Developing Anti-Discrimination Law in Europe

The 27 EU Member States compared

November | 2009

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Ivar | *1991*

Developing Anti-Discrimination Law in Europe

The 27 EU Member States compared

Prepared by Isabelle Chopin and Eirini-Maria Gounari
for the European Network of Legal Experts in the non-discrimination field

November 2009
(Based on information current to 31 December 2008)

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Contents

Preface 7
Executive Summary 8

1. Introduction 11

2. The grounds of discrimination 17
A. Which grounds are included? 18
B. Racial or ethnic origin 18
C. Religion or belief 20
D. Disability 21
E. Sexual Orientation 22
F. Age 23
G. Assumed and associated discrimination. 23

3. The definition of discrimination 27
A. Direct discrimination 28
B. Indirect discrimination 29
C. Harassment 29
D. Instructions to discriminate 30

4. The reasonable accommodation duty 33

5. The personal and material scope of national provisions 37
A. Personal scope 38
B. Material scope 39

6. Exceptions to the principle of equal treatment and positive action 47
A. Genuine and determining occupational requirements 48
B. Employers with an ethos based on religion or belief 49
C. Armed forces and other specific occupations 49
D. Nationality discrimination 50
E. Family benefits 50
F. Health and safety 51
G. Exceptions related to discrimination on the ground of age 52
H. Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others 53
I. Any other exceptions 54
J. Positive action 54

7. Remedies and enforcement 57
A. Judicial and administrative procedures 58
B. Legal standing and associations 62
C. Burden of Proof 66
D. Victimisation 67
E. Sanctions and remedies 69

8. Equal Treatment Bodies 75

9. Implementation and Compliance 81
A. Dissemination of information and Social and Civil Dialogue 82
B. Ensuring compliance 85

10. Conclusion 89

11. Tables 93
These tables set out the general scope of the main relevant legislation in 27 EU Member States which transpose Directives 2000/43/EC and 2000/78/EC.

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Preface

In a great many European countries anti-discrimination legislation has been adopted and reviewed over recent years. This major and unprecedented operation was originally set in motion with the adoption of two pieces of European legislation in 2000, namely the Racial Equality Directive (2000/43) and the Employment Equality Directive (2000/78). The transposition of these Directives into the national law of the 27 Member States is described in a series of annually updated country reports produced by the European Network of Legal Experts in the non-discrimination field. This Network was established and is managed by the 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 ground co-ordinators (experts on the Directives' five discrimination grounds) and content manager read and commented on various drafts of the reports. The 27 reports cover national law, the establishment of enforcement mechanisms and the adoption of other measures. They contain information current as of 31 December 2008.[1] As such, they are a valuable source of information on national anti-discrimination law and can be found on the network's website at: http://www.non-discrimination.net .

This Comparative Analysis, drafted by Isabelle Chopin and Eirini-Maria Gounari (Migration Policy Group), compares the information set out in the **2008** country reports in a format mirroring that of the country reports themselves and draws some conclusions from the information contained in them. As Romania and Bulgaria have joined the EU and the Network since the last Comparative Analysis, the authors have decided to include more detailed information on these two countries.

The 2009 country reports will be published in the course of 2010.

Piet Leunis
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Utrecht – Brussels
November 2009

[1] As an exception, where major changes in legislation have been adopted at national level after the cut-off date for this document, they have been included and signalled accordingly.

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 some gaps in a small number of 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, all 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.

3. Most Member States have incorporated all the grounds of discrimination included in the two Directives in their national anti-discrimination legislation. Most Member States have chosen not to define the grounds of discrimination in their implementing legislation. A considerable number of Member States have chosen 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 have made the list non-exhaustive by adding a phrase such as 'or any other circumstance'.

4. The great majority of Member States have introduced legislation that expressly prohibits 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 and those which provide 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 remain some noteworthy loopholes. In some countries there is a lack of protection for all employees and the self-employed, especially in the public sector. Two Member States (Latvia[2] and Poland) still have to transpose the Racial Equality Directive in all fields outside employment. On

[2] In Latvia a draft law on the prohibition of discrimination against self-employed persons was submitted to the Parliament at the end of January 2009 (after the cut-off date for this Comparative Analysis) but would apply only to discrimination on the grounds of racial/ethnic origin and gender and only in relation to access to and provision of goods and services – thus not covering access to self-employment.

the whole, protection against discrimination in provision of goods and services is mostly 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 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 that 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 all 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 'effective, proportionate and dissuasive' test must be considered on a case-by-case basis. However, few country experts currently predict that sanctions and remedies in their country will comply with this standard.

10. 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 discriminatory laws will be repealed following a finding of discrimination by the courts, or possibly a recommendation by an equality body. Legislation on 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.

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.

Esther | *1986*

Chapter 1
Introduction

The objective of this report is to compare and contrast anti-discrimination laws in the 27 EU Member States, as comprehensively described in the annually updated country reports written by the European Network of Legal Experts in the non-discrimination field that are 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, disability, age 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 referred the comprehensive country reports. These country reports contain information current as of 31 December 2008.[3]

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 could potentially 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 EU 15 Member States and by 1 May 2004 in the EU 10, 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. Clear pictures have emerged of the implementation of the Directives.

Twenty-six of the 27 Member States have transposed the two Directives into their national law: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic,[4] Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy,[5] Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Romania, Slovenia, Slovakia, Spain, Sweden and the United Kingdom. Poland has 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)).

[3] http://www.non-discrimination.net. The 2009 country reports will be published in the course of 2010.

[4] The Czech anti-discrimination bill was adopted on 17 June 2009 and entered into force on 1 September 2009. Due to the importance of this development, the authors decided to include the 2009 Czech country report in this document, therefore making an exception in regards to the cut-off date of 31 December 2008.

[5] The country report for Italy contains information current as of 1 May 2008.

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 (one act for both), Italy (2 decrees), Luxembourg (2 acts) and Sweden[6] (one act)
Anti-discrimination acts covering more grounds than the Directives	Austria, Belgium[7], Bulgaria, Czech Republic, Finland, Germany, Ireland, Hungary, Netherlands[8], Romania, Slovakia
Combination of multi-ground anti-discrimination acts and single-ground acts	Denmark, Netherlands
Several pieces of single-ground anti-discrimination legislation	United Kingdom[9]
Combination of specific legislation and employment act	Estonia[10], Slovenia, Latvia, Malta[11]
Combination of specific legislation, labour and penal codes and some administrative law	France, Lithuania[12], Portugal
Directives transposed in a much wider general act	Spain
So far only transposed in the field of employment	Poland

A second observation about methods of implementation may be made with regard to age discrimination. The transposition of Directive 2000/78 with respect to age discrimination presented special challenges because the great majority of Member States did not have existing general legislation against age discrimination. Two contrasting patterns or models can be identified in the way in which Member States chose to confront these challenges, though it should be stressed that these are only broad stereotypes, within which significant variations occur.

6 The seven anti-discrimination acts were repealed and replaced with the 2008 Discrimination Act (2008:567) that entered into force on 1 January 2009.

7 Three major acts addressing certain deficiencies in the Federal Act of 25 February 2003 were adopted on 10 May 2007 and entered into force on 30 May 2007; these are the Racial Equality Federal Act, the Gender Equality Federal Act and the General Anti-discrimination Federal Act.

8 On 29 January 2009, the Dutch legislator passed a bill (no. 30 859) which extends the scope of the Equal Treatment Act regarding disability/chronic illness (*Wet gelijke behandeling handicap/ chronische ziekte 'Wgbl/cz')* to the fields of housing and education. The extension to the field of housing (new Articles 6a-6c Wgbl/cz) entered into force on 15 March 2009 and to the field of primary and secondary education (Article 5b) on 1 August 2009.

9 The United Kingdom Government has introduced the Equality Bill 2009 into the United Kingdom Parliament; the Bill was published on 27 April 2009 and given its second reading on 11 May 2009.The Bill is currently proceeding through the House of Commons and further amendments to its text are likely. This Bill codifies and extends British discrimination law (but for the most part does not apply to Northern Irish discrimination law, as discrimination legislation is now a matter devolved to the Northern Ireland Assembly).

10 The Law on Equal Treatment was adopted on 11 December 2008 and entered into force on 1 January 2009, in order to complete the transposition of the Anti-discrimination Directives into Estonian legislation.

11 The Equal Treatment of Persons Order 2007 transposing Directive 2000/43/EC in all fields and not only in the field of employment, entered into force on 3 April 2007.

12 The Law on Equal Treatment was amended in June 2008 in order to fully implement the Directives; it also expanded the list of protected grounds, adding social status, language and convictions.

One pattern 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. We have seen in the table above that Cyprus, Greece and Italy have passed anti-discrimination acts which more or less reproduce the Directives; 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 European Union institutions.

A contrasting response consisted 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 within the existing law and practice of the Member State. The resulting legislative debate tended to be difficult and complex, which is why Belgium, Germany, the Netherlands, Sweden and the United Kingdom took up the option of extra time to implement age discrimination requirements in particular.

On the whole, most Member States 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 anti-discrimination provisions still exist in various pieces of legislation, e.g. Bulgaria and Latvia, this method has largely been replaced by more general anti-discrimination provisions and legislation, and more recently a move towards multiple-ground equal treatment bodies is also discernable.

Ensuring the Directives are transposed across all of a Member State's territory and by all tiers of government with relevant competences was a reason for delays in several Member States. The United Kingdom 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/EC.[13] The Commission also initiated action against Finland, Germany, Austria and Luxembourg for failure to transpose Directive 2000/78/EC. In this respect, Luxembourg and Germany were found to be in breach of their EC Treaty obligations for their failure to transpose Directive 2000/78/EC. Meanwhile, the European Commission continued to pursue infringement procedures. For example, on 20 November 2009 it sent a reasoned opinion to the United Kingdom for incorrectly implementing Directive 2000/78/EC, stating that there is no clear ban on 'instruction to discriminate' in national law and no clear appeals procedure in the case of disabled people, and the exceptions to the principle of non-discrimination on the basis of sexual orientation for religious employers are broader than those permitted by the Directive. The European Commission also decided to close infringement proceedings concerning the same Directive against Slovakia and Malta as their national legislation had been brought into line with EU requirements. Similarly, the European Commission agreed to close infringement proceedings against Spain, Slovakia and Malta on the same day after these countries modified their national legislation in order to fully implement the Race Equality Directive (2000/43/EC).

[13] 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/EC.

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

Levi | *2003*

Chapter 2
The grounds of discrimination

The Racial Equality Directive and the Employment Equality Directive require the Member States to prohibit 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 provide a definition of each ground and how to address discrimination based on assumed 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 implementing the Directives. A small group of countries have either included statutory definitions or provided definitions in accompanying documentation, such as an explanatory memorandum. This includes Austria, Ireland, the Netherlands and the United Kingdom.

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, although the legislation in Luxembourg does not expressly mention the ground of belief. In addition, it should be noted that a number of Member States such as Bulgaria, Romania, Hungary, Slovenia and Poland chose not to restrict new anti-discrimination laws to the grounds found within the two Directives and have opted for a broader list of prohibited grounds. In Sweden the new comprehensive anti-discrimination law[14] which entered into force on 1 January 2009 includes a new discrimination ground, 'gender-transgressing identity or expressions'.

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.

[14] Discrimination law (diskrimineringslag) 2008:567. Government bill 2007/08:95. Committee report. 2007/08:AU7. Voted on in the parliament on the 4 of June 2008. rskr. 2007/08:219.

For example, the Finnish Non-Discrimination Act refers to 'ethnic or national origin' (section 6(1)), whilst the Swedish 1999 Ethnic Discrimination Act refers to 'ethnic affiliation' (section 3) and defines it as: 'Ethnic affiliation means that someone belongs to a group of people who have the same race, colour, national or ethnic background or religious belief'. In other countries, 'race' has been included in the legislation, but it is qualified. In France, various legal provisions refer to 'real or assumed' (*vraie ou supposé*) 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'. Many national laws include, as a minimum, colour and national origin within legislation implementing the Racial Equality Directive. Some states, such as Poland or Slovenia, have specific and detailed laws on the protection of national minorities. 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.

