, members of armed forces, armed security services, armed services, the National Security Office, the Slovak Intelligence Service and the Fire and Rescue Services.¹¹⁰

The Italian Decree transposing the Employment Equality Directive expressly deems as non-discriminatory 'the evaluation of such characteristics [age, disability, sexual orientation, religion or belief] when they are relevant to establish whether a person is suitable to carry out the functions that the armed forces and the police, prison and rescue services can be called upon to carry out'. This exception appears to go further than Recital 18 permits.

¹⁰⁸ This exemption is found in the Legal Notice 461 of 2004. However the armed forces are not excluded from the scope of the Equal Opportunities (Persons with Disabilities) Act

¹⁰⁹ Section 37, Employment Equality Act 1998-2004

¹¹⁰ Section 4, paragraph 1(b) of the Anti-discrimination Act

D. Nationality discrimination

Article 3(2) of both Directives provides that 'the Directive does not cover difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third country nationals and stateless persons on the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.' Nevertheless, in several EU Member States nationality is a prohibited ground of discrimination, including the Netherlands (General Equal Treatment Act), Portugal (Labour Code, Law 134/99, Law 18/2004 of 11 May) and Spain (OL 4/2000). The Hungarian Equal Treatment Act contains an open list of prohibited grounds and nationality discrimination, being prohibited by the Constitution, can be assumed to be covered by the law. In Ireland the statutory definition of race includes nationality, ethnic or national origin.¹¹¹ Nationality as a ground of discrimination is to be distinguished from national origin, which is a prohibited ground, *inter alia*, in Austria, Cyprus and Sweden. Where nationality discrimination is prohibited, it tends to be accompanied by explicit exceptions such as working in certain public sector posts or representing the country in sport.

A number of Member States have express exclusions from the scope of their implementing legislation which apply to: discrimination based on nationality; the entry and residence of third-country nationals and stateless persons; any treatment which arises from the legal status of such persons. Such provisions are found in national law in Cyprus, Greece, Italy, Malta and Luxembourg (draft law).

The legal situation is rather complex in several states. In Italy, nationality discrimination is prohibited under the 1998 Immigration Act, which provides for protection similar to that offered by the Directives. Nevertheless, it is expressly excluded from the decrees transposing the Directives. The relevant provisions of the Immigration Act remain in force despite the subsequent decrees. Similarly, in the UK, the Race Relations Act 1976 prohibited nationality discrimination. Whilst its provisions relating to discrimination on grounds of race, ethnic and national origin have been amended in order to comply with the Racial Equality Directive, the provisions relating to nationality discrimination have not been changed.

There is some concern that the exceptions in Article 3(2) can be used to hide racial or ethnic origin discrimination in the guise of (lawful) nationality discrimination. The current climate in many European countries is one in which 'foreigners' often face discrimination. In Austria, it is pointed out that such cases will be rather difficult to deal with if the exemption for the nationality ground is interpreted broadly by the courts; it is likely that the onus of proof will be mainly on the claimant to show the racist background of the discrimination. In Italy, racial discrimination is often disguised as different treatment of non-EU citizens, which can lead to indirect discrimination on the grounds of ethnic origin.

¹¹¹ Section 6(2)(h) Employment Equality Act 1998-2004

E. Family benefits

Implementation of the Directives comes at a time when an increasing number of Member States are allowing same-sex couples to marry or to register partnerships and to benefit from the same benefits as married couples. Under the Employment Equality Directive, it would at first sight appear that any work-related benefits that are made available to opposite-sex couples should always be available to same-sex couples, as otherwise it would constitute discrimination on the ground of sexual orientation. However, Recital 22 of the Employment Equality Directive states that 'this Directive is without prejudice to national laws on marital status and the benefits dependent thereon.'

It is necessary to distinguish a number of different situations that can arise here. First, there are situations where employment-related benefits are limited to those who are married. This can arise from national legislation; for example, French law provides for holidays on the occasion of getting married.¹¹² Alternatively, marital benefits might be located in collective agreements or remuneration packages offered autonomously by employers. In the Netherlands, Belgium and Spain, same-sex couples can get married, so limiting benefits to married couples does not result in sexual orientation discrimination. In other states, national legislation on the recognition of same-sex partnerships has had the impact of requiring marital benefits to be extended to registered partners. For example, the UK amended the Employment Equality (Sexual Orientation) Regulations in 2005 in order to specify that less favourable treatment of civil partnerships in comparison to marriage was unlawful discrimination.¹¹³ This is not, though, an automatic consequence of same-sex partnership legislation. In 2006, the German Constitutional Court held that it was lawful to restrict supplementary payments to married civil servants and to exclude those in (same-sex) registered partnerships.¹¹⁴ Finally, there are states where discrimination on grounds of civil status or family status is forbidden and this could be used to challenge any distinction between married and unmarried persons in the workplace (Finland, the Netherlands).

There remain, however, many states where reserving workplace benefits to married employees is likely to be regarded as lawful. Italy has expressly incorporated Recital 22 of the Employment Equality Directive into its implementing legislation. In Austria, the explanatory memorandum to the Equal Treatment Act refers to Recital 22, stating that 'discrimination against homosexual partnerships compared to unmarried heterosexual partnerships is prohibited; voluntary social benefits are to be granted to all partnerships or only to married couples. Privileges for marriage remain permissible'. In Ireland, there are express exceptions to the prohibition against discrimination on the grounds of sexual orientation and marital status in the Employment Equality Act 1998-2004 and the Pensions Act 1990-2004. These allow the employer to limit all 'family benefits' to married partners.

¹¹² Article L. 226-1, Labour Code.

¹¹³ Schedule 17, The Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005, S.I. No. 2114.

¹¹⁴ BVerwG, 2 C 43.04, 26 January 2006.

In some states, there is no mention of benefits linked to marriage being exempt from national anti-discrimination law (e.g. Cyprus, Estonia, Greece, Latvia, Lithuania, Luxembourg (draft law), Poland, Portugal or Slovakia). Nonetheless, the opinion of the national reporter in these countries is that courts are likely to uphold the restriction of work-related benefits to married employees. In Latvia, this was underscored by the 2005 amendment of the Constitution to define marriage as a union of man and woman.

F. Health and safety

With regard to disabled persons, Article 7(2) of Directive 2000/78 allows Member States to maintain or adopt provisions on the protection of health and safety at work and measures aimed at creating or maintaining provisions or facilities for safeguarding or promoting their integration into the working environment. Although this provision is rather opaque, some national legislators have interpreted it as permitting health and safety exceptions to non-discrimination on the ground of disability. Such exceptions can be found in states such as Cyprus, Greece, Ireland, Luxembourg (draft law), the Netherlands and Portugal. In Ireland, if a person has a disability that under the given circumstances could cause harm to that person or to others, treating that person differently to the extent reasonably necessary to prevent such harm does not constitute discrimination.¹¹⁵

In the UK, the Disability Discrimination Act 1995 does not include specific exceptions for health and safety reasons, but an employer may cite such considerations as justification for less favourable treatment relating to disability.¹¹⁶ In Finland, health and safety concerns may be taken into consideration when assessing whether the measures needed to accommodate a person's disability are to be deemed reasonable: the *travaux préparatoires* to the Non-discrimination Act indicate that measures would not be considered reasonable if they would change the operation of the workplace too much and would at the same time endanger occupational safety and health.

G. Exceptions related to discrimination on the ground of age¹¹⁷

The Employment Equality Directive permits national law to include a range of exceptions in relation to both direct and indirect age discrimination. Article 6(1) states: 'Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.' It then lists examples of differences which could be allowed, including the fixing of minimum

¹¹⁵ Section 4(4) Equal Status Act 2000-2004.

¹¹⁶ *Jones v Post Office* [2001] IRLR 384.

¹¹⁷ See further: C O'Conneide, 'Age Discrimination and European Law', available at: <http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/05agedis_en.pdf>. Some of the findings of this study are reproduced in this section.

conditions of age, professional experience or seniority for access to employment or access to certain advantages linked to employment. Under Article 6(2), Member States may provide that ages can be fixed for admission to occupational social security schemes or entitlement to retirement or invalidity benefits, as long as this does not amount to sex discrimination.

Several Member States have simply inserted the text of Article 6 into national law, including Austria, Cyprus, Germany (draft law), Greece, Malta, Portugal¹¹⁸ and Slovakia. France, Finland, Ireland, Italy, Luxembourg (draft law), Slovenia and the UK have provisions that resemble all or part of Article 6.

Direct discrimination on any ground can be justified in Hungary and Latvia, so there is no additional justification test relating specifically to age discrimination. Dutch law does not distinguish between direct and indirect age discrimination, allowing objective justification for any kind of age discrimination. In Poland, direct discrimination on any ground can be justified in the Labour Code, but this is combined with age-specific exceptions.

Article 6(1)(b) of the Employment Equality Directive expressly allows laws which seek to promote the vocational integration or protection of young people, older workers and persons with caring responsibilities; such laws are very common in the EU Member States. Almost every Member State has some legislation which aims to protect young employees, for instance, Estonia, Finland, France, Hungary, Ireland, Malta, Poland, Portugal, Slovakia and Slovenia. Hungary also has special measures for carers, including protection against dismissal for persons with caring responsibilities for a child or close relative. In Lithuania, persons accorded additional guarantees in the labour market include persons in the 16-25 age group in their first job, persons with less than five years until their entitlement to old age pension, and single parents caring for children under eight years of age.¹¹⁹ In Latvia, in selecting persons to avoid redundancy, priority is given *inter alia* to persons caring for a child under 14 years or a disabled child under 16, persons with at least 2 dependant persons, and persons who have less than five years until they reach the age of retirement.¹²⁰ The Slovenian Employment Relations Act provides that the temporary absence of a worker for reasons of caring for a family member or a disabled person cannot be a criterion for determining who should be made redundant. In Denmark, the government has recently proposed to make lawful different treatment of persons under 18.

Minimum and maximum age requirements, in particular in access to employment, seem to be widely permitted. These can be described as direct age requirements, whereas a required number of years of experience constitutes an indirect age requirement. The Czech Republic has examples of both direct age requirements (minimum age requirements for employment and self-employed activity and maximum age limits set for certain professions) and indirect age requirements (conditions of pay

¹¹⁸ Art. 33(4) of Law 35/2004 provides that legal rules or collective agreements permitting any such measures must be periodically evaluated and modified if they are no longer justifiable.

¹¹⁹ Art. 92 part 2 Employment Code.

¹²⁰ Art.108 Labour Law.

dependent on years of experience, requirement of a certain education and minimum period of training for entrance to professions). In the UK, a wide variety of trades and professions set minimum ages for entry as trainees and in some cases there are also maximum ages for entry. In fixing age limits, employers are expected to avoid unlawful discrimination on other grounds. In Germany, there is a maximum age for access to public support to study at university and a minimum age for starting to count employment time towards benefits.¹²¹

Retirement

A key issue in relation to the age provisions of the Employment Equality Directive is retirement. In principle, compelling an employee to leave work because she has reached a certain age is direct age discrimination, which will require objective justification. Recital 14 gives an indication that retirement ages may be regarded as justified age discrimination. It states 'this Directive shall be without prejudice to national provisions laying down retirement ages: National law and practice varies greatly in this area.

At the outset, it is important to distinguish between the age at which a person becomes entitled to receive a pension (pensionable age) and the age at which they are required to cease employment (retirement age). Sometimes these are linked in national law. In Lithuania, protection against unfair dismissal is lost at pensionable age and in Hungary such protection is reduced. In France, protection from unfair dismissal is lost when full pension rights accrue (Article L122-14-13, Labour Code). In Latvia, the Constitutional Court has held that it was not disproportionate to require civil servants to retire at pensionable age.¹²²

The approach in national law to retirement age can be loosely grouped into three categories. First, there are states where national law does not impose any compulsory retirement age, nor does it remove protection from dismissal for workers after a certain age. In general, this includes the Czech Republic, Poland and Slovakia. Retirement ages are not specified in national legislation in Denmark or Germany, but these may be commonly found in collective agreements.

In a second group of states, retirement ages are specified for public sector employees. The precise age varies: Belgium (65), Cyprus (63 – being phased in), Estonia (65), Hungary (70), Portugal (70) and Spain (65).

Finally, there are states where national law *permits* the compulsory retirement of employees, whether in the public or private sector, because they have reached a certain age: Malta (60 – women, 61 – men), Finland (68), Italy (65), Luxembourg (68), Sweden (67), UK (65). In Ireland, an employee may be dismissed after he or she has reached the 'normal retiring age' for that position.

¹²¹ Age 17, according to § 6 Act on Support of Civil Servants.

¹²² Case 2003-12-01, decision of 18 December 2003.

In transposing the Directives there seems to have been little discussion in some Member States as to the legality of certain existing provisions and practices. In time, it can be expected that legal challenges will bring more focus to bear on what forms of different treatment based on age should be permitted. For example, in Ireland, different rates of remuneration and different terms and conditions based on seniority are permitted in the Employment Equality Act 1998-2004.¹²³ At the same time, the Equality Tribunal previously decided that a 5 year length of service requirement, which was a pre-condition for promotion, constituted indirect discrimination against a 30 year old employee was not justified on the facts.¹²⁴

H. Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others

Article 2(5) of the Employment Equality Directive states that 'This Directive shall be without prejudice to measures laid down by national law which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and for the protection of the rights and freedoms of others.' Article 2(5) is reproduced in legislation in Cyprus, Greece, Malta and Slovakia, and in Italy it is largely incorporated. The Belgian Federal anti-discrimination law is without prejudice to the obligation to respect the fundamental rights and freedoms recognised in Belgium.

UK anti-discrimination legislation typically includes an exception for acts done for the purpose of safeguarding national security or protecting public safety or public order. In Portugal, as elsewhere, even though the laws implementing the Directives do not include any specific exceptions concerning public security, public order or similar, these exceptions may be considered implicit. The courts are accustomed to weighing fundamental rights against public security requirements.

I. Other exceptions

In some states, national legislation includes exceptions which are not expressly provided for in the Directives. Some of these may be incompatible with the Directives, but it is difficult to be certain in advance of case-law testing the scope of these exceptions. For example, in Lithuania, the Law on Equal Treatment provides exceptions for the requirement to know the State language, the prohibition from taking part in political activities and the provision of different rights on the basis of citizenship.

J. Positive action

Article 5 of Directive 2000/43 and Article 7(1) of Directive 2000/78 permit Member States to maintain or adopt specific measures to prevent or compensate for disadvantages linked to any of the grounds covered, with a view to ensuring full equality in practice.

¹²³ Section 34(7).

¹²⁴ *McGarr v Department of Finance*, DEC-E2003/036.

In most Member States it is legal to introduce positive action measures: Austria, Belgium, Cyprus, the Czech Republic, Estonia, Finland, Greece, Hungary, Ireland, Italy, Malta, the Netherlands, Poland, Portugal, Slovenia, Spain, Sweden and the United Kingdom. In Italy, while positive action measures are in line with the Constitution, the Decrees transposing the Directives did not include provisions on this and as yet there are only measures linked to gender, disability and, to a certain extent, religion. The Hungarian Equal Treatment Act contains both a general provision allowing for positive action and more explicit provisions on positive action in relation to employment, the social system and health care, and education and training.

The scope for positive action is often a matter clarified through case-law. The Belgian Constitutional Court (Court of Arbitration) has set four conditions for positive action measures to be considered non-discriminatory:¹²⁵ first, the measure must constitute a response to situations of manifest inequality; second, the legislator must have identified the need to remedy the imbalance between groups, i.e. the initiative must be based on a legislative mandate; third, the measures must be of a temporary nature and cease as soon as their objective is attained; fourth, these corrective measures must not go further than is required.

In Slovakia, the Anti-Discrimination Act included a provision authorising 'specific balancing measures to prevent disadvantages linked to racial or ethnic origin' (Section 8). This was subsequently held to be unconstitutional by the Constitutional Court.¹²⁶ It argued that the Slovak Constitution only provided a legal foundation for positive action related to gender, young people and people with disabilities. It also criticised the broad terms of the positive action clause and the lack of any time limit on its operation.

In Sweden, Uppsala University reserved 10% of places on their law programme for applicants where both parents were born outside Sweden. This was designed to promote pluralism within the law school. Two students who were denied places, but who had better entry qualifications than some of the students admitted to the reserved places, successfully challenged this practice. The District Court emphasised the importance of merit, drawing from the Court of Justice case-law on gender and positive action. The case has now been appealed to the Swedish Supreme Court.

Some states have introduced legal duties to promote equality. In some cases, there are broad obligations to advance equality in national constitutions (Greece, Article 116.6; Spain, Article 14). Other states have included more detailed obligations in national legislation. There is a broad duty in Lithuanian law for public authorities not to discriminate and to assist in the implementation of the Law on Equal Treatment (Article 3), but this is not viewed as legally enforceable. In Finland, national law compels all public authorities to foster equality, including drawing up plans on ethnic equality. In the UK, national legislation includes detailed obligations for public authorities to promote equality on grounds of race, disability and gender. Swedish law obliges employers to take measures designed to ensure full equality with regard to ethnic background.

¹²⁵ Identified by the *Cour d'Arbitrage*, 27 January 1994, Case n° 9/94, recital B.6.2, confirmed by the judgment of the Constitutional Court of 6 October 2004, recital B.79.

¹²⁶ PL US 8/04, 18 October 2005.

Article 7(2) of Directive 2000/78 allows Member States to maintain or adopt provisions on the protection of health and safety at work or measures aimed at creating or maintaining provisions or facilities for safeguarding or promoting the integration of disabled persons into the working environment. Disability is the ground for which there are probably most positive action measures already in place. These can be found in the great majority of Member States. There is a quota system for the employment of disabled persons in Austria, Belgium (public sector only), Cyprus, the Czech Republic, France, Germany, Greece, Italy, Lithuania, Malta, Poland, Portugal, Slovenia and Spain. However alternatives to employing disabled persons such as paying a fee or tax are almost always offered. In Ireland, there is a government policy called the 3% target, which regards it as desirable that the civil and public services aim to ensure that 3% of their work force are people with disabilities. In 2005, a decree was issued in Belgium on the integration of disabled persons within the federal administration.¹²⁷ This included arrangements for positive action in recruitment. In 2006, the Spanish government proposed a law recognising sign language. This would require the state to promote the availability of interpreters and access to education.

There are also many examples of positive action for racial or ethnic minorities, in particular Roma. Austria has positive action measures for all recognised national minorities, and these include Roma. Greece has had a special protection programme promoting Roma social integration since 1996 and it has taken major legislative initiatives of a positive action character, though to little avail. The Czech Republic's Roma programmes are usually established by governmental decrees and generally they aim to improve integration of Roma, for example by combating unemployment and addressing the social problems linked to exclusion. There is a system in place for supporting Roma students in higher education through special state financial subsidies. The Czech Republic, Hungary and Slovakia are involved in the Roma Decade of Social Inclusion, which requires their governments to draw up and implement action plans over a ten-year period. In 2004, the Polish government announced a programme for the Roma community to be implemented over 10 years, with a budget of approximately 1,4 million euro for 2004 and approximately 2.38 million euro for each year thereafter. The programme will provide assistance to Roma in the fields of education, health care, living conditions, culture and in combating unemployment. It will be implemented by local authorities and non-governmental organisations (NGOs).

¹²⁷ *Moniteur Belge*, 25 October 2005.



chapter 7

Remedies and enforcement

A. Judicial and administrative procedures

Article 7(1) of Directive 2000/43 and Article 9(1) of Directive 2000/78 provide that 'Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under [these Directives] are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.' In no Member State are discrimination disputes resolved purely in the courts. All states combine judicial proceedings – according to the type of law, civil, criminal, labour and/or administrative - with non-judicial proceedings which tend to be more easily accessible. Mediation or conciliation proceedings may be available as a mandatory part of the court proceedings, as in France, Portugal and Spain, or separately, as for example in Hungary and Slovakia. Some proceedings are exclusively for private or public sector complaints, while others hear both.

Some non-judicial proceedings are general but provide an effective forum for discrimination cases, whereas others have been established especially for discrimination cases as an alternative, complementary dispute resolution procedure to the normal courts. Among the general non-judicial procedures are Inspectorates, Ombudsmen and Human Rights Institutes.

Labour Inspectorates are charged with enforcing employment law, including equal treatment provisions, in Finland, Hungary, Latvia, Lithuania, France, Greece, Portugal and Spain. In addition in Lithuania, Employment Dispute Commissions as regulated by the Employment Code are the primary mandatory bodies for employment dispute resolution. The responsibility for the establishment of an Employment Dispute Commission in a company, agency or organisation rests with the employer. They are made up of an equal number of representatives of employers and employees. In Spain victims can also submit complaints to the Education Inspectorate and in Hungary they can complain to the Consumer Protection Inspectorate.

The Latvian National Human Rights Office examines and reviews complaints concerning human rights violations and attempts to resolve conflicts through conciliation, which if unsuccessful is followed by non-binding recommendations. In Cyprus the Commissioner for Administration (Ombudsman) can issue binding decisions and impose small fines, however in practice the decisions issued are recommendations which although non-binding tend to be complied with, at least by individuals. In Spain victims of discrimination may appeal to the general Ombudsmen (at both national and regional level) when the issue concerns acts by the public administration. In addition, there is a non-judicial procedure for discrimination cases under Law 51/2003 on equal opportunities for disabled people, which anticipates the establishment of a voluntary system of arbitration to resolve conflicts that may arise in matters of equal opportunities and discrimination (Article 17).

The Estonian Legal Chancellor provides an impartial pre-judicial conciliation procedure upon application by the victim, but the alleged discriminator can refuse to participate. In the case of discrimination by public institutions, a disciplinary procedure can be initiated on the basis of the victim's application or on the Chancellor's own initiative. It is however predicted that the Legal

Chancellor will face difficulties in dealing with discrimination on grounds other than gender in fields other than employment in the absence of detailed legal provisions on these issues.

The Belgian Centre for Equal Opportunities and Opposition to Racism may file a claim under the Law of 25 February 2003 (Art. 31(1) of the Law), but will first seek a friendly settlement. The Portuguese High Commissioner for Immigration and Ethnic Minorities (HCIEM) can act as a mediator to try to avoid formal legal procedures. He can also initiate an administrative procedure and, after having heard the parties and the Permanent Committee of the Commission on Equality (CEARD), decide whether a fine should be imposed and how much that should be. The respondent has the right to appeal to the courts against the fines imposed by the HCIEM. Neither the victim nor associations have the right to appeal or to intervene in the appeal procedure.

In Slovenia an Advocate for the Principle of Equality has started working within the Office for Equal Opportunities to investigate cases of alleged discrimination in an informal procedure that is free of charge. Following completion of the investigation the Advocate will issue an opinion and recommendations. In Hungary, the newly created Equal Treatment Authority can take action against any discriminatory act and can impose severe sanctions on persons and entities violating the prohibition of discrimination. The Ombudsman for Civil Rights (General Ombudsman) and the Ombudsman for the Rights of National and Ethnic Minorities (Minorities Ombudsman) can also investigate cases of discrimination by any public body.

In Finland, non-employment related complaints of ethnic origin discrimination can be submitted to the Ombudsman for Minorities and/or the Discrimination Tribunal. The Discrimination Tribunal may confirm a settlement between the parties or prohibit the continuation of conduct that is contrary to the prohibition of discrimination or victimisation. The Tribunal may also order a party to fulfil its obligations under threat of imposition of a penalty of a fine. It may also issue a statement on how non-discrimination law is to be interpreted upon the request of one or both of the parties, the Ombudsman for Minorities, a court of law, a public authority or an NGO. Proceedings before the Discrimination Tribunal are free of charge and do not require the use of legal counsel. The Ombudsman may issue statements on any discrimination case submitted to him, where necessary forward the complaint to the pertinent authorities, and if agreed to by the complainant, provide legal assistance and lead conciliation proceedings.

In Malta, the National Commission for Persons with a Disability can investigate complaints alleging failure to comply with the Equal Opportunities (Persons with a Disability) Act 2000 and, where appropriate, provide conciliation in relation to such complaints.

Austria and the Netherlands both have Equal Treatment Commissions, which can issue non-binding opinions. These do not preclude applicants from seeking binding court judgments in the same case, in which case the courts are obliged to take the Commission's opinion into consideration and give clear reasons for any dissenting decisions.