Another difficult boundary concerns 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 of the Employment Equality Directive. Nevertheless, the concepts of ethnicity and religion are closely linked. The European Court of Human Rights recently held that:

> 'Ethnicity has its origin in the idea of societal groups marked by common nationality, tribal affiliation, religious faith, shared language, or cultural and traditional origins and backgrounds.'[15]

In the Netherlands, case-law has recognised the possibility for discrimination against Jews,[16] and in certain circumstances Muslims,[17] to be challenged as race discrimination. In the United Kingdom, discrimination against Sikhs[18] or Jews[19] has been accepted as discrimination on racial grounds (specifically, ethnic origin).

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 Latvia and Poland. Secondly, the Racial Equality Directive requires Member States to establish a body or bodies for the promotion of equal treatment. There remain a few Member States where such a body has already been created but has yet to become operational, namely, the Czech Republic, Poland and Spain.

15 Para 55, *Timishev v Russia*, Applications 55762/00 and 55974/00, 13 December 2005.

16 Opinion 1998/48, Equal Treatment Commission.

17 Opinion 1998/57, Equal Treatment Commission.

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

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

In terms of implementation in practice, Roma segregation in education remains a serious challenge for several states,[20] including Bulgaria, 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 (e.g. an exhaustive inventory of protected religions). Several states provide further guidance on the meaning of 'religion or belief' in explanatory documentation accompanying the legislation. In Austria, the explanatory notes for the Federal Equal Treatment Act state that 'the aims of the "framework-directive" must be interpreted in a broad manner. "Religion" in particular is not restricted to churches and officially recognised religious communities. Nevertheless, it has to be noted that for a religion there are minimum requirements of a statement of belief, some rules on way of life and worship. Religion is any religious, confessional belief, the membership of a church or religious community.'[21] The term 'belief' has also been the subject of debate surrounding its meaning. 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. In addition to *levensovertuiging*, the Dutch General Equal Treatment Act (GETA) also covers *godsdienst* (religion).[22] Having said this, *religion* and *belief* are defined and applied in a broad sense.

Most of the controversies around the implementation of the provisions on religion or belief 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. Some states have provided exceptions that go beyond the strict terms of the Directive or which remain ambiguous (e.g. Greece, Ireland, and Italy).

There has been a gradual increase in case-law arising since the adoption of the Directives stemming from controversy over employee dress-codes and religious requirements, this indicating that manifestation of religious beliefs through dress is one of the key issues in the practical implementation of the Employment Equality Directive. Such cases have been recorded in Belgium, Denmark, France, Germany, the Netherlands, Sweden and the United Kingdom.

[20] A thematic report written in 2007 by Lilla Farkas, Roma Expert for the European Network of Legal Experts in the non-discrimination field, entitled *Segregation of Roma Children in Education, Addressing structural discrimination through the Race Equality Directive* provides a more detailed analysis of this issue.

[21] No. 307 der Beilagen XXII. GP - Regierungsvorlage – Materialien.

[22] In the English translation of the GETA on its web site, the Equal Treatment Commission translates *levensovertuiging* as belief.

D. Disability

In 2006, the European Court of Justice provided its first decision on the meaning of 'disability'. The Court distinguished disability from sickness:

> 'the concept of "disability" must be understood as referring to a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life …
> In order for the limitation to fall within the concept of "disability", it must therefore be probable that it will last for a long time'.[23]

National legislation contains many examples of definitions of disability, but these are often in the context of social security legislation rather than anti-discrimination law. There seem to be few Member States where the existing definition of disability, if one exists, is more restrictive than that provided by the Court. One exception is Lithuania where the definition does not include reference to psychological impairments.[24] The Romanian Anti-discrimination Law does not define 'disability' or the connected protected grounds of chronic non-infectious disease or HIV infection even though it provides protection against discrimination on these grounds. Romanian disability-related legislation still uses the concept of 'handicap' defined as 'those persons lacking abilities to normally carry out daily activities due to a physical, mental or sensorial impairment and who require protective measures for rehabilitation, integration and social inclusion.'[25] The Court's requirement for it to be probable that the impairment will last for a 'long time' echoes various definitions of disability in national law. For example, in both Austria[26] and Germany,[27] impairment is not deemed temporary if it is likely to last for more than six months. In the United Kingdom,[28] the impairment should last for at least 12 months. In contrast, other states require the impairment to be indefinite in duration (Cyprus[29] and Sweden[30]). In Bulgaria, the definition of disability is broader than the concept of disability elaborated by the European Court of Justice, as it does not require the limitation to result in 'hinder[ing] the participation of the person concerned in professional life'[31] - the existence of an impairment/limitation is sufficient, regardless of what result it may have on the individual's professional life. Further, this national definition is broader in material scope because it applies to any field, including but not limited to, professional life.

[23] Paras 43-45, Case C-13/05 *Chacón Navas v Eurest Colectividades SA*, judgment of 11 July 2006. See commentary by Lisa Waddington (2007) 44 *Common Market Law Review* 487.

[24] Law on the Social Integration of Disabled Persons, 1991, No. 36-969.

[25] Art.2 and Art.3 (16) of Romania/Law 448/2006 on the protection and promotion of the rights of persons with a handicap.

[26] Section 3, Disability Equality Act 2005.

[27] Section 2, Social Code IX and Section 3 Disabled Equality Law.

[28] Section 1(1), Disability Discrimination Act 1995.

[29] Law 127(I)/2000.

[30] Ch.1 Sec 5 p. 4 new Discrimination Act (2008:567).

[31] Integration of Persons with Disabilities Act, § 1.1and § 1.2 Additional Provision.

It is not yet clear whether the Court regards the formula provided in *Navas* as an exhaustive definition of disability. In particular, this definition leaves no space for the protection of those assumed to be disabled or who are likely to have a future disability. These scenarios are anticipated in some national legislation. Irish legislation covers discrimination on grounds that exist in the present moment, grounds 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.

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. 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, and Lithuania).

E. Sexual Orientation

Very few states have defined sexual orientation within anti-discrimination legislation. In Bulgaria, sexual orientation is defined under the Protection Against Discrimination Act, § 1.9 Additional Provision, as 'heterosexual, homosexual or bisexual orientation'. British 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'.[34] The 2006 German General Law on Equal Treatment adopts the term 'sexual identity'. This is understood to reach beyond sexual orientation and also encompasses protection from discrimination for transsexual people.

Many of the difficulties encountered in implementing the sexual orientation provisions of the 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). It should also be noted that, in the majority of states, there are few or no examples of cases of sexual orientation discrimination being brought before the courts. Issues around confidentiality may deter some individuals. Moreover, in some states the wider political climate remains unfriendly (e.g. Poland) or openly hostile to equality for lesbians, gays and bisexuals (e.g. Lithuania).

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

F. Age

Age is generally assumed to be an objective characteristic with a natural meaning and hence it is not defined. Most Member States have not restricted the scope of the legislation, but the Irish Employment Equality Act 1998-2007 limits its application to 'persons above the maximum age at which a person is statutorily obliged to attend school'.[35] Similarly, in Denmark legislation was adopted in 2006 which removes protection from persons under 18 if differential treatment is stipulated in a collective agreement.[36] Moreover, the prohibition against differential treatment due to age does not apply in regard to the employment and conditions of pay and dismissal of young people under the age of 15, since their employment is not regulated by a collective agreement.

The implementation of the age provisions of the Employment Equality Directive remains a 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*,[37] the Court of Justice provided an early indication that directly discriminatory practices need to be carefully scrutinised by national courts. A key issue is the justification for compulsory retirement ages. National practice varies greatly in this area, ranging from no national compulsory retirement age (e.g. the 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 person has a disability. 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 from the Roma community. In many Member States, the application of discrimination law to such scenarios is neither stipulated nor expressly prohibited, and only future judicial interpretation will clarify this issue. This is the case for Romania, 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.[38] The Bulgarian Protection Against Discrimination Act also explicitly prohibits discrimination on

[35] Section 6(f)(3).

[36] Act No. 31/2006.

[37] Case C-144/04 [2005] ECR I-9981.

[38] Section 6(1)(b), Employment Equality Act 1998-2004.

perceived or assumed grounds and discrimination by association.[39] As mentioned earlier, in several states the legislation refers to 'real or assumed' race (e.g. France) or to a disability that existed in the past or which may exist in the future (the Netherlands). The Federal Disability Equality Act adopted in Austria in 2005 extends protection to relatives caring for disabled persons and the same is stated in the Act on the Employment of People with Disabilities, which protects close relatives with caring responsibilities.

In addition, the explanatory notes to the Austrian Equal Treatment Act explicitly state that 'the principle of equal treatment is applicable irrespective of the fact of whether the grounds for the discrimination are actually present or are only assumed to exist', and this is also reflected in case law. Regarding discrimination by association, no federal Austrian law expressly deals with this question for discriminatory grounds other than disability, so it is for the courts to provide a clear interpretation. In the Flemish Framework Decree of 10 July 2008 in Belgium, the definition of direct discrimination expressly states that it is applicable in cases of discrimination based on an assumed characteristic.

[39] Additional Provisions, § 1.8. See also the European Court of Justice judgment of 17 July 2008 in Case C-303/06 *Coleman v Attridge Law, Steve Law* [2006] OJ C237/6.

Simon | *1987*

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. An overview of Member States' implementation of the Directives reveals considerable progress in this area. 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 of 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.

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, Bulgaria, Cyprus, Denmark, Estonia, France,[40] Finland, Germany, Greece, Italy, Ireland, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Slovakia, Slovenia, Sweden and the United Kingdom. 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. Moreover, most Member States have taken advantage of the opportunity provided for 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 in various ordinary laws governing employment and labour relations. Although different from the definitions proposed by Directive 2000/43/EC and Directive 2000/78/EC, the Romanian 2000 Anti-discrimination Law provides a detailed definition, attempting to cover the whole range of actions and omissions leading to discrimination. In addition, it does not permit any general exemption or exception justifying direct discrimination, Similarly, in

[40] Introduced with the newly-adopted Law no. 2008-496.

Bulgaria the Protection Against Discrimination Act does not permit general justification for direct discrimination with respect to any grounds, while in the Netherlands, direct discrimination is forbidden but is not further defined in legislation.

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 Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, France,[41] Finland, Germany, Greece, Hungary, Italy, Latvia, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

In the Netherlands, the legislation defines indirect discrimination 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 across a range of laws containing various definitions of indirect discrimination, which conform to the definitions given by the Directives.

The Directives anticipate a comparison between the effect of a measure on persons of a particular ethnic origin, etc. and its impact on other persons. National law varies in the approach taken to the comparison required for establishing indirect discrimination. For example, Polish law requires the measure to cause detriment for all or a significant number of employees belonging to the particular group of persons.[42] In the United Kingdom, 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.[43]

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.[44] The majority of Member States have adopted definitions of harassment that appear similar to that contained in the Directives. This includes Belgium, Bulgaria, Cyprus, Estonia, Finland, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovenia, Spain and the United Kingdom. In Romania, harassment is defined in the 2000 Anti-discrimination Law, in the Law on equal opportunities between men and women and in the New Romanian Criminal Code, but none of the definitions provided are in complete compliance with the definition of harassment spelled out in the Directives.

41 Introduced with the newly-adopted Law no. 2008-496.

42 Art. 18, Labour Code.

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

44 Art. 2 (3).

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. For instance, in Slovakia under the Anti-discrimination Act harassment means such conduct which results or may result in intimidation, shame, humiliation, degradation, or offence of a person and the purpose or effect of which is or may be to violate a freedom or human dignity.

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 the 2006 German General Law on Equal Treatment, employers are placed under a legal duty to prevent discrimination occurring in the workplace. This includes a duty to protect employees from discrimination by third parties.[45]

D. Instructions to discriminate

The Directives contain a provision stating that 'an instruction to discriminate … shall be deemed to be discrimination'.[46] 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 such a provision was introduced with Law 2008-496; however, general legal principles on complicity and liability could previously produce similar effects, for instance unlawful discrimination was found where an estate agent refused to rent accommodation to people with surnames of 'foreign origin' following instructions from the owner.[47]

[45] § 12.4 AGG.