There are special court procedures in a number of countries. Spain has an urgent procedure in the Social Courts for actions for the defence of fundamental rights and civil liberties. The United Kingdom's employment/industrial tribunals hear the full range of

employment disputes, including those on discrimination. In Italy the 1998 Immigration Act established a special procedure for discrimination cases and this is now applicable to all grounds of discrimination. Representation by a lawyer is not required and the victim can apply directly to the judge in his or her place of residence (rather than the defendant's place of residence) in order to obtain an injunction against the discriminatory activity and damages. The hearing takes place 'avoiding all unnecessary formality,' with free choice by the judge of the most suitable method to gather evidence. In cases of particular urgency, the judge can issue an interim order, the violation of which (as that of the order issued in the final decision) constitutes a criminal offence. The Decrees transposing the Directives add to this procedure the possibility of pre-trial mediation and the possibility for the judge to order - together with the judgment - the drawing up of a plan for the elimination of discrimination, as well as the publication of the judgment in a major newspaper.

In Ireland, a specialised Equality Tribunal has an investigative role in the hearing of complaints. The procedure is informal. Complainants may represent themselves and costs may not be awarded against either party. Hearings are held in private. In 2004 the jurisdiction for dismissal cases was transferred from the Labour Court to the Equality Tribunal, which now has the power to award remedies, including reinstatement.¹²⁸ The option of mediation is provided for in section 78 of the Employment Equality Act 1998-2004. A mediated settlement agreed by the parties becomes legally binding and its terms can be enforced at the Circuit Court.¹²⁹ The Equality Authority may provide assistance in the enforcement procedures. In Poland a so-called 'compensation complaint' has been operating under the Labour Code since 1 January 2004 (Art. 18^{3d}): victims of discrimination are entitled to initiate judicial proceedings and seek compensation not lower than their minimum salary. The labour court determines the compensation to be awarded, taking into consideration the type and gravity of the discrimination. This specific remedy was intended to obviate the need to use more general legal remedies, like Art. 415 Civil Code (general compensation clause), however, their use is not excluded.

Complaints with regard to the public sector are commonly dealt with separately from private sector complaints. In Italy cases concerning public employees are held in the civil courts. In Lithuania, complaints about administrative acts and acts or omissions of civil servants and municipal employees in the sphere of public administration, including social protection, social advantages, education and access to and supply of goods and services which are available to the public, can be filed with an Administrative Disputes Commission or the Administrative Courts. Cases of alleged discrimination by public institutions in Latvia can be filed with the same public institution that has treated the person differently, with a higher institution, an administrative court, or the public prosecutor's office. In France the administrative courts hear complaints from civil servants and contractual employees of the public sector and from citizens bringing action against the State or questioning a decision of State representative. In the Netherlands if the discrimination occurs in public employment, ordinary administrative law procedures apply.

¹²⁸ Section 46 Equality Act 2004.

¹²⁹ Section 91(2), Employment Equality Act 1998-2004

The low volume of case law on discrimination so far in most Member States may well point towards barriers to justice, real and perceived. Transposition of the Directives will go some way towards improving this situation due to the Directives' enforcement provisions (see below) and the increased likelihood of civil procedures being used over criminal law procedures, which traditionally have been used but which pose difficulties in terms of proof and the prerogative of the state prosecutor. Notwithstanding transposition, however, a number of deterrents and potential barriers to litigation can be identified in the Member States. Firstly, there are those who are concerned that the complexity of discrimination law may be proving to be a deterrent to victims of discrimination in Austria, Luxembourg and the United Kingdom. Skilled, experienced assistance to victims can help counter this, but this remains limited in availability (in contrast to the professional advice and representation usually available to respondents). Linked to assistance are insufficient financial means to pursue a case, a second barrier cited in a number of Member States. In the Czech Republic and Lithuania for example, legal aid is provided in very limited circumstances and is therefore of very limited effect in assisting access to the courts. In Slovakia a new law will provide legal aid to those in material need, but as the threshold for qualification is high there will still be a significant number of people who cannot afford legal services.

Another potential barrier is short time limits for bringing a case. The Directives leave it to the national legislator to set any time limits it deems appropriate (Article 7(3) Racial Equality Directive, Article 9(3) Employment Equality Directive). In all countries individuals can bring cases after the employment relationship has ended provided the time limits for bringing a case are respected. In the Netherlands an applicant who wishes to contest the lawfulness of the termination of an employment contract (discriminatory dismissal/victimisation dismissal) under the civil law must do so within two months after the termination of the employment contract. In Ireland the Equal Status Act 2000-2004 requires a complainant to initiate her complaint by notifying the respondent in writing within two months of the date of the incident (or the date of the last incident) of the nature of the complaint and the intention to pursue the matter to the Equality Tribunal if there is no satisfactory response. Even with the possibility of an extension if there is reasonable cause, there is concern that such short time limits can be problematic for victims, especially people with literacy difficulties, inadequate command of the state's official language and disabled persons. In Hungary for certain types of legal dispute (such as disputes concerning the termination of an employment relationship under Article 202 of the Labour Code) claims have to be initiated 30 days after the injurious measure and in Sweden if the claim is one to have a dismissal declared void the time limit is a matter of weeks from the act of dismissal. Furthermore, the length and the complexity of procedures may act as deterrents to those seeking redress, as is said to be the case in Portugal and there is concern in Slovenia that some judicial proceedings take five years or more.

Basic adjustments to proceedings and court buildings to accommodate the needs of disabled complainants are often lacking and can deter disabled complainants. In the Netherlands there are no specific rules requiring courts or the equality body to be accessible. Physical access to courts and other public buildings is not guaranteed in Ireland,¹³⁰ Slovakia or Slovenia. Access to public buildings is not always guaranteed in practice in Hungary or Portugal despite national legal requirements for this. While required to

¹³⁰ This is however due to be legislated for in the Disability Bill 2004.

be made available in Lithuania and Portugal, the provision of information in Braille or sign language is not mandatory in the Czech Republic, Malta, Slovakia or Slovenia. In Ireland, sign language interpretation in the court system is required in the context of criminal actions, but there is no corresponding provision in respect of civil actions. In Estonia and Hungary sign language is available in the courts but Braille is rare. A further barrier in Estonia is that in practice courts usually reject complaints in Russian, in spite of the claimants' right to interpretation in court. In Cyprus legal documents are not made available in Braille in the courts. No countries mention specific procedural rules for individuals with learning disabilities. The French Law on Disability creates in each "département" a structure which centralises all administrative procedures to enforce the rights of disabled people, for instance a claim referee will transmit the disabled person's claim to the competent authority or jurisdiction.

Finally, the infrequency of litigation itself can be a deterrent to victims of discrimination, as the impression may prevail that success is improbable. The more cases are heard about through the media, the more knowledgeable victims will become about their rights and options for vindicating those rights. The main barriers to litigants in Germany for example are not thought to be financial but lack of information, lack of standing, and the assumption of little hope of success.

B. Legal standing and associations

Article 7(2) of Directive 2000/43 and Article 9(2) of Directive 2000/78 provide that 'Member States shall ensure that associations, organisations or other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of [these Directives] are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under [these Directives].' Member States have some discretion as to how this clause is implemented in terms of the type of assistance that can be provided by associations to victims. Being able to 'support' a victim is more common than the power to engage in proceedings 'on behalf' of a victim.

No special regulations on the engagement of associations in discrimination procedures are found in Denmark, Finland, Lithuania, Sweden or the UK. Individual lawyers (working for an organisation) may represent – and thereby 'engage in support of' - a victim in court upon his or her authorisation, and trade unions and employers' organisations can represent their members. In Lithuania, Article 56(3) of the Civil Procedure Code implies that NGOs are allowed to participate in civil procedures, although there are no known cases of participation of NGOs in a civil case in this context. Under Swedish procedural law anyone can engage in proceedings or support a complaint. In practice in Great Britain, complainants are supported by the equality bodies, trade unions, race equality councils, other voluntary sector advice agencies and complainant aid organisations under the normal rules of civil procedure. Employment Tribunal and Employment Appeal Tribunal procedures allow a complainant to represent him/herself or to be represented by any person.

The Greek anti-discrimination law permits legal entities with a legitimate interest in ensuring the principle of equal treatment is applied to represent persons before any court or administrative authority, as long as they have that person's written consent

(Article 13 para. 3, Law 3304/2005). The organisation must act before the court through an authorised lawyer. In Ireland, an individual or body may be authorised by an individual complainant to represent them before the Equality Tribunal or Labour Court (Article 77(11) Employment Equality Act 1998-2004). In Estonia in conciliation proceedings at the Office of Legal Chancellor, a person who has a legitimate interest in ensuring compliance with the equal treatment guarantee may also act as a representative (Article 23 (2) of the Law on the Legal Chancellor). Representation of victims by legal entities (such as NGOs) is also provided for in the Slovakian Anti-discrimination Act. The legal entity has to be given the authority to do so under a separate law (e.g. as the National Centre for Human Rights has), or has to deal with discrimination.

Few States allow associations to engage in proceedings 'on behalf of' victims of discrimination. The Spanish Law 62/2003 transposing the Directives (Article 31) provides that in cases outside employment, "legal entities legally authorised to defend legitimate collective rights and interests may engage on behalf of the complainant, with his or her approval, in any judicial procedure in order to make effective the principle of equal treatment based on racial or ethnic origin". There is no corresponding provision for employment-related cases, in which only trade unions and employers' organisations can engage. With consent, trade unions can appear in court in the name and interest of their members. Further, the Constitution entitles any physical or legal person invoking a legitimate interest to be party to proceedings relating to the violation of fundamental rights and freedoms, and entitles legal entities with a legitimate interest to engage in administrative procedures. The Latvian National Human Rights Office has a new power under legislation whereby with the agreement of the victim it can bring an application to court on their behalf in civil or administrative cases where the case relates to the violation of the prohibition of differential treatment.

In Poland general rules under the Code of Civil Procedure allow non-profit social organisations to bring a claim on behalf of individuals or join such proceedings in labour law and administrative proceedings. They can also act as *amicus curiae* and present their opinion to the court.¹³¹ The Irish Equality Authority has recently been granted the right to intervene in a case before the High Court as '*amicus curiae*' in order to give evidence in relation to the Racial Equality Directive. Maltese regulations provide that nothing prevents legal entities with a legitimate interest in ensuring compliance with the regulations from engaging in procedures on behalf of or in support of the complainant with his or her approval. However this is a somewhat hollow provision as NGOs are still not recognised as legal entities in Malta. The Hungarian Equal Treatment Act allows 'social and interest representation organisations' as well as the Equal Treatment Authority to engage on behalf of the victim in proceedings initiated due to the alleged infringement of the principle of equal treatment and to engage in administrative procedures. Furthermore, social and interest representation organisations, the Equal Treatment Authority and the Public Prosecutor can bring *actio popularis* claims, provided that the violation of the principle of equal treatment was based on a characteristic that is an essential feature of the individual, and the violation affects a larger group of persons that cannot be determined accurately. Beyond this possibility, class actions by associations engaging in legal proceedings on behalf a group of persons are not permitted in most Member States with the exception of Slovakia and Austria in respect of the Austrian National

¹³¹ Article 63 Code of Civil Procedure.

Council of Disabled Persons (an NGO) which has a limited ability to file a class action on behalf of an unidentifiable group of affected persons.

States also have considerable discretion in the criteria they set for determining which legal entities can provide such assistance and those which cannot. The French Law of 16 November 2001 permits representative trade unions and NGOs which have been established legally for at least 5 years and whose statutes include the fight against discrimination or slavery to intervene in an action brought by any apprentice, trainee, employment candidate or employee who alleges to have been a victim of discrimination. Any person with a legitimate interest in the dismissal or granting of a civil action has legal standing before the civil courts and NGOs working to combat discrimination on the grounds of ethnic origin, race or religion may be civil parties in some criminal actions.

The Hungarian 'social and interest representation organisations' referred to above include any social organisation or foundation whose objectives, set out in its articles of association or statutes, include the promotion of equal social opportunities of disadvantaged groups or the protection of human rights. In respect of a particular national and ethnic minority, the minority self-government is included, and in respect of matters related to employees' material, social and cultural situation and living and working conditions, trade unions (Article 3(f) Equal Treatment Act). In Belgium, the Centre for Equal Opportunities and Opposition to Racism, entities of public utility, associations which have had legal personality for at least five years and state as their objective the defence of human rights or the fight against discrimination and workers' and employers' organisations may engage in discrimination proceedings. Where there is an identifiable victim, that victim's consent is required.

In Italy in cases of discrimination on the grounds of race and ethnicity, associations and bodies active in the fight against discrimination that are included in a list approved by a joint-decree of the Ministries of Labour/Welfare and Equal Opportunities can engage in proceedings in support or on behalf of complainants.¹³² Such organisations are listed on the basis of criteria set out in the joint-decree which include the necessity of being established for one year and promotion of equal treatment and combating discrimination being their only or primary aim. In contrast, for the grounds religion or belief, age, disability and sexual orientation, only trade unions can engage in proceedings. Similarly, Portuguese associations cannot intervene in administrative and judicial proceedings in employment discrimination cases, though in civil and criminal cases involving racial or ethnic origin discrimination, Law 18/2004 provides that "associations whose objective is the defence of non-discrimination based on racial or ethnic origin have the right to engage in judicial procedures on behalf or in support of the interested persons, with their approval" (Article 5). As far as private employment is concerned, only trade unions may intervene in judicial procedures concerning discrimination cases, and then only in relation to their own members.

A different model is found in Austria. Whereas anyone can represent alleged victims of discrimination in the informal proceedings before the Equal Treatment Commission, for court proceedings only one statutory organisation, the Litigation Association of NGOs

¹³² Joint-Decree of the Ministries of Labour, Social Affairs and of Equal Opportunities of 16 December 2005, no.215 (Institution of the list of associations having standing to litigate in support or on behalf of victims of discrimination based on racial or ethnic grounds). Published in Gazzetta Ufficiale serie generale n. 9, on 12 January 2006.

against Discrimination, has been given third party intervention rights in the courts on behalf of the complainant, with his or her consent (§62 Equal Treatment Act). All specialised NGOs can join this Association, but those not in it are excluded from any special procedural rights. The rights are relatively weak, as they do not allow the Association to bear the costs and risks of a case; these must remain with the complainant. For disability, the NGO the Austrian National Council of Disabled Persons has been given a similar right of intervention in court cases and a limited ability to file a class action on behalf of an unidentifiable group of affected persons.

C. Burden of Proof

Because of the difficulties inherent in proving discrimination, Article 8 of the Racial Equality Directive and Article 10 of the Employment Equality Directive lay down that persons who consider themselves to have been discriminated against must only establish, before a court or other competent authority, facts from which it may be presumed that there has been discrimination. The burden of proof will then shift to the respondent who must then prove that there has been no breach of the principle of equal treatment. This does not affect criminal cases (Article 8(3)/10(3)), and Member States can decide not to apply it to cases in which courts have an investigative role (Article 8(5)/10(5)). Thus for example in France, the burden of proof is not shifted in administrative procedures which are inquisitorial in nature, and Portuguese law states that the principle does not apply to criminal procedure nor to actions when, in the terms of the law, it is up to the court to carry out the investigation. In the Netherlands, whereas the burden of proof is shifted in court proceedings, this is not necessary in procedures before the Equal Treatment Commission, though the Commission does nevertheless apply the shift in the burden of proof on a voluntary basis.

Several Member States have failed to transpose the burden of proof provision in line with the Directives. The provision on the burden of proof in Austrian federal legislation, while lowering the burden, is not considered to satisfactorily comply with the Directives, despite a recent amendment which has rendered the provision more compliant. In Italy, although the Decrees transposing the Directives contain a special evidentiary rule, it does not constitute a shift in the burden of proof. In Latvia, Poland and Estonia the burden of proof only shifts in employment cases, as the areas outside employment in the Racial Equality Directive are not yet adequately legislated for. Lithuania and Luxembourg have no specific provisions for shifting the burden of proof in cases of discrimination prohibited by the Directives. In Estonia there is concern that the wording of the burden of proof provision is weaker than the Directives, as it sets down that once the burden of proof has shifted, employers must merely explain the reasons for their conduct or decision. This will be for case-law to determine. In Germany the burden of proof rules exist only for disability discrimination cases.

The Hungarian Equal Treatment Act (Article 19(1)) seems to demand more proof than the Directives require, as victims must not only establish facts on the basis of which discrimination can be presumed, but must also prove they suffered disadvantage and that they have the protected characteristic on which the perpetrator based the discrimination. It is hoped that existing case law will bridge the gap between the wording in domestic and Community law.

While the burden of proof is shifted in cases of alleged victimisation in Austria, Belgium, Ireland and Slovakia, this is not the case in Denmark, Finland, France, Latvia or the Netherlands. Arguably, as victimisation is not a form of direct or indirect discrimination under the Directives, Article 8 of Directive 2000/43 and 10 of Directive 2000/78 are not necessarily applicable.

D. Data Collection¹³³

Data on discrimination can serve a wide range of purposes: a) individual claimants often find themselves in need of statistical evidence to back up a legal claim, particularly where indirect discrimination is involved; b) decision makers at European and national level need comprehensive and reliable information to formulate appropriate policies, legislation and effective remedies to address discrimination; c) development of positive action strategies; d) monitoring the national situation, workplace practices and other institutional patterns; e) assessing the effectiveness of the EU Racial and Employment Equality Directives; f) awareness-raising activities and research seeking to improve understanding of discrimination as a phenomenon.

The collection and use of data is permitted under circumstances prescribed by national law in all the Member States. The concept of collecting sensitive data however raises some concerns and fears. The reason being the many historical and some contemporary examples related to misuse of data in the context of human rights abuses in Europe. The most significant of these involved the extermination and forced migration of Jews, Roma and other minority groups during the second World War in European countries.

Member States are not obliged by the Directives to collect data, however data collection and use is relevant in respect of several key aspects of the Directives, not least the indirect discrimination definitions of Directives 2000/43 and 2000/78.¹³⁴ Article 2(b) of both Directives refer to a neutral provision, criterion or practice which puts persons from a designated group at a particular disadvantage compared with other persons. The definition requires group impact to be compared, and while it is possible to establish indirect discrimination without the use of statistics, in practice - as sex discrimination case law has shown - statistics can play a significant role in an indirect discrimination case. Recital 15 of both Directives provides that 'the appreciation of facts from which it may be inferred that there has been direct or indirect discrimination is a matter for national judicial or other competent bodies, in accordance with rules of national law or practice. Such rules may provide in particular for indirect discrimination to be established by any means including on the basis of statistical evidence.'

¹³³ A Thematic Report on this topic written for the European Network of Legal Experts in the Non-discrimination Field provides a more detailed analysis, cf. Thematic Study by Timo Makkonen: "Measuring Discrimination - Data Collection and EU Equality Law" (forthcoming). Some of the findings of this study are re-produced in this section.

¹³⁴ The others involve: Article 11 Directive 2000/43 and Article 13 Directive 2000/78 setting out the requirements on Member States "...to promote dialogue between the social partners with a view to fostering equal treatment, including through the *monitoring of workplace practices*,"; Article 5 Directive 2000/43 and Article 7 Directive 2000/78 on positive action measures and Article 13 Directive 2000/43 requiring a designated equal treatment body to conduct independent surveys, publish independent reports and make recommendations on racial and ethnic discrimination.

In the majority of Member States national legislation does not expressly permit or prohibit the use of statistical evidence to establish indirect discrimination, the exceptions are Belgium, Italy and Ireland (in relation to employment) where legislation implementing the Directives expressly allows for this mode of proof in civil cases. In the majority of Member States therefore admissibility of statistical evidence is a question for the state's rules of evidence. The rules governing the admissibility of evidence vary from Member State to Member State, but most consider statistical evidence would be admissible in principle. In Slovakia all legal means which can prove a fact can serve as evidence before a court as long as this has been obtained in a legal way. In Hungary and Poland (in civil cases), evidence will be admitted as long as it is useful in establishing the facts of the case and in the UK statistical evidence will be admissible as long as it is relevant and of real evidential value in the circumstances. The widest test is possibly that of the Czech Republic where the civil procedure code defines admissible evidence as all means which can be used to discover the truth. In Luxembourg, in the criminal law the instructing judge may use all legal evidence to prove discrimination as long as it is fair, but in civil proceedings it is unlikely that a civil court would accept this kind of evidence without an express permissive legislative provision. Statistical evidence will be admissible in Portugal if it can be produced in document form.¹³⁵

Despite the potential usefulness of statistical evidence in the context of legal proceedings, the overwhelming majority of the EU countries so far have no, or only very limited experience of the use of such evidence outside sex discrimination cases. The only countries where statistical evidence has played a major role in discrimination cases concerning the five grounds under the Directives are in the UK where statistics have been used in racial discrimination cases, in Hungary in age and ethnic discrimination cases, in Finland in one case on age discrimination and in the Czech Republic in one case concerning segregation of Roma in education, which is now before the Grand Chamber of the European Court of Human Rights. In France, statistics are common in employment law cases but have not been used in civil cases, although there is a Cour de Cassation ruling concerned with discrimination on the grounds of trade union activities which found that the offence of discrimination may be established by comparative evidence.¹³⁶ In the Netherlands statistics are used very often by the Dutch equality body – the Equal Treatment Commission. There is also a tendency for equality officers in the Irish Equality Tribunal to rely on the statistics relating to a specific case. There are indications that the lack of any real role for statistical evidence in proving discrimination under the Directives in the vast majority of Member States to date is linked to the paucity of data collection.¹³⁷

In the majority of Member States national equality laws do not address the issue of data collection for purposes relating to non-discrimination, so where personal data relates to an identifiable individual (as opposed to being anonymous) it falls to be dealt with under national data protection laws. All Member States' laws regulating the processing (which includes the collection, recording, use, disclosure and destruction) of data relating to identifiable individuals are based on the EU Data Protection

¹³⁵ Article 515 and 523 to 552 Civil Procedure Code.

¹³⁶ Court of Cassation, Criminal Chamber, June 14, 2000, no. 2792, 99-108, CFDT Interco

¹³⁷ Thematic Study by Timo Makkonen 'Statistics and Equality: Data Collection, Data Protection and Anti-discrimination Law:' (forthcoming).

Directive.¹³⁸ This Directive prohibits the processing of sensitive data, termed 'special categories of data'¹³⁹ under the Directive and defined as 'personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, and the processing of data concerning health or sex life,' except in situations prescribed by law.

The 'special categories of data' differ from the categories covered by Directive 2000/43 and 2000/78, apart from racial or ethnic origin. All the other grounds are however thought to be covered with the exception of age. Further, data are to be considered sensitive even if they only indirectly indicate racial or ethnic origin or religion or belief, such as a name and place of birth, or a photograph.

The Directive provides for exceptions to this general prohibition.¹⁴⁰ Collection of data on these four grounds for purposes relating to non-discrimination policies is therefore permissible under the conditions set down in national law.

The data protection laws of all EU Member States allow the processing of sensitive data where the individual has given her express consent. There are some limitations to this rule: In Austria, Denmark, Estonia, Greece, Italy and Portugal, in most situations an authorisation of the national data protection body is required in addition to the consent of the individual. In Belgium the consent must be considered to have been given 'freely'.¹⁴¹ This would not be the case in the context of the employment relationship, as it is considered that a power imbalance exists between employer and employee.¹⁴² In Hungary, Italy, Latvia and Slovakia the consent needs to be given in writing. In a number of countries the applicability of the main consent rule is, or can be, limited by means of sectoral laws. This is the case in Belgium, Cyprus, Czech Republic, France, Greece, Luxemburg, Slovakia, and United Kingdom.

Many countries authorise the processing of sensitive data also in other circumstances where the consent of the individual is not required. In Belgium, Cyprus, France, Finland, Greece, Luxembourg, Poland, Portugal, Slovenia and Sweden processing of data is permitted in law if it is necessary for the establishment, exercise or defence of legal claims. In France this is the only exception where prior authorisation of the national data protection body is not necessary. In the Netherlands, processing of data relating to racial or ethnic origin is allowed even without the consent of the individual, provided that such processing is necessary for the purpose of remedying existing inequalities, and that identification of the person concerned takes place upon objective criteria

¹³⁸ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

¹³⁹ Article 8(1) Directive 95/46.

¹⁴⁰ Article 8(2).

¹⁴¹ Executive Decree of 13 February 2001 implementing the Federal Law of 8 December 1992 on the protection of the right to private life with respect to the processing of personal data (Article 27).