[46] Art. 2(4), Directives 2000/43 and 2000/78.

[47] Court of Cassation, Criminal Chamber, 7 June 2005, no. 04-87354.

Pearl | *1991*

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.'[48] The following Member States have legal provisions that approximate to the reasonable accommodation duty found within the Directive: Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Slovakia, Spain, Sweden and the United Kingdom. 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 United Kingdom). In Cyprus, the duty to adopt 'reasonable measures' is not restricted to the work place but covers basic rights (right to independent living; diagnosis and prevention of disability; personal support with assistive equipment, services etc; access to housing, buildings, streets, the environment, public means of transport, etc; education; information and communication through special means; services enabling social and economic integration; vocational training; employment in the open market, etc; and supply of goods and services, including transport and telecommunications).

The reasonable accommodation duty has not been included in national legislation in Italy and Poland. In Hungary, the legal obligations are stronger in respect of persons already employed than those in respect of persons seeking employment. In France, the duty to provide reasonable accommodation is limited to those who are already officially recognised as disabled, while in Bulgaria the Protection Against Discrimination Act, art. 16 and art. 32, makes provision for reasonable accommodation for persons with disabilities in employment and education respectively. In Romania, the 2000 Anti-discrimination Law does not stipulate reasonable accommodation for persons with disabilities, but Law 448/2006 on the promotion and protection of the rights of persons with disabilities, which has the same personal scope as the Anti-discrimination Law, establishes the duty to ensure reasonable accommodation in accessing various public and private services and facilities and in labour relations.

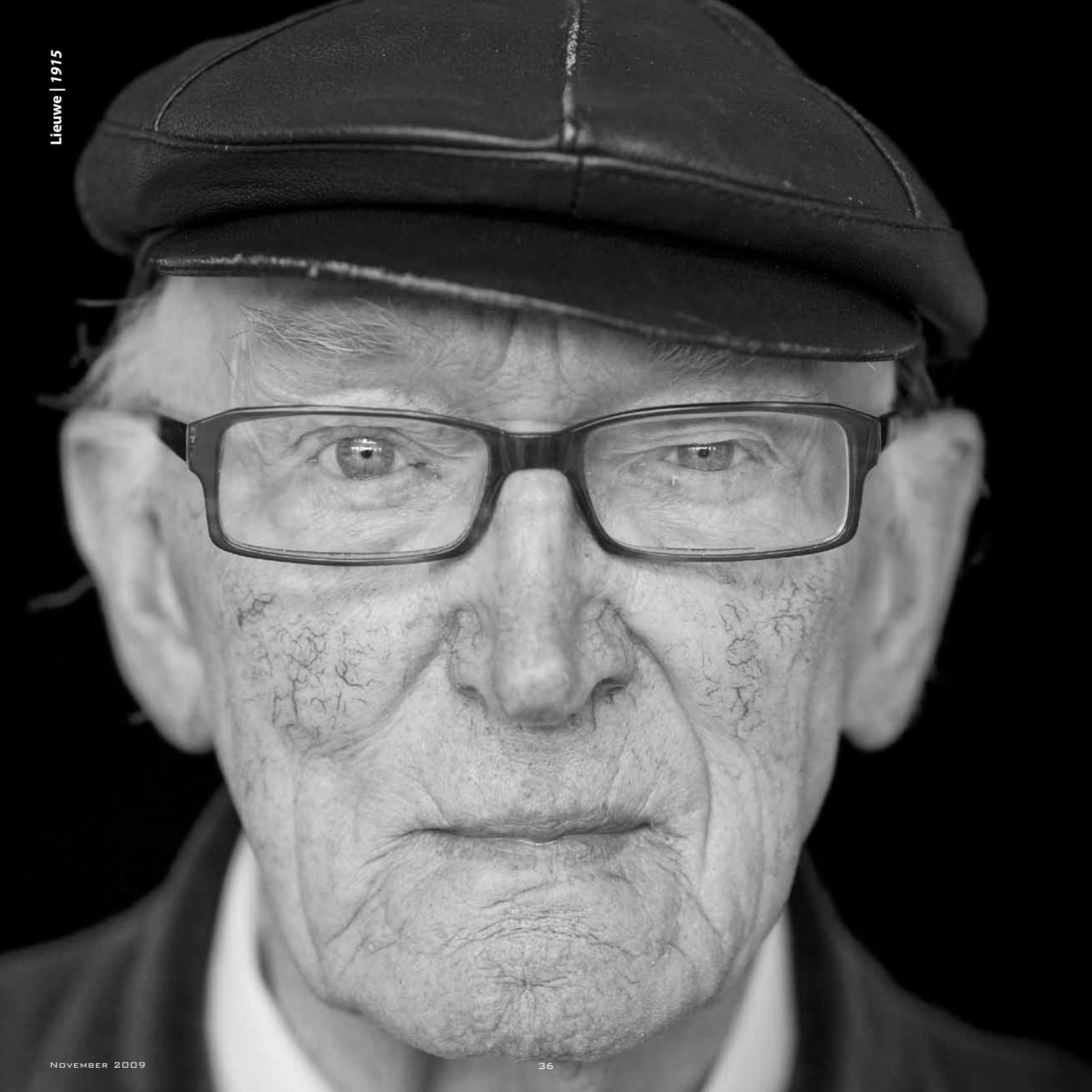
Whilst the definition of the duty varies, it is commonly subject to the limitation that it should not create a 'disproportionate burden' for the employer (in Austria, Belgium, Bulgaria, Cyprus, France, Germany, Ireland, Latvia, Lithuania, the Netherlands, Portugal, Slovakia and Spain). The preamble of 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: Bulgaria, Cyprus, Finland, France, Germany, Ireland, Malta, Spain, the United Kingdom;
- the scale and financial resources of the organisation or undertaking: Austria, Cyprus, Finland, Ireland, Malta, Slovakia and the United Kingdom;
- the possibility of obtaining public funding or any other assistance: Austria, Cyprus, Finland, France, Germany, Ireland, Malta, the Netherlands, Portugal, Spain, Slovakia and the United Kingdom.

[48] Art. 5, Directive 2000/78.

National legislation is often ambiguous with regards to whether failure to provide reasonable accommodation is to be treated as a form of unlawful discrimination (e.g. Cyprus, Hungary, and Latvia). In Bulgaria there is no provision relating the failure to provide reasonable accommodation to the bans on direct or indirect discrimination, but in several cases the courts have found that this constituted direct (rather than indirect) discrimination.

In France, a failure to meet the duty constitutes unlawful discrimination, but it is not specified whether this is classified as either direct or indirect discrimination. In Sweden, failure to provide a reasonable accommodation is linked to the concept of direct discrimination. In contrast, failure to provide reasonable accommodation is treated as indirect discrimination in Austria and Denmark. In Slovakia, failure to provide reasonable accommodation is regarded as a violation of the principle of equal treatment and does not equate to direct or indirect discrimination. However, this does not exclude the possibility that in a specific situation an action or omission of an employer could also fulfil the definition of direct or indirect discrimination. Meanwhile, in the United Kingdom failure to provide reasonable accommodation is defined as a specific form of discrimination.



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.[49]

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, but 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 Bulgaria, Latvia and Greece. Legal persons remain categorically unprotected in Swedish law,[50] and in Austria the wording of the legislation implies that protection against discrimination is provided for natural persons only, while in Estonia the Law on Equal Treatment refers to the rights of persons and the local legal tradition implies that only natural persons can be victims of discrimination (unless this is challenged in the national courts).

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 bears the responsibility for actions of his or her employees, for example for discrimination against a client or for harassment by one employee against another. In Ireland,[51] the Netherlands[52] 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

[49] 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, 22 January 1990, 296 DC, R.F.D.C. no. 2 1990, obs Favoreu.

[50] In Sweden the Discrimination Inquiry Commission has proposed protection for legal persons in a number of areas (but not all) covered by non-discrimination legislation (SOU 2006:22, page 332 *et al*). However, this proposal has not been finally accepted.

[51] Section 8(1) of the Employment Equality Act 1998-2007 prohibits discrimination by employers and employment agencies. Most of the prohibitions contained within the legislation are aimed at the employer and no clear provision is made to enable actions against the person(s) who actually discriminated. Exceptions are section 14 of the Act, which refers to liability being imposed on a 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.

[52] Dutch legislation in the field of employment is directed towards employers, employers' organisations, organisations of workers, employment offices, public job agencies, professional bodies, training institutions, schools, universities etc.

Bulgaria, the courts have interpreted the Protection Against Discrimination Act as providing a basis to hold legal entities liable for discrimination by their employees even where no damages but other remedies have been sought. In contrast, in Spain liability for discrimination is personal and only the person (natural or legal) who has acted in a discriminatory way is liable under the law, not the employer or service provider.

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 providers of services 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-contractors.[53] 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.[54] In Romania, liability is individual; according to the case law of the national equality body, employers can be held liable for actions of their employees if there is joint responsibility, but not for actions of third parties. The national equality body has used personal liability in determining the degree of responsibility of each party.

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; and employment and working conditions, including dismissals and pay; and membership of 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 against an open number of groups) is applicable in national law, e.g. in Cyprus and Finland, the scope of national law is broad, at least in relation to the public sector

[53] Article 617(2) of Labour Code.

[54] 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.

(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 scope of the Directives is met in Austria, Bulgaria, Cyprus, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Malta, the Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain and the United Kingdom. In the Czech Republic the newly adopted anti-discrimination law of 17 June 2009 has a quite broad scope, extending beyond the requirements of the Directives, as it covers work and employment relations; access to employment, self employment and occupation; health care; education; social security and social protection; social advantages; and services including housing for all grounds in the same extent.

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 Portugal the equality and non-discrimination provisions of the Labour Code currently apply to both private 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 and Article 5 of Law 99/2003).

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 and public authorities (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 has applied to military service as of 1 January 2008. In Greece, Latvia, Lithuania, Portugal, 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 Maltese Employment and Industrial Relations Act 2002 only applies if the person concerned has a contract of 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.

In Lithuania, the provision prohibiting discrimination with regard to membership of or involvement in employers' and employees' organisations was introduced into the Law on Equal Treatment only by the latest amendments of June 2008 and in Latvia, membership of and involvement in professional organisations is omitted. Likewise, the Romanian Anti-discrimination Law does not spell out expressly the prohibition of discrimination on grounds of membership in a trade union or in a any professional organisation; however, the national equality body and the courts have interpreted that membership in trade unions or professional organisations falls under the protected ground of 'social category' or under 'any other category' and is therefore protected by anti-discrimination legislation.

As already noted, Latvia, Lithuania and Poland have yet to fully transpose the Racial Equality Directive beyond the employment sphere. In Latvia however, the Law on Social Security of 1 December 2005 prohibits differential treatment on the grounds of race (as well as the other grounds under the Directives, including possibly sexual orientation under 'other circumstances') in the field of social protection within the public sphere. The law similarly prohibits discrimination on grounds of race as far as social security and social services provided by the state are concerned. After the entry into force of amendments to the Law on Consumer Protection on 23 July 2008, discrimination in access to and supply of goods and services based on person's gender, race or ethnic origin is prohibited; as the law does not distinguish between the goods and services available to the public and those available privately, it should apply to these both categories. Lithuanian law does not explicitly cover social protection, social advantages and housing. In Poland the provisions which exist outside the employment field do not include important elements of the Directives such as definitions of direct and indirect discrimination, and the scope of the provisions on goods and services and social advantages are uncertain. In addition, in Ireland it is questionable whether social protection, social advantages and housing are covered by the scope of the Equal Status Act 2000-2004.

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, but the Immigration Act 1998 also protects 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. Portugal.

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 the free movement of workers.[55] 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 the majority of Member States issues arise in relation to discrimination in the 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 apparent exception of Luxembourg and Malta. In Bulgaria, the Czech Republic, Hungary, Slovakia, Poland, Romania and Latvia a disproportionate number of Roma children attend remedial 'special' schools for children with intellectual disabilities 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 Bulgaria, Denmark, Finland, Greece, Hungary, Latvia, Poland, Romania, 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 are directed to the classes irrespective of their language ability. In Romania, a 2008 study conducted by the NGO Romani CRISS monitoring the implementation of measures against segregation of Roma pupils in Romanian schools found cases of segregation of Roma pupils in 67 per cent of the schools monitored (90 schools), either at school or at classroom level.[56] 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 than other pupils. The United Kingdom and France have legislation expressly prohibiting segregation in schools between persons of different racial or ethnic groups but harbour concerns by different stakeholders about *de facto* segregation arising from residential patterns.

There are only a few instances where segregated classes have been challenged under national legal systems, for instance in Bulgaria, Denmark, Finland and Greece. In Finland there has been one case where *de facto* segregation in a school was successfully challenged.

[55] 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.

[56] Laura Surdu, Romani CRISS, with the support of UNICEF, *Monitorizarea aplicarii masurilor impotriva segregarii scolare in Romania* [Monitoring the implementation of measures against school segregation in Romania]. The report used a sample of 134 schools from 9 counties (Alba, Botosani, Brasov, Dolj, Galati, Hunedoara, Iasi, Neamt and Salaj), as well as from Bucharest.

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 2008 report on Roma education stressed that most Roma children (69%) did not attend either pre-school establishments or pre-school groups; and participation in after-school activities is uncommon among Roma.

In a large number of Member States residential patterns also lead to a high concentration of Roma children (e.g. Cyprus, Hungary, Romania, and Slovakia), or children of particular ethnic minorities (e.g. United Kingdom, 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 physical 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, equal treatment legislation has been used to respond to the desire of many school boards or local governments to institute 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.[57] 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 problems of definition and identification and without intensifying potential ethnic tensions. In Romania, the Ministry of Education adopted Order no. 1540/2007 on Banning School Segregation of Roma Children and on approving the Methodology for Preventing and Eliminating School Segregation of Roma Children. The Order aims at preventing, banning and eliminating segregation and includes sanctions for those who do not observe its provisions.

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, Romania, Slovenia and Spain, 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 have provided definitions to delineate the circumstances in which discrimination is prohibited. Swedish law prohibits discrimination in goods and services, including housing, which are professionally provided, and thus the law does not apply to private transactions. There is some concern over the exception from the material scope of the provision of goods and services under German law for all transactions concerning a special relation of trust and proximity between the parties or their family, including the letting of flats.

[57] For a discussion of some of these measures, see the section on positive action measures.

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 banking 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.

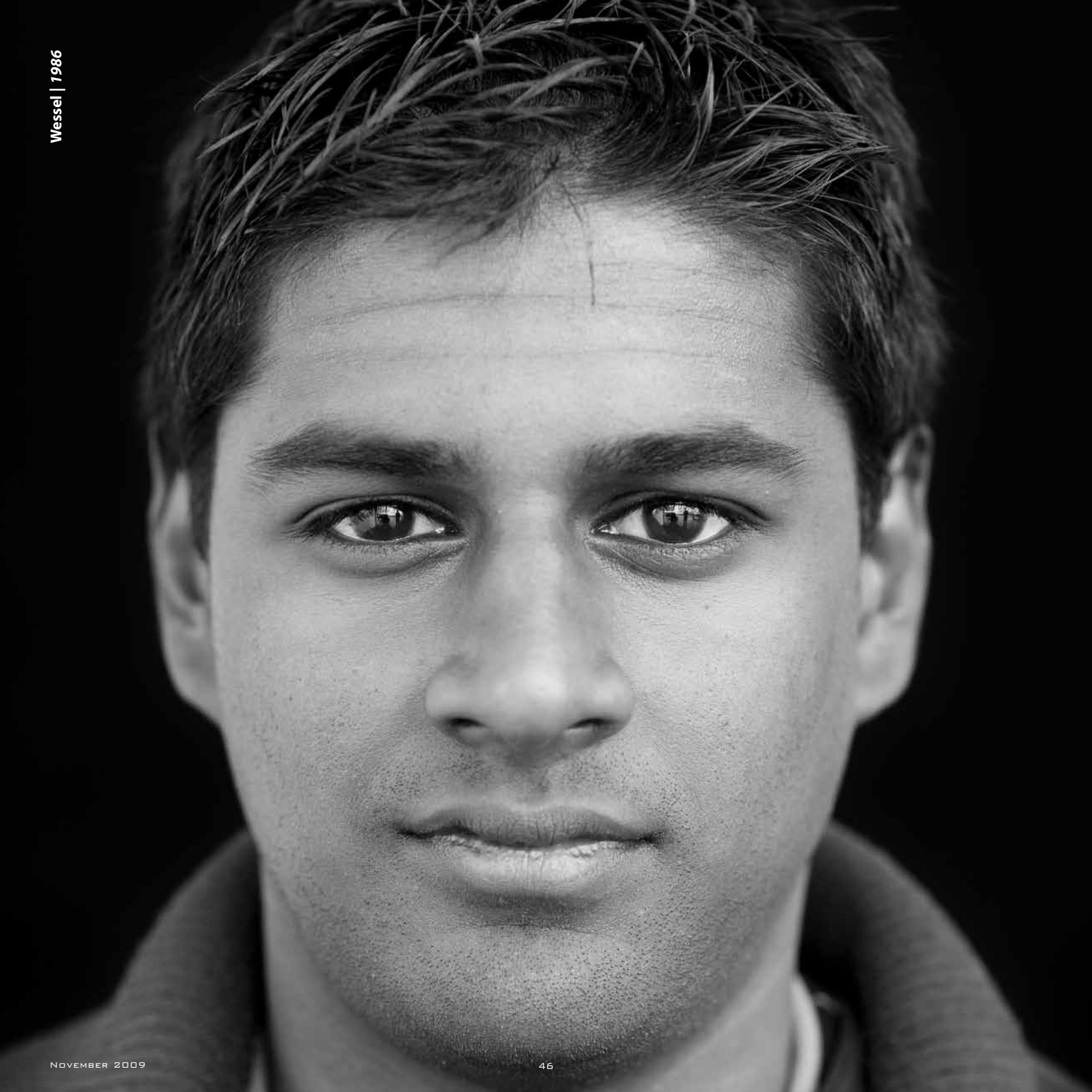
Many Member States have maintained the diverging scope of the two Directives, only expressly outlawing discrimination in social protection, social advantages, education and goods and services available to the public in relation to racial and ethnic discrimination. However, a number of Member States provide the same protection also for other grounds of discrimination, if not all grounds, going 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.
- In Bulgaria the Protection Against Discrimination Act explicitly applies universally to the exercise of all rights and freedoms deriving from law, implicitly including in full any particular field such as any sector of employment and occupation, and all the other fields mentioned under the Racial Equality Directive.[58] In respect of its universal material scope, a number of decisions both by the courts and by the equality body expressly recognise that the Act provides comprehensive, total protection.
- 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'.[59]
- 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 the provision of goods and services, including housing.
- Hungarian law has practically unlimited material scope, treating all grounds of discrimination equally.
- The Irish Employment Equality Act 1998-2007 and Equal Status Act 2000-2004 both prohibit discrimination on nine grounds: marital status, family status, sexual orientation, religious belief, age, disability, gender, race (including nationality and ethnic origin) and membership of the Traveller community (Equality Act 2004).

[58] Protection Against Discrimination Act, art. 6.

[59] 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 (presently Article 165 (1) of the TFEU), 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.

- The scope of the Italian Anti-discrimination Decrees partly corresponds to other pre-existing legislation still in force, primarily the Immigration Act of 1998. This act offers protection that mostly overlaps with that of the Decrees, which cover all fields specified in the two Directives.
- 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.
- 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 and racial, national or ethnic origin. Discrimination in the field of public procurement is also unlawful.
- 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 security and healthcare, including social services, state grants for education, social insurance and related benefit systems on the grounds of ethnic origin, religion or belief, disability and sexual orientation. The prohibition on discrimination in goods, services and housing applies to all the above-mentioned grounds as well, while age is again exempted from the prohibition.
- Romanian anti-discrimination legislation applies to a large number of criteria going beyond those provided by the Directives, and the scope of the Anti-discrimination Law is applicable to areas beyond those spelled out in the Directives.
- In the United Kingdom, discrimination on the grounds of race, national or ethnic origin, nationality and colour is prohibited in all forms and levels of education. Disability discrimination is also outlawed in schools. Discrimination on the grounds of religion or belief and sexual orientation is prohibited 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). Discrimination on grounds of disability in goods, facilities and services is prohibited (Northern Ireland, but not Great Britain, also has a prohibition in this field on grounds of political opinion).



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 be justified. Most Member States have complied with this approach, although there are some states where it may be argued that national law continues to permit the justification of direct discrimination (e.g. 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, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, France, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Spain, Sweden and the United Kingdom - have chosen to include such an exception within their national legislation and this applies to many or all discrimination grounds. In some cases, the precise wording of national legislation varies from that found within the Directives (e.g. Italy and Romania). This creates a risk that the exception is wider than that permitted, but this will depend on subsequent interpretation by national courts.

The Netherlands specifies that only *outer racial appearances* may constitute a genuine occupational requirement.[60] This means that 'race' *in se* is not regarded as a permissible ground for a given distinction; only physical differences (skin colour, hair type, etc.) may form a basis for a distinction, to the exclusion of sociological differences.

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

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 which allow 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 does 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. Latvia and Lithuania).

When implementing the Directive, not all Member States chose to include the Article 4(2) exception: such was the case of France, Romania, and Sweden. The Anti-discrimination Law in Romania does not include specific provisions on an exemption for employers with an ethos based on religion or belief to comply with the Directive, but the provisions of Article 9 on determining occupational requirements which are recognised as exemptions under a clear legitimacy and adequacy test can be interpreted to allow ethos or religion-based exceptions. In contrast, the following states have adopted provisions in national law which seek to rely on Article 4(2): Austria, Bulgaria, Cyprus, the Czech Republic, Denmark, Germany, Greece, Hungary, Italy, Ireland, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Slovakia, Slovenia and the United Kingdom.

There are concerns in several states that the exceptions based on Article 4(2) are too wide (e.g. Greece and Italy). On the contrary, in Bulgaria there is an inconsistency in the wording between the Directive and the Protection Against Discrimination Act, as rather than define the occupational requirement as 'genuine, legitimate and justified', the Act terms it 'genuine and determining', making it arguably stricter than under the Directive.

C. Armed forces and other specific occupations

Article 3(4) of the Employment Equality Directive permits Member States to exclude the armed forces from the scope of anti-discrimination legislation in respect of the grounds of disability and age. A few Member States have included an express exemption for the armed forces in relation to both age and disability: France, Greece, Ireland and the United Kingdom. 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. Bulgaria, Portugal, Romania, Slovenia and Spain. This exception has not been adopted in Finland, Hungary, Lithuania, Luxembourg, and Portugal. In several states, the exceptions seem to be wider than that provided in Article 3(4). For example, Irish and Greek law provides exemptions on the basis of age in respect of the police, prison service or any emergency service.[61]

D. Nationality discrimination

Article 3(2) of both Directives provides that 'the Directive does not cover difference of treatment based on nationality …' Nevertheless, in several EU Member States nationality is a prohibited ground of discrimination, including Bulgaria, the Netherlands, Portugal, Romania and Spain. A number of Member States have express exclusions from the scope of their implementing legislation which apply to discrimination based on nationality: Cyprus, Greece, Italy, Malta and Luxembourg.

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. In the Netherlands, Belgium and Spain, same-sex couples can get married, so here limiting benefits to married couples does not result in sexual orientation discrimination. In other states, such as the United Kingdom, national legislation on the recognition of same-sex partnerships has had the impact of requiring marital benefits to be extended to registered partners. 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.[62] The compatibility of such practices with the Directive was tested in a preliminary reference case judged on 1 April 2008 by the European Court of Justice in C-267/06 *Maruko*.