¹⁴² *Idem*. The rule does not apply where the processing of data is justified by the need to grant an advantage to the workers concerned. This exception legitimises the collection of data necessary for the purpose of e.g. reasonable accommodation.

such as parent's place of birth, and that the individual has not objected to such processing in writing.¹⁴³ Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Hungary, Latvia, Lithuania, Luxemburg, Malta, the Netherlands, Poland and Sweden expressly allow the processing of sensitive data for statistical and scientific purposes. Some of these e.g. France require prior authorisation from the national data protection body and or provide for other safeguards e.g. Hungary which provides that as soon as the research purpose allows it, the personal data be rendered anonymous. In some countries, such as Denmark, Greece, Malta and Sweden, the national data protection authority has been given powers to authorise the processing of sensitive data in other contexts than those expressly mentioned in law.

The UK appears to be the only country where the data protection laws expressly set out monitoring as a legitimate form of processing of sensitive data. According to national law, the data must be collected with the consent of the individual and must be stored in a manner that does not identify the individual.

In some countries processing is permitted so far as it is necessary for the public authority or employer to meet their obligations under employment law. This is generally the case in Austria, Belgium, Cyprus, Hungary, Ireland, Latvia, Malta, Poland, Slovakia, Slovenia and Sweden. In most countries this exception would permit the processing of data in relation to disabled workers as employers have a legal duty to provide reasonable accommodation. In Spain legislation encourages employers to keep records to benefit from the various measures for promoting job creation in which the disabled are specially protected. In Germany the government has a duty to report on the integration of disabled people and legislation permits the collection of statistics to this end. Processing of data may also be required where national law sets positive action duties, such as quotas for employing people with disabilities. In Hungary data can be collected for the purposes of positive action measures, but this needs the written consent of employees.

In Northern Ireland public authorities are required by law to collect statistics as legislation places a positive duty on some employers to take measures to ensure a fair proportion of Catholics and Protestants in their workforce. In Great Britain to give effect to general statutory duties to eliminate unlawful race discrimination, public authorities are often required to monitor the ethnic composition of their workforce and service users. The Commission for Racial Equality publishes guidance as to how public authorities should conduct monitoring of the ethnic composition of their workforce and service users.

In some countries e.g. Hungary there is a lack of systematic data collection by official authorities with the exception of the census. It is from a legal point of view possible to collect and process sensitive data obtained through censuses, administrative processes, surveys, workplace monitoring or by other methods in a manner that does not breach the Directive. Censuses are conducted in most Member States on a regular basis. The censuses include the collection of data for some of the grounds from individuals.

¹⁴³ Article 18 of the Data Protection Act of 6 July 2000, as amended.

Member States carrying out regular censuses all ask about date of birth (age does not constitute sensitive data under the Directive) and do not ask questions on sexual orientation. The providing of sensitive data is however always voluntary. In Austria, Ireland, and Hungary censuses have asked questions on religion, age, disability and ethnic origin, Germany (religion, age and disability), Latvia (ethnicity), Lithuania (ethnic origin, religion), Slovakia (religion), Estonia (ethnicity, religion and disability), Spain (race, religion). In other countries such as France data is collected on nationality and parental origin. Some countries keep population registers: in Latvia, ethnic origin is recorded (based on parents), but it is prohibited to include data on race or colour or religion, disability or sexual orientation and in Estonia data on citizenship, place of birth, when and from where a person arrived in the country are included. Additionally, the register includes references to a person's close relatives (such as parents) and therefore to their personal information. Information on ethnic origin and native language is collected with the person's consent.

In most countries infringements of the data protection laws gives rise to criminal and civil liability and in Sweden this includes the possibility of a claim for punitive damages.

E. Situation Testing¹⁴⁴

In order to be applicable, the mechanism for shifting the burden of proof presupposes that the person who feels that he or she has been wronged can bring evidence which points to the possibility of discrimination. The Directives state that 'The appreciation of the facts from which it may be inferred that there has been direct or indirect discrimination is a matter for national judicial or other competent bodies, in accordance with rules of national law.'¹⁴⁵ It is therefore up to the national legislator to define the types of fact which may lead to a shift in the burden of proof, and up to the judge to weigh their evidential value. In order to establish these facts the Directives stipulate that discrimination can be 'established *by any means* including on the basis of statistical evidence.'¹⁴⁶ There is therefore no express mention of situation testing, even if this means of proof was discussed during preparative work on the Directives. However, there are some instances of national legislators referring explicitly to situation testing.

Situation testing is a method of obtaining evidence of discrimination whereby persons or organisations set up situations to check if a person is discriminating. Situation tests aim to bring to light practices where a person who possesses a particular characteristic is treated less favourably than another person who does not possess this characteristic in a comparable situation. It means setting up a role play, where a suspected discriminator is placed in a position where he/she may or may not reproduce the same conduct without suspecting that he or she is being observed. This person is presented with fictional 'candidates,' some of whom possess a characteristic which may reveal discriminatory behaviour. Observers aim to compare his or her attitude towards people

¹⁴⁴ Explanation based on that which appears in Isabelle Rorive's Article 'Situation Tests in Europe: Myths and Realities,' *European Anti-discrimination Law Review*, Issue 3, April 2006.

¹⁴⁵ Recital 15 of the Preamble to Directives 2000/43 and 2000/78.

¹⁴⁶ *Ibid.*

bearing this characteristic compared to others without it. Situation testing allows direct discrimination, which is frequently hidden behind pretexts (such as the property has already been let, the job vacancy has already been filled), to be unmasked. The most well-known example of situation testing is that of different couples arriving at the entrance to a night club: if mixed couples or couples of foreign origin are systematically refused entry, yet 'native' couples who arrive before and after are admitted without difficulty, discrimination can be inferred. Similar experiments have been carried out with estate agencies or even with employers who are suspected of discriminatory recruitment practices.

In all the Member States except Belgium and Hungary situation testing is not explicitly permitted or prohibited by legislation and no statutory definition of it exists. In Hungary Government Decree 362/2004 on the Equal Treatment Authority and Detailed Rules of Procedure lay down a statutory definition of testing and provide that the Equal Treatment Authority, a quasi-judicial equality body, may apply testing in the course of its investigations, the results of which may be used as evidence in proceedings launched to determine a discrimination claim. Belgian Federal legislation provides examples of evidence which would lead to the shift in the burden of proof: Article 19 of the Federal Law of 25 February 2003 cites 'statistical data' (see above) and 'situation tests' as two examples, which, when put before a judge, will lead the judge to presume that discrimination has occurred thus obliging the defendant to demonstrate that, contrary to that presumption there has been no discrimination.

In the majority of Member States the admissibility of evidence obtained by situation testing will fall to be determined under general principles of evidence. In France situation testing has been held admissible in criminal cases as a means of proving discrimination by the Court de Cassation and is now regularly admitted in evidence in such cases. It has not been used as evidence in civil cases, however a bill on use in civil cases will be presented to Parliament in the first part of 2006. In the Netherlands the courts and the equal treatment body, the Equal Treatment Commission have confirmed in a number of cases that situation testing is admissible as a means of proof.

Belgian Federal legislation provides that the tests may be performed by a public official and that an executive decree will define the conditions of admissibility of such evidence. A draft decree has however so far encountered stern resistance, particularly from employers' organisations. In France the courts of appeal have developed clear criteria for evaluating situational test evidence: the results must be certified by third party witnesses; preferably police officers or bailiffs and the participants in the test must be members of the organisation (NGO, trade union) organising the test and appearing as a civil party before the court. In the Netherlands several opinions of the Equal Treatment Commission concern the criteria for conducting situation testing. Recent guidelines recommend that tests are carefully prepared and executed in close co-operation between the Anti-discrimination Bureau, the Public Prosecutors Office and the Police. An important criteria is one of proximity of the test to the actual discriminatory event (Hungary, Netherlands). In the UK, the Commission for Racial Equality has produced internal guidance for its staff on the use of situational testing.

In practice in most cases the method has mostly been employed to evidence racial discrimination in access to employment (for instance recruitment agencies), services (often discotheques, restaurants and bars) and housing. This appears to be the situation

in Denmark, the Czech Republic, France, Finland, Hungary and the Netherlands. In France it has also been used in disability and age discrimination cases. It is used by NGOs, individual claimants and equality bodies. In France its use has been developed by anti-racism NGOs, but it is also used by individual claimants. In the Netherlands it is also used by NGOs and on the initiative of the individual. In Belgium in the absence of an executive decree providing for a defined procedural framework the technique is not at present widely relied upon by victims who fear that situation tests performed informally will not be acceptable to judges. In one case however, a test was conducted on the victims own initiative and the evidence was used to corroborate the victims own testimony in court. The practice has also not so far been developed by NGOs. In Hungary it has been used by NGOs, primarily the Legal Defence Bureau for National and Ethnic Minorities. In addition, in its first year of operation the Hungarian Equal Treatment Authority used the method once, albeit unsuccessfully. In Slovakia it has recently been practised by NGOs and the first cases where it was used concerning Roma and employment are now pending before the courts. In Sweden testing conducted by law students has been successfully used as evidence in cases.

In Finland NGOs have used testing in the services sector and the results have formed the basis of crime reports filed with the police and therefore have been used to establish grounds to bring a case, rather than a method of gathering evidence to support a discrimination claim. In several cases discrimination has been established by the police and the accused fined. In Denmark testing has been used several times by NGOs to prove discrimination in access to employment and housing services but is also used by journalists to raise awareness of racial discrimination. It is rarely used in the UK but when it is, it is to place pressure on certain outlets to generate changes in practice that do not require litigation.

F. Victimisation

Member States must ensure individuals are protected from any adverse treatment or adverse consequences as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment (Article 9 Racial Equality Directive; Article 11 Employment Equality Directive). Besides the failure to transpose the provision as in Estonia and Lithuania, there are two common inconsistencies with this principle in the Member States. Firstly, in a number of states, protection is restricted to employment situations and thereby fails to protect against victimisation in the areas outside employment protected by the Racial Equality Directives (Belgium, France, Czech Republic, Malta, Latvia, Poland, Portugal and Spain, Luxembourg draft law). Secondly, some States have restricted the protection to the person who made the complaint or initiated proceedings and omitted to protect others who could be adversely treated, e.g. witnesses. This fails to take into account the wording of the Racial Equality Directive, which refers to protection of individuals, and that of the Employment Equality Directive which refers to protection of employees i.e. not just the person who has made the complaint. Belgian, Polish and Portuguese law only protects those 'employees' who have filed a complaint of discrimination or brought legal action. This is also currently the situation in the Czech Republic. The Danish law is unclear but it would seem to only to extend to the complainant and be limited to a right to receive compensation from the courts. The extent of the protection of the Italian provision is similarly unclear and appears only as an element to be taken into consideration in an assessment of the amount of damages. Both provisions belie the preventative nature of the victimisation provision in the Directives.

In the UK, it is pointed out that the perpetrator of the victimisation does not need to have been involved in the initial complaint, for example an employer who refuses to employ a person because he or she had complained of discrimination or assisted a victim of discrimination in a previous job would still be liable for victimisation. Difficulties with the UK victimisation provision are however that the definition of victimisation requires the complainant to show less favourable treatment than a real or hypothetical comparator, but the Directives do not require this. Case law has demonstrated how difficult it is to find an appropriate comparator.¹⁴⁷ Furthermore, protection against victimisation in the UK is retrospective only: the law does not require preventative measures as are implicitly required by the EC Directives. In contrast, Slovenian protection against victimisation is quite proactive: upon finding discrimination in the original case, the Advocate of the principle of equality shall order in writing the corporate body or other body in law which is alleged to have discriminated to apply appropriate measures to protect the discriminated person from victimisation or adverse consequences as a result of the complaint. In the event an alleged offender does not act in accordance with the order of the Advocate and the person discriminated against is still subjected to victimisation, the inspector has the duty to prescribe appropriate measures that protect the person from victimisation, or to prescribe the remedying of adverse consequences of victimisation.

A further shortcoming of French law is that individuals are protected only from disciplinary action or dismissal by the employer, rather than any adverse treatment or consequences as the Directives states. Similarly in Belgium the protection is only against dismissal or the modification of employment conditions. The Polish Labour Code prohibits denunciation and dissolution of a labour contract as a result of an employee having used his rights to defend against unequal treatment (Art. 18^{3e} Labour Code) but this provision does not prohibit other possible adverse consequences. In the Italian decrees, victimisation is mentioned merely as an element to be used in assessing the amount of damages (though general rules against unfair dismissal provide some protection). In Sweden the protection against discrimination or victimisation does not fully cover self-employed persons. Estonian and Lithuanian law currently only prohibit victimisation in cases of sex discrimination.

G. Sanctions and remedies¹⁴⁸

Infringements of anti-discrimination laws must be met with effective, proportionate and dissuasive sanctions, which may include compensation being paid to the victim (Article 15 Racial Equality Directive, Article 17 Employment Equality Directive). The concept of effective, proportionate and dissuasive remedies was first developed in the European Court of Justice's case law concerning sex discrimination. Due to the parallels of EC sex discrimination law with the Racial Equality and Employment Equality

¹⁴⁷ See, for example, *Aziz –v- Trinity Taxis* [1989] QB 463 and *Chief Constable of the West Yorkshire Police –v- Khan* [2001] IRLR 830.

¹⁴⁸ A Thematic Report on this theme written by the European Network of Legal Experts in the Non-discrimination Field provides a more detailed analysis, cf. Thematic study by Christa Tobler: "Remedies and Sanctions in EC Non-discrimination Law, Effective, Proportionate and Dissuasive Sanctions and Remedies, with particular reference to Upper Limits on Compensation to Victims of Discrimination." Some of the findings of this study are reproduced in this section.

Directives, this case law is relevant for the latter two Directives. In any case, the meaning of that concept must be determined in each concrete case in the light of the individual circumstances. At this stage, few experts (only Italy and Finland) assess the sanctions in their country to be effective, disproportionate and dissuasive.

In practice, a wide range of possible remedies exist, depending for example upon the type of law (e.g. civil, criminal, administrative remedies), the punitive or non-punitive character of the remedies, their orientation as backward-looking or forward-looking (the latter meaning remedies seeking to adjust future behaviour) and the level on which they are intended to operate (individual/micro or group/macro level). Remedies may be available through various, possibly complementary enforcement processes (administrative, industrial relations and judicial processes). Depending upon such characteristics, the remedies offered by a particular legal order will reflect different (combinations of) theories of remedies (e.g. remedial, compensatory, punitive and preventive justice) and also different concepts of equality (e.g. an individual justice model, a group justice model or a model based on equality as participation). It follows that a comprehensive enforcement approach is very broad indeed. It addresses not only procedural aspects and the substance of remedies (relief and redress for the victims of discrimination) but also broader issues such as victimisation, compliance, mainstreaming and positive action, as well as other innovative measures such as corrective taxation. Financial compensation to the victim may include compensation for past and future loss (most common), compensation for injury to feelings, damages for personal injury such as psychiatric damage, or exemplary damages to punish the discriminator (much less common).

As a whole, no single enforcement system appears to be truly encompassing. Essentially, they are all based on an individualistic and remedial – rather than a preventive – approach. Nevertheless, some interesting elements can be found in a number of Member States. Irish law provides for a broad range of remedies, including compensation awards, re-instatement and re-engagement, as well as for orders requiring employers and service providers to take specific courses of action. There is case law concerning the following of orders in particular: the creation of an equal opportunities policy; re-training of staff with particular emphasis on disability issues; reviewing recruitment procedures; reviewing sexual harassment procedures; formal training of interview boards; review of customer service practices; equality training for staff; and inviting the complainants and their companions for a complimentary meal or drink. In Spain a bill is going through parliament which will finally introduce sanctions for discrimination on the grounds of disability in the employment sector. The bill also makes non-compliance with positive action measures required by law an administrative offence punishable by fines ranging from 301 euros to 1 million euros, depending on level of seriousness. Interestingly, criteria taken into account in deciding the level of the fine includes company turnover. In the three discrimination cases decided in Latvia in 2005, in awarding damages the courts specifically expressed the need for the sanction to fulfil the preventative function.

In some Member States the specialised body is empowered to issue sanctions in cases in which they have found discrimination. The Cyprus Commissioner for Administration for example, can impose limited fines including fines for non-compliance with its recommendations within the specified time (subject to appeal to the Supreme Court of Cyprus). However, it has not yet used this

power. Furthermore, it can issue orders, published in the Official Gazette for the elimination within a specified time limit and in a specified way of the situation which directly produced the discrimination. The Commissioner's Reports can be used for the purposes of obtaining damages in a regional court or an employment tribunal. In Great Britain the Commission for Racial Equality and its counterpart in Northern Ireland are able to use their powers of formal investigation to investigate organisations they believe are discriminating and, where they are satisfied that unlawful acts have been committed, they can serve a binding non-discrimination notice requiring the organisation to stop discriminating and to take action by specified dates to prevent discrimination from recurring. They can apply to the county/sheriff court for an injunction (Race Relations Act s.62, Race Relations Order (Amendment) Regulations (NI) 2003 Article 59) either based on persistent discrimination after a finding of unlawful discrimination or breach of non-discrimination notice. However, it is thought that no such injunctions have ever been issued. In Lithuania new legislation has been adopted enabling the Equal Opportunities Ombudsman to impose sanctions, if, following an investigation of a claim that an administrative offence has been committed, she finds this to be the case. It also permits the Ombudsman to impose fines on public servants, employers and their agents for a refusal to comply with a request for information necessary to carry out her functions, or for obstructing the Ombudsman in the exercise of her duties. The level of the fines however is very low (between LTL 500 to LTL 1000 (145 to 290 euros)).

Interesting administrative remedies are found in Portugal. Overall, the Portuguese system contains the usual elements of individual redress in the form of civil sanctions (reinstatement, damages), criminal sanctions for some types of discrimination (race, colour, ethnic and national origin as well as religion), and administrative sanctions. Besides administrative fines, the latter include in particular the following measures, which are available in the case of all types of discrimination: publication of the decision; censure of the perpetrators of discriminatory practices; confiscation of property; prohibition of the exercise of a profession or activity which involves a public capacity or depends on authorisation or official approval by the public authorities; removal of the right to participate in trade fairs; removal of the right to participate in public markets; prohibition of access to their establishments; suspension of licences and other authorisations; removal of the right to the benefits granted by public bodies or services.

For certain cases, the European Court of Justice's case law contains specific indications regarding the Community law requirements in relation to remedies. Thus, in the case of discriminatory dismissal, the remedy (or remedies) granted must in any case include either reinstatement or compensation. Further, where compensation is chosen as a remedy it must fully make good the damage. Upper limits are not acceptable, except for situations where the damage was caused not only through discrimination. Upper limits for pecuniary damages seem to apply under the laws of Estonia (six months salary in the case of discriminatory termination of an employment contract where the victim of discrimination waived reinstatement), Hungary (twelve months average earnings, in addition to reinstatement in the case of discriminatory dismissal), Ireland (104 weeks pay; 12,697 euro where the victim of discrimination was not an employee; 6,348.69 euro under the Equal Status Act) and Sweden (32 months' wages in cases of dismissal after 10 years of employment; 48 months if the victim of discrimination is aged 60 years or older). In Finland, there appears to be an informal upper limit (15,000 euro; this limit can be exceeded for special reasons). Statutory upper limits on compensation for non-pecuniary damages seem to apply in Belgium (six months salary in the case of victimisation where a

dismissal is proven to be a form of reprisal) and Malta (200 Liri, which is equivalent to 465 euro). The Greek anti-discrimination law does not provide for compensation, only for fines which are payable to the state in some circumstances. Damages may be awardable under the Civil Code. There appear to be no limits either in relation to pecuniary or non-pecuniary damages in the national laws of the Czech Republic, Denmark, Italy, Luxembourg, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain and the UK. In Latvia there is no maximum amount for damages under the civil law, however the recently enacted Law on Reparation of Damages caused by the State Administrative Institutions sets the maximum amount of non-pecuniary damages for personal harm at 5,000 Lats (around 8,000 euros), or 7000 Lats (around 10,000 euros) in cases of grave personal harm, and 20,000 Lats (around 24,000 euros) if harm has been caused to life or grave harm has been caused to health. The maximum amount of damages for moral harm is set at 3000 Lats (around 4,800 euros) or 5,000 Lats (around 8,000 euros) in cases of grave moral harm and 20,000 Lats (around 24,000 euros) if harm has been caused to life or grave harm has been caused to health. It is unclear as yet whether in cases of discrimination the courts would award damages for both personal harm and moral harm. The definitions of personal harm and moral harm permit the cases of discrimination to come under both, and the law permits applications for several kinds of damages. Finally, Austrian law provides for an upper limit of 500 euro in cases of non-recruitment or non-promotion if the employer proves that the victim would not have been recruited or promoted even in the absence of discrimination. Of the countries where limits do exist, Ireland is particularly interesting because there are no comparable statutory limits on compensation for discrimination on grounds of sex. In Poland there is a minimum level of compensation which is linked to the minimum wage.

In many Member States such as Austria, Cyprus, Estonia, Finland, Germany, Italy, Luxembourg, Portugal, Slovenia there have been either no or too few cases to calculate an average compensation award in a discrimination claim and in others, such as Poland reliable information on this is difficult to attain. In the UK in 2004 the average award in disability discrimination cases was £28,889 (42,899 euros) and £13,720 (20,373 euros) for race discrimination cases. In France legal practice is still very conservative in calculating pecuniary loss and amounts awarded remain rather low. This is also the case for compensation awards in Ireland where the Equality Authority officers have stated that they feel constrained by the maximum level of compensation they can award. In Ireland the average award in employment cases was 12,798 euros and in goods and services cases the average award was 594 euros for the first nine months of 2005 in cases heard before the Equality Tribunal. In Sweden damages for violations of non-discrimination legislation range from between 4,450 to 11,110 euros, depending on the circumstances. In Denmark compensation awards range between 1,500 and 10,000 euros. In Slovakia the financial compensation awarded shows an unstable and varying approach. Dutch courts are generally reluctant to grant damages for non-pecuniary damages and in Luxembourg non-pecuniary damages are not available. In Hungary in a number of initial cases concerning discrimination in access to services, the amount of compensation was consistently around 400 euros. This is double the monthly minimum wage, so not very dissuasive. Recently however, average amounts have risen with discrimination based on racial or ethnic origin being sanctioned with non-pecuniary damages of around 2,000 euros in recent cases. Punitive damages do not exist, but a so-called 'fine to be used for public purposes' may be imposed by the court if the amount of the damages that can be imposed is insufficient to mitigate the gravity of the actionable conduct. This fine is however payable to the state and not the victim.

On an initial examination, with the exception of perhaps the UK, these figures seem relatively low. This, coupled with the length of time it can take to get a decision, for instance in Ireland it takes 3 years for cases to be heard by the Equality Tribunal, questions the effectiveness of the remedy and even whether it in actual fact makes good the damage. The question equally arises about its dissuasiveness, in particular whether such sums will deter larger employers. In this regard, the bill presently before the Spanish Parliament under which company turnover would be a criteria in determining the level of sanction imposed presents an interesting development.

In some Member States such as Cyprus there are specific sanctions to tackle the issue of structural discrimination, for instance the equality body can recommend school de-segregation plans. The body can also issue recommendations to the person or group found guilty of discriminatory behaviour as to alternative conduct, abolition or substitution of the provision, term, criterion or practice and so far all investigations have led to recommendations, as opposed to binding decisions enforceable in court. In Ireland the Equality Tribunal can order that a course of action be taken and in the Netherlands, the Equal Treatment Commission may seek a court ruling that conduct contrary to equal treatment legislation is unlawful and request that the conduct be prohibited or obtain an order that the consequences of such conduct be rectified e.g. a court order to make a de-segregation plan for a school. However it has never used this power. In other Member States, such as Austria there are no such specific sanctions to tackle the issue of structural discrimination.



chapter 8

Equal Treatment Bodies

By now most countries have designated a specialised body for the promotion of equal treatment irrespective of racial or ethnic origin, as required by Article 13 of the Racial Equality Directive. Exceptions are the Czech Republic, where the Anti-discrimination Bill which failed to secure final approval by the Parliament before it was dissolved prior to the general election proposed designating the existing Ombudsperson the specialised body, Luxembourg, where draft legislation foresees the creation of a new Centre for Equal Treatment, Malta, where the intention (not yet expressed in a government bill) seems to be to accord this mandate to the Commission for the Promotion of Equality for Men and Women (set up under the Equality for Men and Women Act, 2003), and Germany, where the draft legislation seeks to set up a new federal anti-discrimination body to work with existing agencies at state and federal level. In Poland the Plenipotentiary for Equal Status of Women and Men whose mandate was extended in 2002 to counter racial and ethnic discrimination was abolished in 2005 and its competence was attributed to the Ministry of Labour and Social Affairs (the Commissioner of Citizens' Rights remains relevant.) Member States which set up completely new bodies are Denmark,¹⁴⁹ France,¹⁵⁰ Greece,¹⁵¹ Hungary,¹⁵² Italy¹⁵³ and Slovenia.¹⁵⁴ Spain¹⁵⁵ is similarly due to set up a new body under their implementing legislation. Bodies that already existed but which have been designated the Article 13 body are the Cypriot Ombudsman, the Estonian Legal Chancellor, the Latvian National Human Rights Office, the Lithuanian Equal Opportunities Ombudsman, the Portuguese High Commissioner for Immigration and Ethnic Minorities and the Slovak National Centre for Human Rights. In some Member States the Article 13 functions are fulfilled by, or shared between, a few organisations (e.g. Greece).

The minimum requirement on Member States is to have one or more bodies for the promotion of racial and ethnic origin equality which a) provide independent assistance to victims of discrimination in pursuing their complaints about discrimination, b) conduct independent surveys concerning discrimination, and c) publish independent reports and recommendations on any issue relating to such discrimination. A high number of Member States go further than this, firstly in terms of the grounds of discrimination they cover, and secondly in terms of the powers they have to combat discrimination. The Austrian Equal Treatment Commission and Office for Equal Treatment, the Cyprus Ombudsman, the Estonian Legal Chancellor, the French High Authority against Discrimination and for Equality, the Irish Equality Authority, the Dutch Equal Treatment Commission, the Belgian Centre for Equal Opportunities and Opposition to Racism, the Hungarian Equal Treatment Authority, the Lithuanian Equal Opportunities Ombudsman, the Greek administrative bodies and the Slovenian Advocate for the Principle of Equality and Council for the

¹⁴⁹ Complaints Committee for Ethnic equality in the Danish Centre for Human Rights.

¹⁵⁰ High Authority against Discrimination and for Equality (HALDE).

¹⁵¹ Equal Treatment Committee and Equal Treatment Service, who will share the task of promoting the principle of equal treatment with the Ombudsperson, the Work Inspectorate and the Economic and Social Committee.

¹⁵² Equal Treatment Authority.

¹⁵³ National Office against Racial Discrimination.

¹⁵⁴ Advocate for the Principle of Equality and Council for the Implementation of the Principle of Equal Treatment.

¹⁵⁵ The Council for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin was established by the Law 62/2003 transposing the Directives. It is not yet operative as its make-up and functions still have to be regulated by a royal decree.

Implementation of the Principle of Equal Treatment all deal with many forms of discrimination. The Equality Commission for Northern Ireland works on discrimination on the grounds of race, religious belief or political opinion, sex, sexual orientation, married status, disability and age, and in Great Britain the existing Commission for Racial Equality, Disability Rights Commission and Equal Opportunities Commission will be replaced by a Commission for Equality and Human Rights in the coming years. Those with the mandate only to deal with racial and ethnic origin discrimination are the Danish Complaints Committee (established within the Danish Institute for Human Rights), the Finnish Minorities' Ombudsman, the Italian National Office against Racial Discrimination, the Portuguese High Commissioner for Immigration and Ethnic Minorities and the Spanish Council for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. The Swedish Ombudsman against Ethnic Discrimination deals with ethnic origin and religion, but there are separate Ombudsmen for gender, disability and sexual orientation respectively.

In terms of the powers of specialised bodies, it is notable that the respective bodies provide assistance to victims of discrimination in a variety of ways. Some specialised bodies provide assistance in the form of support in taking legal action – the Belgian, Finnish, Hungarian, Irish, Italian, Northern Irish, British, and Swedish bodies can do this. Others give their – usually non-binding – opinion on complaints submitted to them, e.g. the Austrian and Dutch Equal Treatment Commissions, the Danish Ethnic Complaints Commission, the Cyprus Ombudsman, the Hungarian Equal Treatment Authority, the Latvian National Human Rights Office, the Lithuanian Equal Opportunities Ombudsman, the Greek Ombudsman and Equal Treatment Committee and the Slovenian Advocate for the Principle of Equality. Such proceedings do not preclude the victim from subsequently taking legal action before the courts with a view to obtaining a binding remedy.

A number of specialised bodies – e.g. those in Austria, Cyprus, France, Hungary, Ireland, Lithuania and Sweden - can investigate complaints of discrimination and usually can force compliance with their investigations by all persons involved. In France, the High Authority may conclude an investigation by issuing its conclusions and recommendations to the parties who will have a certain amount of time to comply. In case of non-compliance, the High Authority will have the power to call public attention to its recommendations. In addition, it may alert the relevant authorities in cases that require disciplinary sanctions against the respondent. The Hungarian Equal Treatment Authority can apply sanctions on the basis of an investigation. In Ireland, the Equality Authority may serve a 'non-discrimination notice' following an investigation. This notice may set out the conduct that gave rise to the notice and what steps should be taken in order to prevent further discrimination. It will be a criminal offence not to comply with a notice for a period of 5 years after its issue. The Equality Authority is also empowered to seek an injunction from the courts during this 5 year period to restrain any further contravention or failure to comply with a notice.

Most bodies can arrange for conciliation between the parties and most can review and comment on legislative proposals and the reform of existing laws.

Interesting and useful powers which are not listed in Article 13(2) are the following:

- The Belgian Centre for Equal Opportunities and Opposition to Racism has the power to take legal action in the name of public interest. Where the alleged violation has an identifiable victim (who can be a natural or legal person)¹⁵⁶, the power of the Centre to act is conditional upon the consent of the victim (Art. 31, *in fine*, of the Law).
- The French High Authority has the role of 'auxiliary of Justice', whereby criminal, civil and administrative courts may seek its observations in cases under adjudication. In addition, the High Authority will have the power to seek permission to submit its observations in criminal matters.
- Employers can ask the Dutch Equal Treatment Commission for an opinion on whether their employment practice contravenes non-discrimination law.
- The Hungarian Equal Treatment Authority can take legal action in the public interest with a view to protecting the rights of persons and groups whose rights have been violated.
- The Irish Equality Authority enjoys legal standing to bring complaints to the Equality Tribunal relating to patterns of discrimination, discriminatory advertising or the contents of a collective agreement. The Equality Authority may also carry out equality reviews, i.e. an audit of the level of equality that exists in a particular business or industry. Based on the results of this audit, an equality plan will be developed. The plan will consist of a programme of actions to be undertaken in employment or business to further the promotion of equality of opportunity. Where there are more than 50 employees, the Authority may instigate the review itself and prepare an action plan. If there is a failure to implement the action plan, the Equality Authority may issue a notice detailing what steps are required for its implementation. Non-compliance with this notice may result in an order from either the High Court or Circuit Court requiring compliance.

Finally, some concerns in relation to particular countries may be illustrated. In Denmark it is maintained that transposition of Article 13 of the Racial Equality Directive violated the non-regression principle in Article 6(2) and Recital 25 of the Directive, because the resources of the body and the assistance available to victims of discrimination are less after transposition than before. It is feared that the Estonian Legal Chancellor will have difficulties in dealing with discrimination in the fields other than employment, since as yet there are no detailed legal provisions to tackle these issues. There is concern that some specialised bodies are placed too close to government, thereby risking the independence of their work. For instance, the Italian Office is located within the Ministry for Equal Opportunities and under the political responsibility of the Minister for Equal Opportunities and the future Spanish Council for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin will be attached to the Ministry of Labour and Social Affairs, its make-up fundamentally of a governmental nature. Moreover, the provision listing its functions does not include the word 'independent.'

¹⁵⁶ In some cases, there will be no victim, but the Law is nevertheless violated: this would be the case, for instance, if an employer publicly boasts that thanks to the 'selective' procedures he has introduced in the recruitment process, no homosexual will ever be hired – this should be considered an offence as defined under Article 6(1) of the Law, and the associations or organisations listed in Article 31 will be considered to have an interest in filing a claim to obtain that a prosecution is launched.



chapter 9

Implementation and Compliance

A. Dissemination of information and Social and Civil Dialogue

Of all the Directives' articles, it is those on the dissemination of information and social and civil dialogue that have seen the least formal implementation by the Member States and probably the most varied response. The reason behind this lies to some extent with the vagueness of these Articles and the interpretation by some governments that they are not bound to transpose these provisions into law but simply to take some steps towards their objectives. For example, the Committee charged with considering the implementation of the Article 13 Directives in Denmark concluded that the legislation did not need to include reference to these provisions of the Directives, as they were already sufficiently transposed in Denmark. The impression prevails that these provisions have been insufficiently implemented in at least Austria, Belgium, Cyprus, Estonia, Greece, Latvia, Luxembourg, Poland, Slovenia and Spain, and, with particular regard to Directive 2000/78, Portugal and Italy.

Positive information dissemination activities include ministerial publications providing basic information on the principle of equal treatment and governmental support for training judges and lawyers on the new laws, as in Austria, and discussion of anti-discrimination rights in the mass media and access to legislation and proposals free of charge via the internet, as in Lithuania. France has recently run campaigns on race and disability, electing racial discrimination as the "Great National Cause" in 2002 and disability in 2004. In Ireland the government has launched a National Action Plan Against Racism and a National Disability Strategy. Under Article 31 of the Hungarian Equal Treatment Act, a National Equal Opportunities Programme shall be adopted every two years for the prevention of discrimination and the promotion of equal opportunities. The government must discuss the proposed programme with the relevant social and interest representation organisations and the organisations representing employers' and employees' interests before submitting it to Parliament for approval. In addition, in Hungary a National Network for Equal Opportunities has been set up. The Network has an office in each county and in Budapest and organises research, conferences, preparation and dissemination of information materials and the maintaining of contacts with and the establishing of networks of civil organisations.

Information should be disseminated in a way that is accessible to all disabled people and in languages understood by minorities in that country. In Finland for instance a leaflet on the Non-Discrimination Act has been produced by the Ministry of Labour and the SEIS-project,¹⁵⁷ and made available in Braille and both in print and on Internet in Finnish, Swedish, English, Sami, Russian, Arabic and Spanish. French television campaigns and websites are adapted for visually and hearing impaired. In contrast, information provision does not seem to cater for disabled persons' needs in Austria, the Czech Republic, Hungary, Latvia, Portugal, Slovakia and to a large extent in Poland. Thus far in Cyprus, information has not been produced in languages other than Greek.

Most Member States can point to the mandate of their specialised body for awareness-raising activities, for instance Denmark, Estonia, Ireland, Sweden and the UK. Where the body only has competences relating to race and ethnic origin, however, other

¹⁵⁷ "STOP – Finland Forward without Discrimination", funded by the Community Action Programme to Combat Discrimination.

arrangements must be made for the grounds religion and belief, age, disability and sexual orientation. This is a shortcoming in Italy, where the dissemination of information has started with the activities of the National Office against Racial Discrimination, but no particular measures are foreseen for the other grounds.

A small number of Member States have written into their law an obligation on employers to inform employees about discrimination laws, including Malta, Poland and Portugal. Malta extends this duty to 'any person or organisation to whom these regulations apply,' who should bring the laws to the attention of the organisation's members or to any other persons who may be affected by the organisation's actions.¹⁵⁸ In Portugal, the failure to provide information about workers equality rights amounts to a 'light offence.' Implementation of the obligation on employers in Poland will be monitored by the National Labour Inspectorate.

Finally, European Union campaigns and project funding must be acknowledged for their role in many Member States in raising awareness, in particular the Commission campaign 'For Equality, against Discrimination' which has been at the centre of efforts in many countries, with the lump sums made available to Member States by Commission DG Employment and Social Affairs for promoting implementation of the Directives and the Community Initiative EQUAL. The designation of 2007 as the European Year of Equal Opportunities for All should further the awareness raising, and place it within a debate on the benefits of diversity for European societies.

Some Member States consulted NGOs and the social partners in their efforts to transpose the Directives. In Hungary, the legislative concept paper and draft were sent to NGOs and put on the Ministry of Justice website with a call for comments, and in Ireland the Department of Justice, Equality and Law Reform produced a discussion document on the employment issues that arose from the Directives and invited submissions from other Government Departments, the social partners, the Equality Tribunal and the Equality Authority. In the UK well over 10,000 copies of a first consultation document were sent to a diverse range of organisations, including employers' organisations, public and private sector employers, trade unions, NGOs, lawyers' organisations, academics and others. Consultation documents were posted on the government's website, with links to versions in Arabic, Hindi, Chinese and Gujarati, and a version prepared for persons with learning difficulties. The documents were also available in Braille, large print and on tape. This contrasts starkly with Spain, where transposition has been severely criticised for being hidden, lacking consultation and parliamentary debate, the absence of a government statement and by-passing of the Council of State and Economic and Social Council. A different problem emerged in Denmark and Finland: a lack of public debate was attributable to the fact that the actors who would normally generate public discussion participated in the Committees charged with considering implementation of the Directives and felt they could not discuss issues until that (lengthy) process was over.

Few Member States have put in place permanent structures specifically for dialogue with civil society and the social partners on equality issues. At local level in France the Commission for the promotion of equality (COPEC) brings together all local actors

¹⁵⁸ Regulation 12 of Legal Notice 461 of 2004

under the authority of the representative of the state in the area (département) to generate co-operation and dialogue. The recently enacted Law on Disability creates a Departmental Commission for the Rights and the Autonomy of the Disabled which will be competent for all decisions relating to the orientation of the disabled person. Its members are representatives of the public service, NGOs, trade unions and social partners and at least 30% are representatives of the disabled. Its organisation will be set out by decree. The same law creates an obligation on the social partners to hold annual negotiations which concern measures necessary for the professional integration of the disabled. Slovenian law requires the government and competent ministries to co-operate with NGOs that are active in the field of equal treatment and with the social partners (Article 8 Act Implementing the Principle of Equal Treatment). Improvements in this field were expected with the establishment of the Council for the Implementation of the Principle of Equal Treatment, however only two sessions have been held.

In Finland there is a good record of co-operation with NGOs and social partners through advisory bodies on youth issues, disability, rehabilitation and Roma affairs. A new body on minority issues is in the process of being set up and members will include ministries, social partners and NGOs. In Lithuania the government maintains dialogue with national minorities' NGOs through regular meetings held in the Council of National Communities, part of the Government Department of National Minorities and Lithuanians Living Abroad. In the Netherlands, the Ministry of Social Affairs and Labour set up the (informal) network 'Equal Treatment' in 2003, comprising NGOs, the social partners and the relevant Ministries. The network convenes twice a year in order to exchange information on equal treatment. In addition, the Ministry of Social Affairs operates an 'Article 13 Project', which delivers training to small and medium-sized businesses, provides information in professional journals, and conducts interviews with large companies on equal treatment. Finally, the project 'Age and Employment' is funded by the Dutch Ministry of Social Affairs and Labour to the National Bureau on Age Discrimination, and promotes expertise on this issue in, among others, works councils, employers, trade unions, personnel managers and employment mediators. Informal exchanges have taken place in Belgium, where the Federal Department of Employment Labour and Social dialogue tried to ensure all actors in the field are acting in a co-ordinated way. In Spain a Strategic Plan for Citizenship and Integration designed to promote the integration of immigrants is to be adopted. One of the key points of the Plan is equal treatment and combating all forms of discrimination. The Plan will be realised through a number of action programmes, through collaboration between various levels of government and NGOs.

There appear to be more instances of structured dialogue for disability than the other grounds of discrimination. The Latvian National Council of the Affairs of Disabled Persons unites representatives of NGOs and state institutions to promote the full integration of disabled persons in political, economic and social life based on the principle of equality. The Lithuanian Council for Affairs of the Disabled, composed of national non-governmental organisations for the disabled and representatives of state institutions (as approved by the Government upon proposal of the Minister of Social Security and Employment), co-ordinates the medical, professional, social rehabilitation and integration of the disabled. In Spain relevant structures for dialogue are the Advisory Commission on Religious Freedom and the National Disability Council which represents associations of disabled persons of various kinds. Its functions include the issuing of reports on draft regulations affecting equal opportunities, non-discrimination and universal accessibility. In France there is a National Consultative Commission for the Disabled.

As with information dissemination, it is often the role of the specialised equality bodies to generate dialogue with the social partners and civil society. This is the case for the Estonian Legal Chancellor, the Irish Equality Authority, the Italian National Office against Racial Discrimination (however for racial and ethnic origin only and there are no plans for dialogue on the other grounds) and it was the case with the Polish Government's Plenipotentiary for Equal Status of Men and Women which was the only organisation dealing with all grounds but which was abolished in November 2005. In France, the new specialised body has a role to play, complementing that of the existing National Human Rights Consultative Commission, which is an advisory body to the Prime Minister composed of delegates of all major human rights and anti-racist NGOs, representative trade unions and branches of the public sector.

General structures for social dialogue may be used for dialogue on equality issues in the Czech Republic, Denmark, Lithuania, Malta, Poland, Portugal, Slovakia, Sweden and the UK. There is a good record of governmental agencies or ministerial departments co-operating with non-government organisations in Slovakia and the UK.

B. Ensuring compliance

Article 14 of the Racial Equality Directive and Article 16 of the Employment Equality Directive require Member States to ensure legal texts comply with the Directives, demanding that on the one hand 'any laws, regulations and administrative provisions that are contrary to the principle of equal treatment are abolished'; and that on the other 'any provisions contrary to the principle of equal treatment which are included in contracts or collective agreements, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations are, or may be, declared void or are amended'. The wording of these provisions would appear to prescribe the systematic repeal of all discriminatory laws, whereas more leeway is left for annulling contract provisions and bringing them into line with the Directives.

Few countries have systematically ensured all existing legal texts are in line with the principle of equal treatment. In transposing the two Directives, only the relevant ministries in Finland seem to have reviewed legislation in their respective administrative fields. They did not find any discriminatory laws, regulations or rules, and it therefore was deemed unnecessary to abolish any laws. In the UK government departments reviewed the legislation for which they are responsible to ensure that any which was contrary to the Directive's principles of equal treatment in relation to disability, religion or belief and sexual orientation, and most recently age, was repealed or amended. Non-governmental experts in other countries have however identified laws that are discriminatory, for example the Luxembourg General Statute of Civil Servants which sets a maximum age for recruitment (45), and in Portugal Article 175 of the Criminal Code, which punishes homosexual acts with persons aged 14 to 16 or the instigation of such acts, while the same type of acts are not punished when the 14 to 16 year old is of the opposite sex. The Article has been challenged and declared unconstitutional. It has yet to be repealed. In Belgium the Federal Ministry of Labour, Employment and Social Dialogue is currently completing a review of all laws and regulations which are potentially discriminatory on the grounds of age to identify which existing regulations may be problematic under Directive 2000/78/EC. It is pointed out by the Belgian expert that the evaluation of texts for compatibility with the Directives will require a delicate interpretation of the Directives and only the most overtly discriminatory regulations could be identified by such a screening.

In most countries therefore, the repeal of discriminatory laws is likely to arise following a complaint before the courts. In most Member States, the Constitutional equality guarantee already acts as a filter for discriminatory laws, with the Constitutional court having the power to declare void or set aside any unconstitutional provisions. However, proceedings before Constitutional courts for this purpose can be lengthy, requiring the exhaustion first of all other remedies and on this basis it can be questioned whether this is sufficient to fulfil this provision of the Directives. Aside from Constitutional clauses, there are often clauses in primary legislation which allow lower courts to declare laws that are in breach of the principle of equal treatment void. For instance in France, the Constitution, civil code and labour code all ensure provisions and clauses which breach the 'superior rule' of equality are void. In Lithuania the Employment Code provides that courts can declare acts adopted by state institutions, municipalities or individual officers invalid if they are contrary to law.

Article 26 of the Greek anti-discrimination Law provides "Once into force, this Law repeals any legislation or rule and abrogates any clause included in personal or collective contracts, general terms of transactions, internal enterprise regulations, charters of profit or non-profit organisations, independent professional associations and employee or employer trade unions opposed to the equal treatment principle defined in this Law."

In Cyprus, contrary to the doctrine of implied repeal, laws contrary to equal treatment legislation are repealed, even if they are adopted at a later date. It seems a recommendation of the Commissioner for Administration (Ombudsman and Specialised Body) following an investigation and finding of a discriminatory law or practice, can trigger the repeal of discriminatory laws. Prior to transposition of the Directives in the UK, the Race Relations Act, Race Relations Order and Fair Employment and Treatment Order stated that the prohibition of discrimination did not apply to acts done in compliance with other legislation passed before or after these measures. The 2003 regulations have deleted that exception in these laws in line with Article 14 Racial Equality Directive and 16 Employment Equality Directive, but have not repealed any existing conflicting legislation. An exception for acts done under statutory authority remains part of the Disability Discrimination Act. In Ireland, there is concern that the Equal Status Act 2000-2004 remains subordinate to other legislative enactments, because section 14(a)(i) provides that nothing in that Act will prohibit any action taken under any enactment.

Legislation which can annul discriminatory rules in contracts or collective agreements, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations is more common among the Member States. This is the case in the Netherlands where the main equal treatment acts stipulate that 'agreements' which are in contravention of the equal treatment legislation shall be void. General labour law is relied on to this end in many countries, including Hungary, where Articles 8 and 13 of the Labour Code provide that an agreement (individual or collective) that violates labour law regulations shall be void. If annulled or successfully contested, the agreement shall be invalid (Article 9) and if invalidity results in damages, these shall be paid (Article 10). Similar general labour law provisions are found in Latvia (Article 6 Labour Law), Poland (Article 9.2 Labour Code), and Estonia (Articles 16 and 125(1) Law on Employment Contracts and under Article 4 (2) Law on Collective Agreements which provides that the terms and conditions of a collective agreement which are "less favourable to

employees than those prescribed in a Law or other legislation" are invalid). The supervisory powers of specialised bodies are also relevant for changing the discriminatory rules of organisations and independent professions and associations such as those of the Swedish Ombudsman and the Irish Equality Authority.

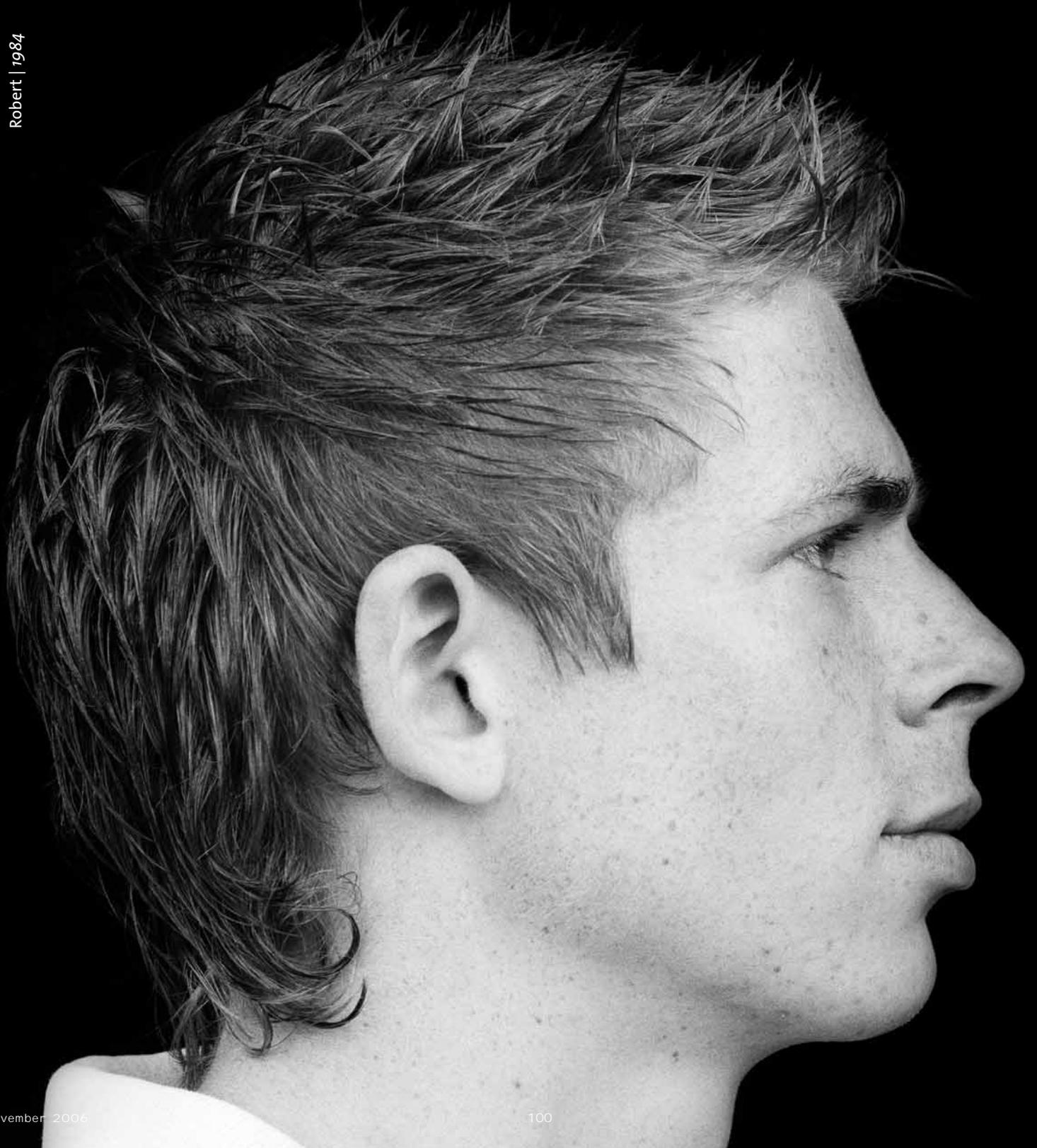
There are provisions in some Member States which specifically render discriminatory provisions in contracts or collective agreements etc. void. In Spain, Article 17.1 of Workers' Statute declares void any discriminatory clauses of collective agreements, individual pacts, and unilateral decisions of discriminatory employers. The Finnish Non-Discrimination Act provides that a court may, in a case before it, change or ignore contractual terms or terms in collective agreements that are contrary to the prohibition provided in section 6 (on discrimination) or section 8 (on victimisation) of the Act (section 10). The Employment Contracts Act also has a special provision concerning employment contracts; a provision of a contract which is plainly discriminatory is to be considered void (section 9:2).