[61] Section 37, Employment Equality Act 1998-2004.

[62] BVerwG, 2 C 43.04, 26 January 2006.

In Bulgaria the Protection Against Discrimination Act, which bans all discrimination based on sexual orientation including by association, implicitly bans discrimination based on marital status as well as employers from excluding same-sex partner employees from access to benefits. In Romania there is no provision on the right of employers to provide benefits solely to employees with opposite-sex partners, and same-sex partnership is not recognised under the Romanian legislation. In addition, Romanian legislation does not include any provision on the right of employers to provide benefits solely to a certain category of employees.

There remain many states where restricting work-related benefits to married employees is likely to be regarded as lawful. In some states (Italy, Ireland, and Austria), this is made clear in the legislation or in guidance accompanying the legislation. In other states, the issue has not been expressly addressed in national legislation, but it is the view of the national reporter that courts would interpret the law as permitting benefits to be officially restricted to married employees (e.g. Cyprus, Estonia, Greece, Latvia, Lithuania, Poland, Portugal and Slovakia).

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. Some national legislators have interpreted this provision as permitting health and safety exceptions to non-discrimination on the ground of disability, e.g. Cyprus, Greece, Ireland, Luxembourg, the Netherlands and Portugal. In Ireland, for instance, 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.[63] In Bulgaria, there are no exceptions for health and safety related to any of the protected grounds, including disability, under the Protection Against Discrimination Act; however, under the Healthy and Safe Work Conditions Act, employers have a duty to assign to their employees only tasks that are compatible with their capabilities[64] in view of the specific dangers for employees with a reduced work capability,[65] and a number of other laws and secondary legislation governing specific fields, such as transportation (including aviation) and other risk-intensive occupations, provide health requirements for access to employment in those fields. Similarly, the Romanian Anti-discrimination Law does not provide specific exceptions in relation to disability in the context of health and safety provisions of the Directive; however, the general exception of objective and justified limitation, allowed by Article 9 of the Anti-discrimination Law, would be applicable.

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

64 Art. 16 (1.2a).

65 Art. 16 (1.3).

G. Exceptions related to discrimination on the ground of age[66]

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 conditions of age, professional experience or seniority for access to employment.

Several Member States have simply inserted the text of Article 6 into national law, including Austria, Cyprus, Greece, Malta, Portugal and Slovakia. Meanwhile, France, Finland, Germany, Ireland, Italy, Luxembourg, Romania, Slovenia and the United Kingdom have provisions that resemble all or part of Article 6.

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. 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 dependent on years of experience, requirement of a certain education and minimum period of training for entrance to professions).

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 s/he 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 Malta protection against unfair dismissal is lost at retirement age and in Hungary such protection is reduced. In Latvia, the Constitutional Court has held that it was not disproportionate to require civil servants to retire at pensionable age.[67]

[66] See further: C O'Cinneide, *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.

[67] Case 2003-12-01, decision of 18 December 2003.

The approach in national law to retirement age can be loosely grouped into three categories. First, there are Member 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). In Bulgaria, in some sectors, such as the professional army[68] and the police,[69] the law imposes age limits after which people, both women and men, can no longer remain in service, although there is no prohibition banning them from finding employment in another sector and still collecting their pension.

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: Finland (68), Italy (65), Luxembourg (68), Romania (65), Sweden (67), and the United Kingdom (65). In Ireland, an employee may be dismissed after he or she has reached the 'normal retiring age' for that position. The general legislative rule in Bulgaria is that workers may be dismissed on the ground of age once they reach the applicable pensionable ages, which vary based on the particular number of years in service; however, this does not affect any other rights to labour protection, including protection against unfair dismissal, which the worker retains as long as employed. In Romania, the state-imposed retirement age is not mandatory as persons of pensionable age who want to carry on their activities can do so if their employers agree.

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. An exception is the Netherlands, where every government department was obliged to make a report giving an inventory of age criteria in its legislation in order to review the legitimacy of such distinctions. The compatibility of retirement ages with Directive 2000/78 has been partially clarified by the Court of Justice, most notably in its decisions in Cases C-87/06 *Pascual García* [2006] OJ C121/2 and C-411/05 *Palacios de la Villa* [2006] OJ C36/20.

H. Public security, public order, criminal offences, protection of health, and 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, and Malta, and in Italy it is largely incorporated.

[68] Defence and Armed Forces of the Republic of Bulgaria Act, art. 127 (1). For soldiers, the limit is 49 years; that limit is raised for each higher rank, with 60 years as the limit for the highest ranking officers (ibid.).

[69] Ministry of Interior Act, art. 245 (1). The limit is 60 years.

United Kingdom 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, even though the laws implementing the Directives do not include any specific exceptions concerning public security, these exceptions may be considered implicit. In Romania, national defence institutions and public institutions dealing with public order and national security are exempted from the obligation for all public authorities and institutions **and** public or private legal persons with at least 50 employees to ensure that disabled people account for at least four per cent of the total number of employees under Article 78(4) of Law 488/2006.

I. Other exceptions

In some states, national legislation includes exceptions which are not expressly specified 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 their scope. For example, in Lithuania, the Law on Equal Treatment provides exceptions that relate to knowledge of the State language, participation in political activities and enjoyment 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. In most Member States it is legal to introduce positive action measures (Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Estonia, Finland, Germany Greece, Hungary, Ireland, Italy, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovenia, Slovakia, Spain, Sweden and the United Kingdom).

The scope for positive action is often a matter clarified through case-law. A significant case in Sweden concerned Uppsala University's practice of reserving 10% of places on their law programme for applicants whose parents were both born outside Sweden. This was designed to promote pluralism within the law school. Two students who were denied places but had better entry qualifications than some of the students admitted to the reserved places successfully challenged this practice. The Supreme Court held that this was not permissible under Swedish legislation, without it being necessary to consider the possible application of the Directives.

A number of states have introduced legal duties to promote equality. In some cases, there are broad obligations to advance equality in national constitutions (Greece, Article 116.2; Spain, Article 14). Other states have included more detailed obligations in national legislation. In Bulgaria, the Protection Against Discrimination Act places a duty on all authorities to take measures to equalise opportunities for disadvantaged groups as well as to guarantee participation by ethnic minorities in education whenever

necessary to accomplish the objectives of the Act.[70] The Act requires authorities to take such measures as a priority for the benefit of victims of multiple discrimination.[71]

In Finland, the Non-Discrimination Act compels all public authorities to foster equality, including drawing up plans on ethnic equality. In the United Kingdom, 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.

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 (mostly public sector only), Bulgaria, Cyprus, the Czech Republic, France, Germany, Greece, Italy, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovenia and Spain. However, alternatives to employing disabled persons such as paying a fee or tax are almost always offered.

There are also many examples of positive action for ethnic minorities, in particular the Roma. The Czech Republic, Hungary, Slovakia, Romania and Bulgaria are amongst a group of nine states involved in the Roma Decade of Social Inclusion, which requires their governments to draw up and implement action plans over a ten-year period.[72]

[70] Art. 11 (1).

[71] Art. 11 (2).

[72] http://www.romadecade.org.

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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. 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, Poland, 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. The Employment Dispute Commission can award compensation to an individual in a case of discrimination, which is generally prohibited under the Labour Code. 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[73] 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 Bulgaria the Protection Against Discrimination Commission can make a finding of discrimination and order preventive or remedial action; it can also impose financial sanctions, but it cannot award compensation to a victim. The procedure is universally applicable to both the public and private sectors. In Cyprus the Commissioner for Administration (also known as the Ombudsman) can issue binding decisions and impose small fines for non-compliance with its decisions. 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 of the public administration.

[73] In the process of re-structuring as an ombudsman with greater competences.

The Estonian Chancellor of Justice provides an impartial conciliation procedure upon application by the victim. In the context of discrimination by natural or legal persons in the private field, the decision of the Chancellor of Justice is legally binding, while the Chancellor of Justice (in case of discrimination by public institutions) and Commissioner for Gender Equality and Equal Treatment (public and private domain) are empowered to conduct ombudsman-like procedures whose results are not legally binding.

The Portuguese High Commissioner for Immigration and Intercultural Dialogue (*Alto Comissariado para a Imigração e Diálogo Intercultural* - ACIDIC) can act as a mediator to try to avoid formal legal procedures. S/he can also initiate an administrative procedure and decide whether a fine should be imposed. The respondent has the right to appeal to the courts against the fines imposed. Neither the victim nor associations have the right to appeal or to intervene in the appeal procedure.

In Hungary, the 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 and the Ombudsman for the Rights of National and Ethnic Minorities 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 by imposing a conditional 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 a legal counsel. The Ombudsman may issue statements on any discrimination case submitted to him/her, 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 Disability can investigate complaints alleging failure to comply with the Equal Opportunities (Persons with Disability) Act 2000 and, where appropriate, provide conciliation in relation to such complaints. By virtue of the provisions of the Equal Treatment of Persons Order 2007, the remit of the National Commission for the Promotion of Equality for Men and Women has been extended to cover the promotion of equal treatment irrespective of racial or ethnic origin within the meaning of the provisions of the Order, which functions continue to be exercised with the assistance of the National Commission for the Promotion of Equality (NCPE).

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 on 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 adjudicate the full range of employment disputes, including those on discrimination; each tribunal has a legally qualified chairman and two lay members, one ostensibly representing employers and the other employees. 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 at the ordinary civil court with territorial jurisdiction for his or her place of residence (an exception to the general principle of suing in the court in the territorial jurisdiction of the defendant) in order to obtain an injunction against the discriminatory activity as well as damages. The hearing takes place 'avoiding all unnecessary formality', with a free choice by the judge of the most suitable method for gathering 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 - that a plan be drawn up 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 hearing 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 to the Equality Tribunal, which now has the power to award remedies including the specific power to order a reinstatement. The option of mediation is provided for in section 78 of the Employment Equality Act 1998-2007. A mediated settlement agreed by the parties becomes legally binding and its terms can be enforced at the Circuit Court.[74] The Equality Authority may provide assistance in the enforcement procedures (section 67(1)(b)(iii) Employment Equality Act 1998-2007). In Poland a 'compensation complaint' procedure 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. 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 such as Art. 415 Civil Code (general compensation clause), but their use is not excluded.

In Romania, a victim of discrimination or any person interested can choose between filing a complaint with the national equality body and/or filing a civil complaint for civil damages with a court of law unless the act is criminal, in which case the Criminal Code provisions apply. The two venues (national equality body and civil courts) are not mutually exclusive and the plaintiff can choose to use them simultaneously, which in practice creates problems for the parties, the equality body and the judiciary. Moreover, an action before the equality body does not suspend the period of prescription (time limit) for filing a civil case.

[74] Section 91(2), Employment Equality Act 1998-2007.

Complaints with regard to the public sector are commonly dealt with separately from the private sector. In Italy cases concerning public employees are heard 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. In the Netherlands if the discrimination occurs in public employment, ordinary administrative law procedures apply.

Although the number of complaints submitted to courts or Equality bodies has been gradually rising, the still relatively low volume of case law on discrimination 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, some experts are concerned that the complexity of discrimination law may be deterring victims of discrimination in Austria and the United Kingdom from bringing cases. Skilled, experienced assistance to victims can help counter this, but this type of aid remains limited in availability (in contrast to the professional advice and representation usually available to respondents). Insufficient financial means to pursue a case is a second barrier cited in a number of Member States and which is closely related to lack of adequate representation. In the Czech Republic and Lithuania for example, legal aid is provided in very limited circumstances and is therefore of very limited effect. In Slovakia the threshold for the entitlement to free legal aid is quite low and hence a relatively significant number of people 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 submitting a claim 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 of the termination of the employment contract. Under the German General Equal Treatment Law there is a time limit of two months for claims, beginning either with the receipt of the job application by the employer or knowledge of the disadvantageous behaviour. In Ireland, the Equal Status Act 2000-2004 requires a complainant to notify 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 with the Equality Tribunal if there is no satisfactory response. Even with the possibility of an extension if there is reasonable cause that prevented the complainant from sending the notification within the normal time period, 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; in Sweden if the claim aims to have a dismissal declared void, the time limit for filing is a matter of weeks from the act of dismissal or - in certain cases - one month after the expiry of the employment. 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 over three years to complete.