Significantly, the Irish Employment Equality Act 1998-2004 provides that all employment contracts are deemed to have an equality clause that transforms any provisions of the contracts that would otherwise give rise to unlawful discrimination (section 30). All discriminatory provisions in collective agreements are deemed void, and it is not possible to contract out of the terms of the equality legislation (section 9). While it is the case that discriminatory clauses are not valid, the reality is that this fact may only be established through litigation. Where the Equality Tribunal hold that the clause in question is contrary to the legislation, then that part of the collective agreement/contract cannot be enforced and must be modified.

In Malta, Regulation 12 of Legal Notice 461 of 2004 provides that any provisions in individual or collective contracts or agreements, internal rules of undertakings, or rules governing registered organisations that are contrary to the principle of equal treatment, shall, on entry into force of these regulations, be considered void. The Cyprus Commissioner can declare provisions in agreements, contracts etc. void or amended. In the UK there are specific provisions for this purpose in the anti-discrimination legislation for each of the relevant grounds.

Under the Slovakian Anti-discrimination Act, employers and relevant trade unions had until 1 January 2005 to bring the provisions of collective agreements into compliance with the principle of equal treatment. Employers have the same obligation with regard to provisions in their internal rules. Furthermore, normative acts registered by a state agency (by-laws of associations, by-laws of independent professions and workers' and employers' organisations, by-laws of profit-making organisations, etc.) must not be contrary to the principle of equality. If the by-laws submitted for registration are in breach of this principle, the registration body must reject them.

Identified shortcomings in national laws on this point are the following. The Belgian provision stating that contract clauses in violation of the prohibition of discrimination will be declared void (Article 18 2003 Law) omits the other forms of clauses listed in Article 14b)/16b). In Sweden the law does not expressly provide that discriminatory internal rules of an employer may be amended or declared void.



chapter 10

Conclusion

The transposition of the Racial Equality and Employment Equality Directives has immensely enhanced provision of legal protection against discrimination on the grounds of racial and ethnic origin, religion and belief, age, disability and sexual orientation across the European Union. It is encouraging how much additional protection national law provides compared to EC law in certain instances and to discern that levelling up of protection across grounds has continued in a few countries (e.g. the UK). However, this second comparative overview has revealed that although some progress has been made in the last year, a significant number of apparent shortcomings in Member States' legislation still remain and it is now imperative that they be resolved. Of concern is also that there are some signs of regression, most notably the abolition of the specialised equality body in Poland. Ultimately it is up to the courts to decide whether national law is inconsistent with European law and case-law at national and European level is now slowly starting to emerge. Given the ambiguities in some of the Directives' text, and therefore also many national provisions, judicial interpretation will clarify important boundaries.

A challenge identified in many Member States is the application of anti-discrimination laws in practice. Most EU Member States have outlawed discrimination at least on some grounds for a long time, yet the number of cases brought by victims seeking to assert their equality rights remains rather low. The hope was expressed in the last edition of this publication that the detail that has been added to the law in many countries, and in particular the specific procedural rights in the remedies and enforcement rules, will change this situation. Although a lot of this machinery has been put in place by many Member States it remains too early to draw conclusions here. There are however indications that certain procedural difficulties in the form of short limitation periods and legal aid provision may play a role in effective enforcement. The credibility and admissibility of methods of proof such as statistical evidence (and therefore the issue of data collection), and to a lesser extent situation testing will be key. Dissemination of information on anti-discrimination laws has begun and Member States have made progress in this regard but more remains to be done on increasing dialogue among government, civil society and the social partners across all grounds. The European Year of Equal Opportunities in 2007 presents the possibility of injecting new vigour into this process.



chapter 11

Tables

OVERVIEW OF ANTI-DISCRIMINATION LAW IN THE MEMBER STATES

Explanatory Note to Tables

The information in the tables is based solely on that which appears in the executive summaries and main country reports of the Network of Legal Experts in the Non-discrimination Field, dated 1 February 2006 and the thematic report “Catalysts for Change? Equality Bodies according to Directive 2000/43/EC – existence, independence and effectiveness” by Rikki Holtmaat (forthcoming). The information is a non-exhaustive list which contains only the principle pieces of anti-discrimination legislation in each Member State and does not include references to national Constitutional provisions. Inclusion of the legislation in the tables does not imply that national law is in compliance with Directives 2000/43 or Directive 2000/78. Although the information contained in the tables is stated as of 1 February 2006, exceptionally the situation in Germany has been based on the new Anti-discrimination legislation which entered into force on 18 August 2006.

INTERNATIONAL INSTRUMENTS

European Convention on Human Rights	Protocol 12, ECHR	Revised European Social Charter	Framework Convention on the protection of National Minorities	International Covenant on Civil and Political Rights	International Convention on Economic, Social and Cultural Rights	Convention on the Elimination of All Forms of Racial Discrimination	Convention on the Elimination of Discrimination against Women	Convention on the Rights of the Child	ILO Convention N°111 on Discrimination
AUSTRIA	signed, not ratified	signed, not ratified	ratified	ratified	ratified	ratified	ratified	ratified	ratified
BELGIUM	signed, not ratified	ratified	signed, not ratified	ratified	ratified	ratified	ratified	ratified	ratified
CYPRUS	ratified	ratified	ratified	ratified	ratified	ratified	ratified	ratified	ratified
CZECH REPUBLIC	signed, not ratified	signed, not ratified	ratified	ratified	ratified	ratified	ratified	ratified	ratified
DENMARK	not signed	ratified	ratified	ratified	ratified	ratified	ratified	ratified	ratified
ESTONIA	signed, not ratified	ratified	ratified	ratified	ratified	ratified	ratified	ratified	ratified
FINLAND	ratified	ratified	ratified	ratified	ratified	ratified	ratified	ratified	ratified
FRANCE	not signed	ratified	not signed	ratified	ratified	ratified	ratified	ratified	ratified
GERMANY	signed, not ratified	not signed	ratified	ratified	ratified	ratified	ratified	ratified	ratified
GREECE	signed, not ratified	not signed	signed, not ratified	ratified	ratified	ratified	ratified	ratified	ratified
HUNGARY	signed, not ratified	signed, not ratified	ratified	ratified	ratified	ratified	ratified	ratified	ratified
IRELAND	signed, not ratified	ratified	ratified	ratified	ratified	ratified	ratified	ratified	ratified
ITALY	ratified	not signed	ratified	ratified	ratified	ratified	ratified	ratified	ratified
LATVIA	signed, not ratified	not signed	ratified	ratified	ratified	ratified	ratified	ratified	ratified
LITHUANIA	not signed	ratified	ratified	ratified	ratified	ratified	ratified	ratified	ratified
LUXEMBOURG	not signed	ratified	signed, not ratified	ratified	ratified	ratified	ratified	ratified	ratified
MALTA	not signed	ratified	ratified	ratified	ratified	ratified	ratified	ratified	ratified
NETHERLANDS	ratified	signed, not ratified	ratified	ratified	ratified	ratified	ratified	ratified	ratified
POLAND	not signed	ratified	ratified	ratified	ratified	ratified	ratified	ratified	ratified
PORTUGAL	signed, not ratified	ratified	ratified	ratified	ratified	ratified	ratified	ratified	ratified

	European Convention on Human Rights	Protocol 12, ECHR	Revised European Social Charter	Framework Convention on the protection of National Minorities	International Covenant on Civil and Political Rights	International Convention on Economic, Social and Cultural Rights	Convention on the Elimination of All Forms of Racial Discrimination	Convention on the Elimination of Discrimination against Women	Convention on the Rights of the Child	ILO Convention N°111 on Discrimination
SLOVAKIA	ratified	signed, not ratified	signed, not ratified	ratified	ratified	ratified	ratified	ratified	ratified	ratified
SLOVENIA	ratified	signed, not ratified	ratified	ratified	ratified	ratified	ratified	ratified	ratified	ratified
SPAIN	ratified	not signed	signed, not ratified	ratified	ratified	ratified	ratified	ratified	ratified	ratified
SWEDEN	ratified	not signed	ratified	ratified	ratified	ratified	ratified	ratified	ratified	ratified
UNITED KINGDOM	ratified	not signed	signed, not ratified	ratified	ratified	ratified	ratified	ratified	ratified	ratified

	Constitutional provisions	Main Anti-Discrimination Legislation	grounds covered
AUSTRIA	Art. 7 Federal Constitutional Act (B-VG), Art. 2 Basic Law, Arts. 63, 66 and 67 Treaty of St Germain, Art. 1 of Constitutional law of 3-7-73 implementing ICERD, ECHR is part of Austrian constitution	<p>Federal-Equal Treatment Act, Federal Law Gazette I Nr. 100/1993 as amended by Federal Law Gazette I Nr. 65/2004</p> <p>Equal Treatment Act, Federal Law Gazette I Nr. 66/2004</p> <p>Law on Equal Treatment Commission and the Office for Equal Treatment, Federal Law Gazette I Nr. 66/2004</p> <p>Equal Status Act for People with Disabilities, Federal Law Gazette I Nr. 82/2005</p> <p>(Amendment to) Act on the Employment of People with Disabilities, Federal Law Gazette I Nr. 82/2005</p> <p>Federal Disability Act, BGG1 I Nr. 82/2005</p> <p>Styrian Equal Treatment Act, Styrian Provincial Law Gazette Nr. 24/2004</p> <p>Viennese Service Order, as amended by Viennese Provincial Law Gazette Nr. 36/2004</p> <p>Viennese Anti-Discrimination Act, Viennese Provincial Law Gazette Nr. 35/2004</p> <p>Lower Austrian Equal Treatment Act, Lower Austrian Provincial Law Gazette Nr. 69/1997 as amended by Nr. 65/2004</p> <p>Carinthian Anti-Discrimination Act, Carinthian Provincial Law Gazette Nr. 63/2004</p> <p>Voralbergian Act on Anti-Discrimination</p> <p>Upper Austrian Act on Anti-Discrimination</p> <p>Burgenland's Anti-Discrimination Act</p>	<p>gender, ethnic affiliation, religion, belief, age, and sexual orientation</p> <p>gender, ethnic affiliation, religion, belief, age, and sexual orientation</p> <p>gender, ethnic affiliation, religion, belief, age, and sexual orientation</p> <p>disability</p> <p>disability</p> <p>disability</p> <p>gender, race or ethnic origin, religion or belief, disability, disability of a relative, age, sexual orientation</p> <p>gender, race, ethnic origin, religion, belief, disability, age, sexual orientation</p> <p>race, ethnic origin, religion, belief, age, sexual orientation</p> <p>gender, ethnic affiliation, religion or belief, disability, age, sexual orientation</p> <p>gender, ethnic affiliation, religion or belief, disability, age, sexual orientation</p> <p>All grounds of the two directives</p>
BELGIUM	Arts. 10 and 11 and 191 of the Constitution	<p>Law of 30 July 1981 criminalising certain acts inspired by racism or xenophobia, as amended by the Laws of 12 April 1994, of 7 May 1999, and of 20 January 2003</p> <p>Law of 25 February 2003 on combating discrimination and amending the Act of 15 February 1993 setting up the Centre for Equal Opportunities and the Fight against Racism</p> <p>Flemish Region/Community: Decree of 8 May 2002 on proportionate participation in the employment market</p> <p>French-speaking Community: Decree of 19 May 2004 on the implementation of the principle of equal treatment</p> <p>Walloon Region: Decree of 27 May 2004 on equal treatment in employment and professional training</p> <p>German-speaking Community: Decree of 17 May 2004 on the guarantee of equal treatment on the labour market</p>	<p>Race, colour, descent, ethnic and national origin</p> <p>All grounds in the two directives and additional grounds</p> <p>All grounds of the two directives</p>

	Constitutional provisions	Main Anti-Discrimination Legislation	grounds covered
BELGIUM	Arts. 10 and 11 and 191 of the Constitution	Region of Brussels-Capital: Ordinance of 26 June 2003 on the joint management of the labour market in the Region of Brussels-Capital	All grounds of the two directives
CYPRUS	Art 28 of the Constitution	The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004	race, community, language, colour, religion, political or other beliefs, national or ethnic origin, special needs, age and sexual orientation
		The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I)/2004	Racial and ethnic origin
		The Equal Treatment in Employment and Occupation Law No. 58 (1)/2004	Racial and ethnic origin religion or belief, age, sexual orientation
		Law on Persons with Disabilities (Amendment) No. 57(I)/2004	disability
CZECH REPUBLIC	Art 3.1 of the Charter of Fundamental Rights and Freedoms. (part of the Constitutional order)	Law n° 65/1965 Coll., Labour Code, Sec.1, Para.4 (as amended by Law n°46/2004 Coll)	All grounds in the two directives and additional grounds, except disability
		Law n° 361/2003 Coll. On Service by Members of the Security Services, Sec.4,Para.2	All grounds in the two directives and additional grounds, except disability
		Law n° . 435/2004 Coll., on Employment, Sec. 4., Para. 2	All grounds in the two directives and additional grounds
		Law n° . 221/1999 Coll. On Service by Members of the Armed Forces, Sec.2, Para.3, as amended by Law n°: 252/2002 Coll.	All grounds in the two directives and additional grounds, except disability
		Law n° . 218/2002 Coll, on Official Service in State Administration and on Remuneration of these Officials and other Employees	All grounds in the two directives and additional grounds
		School Law No. 561/2004 Coll., Sec. 2, Para. 1, subsection a)	All grounds in the two directives and additional grounds
DENMARK	None	Act No. 960 (2004) Penal Code, section 266 b	Race, colour, national or ethnic origin, religion and sexual orientation
		Act No. 626 (1987) on the prohibition of racial discrimination	Race, colour, national or ethnic origin, religion and sexual orientation
		Act No. 31 (2005) Act on prohibition against discrimination in respect of employment and occupation	Race, colour, national, social or ethnic origin, religion, belief, age, disability, sexual orientation and political opinion
		Act No.374 (2003) Act on the prohibition against unequal treatment due to race and ethnicity	Race and ethnic origin
		Act No. 411 (2002) Act on the institute for international studies and human rights	Race and ethnic origin
		Act No. 1417 of 22 December 2004 on the prohibition of direct and indirect discrimination on the grounds of age and disability	age and disability

ESTONIA	Arts. 9 and 12 Constitution	Law on Amendments to the Law on the Legal Chancellor and Related Laws	All grounds in the two directives and additional grounds
		Law on Amendments to the Law of the Republic of Estonia on Employment Contracts and to the Decision of the Supreme Soviet of the Republic of Estonia "Implementation of the Law of the Republic of Estonia on Employment Contracts" of 22 April 2004	All grounds in the two directives and additional grounds, recent amendments only in respect of age
		Law on Employment Services and Allowances, 1 January 2006	All grounds in the two directives and additional grounds
FINLAND	Section 6(1) and (2) Constitution	Penal Code	ethnic origin, race, colour, sex, language, origin, religion, political opinion, financial or social status, genetic risks
		Non-Discrimination Act, 21/2004	All grounds in the two directives and additional grounds
		Penal Code as amended by Law 578/1995 and Law 302/2004	All grounds in the two directives and additional grounds
		Employment contract Act as amended by Law 23/2004	All grounds in the two directives and additional grounds
		Civil Servant Act (750/1994)	All grounds in the two directives and additional grounds
		Province of Åland: Act on Prevention of Discrimination, Act on the Discrimination Ombudsman, Provincial Decree on the Discrimination Board	All grounds in the two directives
FRANCE	Preamble to the Constitution, Art. 1 of the Constitution	Law on separation of Church and State, 1905	religion
		Law on the press of 1881 (last amended February 2005)	All grounds in the two directives and additional grounds
		Law combating discrimination n°. 2001-1066	All grounds in the two directives and additional grounds
		Law of social modernisation n°2002-73	All grounds in the two directives and additional grounds
		Law no 2004-1486 of 30 December 2004 creating the Specialised Body (HALDE)	All grounds in the two directives and additional grounds
		Law of social cohesion 20 December 2004	race and religion
		Law no 2005-846 of 26 July 2005 habilitating the Government to adopt emergency measures for employment by way of Governmental Decree	age
		Governmental Decree 2005-901 of 2 August 2005 on Access to Employment in the Public Service	age

	Constitutional provisions	Main Anti-Discrimination Legislation	grounds covered
GERMANY	Arts. 3 and 33, 140, 136 German Basic Law	<p>Law on Promoting the Equality of the Disabled</p> <p>Law on Protection against Unfair Dismissal Social Code</p> <p>Work Constitution Law 1972, amended 2004</p> <p>Law on the Federal Employee Representation 1974 as amended in 2005</p> <p>Federal Law on Civil Servants 1999, amended 2005</p> <p>Framework Law on Civil Servants 1999, amended 2005</p> <p>Pending bill to transpose the directives (Law transposing the European Directives to implement the Principle of Equal Treatment of 18 August 2006)</p>	<p>Disability</p> <p>age and (severe) disability</p> <p>age and (severe) disability</p> <p>religion, origin, sex, sexual identity, age</p> <p>religion, origin, sex (sexual orientation in some state legislation)</p> <p>sex, race, religion, origin</p> <p>sex, race, religion, origin (sexual orientation in some state legislation)</p> <p>All grounds in the two directives and additional grounds</p>
GREECE	Art.4.1, 5.2.a, 5.5, 9A, 16.4, 21.1, 21.1.2, 25.1, 116.2 Constitution 1975/1986/2001	<p>The Law n. 927/1979, Anti-racist Law against discrimination on the grounds of racial or ethnic origin or religion</p> <p>The Law no. 3304/27.01.2005 Implementation of the Principle of equal treatment regardless of racial or ethnic origin, religion or other beliefs, disability, age or sexual orientation</p> <p>The Law no. 2643/1998 on the compulsory employment of disabled persons and of people of special groups as revised by the Law n. 3144/2003 Social dialogue on the promotion of occupation and social protection</p>	<p>racial or ethnic origin and religion</p> <p>All grounds in the two directives</p> <p>disability</p>
HUNGARY	Art. 70/A Constitution, extended by decision 61/1992 Constitutional Court	<p>Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities, last amended in May 2005</p> <p>Government Decree 362/2004 on the Equal Treatment Authority and the Detailed Provisions of its Proceedings</p>	<p>All grounds in the two directives and additional grounds</p> <p>All grounds in the two directives and additional grounds</p>
IRELAND	Arts. 40.1, 40.3.1, 40.3.2, 44 Constitution	<p>Equality Act 2004 amending the Employment Equality Act 1998 and the Equal Status Act 2000</p> <p>Pensions Act 1990-2004</p> <p>Intoxicating Liquor Act 2003</p> <p>Unfair Dismissals Act 1977 – 1993</p>	<p>All grounds in the two directives and additional grounds</p> <p>All grounds in the two directives and additional grounds</p> <p>Race, colour, sexual orientation, age, membership of the Traveller community</p>

ITALY	Art. 3 Constitution	Legislative Decree No. 215 of 9 July 2003 transposing Directive 2000/43, subsequently amended by Legislative Decree No 256 of 2 August 2004	racial and ethnic origin
		Decree of 11 December 2003 on internal structures and competences of specialised body	racial and ethnic origin
		Joint Decree of the Ministries of Labour/Welfare and Equal Opportunities of 16 December 2005 establishing a register of associations and bodies with standing to litigate discrimination claims	racial and ethnic origin
		Decree No. 286 of 25 July 1998	race and ethnic origin, religion and other grounds
		Legislative Decree No. 216 of 9 July 2003 transposing Directive 2000/78, amended by Legislative Decree no. 256 of 2 August 2004	All grounds in Directive 2000/78
		Act of 25 June 1993, no.205, Attribution of the force of ordinary statute, with modifications, to the government's legislative decree of 26 April 26, no.122 "Urgent measures concerning racial, ethnic and religious discrimination"	race, ethnicity and religion
		Act of 12 March 1999 n.68 Provisions on the right to work of disabled persons	disability
		Framework Law of 5 February 1992, no. 104 on the assistance, social integration and rights of disabled persons	disability
		Act of 20 May 1970, no. 300, Provisions on the protection of the freedom and dignity of workers, freedom of association with trade unions and freedom of trade union activity at the workplace, and work placement	All grounds in the two directives
		Labour Law, adopted 2001, amended 07.05.2004	an inexhaustive list of grounds: sexual orientation is still not explicitly mentioned among prohibited grounds
LATVIA	Art. 91 Constitution	Law on Social Security 1995, amendments containing the equality guarantee in force from 03.01.2006	an inexhaustive list of grounds: sexual orientation is still not explicitly mentioned among prohibited grounds
		amendments to the Law on the National Human Rights Office entered into force on 13 January 2006	all grounds except age
LITHUANIA	Art. 29 Constitution	Law on Equal Treatment, January 2005	All grounds in the two directives
		Employment Code, June 2002	All grounds in the two directives
		Law amending the Code of Administrative Offences, 2005	All grounds in the two directives
		Law on National Minorities, January 1991	nationality and ethnic origin
		Law on the Social Integration of Disabled, January 1991	disability
		Law on Religious Communities and Associations, October 1995	religion and belief

	Constitutional provisions	Main Anti-Discrimination Legislation	grounds covered
LUXEMBOURG	None (Arts. 10bis and 111 Constitution do not contain an explicit non-discrimination clause)	Penal code of 19 July 1997 pending bill N° 5518 to transpose the directives	All grounds except age All grounds in the two Directives
MALTA	Article 45 of the Constitution	Employment and Industrial Relations Act 2002 Legal Notice 461 of 2004 issued under the Employment and Industrial Relations Act Equal Opportunities (Persons with Disabilities) Act 2000 General Equal Treatment Act of 1994, amended by EC Implementation Act 2004 and by Law of 15 September 2005 amending the General Treatment Act Act on Equal Treatment on the Ground of Age in Employment of 1 May 2004 Act on Equal Treatment on the Grounds of Disability and Chronic Disease of 3 April 2003 Amendments to the Criminal Code	All grounds in the two directives and additional grounds All grounds in the two directives and additional grounds Disability All grounds in the two directives and additional grounds Age Disability and chronic disease Disability (a person's physical, psychological or mental disability)
NETHERLANDS	Art. 1 Constitution		
POLAND	Art. 32(1) and (2) Constitution (general). Arts. 19, 25, 27, 33, 35, 72, 76 Constitution (specific categories)	Labour code (last amended 14 November 2003) Act of 20 April 2004 on the Promotion of Employment and the Institutions of Labour Market Council of Ministers Ordinance of 25 June 2002 on Government's Plenipotentiary for Equal Status of Men and Women Decree of Council of Ministers of 3 November 2005 abolishing the Plenipotentiary	All grounds in the two directives and additional grounds All grounds in the two directives and additional grounds All grounds and gender except disability All grounds and gender except disability
PORTUGAL	Arts. 1, 13, 15, 26-1, 59, 70, 71, 72 and 74 of the Constitution	Law 18/2004 on Racial and Ethnic Origin Discrimination as amended by Decree Law 86/2005 Decree Law 251/2002 as amended by Decree Law 27/2005 (High Commissariat for Immigration and Ethnic Minorities) Labour Code Law 99/2003 Law 35/2004 of 29 July 2004 which regulates Law 99/2003 (Labour Code) Law 38/2004 on Measures for the Rehabilitation and Participation of Persons with Disabilities	Race, colour, nationality and ethnic origin Race and ethnic origin All grounds in the two directives and additional grounds All grounds in the two directives and additional grounds Disability

SLOVAKIA	Arts. 12, 20, 30, 46 Constitution	Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination, amending and supplementing certain other laws Act No. 308/1993 Coll. on establishing the Slovak National Centre for Human Rights, last amended in 2004 Coll. Labour Code no. 311/2001 Coll. last amended in 2004	All grounds in the two Directives All grounds in the two Directives All grounds in the two Directives
SLOVENIA	Arts. 14, 15 and 63 Constitution	Implementation of the Principle of Equal Treatment Act 2004 (IPETA) Employment Relations Act 2003 Vocational Rehabilitation and Employment of Disabled Persons Act 2004	All grounds in the two directives and additional grounds All grounds in the two directives and additional grounds Disability
SPAIN	Arts. 1.1; 9.2, 10, 13.1, 14, 16, 49 and 53 Constitution	Law 62/2003, of 30 December, of fiscal, administrative and social measures Legal Decree 5/2000, 4 August 2000 (Law on Infractions and Sanctions of Social Order) Law 51/2003 of 2 December on Equal Opportunities, Non-discrimination, and Universal Access for Persons with Disability Decree 1865/2004 creating the National Disability Council Law 14/2005 of 1 July 2005	All grounds in the two Directives All grounds in the two Directives Disability Disability Age
SWEDEN	Chapter 2, Art. 15 Constitution	Prohibition of Discrimination Act (2003:307) amended by Act 2004:1089 Equal Treatment of Students at Universities Act (2001:1286) amended by Act 2003:311 Prohibition of Ethnic Discrimination Act, last amended by Act 2003:308 Prohibition of Discrimination in Working Life of People with a Disability Act (1999:132) amended by Act 2003:309 Act on a Ban against Discrimination in Working Life on Grounds of Sexual Orientation (1999:133) amended by Act 2003:310	All grounds except age All grounds except age Ethnicity, religion and belief Disability Sexual Orientation

	Constitutional provisions	Main Anti-Discrimination Legislation	grounds covered
UNITED KINGDOM	No written constitution	<p>Great Britain: Race Relations Act 1976 last amended by Race Relations Regulations in 2003</p> <p>Northern Ireland: Race Relations (NI) Order 1997, last amended by Race Relations Order Regulations 2003</p> <p>Great Britain: Disability Discrimination Act 2005 amends the Disability Discrimination Act 1995 (entered into force on 5 December 2005 with the positive duty coming into force in December 2006)</p> <p>Great Britain: Disability Discrimination Act 1995 (Pensions) Regulations 2003</p> <p>Great Britain: Special Educational Needs and Disability Act 2001</p> <p>Northern Ireland: Disability Discrimination Act 1995 (Amendment) Regulations (NI) 2004</p> <p>Great Britain: Employment Equality (Sexual Orientation) Regulations 2003 as amended by the Civil Partnership Act 2004 (Consequential Amendments to Subordinate Legislation) (Wales) Order 2005 and by the Civil Partnership Act 2004 (Consequential Amendments) (Scotland)) Order 2005</p> <p>Northern Ireland: Employment Equality (Sexual Orientation) Regulations (NI) 2003: The Civil Partnership Act 2004 (Amendments to Subordinate Legislation) (No2) Order 2005</p> <p>Great Britain: Employment Equality (Religion and Belief) Regulations 2003</p> <p>Northern Ireland: Fair Employment and Treatment (NI) Order 1998, last amended by Fair Employment Regulations in 2003.</p> <p>Great Britain: The Equality Act 2006</p>	<p>Racial and ethnic origin</p> <p>Racial and ethnic origin</p> <p>Disability</p> <p>Disability</p> <p>Disability</p> <p>Disability</p> <p>Sexual Orientation</p> <p>Sexual Orientation</p> <p>Religion and Belief</p> <p>Religious belief and political opinion</p> <p>All grounds including sex</p>

	<i>Direct Discrimination</i>	<i>Indirect Discrimination</i>	<i>Harassment</i>	<i>Instruction to discriminate</i>
AUSTRIA	All Federal and Provincial laws	Equal Treatment Act and similar wording in most of the provincial acts	Equal treatment Act, Criminal Code, All provincial acts	Federal and Provincial laws except the Lower Austrian Equal Treatment Act
BELGIUM	Law of 30 July 1981, Federal Law of 25 February 2003, Flemish Decree, Decrees adopted by the German-speaking Community, the French-speaking Community and the Walloon Region	Law of 30 July 1981, Federal Law of 25 February 2003, Flemish Decree, Decrees adopted by the German-speaking Community, the French-speaking Community and the Walloon Region	Law of 30 July 1981, Federal Law of 25 February 2003, Flemish Decree, Law of 11 June 2002 on the protection against violence and moral or sexual harassment at work, Penal Code	Law of 30 July 1981, Federal Law of 25 February 2003, Flemish Decree, Decrees adopted by the German-speaking Community, the French-speaking Community and the Walloon Region, Penal Code
CYPRUS	Defined in Articles 2 of both Law N. 59(I) /2004 and Law N. 58(I) /2004, article 2 of The Law (amendment) concerning Persons with Disabilities Law 57(I)/2004	Defined in Law 57(I)/2004 (disability), N.58(I)/2004 (transposing the Employment Directive) and N.59(I)/2004 (transposing the Race Directive)	Law 57(I)/2004 (disability), N.58(I)/2004 (transposing the Employment Directive) and N.59(I)/2004 (transposing the Race Directive)	Article 6(1)(d) of Law 58(I)/2004 (transposing the Employment Directive) and under Article 5(2)(d) of Law 59(I)/2004 (transposing the Race Directive)
CZECH REPUBLIC	Law No. 65/1965 Coll., Labour Code, Law No. 435/2004 Coll., on Employment, Draft Anti-discrimination Bill	Law No. 65/1965 Coll. Labour Code, Law No. 435/2004 Coll. on Employment, Draft Anti-Discrimination Bill	Law No. 65/1965 Coll. Labour Code, Law No. 435/2004 Coll. on Employment, Draft Anti-Discrimination Bill	Labour Code, Law on Service by Members of the Armed Forces and Law on Service by Members of the Security Services
DENMARK	Act No. 31, 2005. According to this Act Section 1(2) for the labour market, for non employment aspects: Act on Ethnic Equality (2003) Section 3 (2), both mention "direct unequal treatment"	The Act on Ethnic Equality Section 3 (3), The Act on Discrimination in the Labour Market Section 1 (3), both mention indirect differential treatment	Labour Market Discrimination Act (as amended) section 1, subsection 4, Act no. 374 on Ethnic Equality	with regard to provision of goods and services: Sections 23 and 21 Criminal code, incitement to racial or discriminatory speech: Section 266b Criminal Code, Act on Ethnic Equality, Act No. 31 (2005) Act on prohibition against discrimination in respect of employment and occupation
ESTONIA	Law on Employment Contracts (direct unequal treatment)	Law on Employment Contracts (indirect unequal treatment)	Law on Employment Contracts, Law on the Cultural Autonomy of National Minorities, Penal Code	Art. 12 Constitution, Law on Employment contracts, Penal Code
FINLAND	Non-Discrimination Act, The Provincial Act on Prevention of Discrimination in the Province of Åland Islands	Non-Discrimination Act, The Provincial Act on Prevention of Discrimination in the Province of Åland Islands	Non-Discrimination Act, Occupational Safety and Health Act, Penal Code, The Provincial Act on Prevention of Discrimination in the Province of Åland Islands	Non-Discrimination Act, Penal Code, The Provincial Act on Prevention of Discrimination in the Province of Åland Islands

	Direct Discrimination	Indirect Discrimination	Harassment	Instruction to discriminate
FRANCE	Art. 225.1 and 2 Penal Code and 1881 Law (freedom of press)	L. 122-45 Labour Code (as amended in 2001) and Article 19 Law HALDE. No definition. No case law. Not applicable in criminal law	Sexual and Moral harassment (Art. 222-33 Penal Code, Arts. 122-46 and 122-49 Labour Code)	Not generally covered. However, notion of complicity relevant in Arts. 121-6 and 121-7 Penal Code, Arts. 23 and 24 Law on the Press of 1881 and Art.R625-7 Penal Code and general principles of liability in civil law (incl. labour law)
GERMANY	Constitutional concept of equality. Federal Law on the Civil Service, Work Constitution Law, Federal Employee Representation Law, Social Code IX, some state legislation. Definition in new Anti-discrimination Law	Distinction and definition in new Anti-discrimination Law	Defined in new Anti-discrimination Law	Section 26 and 185 Penal code, gender:Defined in new Anti-discrimination Law
GREECE	Implementation of the Principle of equal treatment Law 3304/2005	Implementation of the Principle of equal treatment Law 3304/2005	Implementation of the Principle of equal treatment Law 3304/2005	Implementation of the Principle of equal treatment Law 3304/2005
HUNGARY	Equal Treatment Act	Equal Treatment Act	Equal Treatment Act	Equal Treatment Act (regarding liability civil code and Labour Code)
IRELAND	Employment Equality Act 1998-2004, Equal Status Act 2000-2004	Employment Equality Act 1998-2004, Equal Status Act 2000-2004 (prohibits indirect discrimination in the provision of goods and services)	Employment Equality Act 1998-2004, Equal Status Act 2000-2004, Prohibition on the Incitement to Hatred Act	Employment Equality Act 1998-2004, Equal Status Act 2000-2004
ITALY	Art. 2 Decree 215/2003 and Art. 2 Decree 216/2003	Art. 2 Decree 215/2003 and Art. 2 Decree 216/2003	Decree 215/2003 and Decree 216/2003	Art. 2(4) Decree 215/2003 and Decree 216/2003
LATVIA	Labour Law, Law on Social Security, in a limited way in Criminal Code	Labour Law, Law on Social Security	Labour Law, Law on Social Security, Criminal Code	Labour Law, Law on Social Security, Criminal Code
LITHUANIA	Law on Equal Treatment 2005	Law on Equal Treatment 2005	Law on Equal Treatment 2005	Law on Equal Treatment 2005
LUXEMBOURG	Vague definition Art. 454 Penal law, included in draft bill Nr 5518	included in draft bill Nr 5518	included in draft bill Nr 5518	included in draft-bill Nr 5518 (article 457-1 of the penal code prohibits incitement)
MALTA	Legal Notice 461 of 2004 issued under the Employment and Industrial Relations Act 2002, Equal Opportunities (Persons with Disability) Act 2000	Legal Notice 461 of 2004 issued under the Employment and Industrial Relations Act 2002, Equal Opportunities (Persons with Disability) Act 2000	Legal Notice 461 of 2004, issued under the Employment and Industrial Relations Act 2002, Public Service Commission (Disciplinary Procedure) (Amendment) Regulations 2006, Public Service Management Code	Legal Notice 461 of 2004 issued under the Employment and Industrial Relations Act 2002, Regulation 3(4) of Legal Notice 461 of 2004, civil code, penal code

NETHERLANDS	art 1 of General Equal Treatment Act, art 1.1 of Age Discrimination Act, art 1 of Disability Discrimination Act (all Acts use distinction and not discrimination)	art 1 of General Equal Treatment Act, art 1.1 of Age Discrimination Act, art 1 of Disability Discrimination Act (all Acts use distinction and not discrimination)	Art 1.a of General Equal Treatment Act, art 1.a of Disability Discrimination Act and art 2 of Age Discrimination Act	General Equal Treatment Act, Disability Discrimination Act and Age Discrimination Act
POLAND	Labour Code	Labour Code	Labour Code, Act on the Promotion of Employment and the Institutions of Labour Market	Labour Code, Civil Code, Penal Code
PORTUGAL	Law 18/2004, Law 35/2004, Labour Code	Law 18/2004, Law 35/2004	Law 18/2004, Law 35/2004, Civil Code, Penal Code, Labour Code	Law 18/2004, Law 35/2004
SLOVAKIA	Equal Treatment Act	Equal Treatment Act	Equal Treatment Act, Criminal Code, Act on Minor Offences, Civil Code	Equal Treatment Act, Criminal Code
SLOVENIA	Implementation of the Principle of Equal Treatment Act 2004, Employment Relations Act	Implementation of the Principle of Equal Treatment Act 2004, Employment Relations Act	Implementation of the Principle of Equal Treatment Act 2004, Employment Relations Act, Penal Code	Implementation of the Principle of Equal Treatment Act 2004
SPAIN	Law 62/2003, Organic Law 4/2000 (for Aliens), Law 13/1982 on Social Integration of Disabled People	Law 62/2003, Law 51/2003 (disability), Law 13/1982, on the Social Integration of Disabled People, Organic Law 4/2000 (for Aliens)	Law 62/2003, Law 51/2003 (disability)	Criminal Code, Organic Law 4/2000 (for Aliens), Law 62/2003
SWEDEN	Prohibition of Ethnic Discrimination Act, Prohibition of Discrimination in Working Life of People with Disability Act, the 2001 Students at Universities Act and the 2003 Prohibition of Discrimination Act, Act on Sexual Orientation	Prohibition of Ethnic Discrimination Act, Prohibition of Discrimination in Working Life of People with Disability Act, the 2001 Students at Universities Act and the 2003 Prohibition of Discrimination Act, Act on Sexual Orientation	Prohibition of Ethnic Discrimination Act, Prohibition of Discrimination in Working Life of People with Disability Act, the 2001 Students at Universities Act and the 2003 Prohibition of Discrimination Act, Act on Sexual Orientation	Sec. 3 par. 5, Discrimination Prohibition Act
UNITED KINGDOM	GB: Disability Discrimination Act, Race Relations Act, Employment Equality (Sexual Orientation) Regulations, Employment Equality (Religion or Belief) Regulations 2003, Equality Act 2006, NI: Race Relations Order, Fair Employment and Treatment Order, Employment Equality (Sexual Orientation) Regulations	GB: Race Relations Act, Employment Equality (Sexual Orientation) Regulations, Employment Equality (Religion or Belief) Regulations, Equality Act 2006, NI: Race Relations Order, Fair Employment and Treatment Order, Employment Equality (Sexual Orientation) Regulations	GB: Race Relations Act, Employment Equality (Sexual Orientation) Regulations, Employment Equality (Religion or Belief) Regulations, Equality Act 2006, NI: Race Relations Order, Fair Employment and Treatment Order, Employment Equality (Sexual Orientation) Regulations	GB: Race Relations Act, Disability Discrimination Act, NI: Race Relations Order, Fair Employment and Treatment Order

	National Legislation on Data Collection	Data considered as sensitive data	Situation testing permitted by law	Situation testing admissible as evidence in court	Situation testing used in practice
AUSTRIA	Austrian Act on Data Protection	Parag. 4/2 of the Austrian Act on Data Protection : racial and ethnic origin, political opinion, membership of a trade union, religious or philosophic belief, health and sexual life	No reference in legislation	no formal limits to establish evidence to a court	is under development by NGOs
BELGIUM	Federal Law of 8 December 1992 on the protection of the right to private life with respect to the processing of personal data	Article 6 § 1 of the Federal Law of 8 December 1992 on the protection of the right to private life with respect to the processing of personal data : data relating to race or ethnic origin, religion, disability (health) or sexual orientation	authorised and specifically mentioned in the Federal Anti-discrimination Law of 25 February 2003	yes, (but a decree implementing the provision in the Federal Anti-Discrimination Law of 25 February 2003 is expected strictly defining conditions of admissibility)	by NGOs
CYPRUS	Law on Processing of Personal Data Law 138(I)/2001	article 15 Constitution. Article 2 and 6 Law on Processing of Personal Data Law 138(I)/2001: racial or national origin, political belief, religious or philosophical conviction, participation in an organisation, association or trade union, health, sex-life, sexual orientation, criminal prosecution or criminal conviction	No reference in legislation	The admissibility of <i>situation testing</i> as a method of proving discrimination in courts will be subjected to the general test of 'relevance' and 'the best evidence rule'	no
CZECH REPUBLIC	Law No. 101/2000 on the Protection of Personal Data	Section 4 of the Data Protection Law: ethnic or racial origin, disability, religion or belief or sexual orientation	situation testing allowed in situations where the law does not expressly disprove or forbid it	secrecy of messages, protection of personal privacy and protection of personality have to be respected: secret recordings of telephone, secret tape recordings made in private places and video recordings including the person's face or images without his/her consent would therefore probably be problematically admissible evidence before the courts	by NGOs

DENMARK	Act no. 429 the Law on Treatment of Personal Data dated 31 May 2000. Section 4 of Act no. 31 on prohibition against discrimination in respect of employment and occupation	According to Section 7 of Act no. 429 the Law on Treatment of Personal Data dated 31 May 2000 it is prohibited to register (request, collect, obtain or make use of) information on race, ethnicity, religion or belief, union membership, health, sexual orientation	No reference in legislation	yes, there are no specific procedural requirement	Has been used by NGOs and journalists
ESTONIA	Law on Personal Data Protection	Article 4 (3) of Law on Personal Data protection: data on ethnic or racial origin, disability, religion or belief or sexual orientation	No reference in legislation	formal interpretation of the Code of Civil Procedure's provisions lead believe that situation testing could be recognised by Estonian courts	no
FINLAND	Personal Data Act 523/1999; Act on the Protection of Privacy in Employment 759/2004	Personal Data Act: ethnic origin, religion or belief, disability and sexual orientation	No reference in legislation	Has been admitted	NGOs
FRANCE	Law 78-17 of 6 January 1978 relating to information systems, data and the protection of freedom	Art. 8 (l) (a) of Law 78-17: racial and ethnic origins, political, philosophical, religious opinions, trade union affiliation, health or sexual life	No specific reference. Draft legislation in preparation. Bill expected in the first semester 2006	Admissible as evidence in criminal courts as per Court of Cassation	NGOs
GERMANY	Federal Law on the Protection of Data	According to Constitutional provisions, any data is potentially considered as sensitive	No reference in legislation	Potentially. Its use will depend upon the general law of evidence in each area	no
GREECE	Law 24/72/1997 as amended	Law 24/72/1997 : sensitive data are data referring to racial or ethnic origin, political opinions, religious or philosophical beliefs, membership to a society, association or trade-union, health, social welfare and sexual life as well as criminal charges or convictions"	No reference in legislation	Constitution prohibits the use of evidence which is adopted in violation of the rights to correspondence, to domicile and of the protection of personal data	no

	National Legislation on Data Collection	Data considered as sensitive data	Situation testing permitted by law	Situation testing admissible as evidence in court	Situation testing used in practice
HUNGARY	Act LXIII of 1992 on the Protection of Personal Data and Public Access to Data of Public Interest (Data Protection Act)	Article 2 of the Data Protection Act: racial, national or ethnic minority origin, political opinion or party affiliation, religious or ideological belief, membership in any interest representing organisation, state of health, disability, pathological addictions, sexual life or criminal personal data	statutory acknowledgment of situation testing by Government Decree 362/2004 on the Equal Treatment Authority and the Detailed Rules of its Procedure (ETAD) adopted in December 2004	Testing should be conducted avoiding provocation. Has been accepted by the Supreme Court as evidence.	NGOs
IRELAND	Data Protection Act 1988-2003	Section 2(b) Data Protection Act 1988-2003: ethnic or racial origin, disability, religion or belief or sexual orientation (allowed)	No reference in legislation	It may be inferred from the facts of some cases that a form of situational testing has taken place and has been accepted as evidence by the Equality Tribunal	rarely used
ITALY	Data Protection Act 1996; Workers' Act 1970/300 (Art. 8)	Art. 22 Data Protection Act: data on racial and ethnic origin, religious beliefs and those that can disclose health conditions and sexual life	Not defined in legislation	This remains untested	no
LATVIA	Law on protection of data of natural persons of 23.03.2000	race, ethnic origin, religious, philosophical or political conviction, trade unions membership, person's health or sexual life	No reference in legislation	Civil Procedure Law (the court can only accept evidence which is of relevance to the case)	no
LITHUANIA	Law on Legal Protection of Personal Data of 2003	Information on the physiological, psychological, economical, cultural or social features of person	No reference in legislation	Likely to be admissible as all types of information which can prove or disprove each parties' case are admissible. It would not however be treated as evidence of higher probative power	no
LUXEMBOURG	Law on Data Protection of 02 August 2002	Art. 6 Law on Data Protection: racial or ethnic origin, political opinions, religious or philosophical belief, belonging to a trade-union, health and sexual life, including genetic items	No reference in legislation	system of the civil procedure governed by the principle of the legality of evidence (only the kind of evidence brought according to the civil procedure code are admissible)	no

MALTA	Data Protection Act 2001; Persons with Disability (Employment) Act	Art. 16 Data Protection Act: race or ethnic origin, political opinions, religious or philosophical beliefs, membership of a trade union, health, or sex life	No reference in legislation	not clear whether or not situational testing would be accepted as evidence in judicial, administrative or other procedures	no
NETHERLANDS	Personal Data Protection Act	Article 16 Personal Data Protection Act: race, political convictions, religion or belief, health, sexual life and membership of a trade union. But Article 18: exception to this rule for the case of positive action	No reference in legislation	Courts in the Netherlands have accepted situational testing as a method to prove discrimination. Both in civil as well as in criminal litigation, testing has been allowed as sufficient proof (however, in the latter case this needs to be prepared very carefully in order to avoid provocation)	yes mostly by NGOs
POLAND	Act on the Protection of Personal Data	Art 27.1 Act on the Protection of Personal Data: racial or ethnic origin, political opinions, religious or philosophical beliefs, party or trade-union membership, health, genetic code, additions or sex life, data relating to convictions, decisions on penalty, fines and other decisions issued in court or administrative proceedings. BUT article 27.5 and 6: it is possible to collect sensitive data in order to substantiate a case of discrimination	No reference in legislation	court may accept the evidence collected ex officio and following rules of the Code of Civil Proceedings	no
PORTUGAL	Law on the Protection of Personal Data 67/98 of 26 October 1998	Article 7(1) Law on the Protection of Personal Data: philosophical or political convictions, membership of political parties or trade unions, religion, private life, racial or ethnic origin, health and sexual life	No reference in legislation	can be admitted as evidence, but is not defined by law. The procedural rules of the Civil Procedure Code and the Criminal Procedure Code are applicable	no

	National Legislation on Data Collection	Data considered as sensitive data	Situation testing permitted by law	Situation testing admissible as evidence in court	Situation testing used in practice
SLOVAKIA	Act on Protection of Personal Data No. 428/2002	Section 8, paragraph 1 of the Act on Protection of Personal Data: racial or ethnic origin, political opinion, religion or belief, membership of political parties or political movements, membership of trade unions and data related to health and sexual life	No reference in legislation	Admissibility might be problematic (Code of Civil Procedure, Criminal Code)	very recently by an NGO
SLOVENIA	Personal Data Protection Act No. 86/2004	racial, national or ethnic origin, political, religious or philosophical beliefs, trade-union membership, health status, the entry in or removal from criminal record or records of minor offences that are kept on the basis of a statute that regulates minor offences and biometric characteristic	No reference in legislation	Civil Procedure Act stipulates that the court shall reject evidence which would be contrary to the law or moral rules, and the provision on preclusion of evidence	no
SPAIN	Organic Law 15/1999 of 13 December on the protection of personal data	Art. 16 Constitution; Art. 7 Organic Law on the protection of personal data: ideology, trade-union affiliation, religion or beliefs, racial origin, health and sexual life	No reference in legislation	Might be used as a form of evidence	no
SWEDEN	The (1998:2004) Act on Personal Information	Section 13 Act on Personal Information: ethnicity, religion or other belief and information concerning health and sexual life including sexual orientation	No reference in legislation	situational testing can be permitted and the value of such evidence has to be assessed in accordance with the circumstances at issue	Swedish Integration Board, Ethnicity Ombudsman, NGOs
UNITED KINGDOM	GB: Data Protection Act 1998, Anti-Discrimination Law; Race Relations Act; NI: Fair Employment and Treatment Order 1998	no national rules that restrict data collection in respect of all 5 of the grounds	No reference in the law	No particular procedural conditions for its admissibility, or barriers to its use once its relevance has been established	rarely used