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 Slovakia or Slovenia. Access to public buildings is not always guaranteed in practice in Hungary or Portugal despite legal requirements. While the provision of information in Braille or sign language is required in Lithuania and Portugal, it 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.[75] 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 a structure which centralises all administrative procedures to enforce the rights of disabled people, for instance a claim referee will forward a disabled person's claim to the competent authority or jurisdiction.

Finally, the infrequency of litigation may itself be a deterrent to victims of discrimination as the impression may prevail that success is improbable. The more cases that are reported in the media, the more knowledgeable victims will become about their rights and options for vindicating those rights.

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

[75] In Estonia as of 1 January 2009 the administrative court may provide translations of complaints and other materials for people deprived of their liberty (Article 10 (9) of the Code of Administrative Court Procedure).

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, Sweden or the United Kingdom. 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 the United Kingdom, associations with sufficient interest (*locus standi*) in a matter may bring judicial review actions under administrative law against public authorities, even if they have not themselves been the victims of a wrongful act. This requirement of sufficient interest has been given a generous interpretation in recent years by the UK courts, and trade unions, NGOs and the equality commissions have brought bring important actions against public authorities through judicial review proceedings. In addition, courts and tribunals may at their discretion permit associations with relevant expertise to make a 'third-party intervention' in any case, whereby associations may present legal arguments on a point of law that is at issue in the proceedings. Such 'third party interventions' are often permitted in complex discrimination law cases. In practice, 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. Under Swedish procedural law anyone can engage in proceedings or support a complaint. In Bulgaria, public interest NGOs and trade unions may join proceedings brought by a victim in their support, for which they do not formally need the complainant's consent or may represent complainants, for which consent is necessary.[76] Furthermore, they can initiate proceedings themselves without an individual complainant where the rights of many parties are affected.[77] Trade unions and public interest NGOs can also join such *actio popularis* proceedings brought by other associations in an *amicus curiae* capacity.

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 1998-2007). In Estonia associations and other entities with a legitimate interest have the right of involvement in discrimination disputes in private employment and in the framework of the conciliation procedure before the Chancellor of Justice; in addition, 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 Chancellor of Justice). Representation of victims by legal

[76] Ibid. In practice, however, if the complainant and NGO are not in communication, it would be difficult for the NGO to learn about the case in order to file a motion to join it.

[77] Art. 72 (3).

entities (such as NGOs) is also allowed 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 is the case for the National Centre for Human Rights) or has to deal with discrimination. Additionally, an amendment of 15 October 2008 to the Code of Civil Procedure offers the opportunity to 'a legal entity whose activity is the protection of rights under a special law', to join a pending court proceeding. The Slovak Anti-discrimination Act is one such 'special law'. This means that the national equality body (the Slovak National Centre for Human Rights) as well as an NGO aiming to protect the victims of discrimination can intervene as a third party to a court's proceedings.

In Germany under the General Law on Equal Treatment, anti-discrimination associations are entitled to support claimants in court proceedings, provided that they fulfill certain criteria (such as having at least 75 members and operating permanently, and not only on an *ad hoc* basis to support one claim) if representation by a lawyer is not mandatory. In Luxembourg, under the General Discrimination Law of 28 November 2006, for associations to assist a victim of discrimination before the courts they must be recognised by the Ministry of Justice as being nationally representative in the field of anti-discrimination and have legally existed for five years.

Few states allow associations to engage in proceedings 'on behalf of' victims of discrimination. 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 complainants' consent, trade unions can appear in court in the name and interest of their members. Furthermore, the Constitution entitles any natural 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. In Latvia, the 2006 amendments to the Law on Organisations and Foundations extended the power to bring a case on behalf of a victim (with their consent) before state institutions and courts to organisations and foundations whose aims are the protection of human rights and individual rights. Prior to this only the National Human Rights Office (the predecessor of the Ombudsman's Office), trade unions (on behalf of their members) and voluntary organisations within the scope of their aims and tasks had this right. In Lithuania, according to the latest amendments to the Law on Equal Treatment in June 2008, associations whose field of activity encompasses representation of victims of discrimination on a particular ground of discrimination in the courts have the right to engage on behalf or in support of the complainant, with his or her approval, in judicial and administrative procedures.

In Romania, NGOs with a legitimate interest in combating discrimination can appear in court as parties and may engage, either on behalf of or in support of the plaintiff, in any judicial and/or administrative discrimination procedure based on a request or proxy given by the victim. 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 an *amicus curiae* and present their opinion to the court.[78] The Irish Equality Authority was granted the right to intervene in a case before the High Court as an *amicus curiae* in order to give evidence in relation to the Racial Equality Directive. Following a legal challenge, this right was subsequently upheld by the Irish Supreme Court.[79] 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, where according to an amendment of 15 October 2008 to the Code of Civil Procedure the national equality body as well as NGOs dealing with discrimination can bring a class action, and Austria, where the Austrian National Council of Disabled Persons (an NGO) 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 five years and whose statutes mention 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. This includes the minority self-government for a particular national and ethnic minority and trade unions for matters related to employees' material, social and cultural situation and living and working conditions (Article 3(f) Equal Treatment Act). In Belgium, the Centre for Equal Opportunities and Opposition to Racism, officially recognised associations, associations which have had a legal personality for at least three 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. However, where the victim of the alleged discrimination is an identifiable (natural or legal) person, an action brought by such bodies will only be admissible if they prove that the victim has consented.

[78] Article 63 Code of Civil Procedure.

[79] Supreme Court [2006] IESC 57.

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 and of Welfare and Equal Opportunities can engage in proceedings in support or on behalf of complainants.[80] Such organisations are listed on the basis of criteria set out in the joint decree which include establishment for one year and promotion of equal treatment and combating discrimination as their only or primary aim. With regard to all the grounds of discrimination dealt with in Directive 2000/78, standing to litigate - previously limited by Decree 216/2003 to trade unions - is now extended to other organisations and associations representing the rights or interests affected. Portuguese associations may engage in judicial or other procedures in support of a complainant as they have the right to legal standing in civil and criminal cases concerning race discrimination and in some administrative proceedings. In particular, 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).

A different model is found in Austria. Whereas anyone can represent alleged victims of discrimination in informal proceedings before the Equal Treatment Commission, for court proceedings only one statutory organisation, the Litigation Association of NGOs 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 non-members are not granted any special procedural rights. If they want to intervene they have to prove their legal interest in the case. 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

As a result 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 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, the burden of proof is shifted in court proceedings while this is not necessary in procedures before the Equal Treatment Commission, although the Commission does nevertheless apply the shift in the burden of proof on a voluntary basis. On the contrary in Bulgaria, the shift

[80] Joint Decree of the Ministries of Labour, Social Affairs and of Equal Opportunities of 16 December 2005, no.215 (Establishment 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.

of the burden of proof is applicable to both judicial proceedings and proceedings before the equality body; it is also uniformly applicable to all forms of discrimination, including harassment and victimisation.

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. In Poland the burden of proof only shifts in employment cases. In Latvia the shift of the burden of proof applies to employment and access to goods and services (Law on Consumer Protection, Art. 3.1(5)).

In Lithuania, the shift of the burden of proof in respect to the grounds covered by the Racial Equality Directive was formally introduced to the Law on Equal Treatment only in June 2008. However, the Equal Opportunities Ombudsperson applied the shift of the burden of proof while investigating complaints from 2005 as the Ombudsperson is not bound by the Code of Civil Procedure. In Romania, the provisions on the burden of proof are not in full compliance with the Directives as the 2006 amendments to the 2000 Law introduced the concept of 'sharing the burden of proof' meaning that 'the person interested has the obligation of proving the existence of facts which allow a presumption of the existence of direct or indirect discrimination and the person against whom a complaint was filed has the duty to prove that the facts do not amount to discrimination.'[81] While the interpretation by the national equality body of this provision tends to result in compliance with the Directives, judicial interpretation has varied and some courts have interpreted it in such a manner as to place an unreasonable burden on the victim, thus conflicting with the provisions of the Directives in relation to burden of proof.

National case law is starting to reveal a varied approach to what may be taken to constitute 'facts from which it may be presumed that there has been direct or indirect discrimination.' The meaning of this phrase is one of several questions on the burden of proof put before the European Court of Justice in the Case of C-54/07 *Centrum voor gelijkheid van kansen en voor racismebestrijding v NV Firma Feryn* decided by the Court on 1 July 2008.

D. 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). There are two common inconsistencies with this principle in the Member States: firstly, in a number of states, protection is restricted to the employment field and thereby fails to protect against victimisation in the areas outside employment protected by the Racial Equality Directive (the Czech Republic, Malta, Latvia, Poland, Spain, and Luxembourg). Secondly, some states have restricted protection to the person who made the complaint or initiated proceedings and have omitted to protect others who could be adversely treated, e.g. witnesses. This fails to take into account the wording of the Racial Equality

[81] Art.20 (6) of the Governmental Ordinance 137/2000.

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. 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. According to the Danish law, 'the protection applies to a person who files a complaint regarding differential treatment of her/himself and to a person who files a complaint of differential treatment of another person' and it is a prior condition that a causal link can be established between the victimisation and the employee's request for equal treatment. In Italy a recent act[82] introduced amendments to the Anti-discrimination Decrees extending the protection against victimisation to 'any other persons than the complainant'.

In Belgium, the General Anti-discrimination Federal Act and the Racial Equality Federal Act extend the protection against reprisals for victims filing a complaint to any witness in the procedure. Similar protection from victimisation is provided in fields other than employment by Article 16 of the General Anti-discrimination Federal Act; in this context too, protection extends to witnesses. In Bulgaria, protection is accorded for victimisation by presumption and by association as well. Action for protection against discrimination may include, but is not limited to, bringing proceedings before the equality body or a court, in either the capacity of victim or as a third party, or testifying in proceedings. In the United Kingdom, it is not required that the perpetrator of the victimisation should 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. The United Kingdom provision on victimisation is, however, problematic in that the definition of victimisation requires the complainant to show less favourable treatment than a real or hypothetical comparator, while the Directives do not require a comparator. Case law has demonstrated how difficult it is to find an appropriate comparator.[83] Furthermore, protection against victimisation in the United Kingdom 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 proactive: upon finding discrimination in the original case, the Advocate of the Principle of Equality should order in writing the legal person in which discrimination allegedly occurred to apply appropriate measures to protect the discriminated person or persons assisting the victim of discrimination 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, the inspector has the duty to prescribe appropriate measures that protect the person from victimisation. In Lithuania, the provision in the Law on Equal Treatment repeats the wording of the Directives, stating that an employer is obliged to take necessary measures to ensure that employees are protected against dismissal or other adverse treatment which could occur as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment, while before the latest amendments of June 2008, it limited the protection to those employees who

[82] Legislative decree of 8 April 2008, n. 59 (later converted into an ordinary law by Law of 6 June 2008, n. 101, converting into law, with modifications, legislative decree of 8 April 2008, containing urgent provisions for the implementation of EU obligations and the execution of judgments of the Court of Justice of the European communities, published in Official Journal n. 132 of June 7, 2008 (*Legge 6 giugno 2008, n. 101, "Conversione in legge, con modificazioni, del decreto-legge 8 aprile 2008, n. 59, recante disposizioni urgenti per l'attuazione di obblighi comunitari e l'esecuzione di sentenze della Corte di giustizia delle Comunità europee." pubblicata nella* Gazzetta Ufficiale *n. 132 del 7 giugno 2008*).

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

directly filed a complaint against discrimination. In Romania, protection against victimisation is not limited to the complainant but extends to witnesses. As the law does not distinguish, victimisation is prohibited not only in relation to complaints filed with the national equality body but also in relation to complaints submitted to any other public or private institution (labour inspectorate, consumer protection office etc.).