	REASONABLE ACCOMMODATION FOR DISABLED PEOPLE	REASONABLE ACCOMMODATION TRANSPOSED FOR OTHER GROUNDS	GENUINE AND DETERMINING OCCUPATIONAL REQUIREMENT	LEGAL PROVISIONS FOR POSITIVE ACTION
AUSTRIA	Act on the Employment of People with disabilities	no	All Federal and Provincial Acts	National Minorities Act 1976 , Disability Employment Act
BELGIUM	Federal Law of 25 February 2003; Executive Decree of 5 November 1998 on the promotion of the equality of chances of persons with disabilities on the employment market, Flemish Decree, Decrees adopted by the German-speaking Community, the French-speaking Community and the Walloon Region	Flemish Decree of 8 May 2002 (could also apply to race and ethnic origin in a limited scope)	Federal Law of 25 February 2003, and Regional and Communities legislation	Federal Law of 25 February 2003, The Law on the social reintegration of disabled persons as amended by Law of 22 March 1999 on various measures in public administration, Flemish Decree, German-speaking Decree, Wallon Region Decree, French-speaking Community Commission of the Region of Bruxelles-Capitale Decree
CYPRUS	Law on Persons with Disabilities N.127(II)2000 amended by Law 57(I) of 2004	no	Law 57(II)2004 (disability), N.58(II)2004 (transposing the Employment Directive), The Law on Public Service	Law 57(II)2004 (disability), N.58(II)2004 (transposing the Employment Directive) and N.59(II)2004 (transposing the Race Directive), The Public Education Service Law, as amended by Law 180/1987, The Law on the Engagement of Trained Blind Telephone Operators of 1988, The Public Service Law 1/1990, The Protection of the Mentally Retarded Persons Law 117/1989, and the Street and Building (Amendment) Regulations No. 3322 30.4.99, Special Fund Law 79(II)/1992, The Special Education for young persons with Special Needs Law 1 13(II)/1999, as well as the Public Assistance and Services Law of 1991
CZECH REPUBLIC	Labour Code, Law on Employment, Draft Anti-Discrimination Bill	no	Labour Code and Law on Employment	Labour Law and , Law on Employment
DENMARK	Section 2a Labour Market Discrimination Act amended in 2004	no	Section 6(1) and 6(2) of the Labour Market Discrimination Act as amended in 2003	No provisions with two narrow exceptions found in Sections 6(2) and 9(2) Act on Prohibition of Differential Treatment on the Labour Market and Labour market discrimination Act section 9, subsection 3 regarding disability, Act no 577 of 19th June 2003

	REASONABLE ACCOMMODATION FOR DISABLED PEOPLE	REASONABLE ACCOMMODATION TRANSPOSED FOR OTHER GROUNDS	GENUINE AND DETERMINING OCCUPATIONAL REQUIREMENT	LEGAL PROVISIONS FOR POSITIVE ACTION
ESTONIA	Law on Employment Contracts; Law on Occupational Health and Safety; Law on Employment Services and Allowances	no	Law on Employment Contracts	Law on Employment Contracts (Law on Occupational Health and Safety)
FINLAND	Non-Discrimination Act; Employment Contracts Act 55/2001, applicable also in the Åland Islands as regards privately employed persons and those employed as civil servants by the state. As regards civil servants of the Åland Islands or one of the municipalities in the ÅI: Provincial Act on Prevention of Discrimination	no	Non-Discrimination Act, Provincial Act on Prevention of Discrimination in the Province of Åland Islands	Non-Discrimination Act, Act on Public Employment Service, Social Welfare Act, Provincial Act on Prevention of Discrimination in the Province of Åland Islands
FRANCE	Law on disability 2005, Labour Code. Article L114 Code of Social Welfare. Law 83-6345 of July 13 1983 relating to the rights and obligations of civil servants; Law 84-16 of January 11 1984 concerning the civil service of the State; Law 84-53 of January 26, 1984 civil service for local and regional levels of government and Law 86-33 of January 9, 1986 concerning the hospital civil service	Religion: No express provision, but case law. Law n° 2000-614 of July 5, 2000 (integration of travelling Roma children)	No. Other exceptions are included at Arts 225-3 Penal Code and R123-1 LC	Art. 122-45-4 CSW. Bill no 84-1911 of Social Cohesion. Disabled Persons Employment Act 87-157
GERMANY	Various provisions of the Social Codes Parts I, III, IX, XII, III. Section 5 Disabled Equality Law. Section 554a Civil Code	No express provision (but case law; religion)	yes	New Anti-discrimination Law permits measures if they are aimed at overcoming existing disadvantages (all grounds)
GREECE	General clause of Article 662 Civil Code (so-called duty to care - not disability specific); Law n. 1568/1985 on Health and Safety at Work; Law n. 2643/1998 on the compulsory employment of disabled persons and of people of special groups, Principle of Equal Treatment Law 3304/2005	no	Principle of Equal Treatment Law 3304/2005	Constitution, Principle of Equal Treatment Law 3304/2005, Law 2646/1998 ("vulnerable population groups"), Law n. 2348/1998, on the Compulsory Employment of Disabled People, Law n. 2643/1998 on the Compulsory Placement of Special Groups of Workers

HUNGARY	No proper transposition, relevant provisions regarding the concept can be found in Disabled Persons Act, Work Safety Act, Joint Decree 8/1983 of the Ministers of Health and Finances on the Employment and Social Benefits of Disabled Workers	no	Equal Treatment Act	Disabled Persons Act, Equal Treatment Act
IRELAND	Employment Equality Act 1998-2004, Equal Status Act 2000-2004, Building Regulations 1997 – 2005, Disability Act 2005	The provisions in the Equal Status Act could potentially be interpreted as encompassing all grounds	Employment Equality Act 1998-2004	Employment Equality Act 1998-2004, Equal Status Act 2000-2004, Disability Act 2005
ITALY	No general duty on employers. Some rules in Framework Act of 5 February 1992	no	Decree 215/2003 and Decree 216/2003	Act 125/1991 (gender), Act 162/1998 and Act 1992/104 (disability)
LATVIA	1992 Law on Medical and Social Protection of Disabled Persons, Law on Social Security, Labour Law	no	Labour Law	No specific provisions, (one exception: a reduction of social tax if employing disabled persons)
LITHUANIA	Not directly established in Lithuanian law. Some provision in Employment Code (Article 92), Law on Equal Treatment	no	yes (usual and decisive professional requirement), Law on Equal Treatment	Art. 3 Law on Equal Treatment creates duty on state. Art. 92 Employment Code
LUXEMBOURG	draft Bill Nr 5518 modifying the existing law on disabled persons of 12 September 2003	no	draft bill Nr 5518	Draft Bill Nr 5518, Disabled Workers Law of 12 September 2003
MALTA	Equal Opportunities (Persons with Disability) Act 2000	no	Regulation 4 of Legal Notice 461 of 2004 entitled "Equal Treatment in Employment Regulations 2004, The Employment and Industrial Relations Act	Regulation 6 (1) of Legal Notice 461 of 2004, Persons with a Disability (Employment) Act 1969, Legal Notice 135 of 2001 'Business Promotion Regulations 2001'
NETHERLANDS	Article 2 of the Disability Discrimination Act	no	Article 2(4) of the GETA (for race and sex only)	Art. 2(3) General Equal Treatment Act, Article 3(1) subsection 'c' of the Disability Discrimination Act, The 1998 Act on the Reintegration of Disabled People in Employment
POLAND	Act on Vocational and Social Rehabilitation and Employment of Disabled Persons amended in 2003	Act of 17 May 1989 on Guarantees of the Freedom of Conscience and Religion (for grounds of religion and belief might be interpreted as a form of providing reasonable accommodation)	Labour Code	Art. 134 Electoral Law for the Sejm and Senate (minorities), Act on Disabled Persons, Act on the System of Education, Act on National and Ethnic Minorities and on Regional Language, Labour Code, Act on Rehabilitation and Employment of Disabled

	REASONABLE ACCOMMODATION FOR DISABLED PEOPLE	REASONABLE ACCOMMODATION TRANSPOSED FOR OTHER GROUNDS	GENUINE AND DETERMINING OCCUPATIONAL REQUIREMENT	LEGAL PROVISIONS FOR POSITIVE ACTION
PORTUGAL	Labour Code, Decree-law 123/97 of 22 May 1997	no	Law 18/2004, Law 35/2004, Labour Code	Decree-law 251/2002, Law 18/2004, Law 38/2004, Law 35/2004, Law 115/97 (the Basic Law on the Educational System), Labour Code, Law 32/2002 (the Basic Law on Social Security System)
SLOVAKIA	Equal Treatment Act, Labour Code	Section 2 of the Anti-Discrimination Act might be interpreted as including a duty to provide reasonable accommodation applies not only to the employers and to the disabled in the area of employment but to all other areas and grounds which are regulated by the existing laws prohibiting discrimination	Equal Treatment Act	Equal Treatment Act, Labour Code, Act on Employment Services, Labour Code, School Act, Jurisprudence of Constitutional Court
SLOVENIA	Employment Relations Act, Implementation of the Principle of Equal Treatment Act 2004, Vocational Rehabilitation and Employment of Disabled Persons Act, Pension and Disability Insurance Act, Health and Safety at Work Act	no	Employment Relations Act, Implementation of the Principle of Equal Treatment Act 2004, Public Servants Act, Safety and Health at Work Act	Implementation of the Principle of Equal Treatment Act 2004, Local Self-Government Act, Organizational and Financing of Education Act, Special Rights for Members of the Italian and Hungarian National Minorities in the Field of Education Act, pending bill protecting the status and rights of the Roma, Vocational Rehabilitation and Employment of Disabled Persons Act
SPAIN	Law 51/2003 (Disability), Law 13/1982 on the Social Integration of the Disabled	Cooperation Agreements with the various religious communities (Evangelical, Jewish and Islamic)	Law 62/2003	Law on the Education System, Workers' Statute, Law 62/2003, National Action Plan for Social Integration in the Kingdom of Spain, Law 51/2003 (disability), Law 13/1982, on the Social Integration of Disabled People

SWEDEN	2001 Student at Universities Act; Section 6 Disability Discrimination Act (employment (i.e. recruiting), promotion or training for promotion); 1977 Working Environment Act (employer's duty of rehabilitation measures); 1982 Employment Protection Act (duty of fairly fair-reaching accommodation)	No specific provision but possible interpretation of Prohibition of Ethnic Discrimination Act where employers have duty to undertake active measures to ensure that the workplace is more inclusive in terms of persons with different ethnic and religious backgrounds	Prohibition of Ethnic Discrimination Act, Prohibition of Discrimination in Working Life of People with Disability Act, the 2001 Students at Universities Act and the 2003 Prohibition of Discrimination Act, Act on Sexual Orientation	1999 Ethnic Discrimination Act, Act on General Social Insurance, Work Environment Act, Work Environment Decree, 2003 Prohibition of Discrimination Act
UNITED KINGDOM	Disability Discrimination Act	No. However, a failure to provide reasonable accommodation for religious beliefs could violate the ECHR as incorporated into UK law by the Human Rights Act	GB: Race Relations Act, Employment Equality (Sexual Orientation) Regulations, Employment Equality (Religion or Belief) Regulations; NI: Race Relations Order, Employment Equality (Sexual Orientation) Regulations, Fair Employment and Treatment Order	GB: Race Relations Act, Disability Discrimination Act, Employment Equality (Sexual Orientation) Regulations, Employment Equality (Religion or Belief) Regulations; NI: Race Relations Order, Fair Employment and Treatment Order, Police (Northern Ireland) Act, Disability Discrimination Order, Employment Equality (Sexual Orientation) Regulations

	Employment	Social Protection	Social advantages	Education	Goods and services	Housing
AUSTRIA	Equal Treatment Act, Act on the Equal Treatment Commission and the Equal Treatment Office, Federal Equal Treatment Act, Act on the Employment of People with Disabilities, Disability Equality Act, Federal Equality Act, Provincial Equal Treatment Acts and/or Provincial Anti-Discrimination Acts	Equal Treatment Act (only on the ground of ethnic affiliation), Burgenland Anti-discrimination Act (all grounds), Carinthian Equal Treatment Act (all grounds), Viennese Anti-Discrimination Act (except disability and gender), Styrian and the Lower Austrian Acts do not fully comply	Equal Treatment Act, Burgenland Anti-discrimination Act, Carinthian Equal Treatment Act and Viennese Anti-discrimination Act deal with all ground and regard "social affairs"	Equal treatment Act, Burgenland, Carinthian and Viennese Acts	Equal Treatment Act (ethnic affiliation), Disability Equality Act, Viennese, Carinthian and Burgenland Acts	Equal treatment Act, Disability Equality Act, Viennese Anti-discrimination Act (all grounds except Gender) and Carinthian anti-Discrimination Act (all grounds)
BELGIUM	Law of 30 July 1981, Federal Law of 25 February 2003, Flemish Decree, Decrees adopted by the German-speaking Community, the French-speaking Community and the Walloon Region, not fully implemented in the Region of Brussels-Capital Ordinance of 26 June 2003	social security is Federal competence: Law of 8 August 1980, health-care and social aid are competence of the Communities	Federal Law of 25 February 2003, Law of 30 July 1981	competence of the Communities in the Belgian federal system, implemented at different level in the Flemish/French-speaking and German-speaking Communities; general article in Federal Law of 25 February 2003	Law of 30 July 1981, Federal Law of 25 February 2003	Law of 30 July 1981, Federal Law of 25 February 2003
CYPRUS	Law 57(I)/2004 (disability), Law 58(I)/2004 (transposing the Employment Directive), Law on Unfair Dismissal (Law N.24/1967), applies equally to public and private sector	Law 57(I)/2004 (disability), N.58(I)/2004 (transposing the Employment Directive) and N.59(I)/2004 (transposing the Race Directive)Public Assistance Law N.8/1991	Section 4 (c) of the Law on Equal Treatment of Persons Irrespective of Racial or Ethnic Origin, Law 59(I)/2004; Section 6 of the Law concerning Persons with Disabilities (Law 127(I)/ 2000)	International agreements; Section 4 (d) and art. 13 of Law on Equal Treatment of Persons Irrespective of Racial or Ethnic 59(I)/2004	Section 4(e) of Law on Equal Treatment of Persons Irrespective of Racial or Ethnic 59(I)/2004; Section 2A(4) of the Law amending the Ratification law of the Convention on the Elimination of All Forms of Discrimination of 1967, No. 11 of 1992	Section 4(1)(e) of Law on Equal Treatment of Persons Irrespective of Racial or Ethnic Origin, 59(I)/2004

CZECH REPUBLIC	Labour Code, Law on Employment, Law on Self-employment, Law on Wages (Law No. 1/1992 of the Coll, Law on Salaries (Law No. 143/1992 of the Coll	No specific anti-discrimination provision in legislation, Draft Anti-Discrimination Bill covers social security and healthcare	No specific anti-discrimination provision in legislation, only general non-discrimination clauses Civil Code	No specific anti-discrimination provision in legislation, only general non-discrimination clauses Civil Code 561/2004 on Pre-school, Primary, Secondary and Higher Vocational and other Education ("special educational arrangements")	Law on Consumer Protection	No specific provision except in the Draft Anti-Discrimination Bill
DENMARK	section 2 (1) and section 3 (3) for self employment of the Labour Market Discrimination Act	section 1(1) of the 1971 Criminal Antidiscrimination Act, Act on Ethnic Equality of 2003	section 1(1) of the 1971 Criminal Antidiscrimination Act, Act on Ethnic Equality of 2003	Section 14(1) of the 1971 Criminal Antidiscrimination Act; Act on Ethnic Equality of 2003	section 1(1) of the 1971 Criminal Antidiscrimination Act, Act on Ethnic Equality in 2003	Act on Prohibition of Differential Treatment on Grounds of Race, Act on Ethnic Equality in 2003
ESTONIA	Law on Employment contracts, no special anti-discrimination provisions regarding access to self-employment, employment in the public sector or access to occupations, Law on Wages	no specific anti-discrimination provisions as regards social protection, including social security and healthcare (only Constitutional provisions)	no specific anti-discrimination provisions as regards social advantages (only Constitutional provisions)	no specific anti-discrimination provisions in regard to education (only Constitutional provisions)	no specific anti-discrimination provisions as regards access to and supply of goods and services (only Constitutional provisions), Law on Trading and Law on Public Transport used in practice by lawyers	no specific anti-discrimination provisions as regards housing (only Constitutional provisions)
FINLAND	Non-Discrimination Act, Act on State Civil Servants, Seamen's Act, Act on Municipal Office Holders, Non-Discrimination Act is also applicable with respect to privately employed persons and civil servants of the state working in the Åland Islands. The Provincial Act is applicable with respect to those employed as civil servants by the Åland Islands or one of the municipalities in Åland Islands and those that are self-employed	Constitution, the Penal Code and Non-Discrimination Act, Provincial Act on Prevention of Discrimination in the Province of Åland Islands	Non-Discrimination Act, Provincial Act on Prevention of Discrimination in the Province of Åland Islands	Non-Discrimination Act, Åland Islands: Provincial Act on Prevention of Discrimination, Provincial Act on Åland's Music Institute, Provincial Act on Education on a High School Level, Provincial Act on Ålands Folk High School, Provincial Act on University in Åland	Non-Discrimination Act, Provincial Act on Prevention of Discrimination in the Province of Åland Islands	Non-Discrimination Act, Provincial Act on Prevention of Discrimination in the Province of Åland Islands

	Employment	Social Protection	Social advantages	Education	Goods and services	Housing
FRANCE	L122-45, L120-2, L422-1-1, L513-3-1 Labour Code, 6 quinquies of Law no. 83-634 of July 13, 1983 as modified by the Law of November 16, 2001 and Article 432-7 Penal Code. Art. 19 Law HALDE. Articles 225-1 and 225-2 Penal Code. Art. 19 Law on disability, Decree no. 2005-1617. Executive Order no 2005-893 of 2 August 2005	Constitution, Art. 19 Law HALDE	Constitution, Art. 19 Law HALDE	Constitution, circulars from Ministry of Education, Administrative instructions, Act 2001-1066 on the Fight Against Discrimination, Law n° 2000-614 of July 5, 2000, on the accommodation of travelling people, Law on the application of the principle of security in public schools of 15 March 2004, Article 11 and 19 to 22 of the Law on disability	Constitution, Arts. 225-2 and 432-7 Criminal law, Act 2002-73 on social modernisation (housing), Law HALDE	Law of January 17, 2002 amending article 1 paragraph 2 of Law no. 89-462 of July 6, 1989 on relations between landlords and tenants, Criminal law
GERMANY	New Anti-discrimination Act	New Anti-discrimination Act	New Anti-discrimination Act	New Anti-discrimination Act	New Anti-discrimination Act	New Anti-discrimination Act (number of exceptions)
GREECE	Principle of Equal Treatment Law 3304/2005 (contract work, self employment, military service and holding statutory office are not covered)	Law n. 2646/1998 on the development of the National System of Social Care, Principle of Equal Treatment Law n. 3304/2005,	Law n. 3304/2005 includes the field of education but only in respect of race and ethnic origin	Aliens Law 2910/2001, Principle of Equal Treatment Law n. 3304/2005, Law 2817/2000 for the education of disabled children	Principle of Equal Treatment Law 3304/2005	Principle of Equal Treatment Law 3304/2005
HUNGARY	Equal Treatment Act, Public Education Act (regarding vocational training), Act on the Promotion of Employment	Health Care Act, Equal Treatment Act	Not specifically addressed in legislation	Public Education Act, Equal Treatment Act (Chapter "Education and training")	Equal Treatment Act, Consumer Protection Act	Equal Treatment Act
IRELAND	Employment Equality Act 1998-2004, Pensions Act 1990-2004, Unfair Dismissals Act 1977-1993, Equal Status Act 2000-2004	No express prohibition in legislation (interpretation of legislation will be the determinant factor)	No express prohibition in legislation (interpretation of legislation will be the determinant factor)	Equal Status Act 2000-2004, Education Act 1998, Ministerial Guidelines on Traveller Education in Primary Schools, Employment Equality Act 1998-2004 Education for Persons with Special Educational Needs Act 2004	Equal Status Act 2000-2004, Intoxicating Liquor Act 2003	Equal Status Act 2000-2004, The Housing (Traveller Accommodation) Act 1998, Housing (Miscellaneous Provisions) Act, 2002
ITALY	Decree 215/2003 and Decree 216/2003. Workers Act of 1970	Decree 215/2003. Immigration Act 1998	Decree 215/2003. Immigration Act 1998	Decree 215/2003. Immigration Act 1998	Decree 215/2003. Immigration Act 1998	Decree 215/2003. Immigration Act 1998

LATVIA	Labour Law, State Civil Service Law, Criminal Law	Law on Social Security, Medical Care Code (no express guarantee of equality)	Law on Social Services and Social Security (no express guarantee of equality), Broad guarantee in Labour Law, amendments to the Civil Code pending	Law on Education (except grounds of age, disability, sexual orientation)	No specific provisions, Criminal Law (to a very limited extent), to the Law on Consumer protection and to the Civil Law	No specific provision, Law on Social Security (for social housing)
LITHUANIA	Law on Equal Treatment (not self-employment)	Art. 29 Constitution, State Social Security Insurance Law	Art. 29 Constitution, No detailed regulation in the Law on Equal Treatment	Art. 29 Constitution, Law on Equal Treatment	Art. 29 Constitution, Law on Equal Treatment	no specific anti-discrimination provisions (regulated at municipal level)
LUXEMBOURG	Partially in Penal code, partially included in draft bill Nr 5518	Draft Bill Nr. 5518	Draft Bill Nr. 5518	Draft Bill Nr. 5518	partially art 455 Penal Code, Draft Bill No. 5518	Art. 455 of the Penal Code, Draft Bill No. 5518
MALTA	Employment and Industrial Relations Act 2002, Public Service Management Code, Regulation 2(4) of Legal Notice 461 of 2004 entitled "Equal Treatment in Employment Regulations 2004, Employment and Training Services Act, Contracts of Service for a Fixed Term Regulations 2002, Equal Opportunities (Persons with Disability) Act 2000	no specific prohibition of discrimination on racial or ethnic origin in this field	Maltese Legislation does not expressly address the category of 'social advantages'	no specific provisions	Maltese Law does not distinguish between goods and services available to the public and those available privately and there is no specific prohibition of discrimination on racial or ethnic origin in this field	no specific legislation
NETHERLANDS	both public and private sectors, General Equal Treatment Act, Age Discrimination Act, Disability Discrimination Act	Art. 7a General Equal Treatment Act	Art. 7a General Equal Treatment Act	Art. 7 General Equal Treatment Act	Art. 7(1) General Equal Treatment Act	Article 7(1) subsection "c" General Equal Treatment Act
POLAND	Labour Code, Act on Freedom of Economic Activity, Act on Employment, Act on Trade Unions, Act on the Employers Organizations	Act on Medical Treatment Financed from the Public Resources	Complex combination of provisions, no provision concerning age	Education Act, 2005 Act on National and Ethnic Minorities, Act on the System of Education	no specific legislation, (Code of Minor Offences could be used)	no specific legislation, (Code of Minor Offences could be used)
PORTUGAL	Law 18/2004, Law 35/2004, Labour Code, Law 99/2003, Law 38/2004, Basic Law on the Educational System	Law 18/2004, Law 32/2002 of 20 December 2002 (the Basic Law on Social Security System)	Law 18/2004, Law 32/2002 of 20 December 2002 (the Basic Law on Social Security System)	Law 35/2004, Law 38/2004, Law 115/97 (the Basic Law on the Educational System)	Law 18/2004	Law 134/99, Law 18/2004