French Law No. 2008-496 introduced specific protection against victimisation applicable to the entire scope of civil remedies for direct or indirect discrimination covered by the Directives. In particular, it provides that no one having testified in good faith about discriminatory behaviour or having reported it can be treated in an unfavourable manner and that 'Unfavourable measures cannot be taken against a person because he or she was a victim of discrimination or because of his or her refusal to submit to discrimination prohibited at Article 2.' This law clarifies that protection extends to victims and non-victims but does not provide any indication as to the burden of proof applicable to claims of victimisation.

In Poland, a recent amendment to the Labour Code[84] extended the prohibition of victimisation; previously the Labour Code prohibited only the termination of a labour contract as the result of an employee having used their rights to defend themselves against unequal treatment. This provision was amended and currently any other adverse treatment and negative consequences are prohibited. This broadened protection covers complainants but is also extended to employees who in any way support a victim of discrimination.

E. Sanctions and remedies[85]

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 on sex discrimination. Due to the parallels of EC sex discrimination law with the Racial Equality and Employment Equality Directives, this case law is of relevance to the latter Directives. The meaning of this concept must be determined in each concrete case in the light of individual circumstances.

In practice, a wide range of possible remedies exist, depending for example upon the type of law (e.g. civil, criminal, or administrative remedies), the punitive or non-punitive character of the remedies, their orientation as backward-looking or forward-looking (the

[84] Act of 21 November 2008 on an amendment of the Act on the Labour Code (Dz.U. Nr 223, poz. 1460, 18 December 2008), in force since 18 January 2009.

[85] A thematic report on this topic produced by the European Network of Legal Experts in the Non-discrimination Field provides a more detailed analysis, cf. the 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.

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 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. Irish law provides a broad range of remedies including compensation awards, re-instatement and re-engagement, as well as orders requiring employers to take specific courses of action. In particular, there is case law relating to compliance with these orders: the creation of an equal opportunities policy; reviewing recruitment procedures; reviewing sexual harassment procedures; formal training of interview boards; review of customer service practices; and equality training for staff. In Spain sanctions have been established in the employment field for all the grounds (Directive 2000/78) and for the ground of disability in all fields (Law 49/2007), but not in the other fields covered by Directive 2000/43 on grounds of racial or ethnic origin, except in criminal law.

In some Member States the specialised body is empowered to issue sanctions in cases in which they have found discrimination. The Bulgarian Protection Against Discrimination Commission has powers to impose financial sanctions between the equivalents of 125€ and 1 250 €, amounts that would be dissuasive to the majority.[86] These sanctions are administrative fines and are not awarded to the victim as compensation but go to the state budget. The Cyprus Commissioner for Administration 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). Furthermore, it can issue orders, published in the Official Gazette, for the elimination within a specified time limit and in a specified manner of the situation which directly produced the discrimination. The Commissioner's reports can be used for obtaining damages in a regional court or an employment tribunal. In Great Britain the Commission for Equality and Human Rights[87] and the Equality Commission for Northern Ireland are able to use their powers of formal investigation to investigate organisations

[86] Art. 78-80 of the Protection Against Discrimination Act.

[87] The Equality Act 2006 established a new single equalities and human rights body for Great Britain, the Commission for Equality and Human Rights (CEHR), which came into formal existence in October 2007 and now calls itself the Equality and Human Rights Commission (EHRC). The EHRC has taken over the powers and functions of the three previous GB equality commissions - the Commission for Racial Equality, the Disability Rights Commission and the Equal Opportunities Commission - and has new functions in relation to sexual orientation, religion or belief and age, as well as in relation to human rights in general.

they believe are discriminating and, where they are satisfied that unlawful acts have been committed, they can serve a binding 'compliance notice' requiring the organisation to stop discriminating and to take action by specified dates to prevent discrimination from recurring. They also have the power to enter into (and to enforce via legal action if necessary) binding agreements with other bodies who undertake to avoid discriminatory acts and to seek an injunction to prevent someone committing an unlawful discriminatory act.

Interesting administrative remedies are found in Portugal. Besides administrative fines, the following remedies are available in all cases 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 prerogative 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 premises for the perpetrators; suspension of licences and other authorisations; and 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 European Union legal requirements in relation to remedies. Thus, in the case of discriminatory dismissal, the remedy (or remedies) granted must in all cases 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 not caused through discrimination alone.

Upper limits for pecuniary damages seem to apply under the laws of Hungary (12 months' average earnings, in addition to reinstatement in the case of discriminatory dismissal) and Ireland (in dismissal cases, a maximum of two years' salary and approximately 6 348 € under the Equal Status Act 2000-2004). In Finland, there appears to be an informal upper limit of 15 500 €; this limit can be exceeded for special reasons, such as the fact that the breach of equal treatment laws took place over an extended period of time; the respondent's indifferent attitude to requirements posed by law; the severity of the breach; and the extent to which the complainant felt offended by the breach. Statutory upper limits on compensation for non-pecuniary damages seem to apply in Malta (200 Liri, equivalent to 465 €). The Greek anti-discrimination law does not provide compensation, only fines which are payable to the state in some circumstances. Damages may be awardable under the Civil Code. In Romania the level of fine varies: when only one individual is a victim, the level of fine varies from 400 RON to 4 000 RON (approximately 114 - 1 114 €); if a group or community are victims, the fine ranges between 600 and 8 000 RON (170 - 2 285 €).

There appear to be no limits either in relation to pecuniary or non-pecuniary damages in the national laws of Bulgaria, the Czech Republic, Denmark, Italy, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and the United Kingdom. In Estonia, according to the December 2008 amendments of both the Law on Employment Contracts and the Law on Public Service, the upper limit of compensation for illegal termination of employment or service does not apply in the case of discriminatory termination as specified in the Law on Equal Treatment and the Law on Gender Equality. The same rule is repeated in Article 30 (4) of the Law on the Resolution of Individual Labour Disputes.

In Latvia there is no maximum amount for damages under the civil law, but the Law on Reparation of Damages caused by State Administrative Institutions sets maximum amounts of non-pecuniary damages for personal harm at 5 000 Lats (around 8 000 €), or 7 000 Lats (around 10 000 €) in cases of grave personal harm, and 20 000 Lats (around 24 000 €) if harm has been caused to life or grave harm has been caused to health. The maximum amount of damages for moral (i.e. non-pecuniary) harm is set at 3 000 Lats (around 4 800 €) or 5 000 Lats (around 8 000 €) in cases of grave moral harm and 20 000 Lats (around 24 000 €) 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 cases of discrimination to be brought under both, and the law permits applications for several kinds of damages at the same time. Austrian law specifies an upper limit of 500 € in cases of non-recruitment or non-promotion if the employer proves that the victim would not have been recruited or promoted anyway. 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 the United Kingdom in 2004, according to the Equal Opportunities Review (EOR) annual survey of compensation awards, the average award in disability discrimination cases was £28 889 (approx. 34 000 euros); for race discrimination, £13 720 (approximately 16 183 €); and for sex discrimination £11 898 (approximately 14 030 €). Average compensation across all three grounds increased by 44% from 2003; trends since then have remained reasonably static. 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 under the Employment Equality Act. In Ireland the average award before the Equality Tribunal in 2007 was 14 431 € compared to 10 113 € in 2006. The highest award was 125 000 €. The average award in equal status cases was 2 751 €, an increase compared to 2006 (1 187 €). In Sweden damages for violations of non-discrimination legislation range from between 3 700 to 9 100 €, depending on the circumstances. In Slovakia an inconsistent and varying approach is taken to financial compensation. Dutch courts are generally reluctant to grant damages for non-pecuniary damages. In a number of early cases concerning discrimination in access to services in Hungary, the amount of compensation was consistently around 400 €. 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 € 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 initial examination, with the possible exception of the United Kingdom, 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 three years for cases to be heard by the Equality Tribunal - throws doubt on the effectiveness of the remedy and even whether it in actual fact makes good the damage. Its dissuasiveness is also questionable, in particular regarding the issue of whether such sums will deter larger employers. In this regard, the bill

presently before the Spanish Parliament under which company turnover would be a criterion in determining the level of sanction imposed presents an interesting development.

In Ireland the Equality Tribunal can order that a course of action be taken. In the Netherlands, the Equal Treatment Commission may initiate legal action in order to obtain 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 produce a de-segregation plan for a school. However it has never used this possibility.

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. However, the Czech Public Defender of Rights will be established on the first day of the sixth month following the publication of the Anti-discrimination Law of 17 June 2009 in the collection of laws; in Luxembourg, the Centre for the Equality of Treatment became operational only in 2008; and in Spain, the Council for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin, although established by Law 62/2003 transposing the Directives and regulated by Royal Decree 1262/2007, was still not operational in December 2008. In Poland there is no single specialised body which would be able to fulfil all three functions under Article 13.2 of the Racial Equality Directive. No body or institution has been officially designated in the transposition process to comply with the Directive. However, there are several institutions which have the mandate to promote the equal treatment of all persons without discrimination based on racial or ethnic origin; these are the Ombudsperson, the Ministry of Interior, the Government Plenipotentiary for Equal Treatment and the Department of Women, Family and Counteracting Discrimination within the Ministry of Labour and Social Policy. Member States which set up completely new bodies are Denmark,[88] France,[89] Germany, Greece,[90] Hungary,[91] Italy,[92] Romania[93]and Slovenia.[94] Bodies that already existed but which have been given the functions designated by Article 13 EC are the Cypriot Ombudsman, the Estonian Chancellor of Justice, the Lithuanian Equal Opportunities Ombudsperson, the Maltese Equality Commission and the Slovak National Centre for Human Rights. In Latvia the National Human Rights Office was re-organised in 2007 as the Ombudsman's Office with increased competences after the Parliament appointed the Ombudsman on 1 March 2007. 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 Bulgarian Protection Against Discrimination Commission, the Cypriot Ombudsman, the Estonian Chancellor of Justice, the French High Authority against Discrimination and for Equality, the German Federal Anti-discrimination

[88] Complaints Committee for Ethnic Equality**,** part of the Danish Centre for Human Rights. A bill is currently before the Danish Parliament which will abolish the Complaints Committee and establish a new Common Complaints Board for Equal Treatment which will deal with several grounds including all of those under the Directives.

[89] High Authority against Discrimination and for Equality (HALDE).

[90] Equal Treatment Committee and Equal Treatment Service, which share the task of promoting the principle of equal treatment with the Ombudsman, the Work Inspectorate and the Economic and Social Committee.

[91] Equal Treatment Authority.

[92] National Office against Racial Discrimination.

[93] National Council on Combating Discrimination (NCCD).

[94] Advocate of the Principle of Equality and Council of the Government for the Implementation of the Principle of Equal Treatment.

Agency, 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 Ombudsperson, the Greek Ombudsman, Equal Treatment Committee and Work Inspectorate, the Romanian National Council on Combating Discrimination, the Slovenian Advocate of the Principle of Equality and Council for the Implementation of the Principle of Equal Treatment, and the Swedish Equality Ombudsman[95] 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 Commission for Equality and Human Rights, which came into formal existence in October 2007 and now calls itself the Equality and Human Rights Commission (EHRC), replaced the three previous British equality commissions – the Commission for Racial Equality, the Disability Rights Commission and the Equal Opportunities Commission - and has new functions in relation to sexual orientation, religion or belief and age, as well as in relation to human rights in general. Those with the mandate only to deal with racial and ethnic origin discrimination are the Danish Board of Equal Treatment[96] (established as part of the Danish Institute for Human Rights), the Finnish Ombudsman for Minorities, the Italian National Office against Racial Discrimination, the Portuguese High Commissioner for Immigration and Intercultural Dialogue, and the Spanish Council for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin.