	Employment	Social Protection	Social advantages	Education	Goods and services	Housing
SLOVAKIA	Labour Code, Civil Service Act, Small Business Act, Equal Treatment Act, Employment Service Act, Act on Further Education	Equal Treatment Act, Social Insurance Act, Act on Social Assistance, Act on Health Care	Social Insurance Act, Equal Treatment Act	Schools Act, Equal Treatment Act, Act on Higher Education, Act on the System of Primary and Secondary Schools	Equal Treatment Act, Consumer Protection Act	Equal Treatment Act in a limited way
SLOVENIA	Employment Relations Act, (equal treatment relating to state of health is covered by the Implementation of the Principle of Equal Treatment Act 2004, Civil Servants Act, Act on Vocational Rehabilitation and Employment of Disabled People and the Pension, Disability Insurance Act	Social Security Act, Parental Protection and Family Benefit Act, Pension and Invalidity Insurance Act, Implementation of the Principle of Equal Treatment Act 2004, Health Services Act	Implementation of the Principle of Equal Treatment Act 2004	Implementation of the Principle of Equal Treatment Act; Organisation and Financing of Education Act, Special Rights for Members of the Italian and Hungarian National Minorities in the Field of Education Act	Implementation of the Principle of Equal Treatment Act 2004	no specific provision in the Implementation of the Principle of Equal Treatment Act 2004 but mention of "every field of social life"
SPAIN	Law 62/2003, Criminal Code, Law 56/2003 (employment), Worker's Statute, Law on Violations and Sanctions of the Labour Laws (modified by Law 62/2003, Law of Social Integration of the Disabled (LISMI) (modified by Law 62/2003, Organic Law 5/2002 on Qualifications and Vocational Training	Law 62/2003	Law 62/2003	Law 62/2003; pending Bill for an Organic Law on Education; Law on the Social Integration of Disabled People	Law 62/2003	Law 62/2003; (2005-2008 National Housing Plan adopted by Royal Decree on 1 July 2005)
SWEDEN	Prohibition of Ethnic Discrimination Act, Prohibition of Discrimination in Working Life of People with Disability Act, 2003 Prohibition of Discrimination Act, Act on Sexual Orientation	2003 Prohibition of Discrimination Act (ethnic origin, religion or belief) as amended in January (sexual orientation) and July 2005 (gender)	2003 Prohibition of Discrimination Act (ethnic origin, religion or belief) as amended in January (sexual orientation) and July 2005, Penal Code	Equal Treatment of Students at Universities Act; Act on a ban against discrimination and other degrading treatment of children and pupils of 8 February 2006	2003 Prohibition of Discrimination Act (ethnic origin, religion or belief) as amended in January (sexual orientation) and July 2005 (gender). Does not apply to private transactions	2003 Prohibition of Discrimination Act - applies only to the provision of housing services provided for professional reasons

UNITED KINGDOM	<p>GB: Race Relations Act, Employment Equality (Sexual Orientation) Regulations, Employment Equality (Religion or Belief) Regulations, Disability Discrimination Act, Employment Equality (Age) Regulations 2006 NI: Race Relations Order, Employment Equality (Sexual Orientation) Regulations, Fair Employment and Treatment Order, Disability Discrimination Act</p>	<p>GB: Race Relations Act, Disability Discrimination Act, Equality Act; NI: Race Relations Order, Fair Employment and Treatment Order, Disability Discrimination Act</p>	<p>GB: Race Relations Act, Disability Discrimination Act, Equality Act; NI: Race Relations Order</p>	<p>GB: Race Relations Act, Equality Act, Employment Equality (Sexual Orientation) Regulations, Employment Equality (Religion or Belief) Regulations, Special Educational Needs and Disability Act 2001; NI: Fair Employment and Treatment Order, Race Relations Order, Special Educational Needs and Disability (NI)</p>	<p>GB: Race Relations Act, Disability Discrimination Act, Equality Act; NI: Race Relations Order, Fair Employment and Treatment Order</p>	<p>GB: Race Relations Act, Disability Discrimination Act, Equality Act; NI: Race Relations Order, Fair Employment and Treatment Order, Disability Discrimination Order 2006</p>
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	Burden of proof	Victimisation	Legal standing Representation by associations, organisations or other legal entities
AUSTRIA	“amended federal acts” lower the burden of proof for the claimant - but in a way that is different from the way stated in the directives.) All provincial acts basically quote the wording of the directives	Equal Treatment Act as well as the Act on the Employment of People with Disabilities	Equal Treatment Act, third party intervention is only allowed through one specific NGO “Litigation Association of NGOs Against Discrimination”
BELGIUM	Federal Law of 25 February 2003, Decree adopted by the Walloon Region, in a limited way for the Flemish Decree and the Decree adopted by the German-speaking Community	Law of 25 February 2003 and Flemish Decree of 8 May 2002	Law of 30 July 1981 (Centre for Equal Opportunities and the Fight against Racism and associations whose mission is to defend human rights and combat racism and discrimination) on the basis of this law, Federal Law of 25 February 2003 (every public utility institution and every association which has been legally founded for at least five years and has for objective the defence of human rights or the fight against discrimination, as well as workers’ and employers’ organisations)
CYPRUS	Civil procedures: Section 11 Law N.58(l)/2004; Section 7 Law N.59(l)/2004 (racial discrimination in fields other than employment and occupation) BUT applicable only with regard to the procedure before the Court and not with regard to any other procedure, such as the procedure before the Equality Body	Section 11 Equal Treatment (Racial or Ethnic Origin) Law No. 59(l) /2004 (31.3.2004); Section 10 Equal Treatment in Employment and Occupation of 2004 No. 58 (l)/2004 (31.3.2004); Section 7 Law on Persons with Disabilities N. 57(l)/2004 (31.03.2004) amending Section 9E of the basic law	Law N.58(l)/2004 Section 14 and Law N.57(l)/2004 Section 9Δ, Law N.59(l)/2004, Section 12
CZECH REPUBLIC	Code on Civil Court Procedure	Labour Code (does not apply outside labour contracts), Draft Anti-Discrimination Bill extends protection	Civil Procedure Code, Law No. 83/1990 Coll. on Citizens Assembly, protection against such discrimination is part of the association’s activities, Trade unions; Draft Anti-Discrimination Bill goes wider
DENMARK	Section 7 Ethnic Equality Act (2003); Section 7a of the amended Labour Market discrimination Act (2004)	Act on Prohibition of Differential Treatment in the Labour Market, 31/2005	No legal standing for organisation but it is difficult to assess whether NGO’s would be provided legal standing without the need for an identified individual victim of discrimination. (only NGO’s with a legitimate interest in ensuring compliance with the provisions of the Directive, may engage, either on behalf of the complainant, or with his or her approval, seems to suggest that one individual is involved in the case. In order to challenge more institutionalised forms of discrimination it would, however, sometimes be necessary to challenge this practice by taking legal action without any individual being involved.)

ESTONIA	Law on Employment Contracts	Some components of victimisation to be found in Law on Employment Contracts but no special provisions regarding victimisation were introduced into legislation in the fields covered by the Directives	No special provisions allowing association with legitimate interest to be engaged in judicial procedures in support of a complainant or on behalf of one or more complainants (however, in penal, civil and administrative court procedure, the workers of associations and other entities with a legitimate interest may be legal representatives of one or more victims of discrimination)
FINLAND	Non-Discrimination Act, not clear whether the Non-Discrimination Act is applicable with respect to the proceedings brought under the legislation adopted in the Åland Islands	Penal code, Non-Discrimination Act, Provincial Act on Prevention of Discrimination in the Province of Åland Islands	Interested organisations may not bring legal action on behalf of victims of discrimination or become third parties in proceedings brought by the complainants or even act as amicus curiae
FRANCE	Labour Code: Art. L 122-45 introduced by article 1 of the Law of November 16, 2001; Art. L122-49 (harassment); Art. 158 of Law of January 17, 2002 (housing); Art. 19 of the Law HALDE	Art. L122-45 para 3 Labour Code ; Article L122-49 Labour Code (witnesses of harassment). Art. 6 quinquies of Law no 83-643 created by the Law of January 17, 2002. Law of November 16, 2001 created article L315-14-1 of the Code of social services. Article 434 Penal Code	Art. 122-45-1 Labour Code, Law 83-634 of July 13, 1983 in the public sector article 8 par. 1 et 2, L122-45-5 Labour Code, L122-53 Labour Code (harassment). Law of January, 17, 2002 extends the right of action of NGOs to collective and individual recourses (article 24-1 Law of July 6, 1989. Article 48-1 of the Law on the Press of July 29, 1881. Article 31 New Code of Civil Procedure. Article 2 Code of penal Procedure
GERMANY	New Anti-discrimination Law (labour and general civil law)	New Anti-discrimination Law	Yes. New Anti-discrimination Law permits support from associations dealing with discrimination. Associations have to have at least 75 members, or be the association of at least 7 other organisations concerned with non-discrimination
GREECE	Principle of Equal Treatment Law n. 3304/2005	Principle of Equal Treatment Law n. 3304/2005	Principle of Equal Treatment Law 3304/2005
HUNGARY	Equal Treatment Act	Equal Treatment Act	Equal Treatment Act
IRELAND	Employment Equality Act 1998-2004 (governs also the Equal Status Act 2000-2004); Pensions Acts 1990 and 2004	Employment Equality Act 1998-2004, Equal Status Act 2000-2004	Sections 67 Employment Equality Act 1998-2004 (Equality Authority may take actions on their own behalf, in certain circumstances, and on behalf of an individual). Section 77(11) of that Act provides that a party to any proceedings under that Act before the [Equality Authority] Director or Labour Court may be represented by an individual or body authorised by the party in that behalf. In practice it is common for trade unions and employers organisations to represent parties to an action

	Burden of proof	Victimisation	Legal standing Representation by associations, organisations or other legal entities
ITALY	Article 2729 Civil Code; Article 4 of Decree 215/2003 and Decree 216/2003 (no explicit shift)	Articles 4.5 and 4.6 of Decrees 215/2003 and 216/2003 (but only as an element to be taken into consideration in the assessment of the amount of damages); General rules against unfair dismissal	Art. 5 Decree 215/2003. Decree of the President of the Republic from 31 August 1999. Regulation with rules for the implementation of the consolidated text of the provisions concerning immigration and the condition of aliens, according to article 1, section 6, of the legislative decree 25 July 1998, n. 286, in Official Gazette, n. 258 of november 3, 1998. Joint Decree of the Ministries of Labour, Social Affairs and of Equal Opportunities of 16 December 2005, published 12 January 2006
LATVIA	Labour Law, Administrative Procedure Law	Labour Law, Law on National Human Rights Office (for cases investigated by the National Human Rights Office), Law on Social Security	No legal standing for organisations, with the exception of trade unions and certain organisations, the regulations of which specifically provide for this possibility and only in relation to the members of those organisations (Trade Unions Law, Law on Organisations and Foundations), pending amendments to the Law on Associations and Foundations
LITHUANIA	No specific provisions although civil and administrative judicial proceedings are adversarial procedures, which assume the equal distribution of the burden of proof on both sides of the dispute	No specific provision in relation to the grounds under the Directives	Labour Unions: Employment Code, new Civil Procedure Code from 1 January 2003., Under Art. 56 Civil Procedure Code NGOs possibly can engage in civil procedures. (untested)
LUXEMBOURG	Draft Law No. 5518	Art 11 Draft Law (employment field and private sector only)	Art VI of Law of 19 July 1997 and Draft Law No. 5518
MALTA	Employment and Industrial Relations Act 2002; Regulation 10(3) of Legal Notice 461 of 2004	Employment and Industrial Relations Act 2002	Regulation 11 of Legal Notice 461 of 2004 although NGOs are still not recognised as legal entities, the National Commission Persons with Disability is legislatively empowered to assist a complainant of alleged discriminatory treatment
NETHERLANDS	Article 10(1) General Equal Treatment Act; art. 10(1) Disability Discrimination Act; art. 12(1) Age Discrimination Act	Art. 8(1) and 8(a) General Equal Treatment Act; Articles 9(1) and 7a Disability Discrimination Act; Articles 11(2) and 10 Age Discrimination Act	Article 3:305a and 305b of the Civil Code and Article 1:2(3) of the General Act on Administrative Law, Art. 12(2)e Equal Treatment Act
POLAND	Labour Code, Civil Code (outside employment which does not contain the shift mechanism)	No definition in national law, Labour Code in a very limited way - protects only against termination of contract of the complainant	Code of Civil Procedure
PORTUGAL	Labour Code, Law 18/2004, Law 35/2004	Law 18/2004, Labour Code	Law 18/2004, except for minor offences, Labour Code, Labour Procedure Code, Procedural Code for Public Administration, People's Civil Action Law

SLOVAKIA	Equal Treatment Act	Equal Treatment Act, the Act on Complaints, Labour Code, and other laws such as the Act on State Service of Customs Officers, Act on State Service of Members of the Police Force, Act on Fire and Rescue Service, Act on Employment Services, Act on Higher Education, in the School Act and in the Act on Health Care	Equal Treatment Act
SLOVENIA	Implementation of the Principle of Equal Treatment Act 2004, Employment Relations Act	Implementation of the Principle of Equal Treatment Act 2004, Employment Relations Act	Regarding engaging in judicial or other procedures in support of a complainant: Implementation of the Principle of Equal Treatment Act 2004, Civil Procedure Act, General Administrative Procedure Act, Employment Relations Act; regarding engaging on behalf of complainant: societies and other associations do not have the right to challenge regulations that interfere with the legal status of their members or other persons. They only have legal interest if the regulation in question interferes directly with their rights, legal interests or their status as a legal person
SPAIN	Labour Procedure Law as amended by Law 62/2003. Law 62/2003 Art. 32 (employment - race and ethnic origin) and 36 (employment - all grounds)	Workers' Statute and Law 5/2000 on infractions and remedies in social domain as amended by Arts. 37 and 41 of Law 62/2003 respectively	Law 29/1998 regulating Contentious-Administrative Jurisdiction, Organic Law 4/2000 (for Aliens)
SWEDEN	enforced by all the non-discrimination acts	Prohibition of Ethnic Discrimination Act, Prohibition of Discrimination in Working Life of People with Disability Act, the 2001 Students at Universities Act and the 2003 Prohibition of Discrimination Act, Act on discrimination in working life on ground of Sexual Orientation	Trade Unions for their members. Ombudsmen have rights secondary to trade unions

UNITED KINGDOM	Burden of proof	Victimisation	Legal standing Representation by associations, organisations or other legal entities
	<p>GB: Race Relations Act; Disability Discrimination Act, Employment Equality (Religion or Belief) Regulations, Employment Equality (sexual orientation) Regulations / Section 17A (1C) Disability Discrimination Act (only Part II or employment services (s.21A))</p> <p>NI: Race Relations Order, Fair Employment Treatment Order, Employment Equality (sexual orientation) Regulations (only activities under art. 3(2B)). Will not apply under the provisions of the Equality Act 2006 that prohibit discrimination on the grounds of religion or belief in employment</p>	<p>Race Relations Act 1976 (Amendment) Regulations 2003; Race Relations Order (Amendment) Regulations (Northern Ireland) 2003; Employment Equality (Sexual Orientation) Regulations 2003; Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003; Employment Equality (Religion or Belief) Regulations 2003; Fair Employment and Treatment Order (Amendment) Regulations (Northern Ireland) 2003; Disability Discrimination Act 1995 (Amendment) Regulations 2003; Disability Discrimination Act 1995 (Amendment) Regulations (Northern Ireland) 2004</p>	<p>GB + NI: no restrictions under the normal rules of civil procedure on any organisation offering support to complainants in discrimination cases, where "support" is limited to advice, assistance in case preparation or financial assistance to secure external lawyers' services</p>

	Article 13 designated Specialised body	Instrument of designation	Body for other grounds	provide independent assistance to victims ¹⁵⁹	independent surveys	issue recommendations
AUSTRIA	National Equality Body (NEB) Equal Treatment Commission (ETC) (Each province will have an equality body, although not all have been set-up)	Act on the Equal Treatment Commission and the National Equality Body, GBK/GAW-Gesetz, BGBl I Nr. 66/2004	All grounds in Art 13 EC Treaty except disability	NEB: yes ETC: yes	NEB: yes ETC: no	NEB: yes ETC: no
BELGIUM	Centre for Equal Opportunities and the Fight against Racism	No official designating act. However the Law of 25 February 2003 extended the powers of the Centre so it could function in accordance with Art. 13 of the RED	All grounds under Art. 13 EC Treaty except gender	yes	yes	yes
CYPRUS	Commissioner for Administration (also referred to as the Ombudsman)	The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/2004 (19.03.2004)	All grounds under Art. 13 EC Treaty plus additional grounds	yes	yes	yes
CZECH REPUBLIC	No Specialised Body has been designated as the article 13 body. A relevant institution performing similar tasks is: the Public Defender of Rights (Ombudsperson)	Anti-discrimination Bill submitted to Parliament on 12.2004 proposed to extend the mandate of the Public Defender to carry out the activities under Art. 13 RED. The Bill failed to be adopted by the last Parliament	All grounds under Art. 13 EC Treaty (according to Anti-discrimination Bill)	-	-	-
DENMARK	Danish Institute for International Studies and Human Rights	Section 2 (2) of Act no. 411, 2002 on the Centre on International Studies and Human Rights establishing the Institute for Human Rights	No (although covers general human rights infringements)	yes	yes	yes
ESTONIA	Legal Chancellor (or Chancellor of Justice)	Law on Legal Chancellor, published Riigi Teataja I 1999, 29, 406. Amendments: RT I 2003, 23, 142; RT I 2003, 20, 119; RT I 2002, 57, 357; RT I 2002, 30, 176; RT I 2001, 58, 353; RT I 2001, 43, 240; RT I 2000, 92, 597	All grounds under Art. 13 EC Treaty plus additional grounds	yes	yes	yes
FINLAND	Ombudsman for Minorities and Discrimination Ombudsman for the Åland Islands	Act on the Ombudsman for Minorities and the Discrimination Board (660/2001), as amended. Provincial Act on the Discrimination Ombudsman (67/2005) and Provincial Act on Prevention of discrimination in the Province of Åland (66/2005)	no	yes	yes	yes

	Article 13 designated Specialised body	Instrument of designation	Body for other grounds	provide independent assistance to victims ¹⁵⁹	independent surveys	issue recommendations
FRANCE	High Authority against Discrimination and for Equality (HALDE)	Law no 2004-1486 of 30 December 2004	All grounds under Art. 13 EC Treaty plus additional grounds	yes	yes	yes
GERMANY	<i>New body to be set up from 1-10-2006 (Antidiskriminierungsstelle des Bundes)</i>	<i>Law transposing the European Directives to implement the Principle of Equal Treatment of 18 August 2006</i>	<i>All grounds under Art. 13 EC Treaty</i>	<i>(yes)</i>	<i>(yes)</i>	<i>(yes)</i>
GREECE	Ombudsman Equal Treatment Committee (ETC) Labour Inspectorate	Article 19 Law no. 3304/2005 (Law Gazette A'16) on the Application of the Principle of Equal Treatment regardless of Racial or Ethnic origin, Religious or other Beliefs, Disability, Age, or Sexual Orientation	Ombudsman: All grounds in Art. 13 EC Treaty and general human rights infringements. ETC: All grounds in Public sector only. Art. 13 EC Treaty except gender in social protection, social advantages, education, goods and services. Private sector only. Labour Inspectorate: All grounds in Art. 13 EC Treaty except gender in employment and occupation. Private sector only	Ombudsman: no ETC: no Labour Inspectorate: no	Ombudsman: yes ETC: yes Labour Inspectorate: yes	Ombudsman: yes ETC: yes Labour Inspectorate: yes
HUNGARY	Equal Treatment Authority	Article 65 of Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities and Article 22 of Government Decree 362/2004 on the Equal Treatment Authority and the Detailed Rules of its Proceedings	All grounds in Art. 13 EC Treaty plus additional grounds.	yes	yes	yes
IRELAND	The Equality Authority (EA) The Equality Tribunal (ET)	The Employment Equality Act 1998 as amended by the Equality Act 2004 and the Equal Status Act 2000 as amended by the Equality Act 2004	All grounds in Art. 13 EC Treaty plus additional grounds.	EA: yes ET: no	EA: yes ET: no	EA: yes ET: no

ITALY	National Office against Racial Discrimination (UNAR)	Legislative Decree 9 July 2003, no. 215. Decree of the President of the Council of Ministers, Establishment and internal organisation of the Office for the Promotion of equality of treatment and the removal of discrimination	no	yes	yes	yes
LATVIA	The National Human Rights Office	Amendments to the Law on the National Human Rights Office, adopted 15.12.2005, entered into force on 12.01.2006	All grounds under Art. 13 EC Treaty and general human rights infringements	yes	yes	yes
LITHUANIA	Equal Opportunities Ombudsman	Law on Equal Treatment was adopted on 18 November 2003, Nr. IX-1826, and came into force on 1 January 2005	All grounds under Art. 13 EC Treaty	yes	no	yes
LUXEMBOURG	<i>Centre for Equality of Treatment to be created (Bill pending)</i>	<i>Bill No. 5518 pending before Parliament</i>	<i>(All grounds under Art. 13 EC Treaty)</i>	–	–	–
MALTA	<i>It is intended to designate the National Commission for the Promotion of Equality for Men and Women as the Article 13 body</i>	<i>No bill pending so far</i>		–	–	–
NETHERLANDS	Equal Treatment Commission (ETC)	No official designation by law. However, Explanatory Memorandum to the Bill (page 20 Appendix) that led to the Law of 21 February 2004 (Equal Treatment Law), states that the implementation of Article 13 RED is already accomplished as the Netherlands has the ETC	All grounds under Article 13 EC Treaty plus additional grounds	yes	yes	yes
POLAND	No "specialised body" in the sense of the Art. 13.2 of the directive but the Commissioner of Citizens for Civil Rights Protection (Ombudsperson) is a relevant institution	The Commissioner has not been designated officially as a body responsible for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin	Scope of activities is very broad (protecting rights and liberties of the human being and of the citizen infringed by organs of public authority.) Discrimination is not a priority issue. There is no unit dealing exclusively with discrimination cases	(yes)	(yes)	(yes)

	Article 13 designated Specialised body	Instrument of designation	Body for other grounds	provide independent assistance to victims ¹⁵⁹	independent surveys	issue recommendations
PORTUGAL	High Commissariat for Immigration and Ethnic Minorities (ACIME) Commission for Equality and Against Racial Discrimination (CEARD)	ACIME - Law 251/2002 amended by Law 27/2005. CEARD - Law 134/99	ACIME - the same CEARD - race, colour, nationality or ethnic origin	ACIME: yes CEARD: no	ACIME: yes CEARD: yes	ACIME: yes CEARD: yes
SLOVAKIA	Slovak National Centre for Human Rights	Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination designated the Centre the Art. 13 body by amending Act No. 308/1993 Coll. on Establishing the Slovak National Centre for Human Rights	All grounds under Art. 13 EC Treaty and human rights	yes	yes	yes
SLOVENIA	Advocate of the Principle of Equality/Council of the Government for the Implementation of the Principle of Equal Treatment	Advocate and Council: Act implementing the principle of equal treatment (Official Gazette 50/2004; adopted on 22 April 2004. Came into force on 7 May 2004)	All grounds in Art. 13 EC Treaty plus additional grounds	yes	no	yes
SPAIN	Council for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin.	Law 62/2003, of 30 December 2003 on fiscal, administrative and social measures (Art.33)	no	(yes)	(yes)	(yes)
SWEDEN	The Ombudsman against Ethnic Discrimination (DO)	Sec. 22 the (1999:130) Act against Ethnic Discrimination, Sec. 19 the (2003:307) Act against Discrimination and Sec. 16 the (2001:1286) Equal Treatment of Student at Universities Act. None of the Acts actually mentions Art.13 RED but they are the legal instruments by which the Directive is implemented and the Ombudsman is designated to 'insure that this Act is complied with'. Also Sec. 5 the (1999:131) Act concerning the Ombudsman against Ethnic Discrimination	Religion and belief	yes	yes	yes

UNITED KINGDOM	Great Britain: Commission for Racial Equality (CRE) Northern Ireland: Commission for Racial Equality for Northern Ireland (ECNI)	No formal legal instrument officially designating the CRE or the ECNI as "Article 13 bodies". The bodies were in existence prior to the Directives. In Part 7 of Equality and Diversity: Making it Happen (London: DTI, 2001), a consultation paper on how to ensure the 2000 Directives were to be enforced in Britain, the UK government stated that the CRE already constituted an independent body which was performing the functions set out in Article 13. Its consultation paper on implementing the Directives in Northern Ireland made a similar statement about the ECNI	CRE: race, ethnic origin, national origin and nationality. ECNI: All Art. 13 ECT grounds	CRE: yes ECNI: yes	CRE: yes ECNI: yes	CRE: yes ECNI: yes
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¹⁵⁹ The results in this column are based on a broad view of the variety of ways in which assistance can be provided to victims. It does not represent an assessment of Directive 2000/43's requirement that the equality body or bodies provide 'independent assistance.' For this reason a positive answer was produced for bodies which provide independent assistance or advice to victims and also those bodies which investigate and hear complaints of discrimination (quasi-judicial bodies). For more information on this issue see the Thematic Report of Professor Rikki Holtmaat 'Catalysts for Change? Equality Bodies according to Directive 2000/43/EC' for the European Network of Legal Experts in the Non-discrimination Field (forthcoming 2007).