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 Board of Equal Treatment, the Hungarian Equal Treatment Authority, the Latvian Ombudsman's Office, the Greek Ombudsman and Equal Treatment Committee, and the Slovenian Advocate of 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, Bulgaria, Cyprus, France, Hungary, Ireland, Lithuania, Romania 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 a sworn statement returning a finding of discrimination which can only be over-turned with substantial evidence before the courts. The Protection Against Discrimination Commission in Bulgaria has the power to impose sanctions, including fines, and 'soft' penalties, such as public apology or publication of its decision. The Hungarian Equal Treatment Authority can apply sanctions on the basis of an investigation. In Ireland, the Equality

[95] Established by the 2008 Discrimination Act (2008:567) according to which the previous Equal Opportunities Ombudsman (JämO - sex equality), Ombudsman Against Ethnic Discrimination (DO – also covered discrimination on the grounds of religion and other belief) the Disability Ombudsman (HO) and the Ombudsman Against Discrimination due to Sexual Orientation have now been merged into one Equality Ombudsman responsible for supervising all grounds.

[96] The Danish Complaints Committee for Ethnic Equal Treatment was closed as of 1 January 2009, as a result of the establishment of the new Board of Equal Treatment. The Board of Equal Treatment consists of 1 president, 2 vice-presidents and 9 additional members.

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. Non-compliance with this notice may result in an order from either the High Court or Circuit Court requiring compliance.

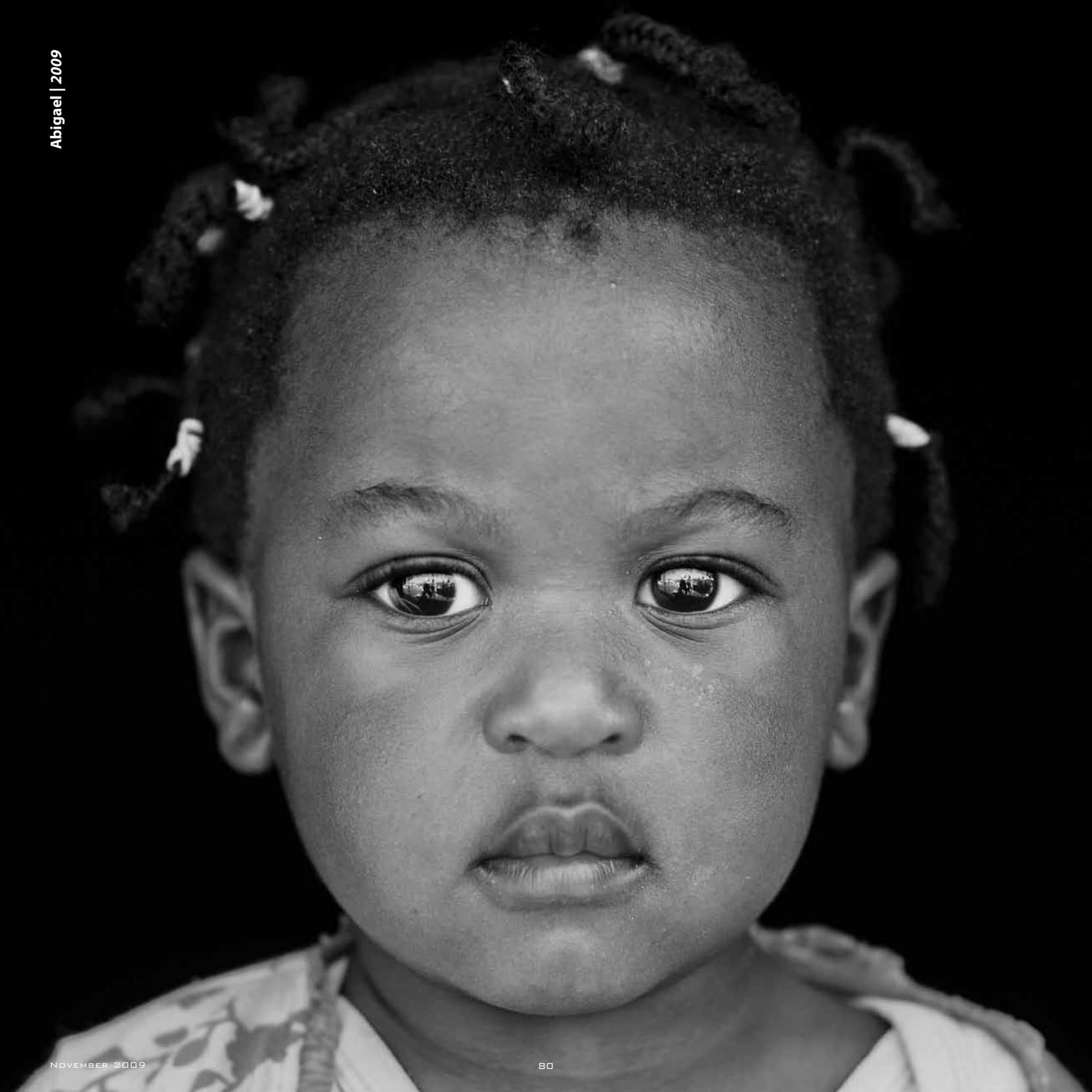
Most bodies can arrange for conciliation between the parties and most can review and comment on legislative proposals and the reform of existing laws.

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 public interest. Where the alleged violation has an identifiable victim (who can be a natural or legal person),[97] the Centre's power to act is conditional upon the consent of the victim (Art. 31, *in fine*, of the General Anti-discrimination Federal Act).
- The French High Authority has the role of legal adviser ('*auxiliaire de justice*'), whereby criminal, civil and administrative courts may seek its observations in cases under adjudication. In addition, its powers have been extended to include the right to seek permission to submit its observations in criminal matters.
- In the case of an investigation of a complaint which results in a finding of direct intentional discrimination (a criminal offence), the French High Authority can propose a *transaction pénale* - a kind of negotiated criminal sanction – to a perpetrator which s/he can either accept or reject. This could be a fine or publication (for instance a press release). If the proposed negotiated criminal sanction is rejected or, having been accepted there is a subsequent failure to comply with it, the Authority can initiate a criminal prosecution, in place of the public prosecutor, before a criminal court.
- The Dutch Equal Treatment Commission has the power to advise organisations (including governmental bodies) whether their employment practices contravene non-discrimination law.
- The Hungarian Equal Treatment Authority may initiate an *actio popularis* 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 produce 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.

[97] In some cases there is no victim, but the Law is nevertheless violated: this would be the case, for instance, if an employer publicly boasts that thanks to his 'selective' procedures 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 request that a prosecution is launched.

Finally, some concerns in relation to particular countries may be highlighted. There is concern that some specialised bodies are placed too close to government, thereby risking the independence of their work. For instance, the Italian National Office against Racial Discrimination is part of the Ministry for Equal Opportunities; the Slovenian Advocate of the Principle of Equal Treatment does not have its own budget, but is actually funded through the Government Office for Equal Opportunities, while the appointment mechanism and fact that the Advocate can be dismissed before the end of the mandate cast doubts on his/her independence; and the 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, and its make-up is fundamentally of a governmental nature. Moreover, the legislative provision listing its functions does not include the word 'independent.'



Abigael | *2009*

Chapter 9
Implementation and compliance

A. Dissemination of information and social and civil dialogue

Of all of 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. To some extent, this is due to 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 achieving their objectives. The impression prevails that these provisions have been insufficiently implemented in at least Bulgaria, Cyprus, Estonia, Greece, Latvia, Luxembourg, Poland, Slovenia and Spain, and, with particular regard to Directive 2000/78/EC, Portugal and Italy.

Positive information dissemination activities include ministerial publications providing basic information on the principle of equal treatment, information campaigns through the media and organisation of seminars, as in Austria and Bulgaria. In Hungary a National Network for Equal Opportunities has an office in each county and in Budapest and organises research and conferences, produces and disseminates information materials, maintains contacts with civil society and establishes networks of civil organisations. In Romania the National Council on Combating Discrimination has carried out national campaigns for raising awareness, cultural events, summer schools, courses and training, round tables discussing public policies, and affirmative measures targeting children, students, teachers, civil servants, police officers, gendarmes, judges, lawyers, NGO representatives, medical doctors and medical personnel.

Information should be disseminated in a way that is accessible to all people with disabilities 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,[98] and made available in Braille and both in print and on the internet in Finnish, Swedish, English, Sami, Russian, Arabic and Spanish. French television campaigns and websites are adapted for the visually and hearing impaired. In contrast, information provision does not seem to cater for disabled persons' needs in Bulgaria, the Czech Republic, Hungary, Latvia, Portugal, Slovakia and to a large extent in Poland.

Most Member States can point to the mandate of their specialised body for awareness-raising activities, for instance Denmark, Estonia, France, Ireland, Romania, Sweden and the United Kingdom. Where the body only has competences relating to race and ethnic origin, however, other arrangements must be made for the grounds of 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 planned for the other grounds.

A small number of Member States have included in 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

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

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.[99] Implementation of the obligation on employers in Poland is 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. Although some activities had been carried out previously, the designation of 2007 as the European Year of Equal Opportunities for All resulted in various activities being organised on a national level in each Member State aimed at awareness raising and promoting 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 United Kingdom 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 with a particular interest in any of the areas of discrimination within the Directives, lawyers' organisations, academics and others. This contrasts starkly with Spain, where transposition has been severely criticised for being 'hidden', with a lack of consultation and parliamentary debate, the absence of a government public statements and the by-passing of the Council of State and Economic and Social Council. A different problem emerged in Denmark and Finland: the lack of public debate was attributable to the fact that the actors who would normally generate public discussion were participants 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. In Bulgaria, the Protection Against Discrimination Commission has signed a partnership agreement with one of the two principal trade unions. At local level in France the Commission for the Promotion of Equality (COPEC) brings together all local actors under the authority of the representative of the state in the administrative area (*département*) to generate co-operation and dialogue. The Law on Disability of 2005 created a *Département*-level Commission for the Rights and Autonomy of the Disabled which will be competent for all decisions relating to the orientation of disabled people. Its members are representatives of public authorities, NGOs, trade unions and social partners and at least 30% are representatives of the disabled. Its structure will be set out by decree (still to be adopted). 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).

[99] Regulation 12 of Legal Notice 461 of 2004.

In Finland there is a good record of government co-operation with NGOs and social partners through advisory bodies on youth issues, disability, rehabilitation and Roma affairs. A new Advisory Body on Minority Issues has been set up which will develop a means of co-operation between the government and NGOs in matters relating to the supervision and monitoring of the implementation of equal treatment. Key ministries, the association of municipalities, social partners and five NGOs are represented on the board of the advisory body. In the Netherlands, the Ministry of Social Affairs and Labour has established a network of professionals on equal treatment issues, consisting of representatives from the most important ministries and national employees' and employers' organisations. 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. In Romania the national equality body works closely with NGOs representing various vulnerable groups and consults with the main NGOs when developing its programmes on relevant areas. In Spain a Strategic Plan for Citizenship and Integration designed to promote the integration of immigrants was adopted in February 2007. One of the key points of the Plan is equal treatment and combating all forms of discrimination. The Plan is implemented through a number of action programmes in 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 for 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. 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 issuing 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 Belgian Centre for Equal Opportunities and Opposition to Racism, the Estonian Chancellor of Justice, the Irish Equality Authority, and the Italian National Office against Racial Discrimination (for racial and ethnic origin only).

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 United Kingdom. There is a good record of governmental agencies and ministerial departments co-operating with non-government organisations in Slovakia and the United Kingdom.

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 contractual 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 United Kingdom, government departments reviewed the legislation for which they were 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 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 but has yet to be repealed.

In most countries therefore, discriminatory laws are likely to be repealed 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 is questionable 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 that provisions and clauses which breach the 'superior rule' of equality are void. In Lithuania the Labour Code provides that courts can declare invalid acts adopted by state institutions, municipalities or individual officers if they are contrary to the law. In Romania, as the principle of equality is clearly guaranteed in the Constitution, any contrary provisions would be unconstitutional and illegal under the Anti-discrimination Law as *lex specialis*. Following the decisions of the Romanian Constitutional Court which limited both the mandate of the NCCD[100] and of the civil courts in relation to discrimination generated by legislative norms,[101] only the Constitutional Court may tackle norms containing provisions contrary to

[100] Romania/Curtea Constituțională/Decision 997 of 7 October 2008 finding that Article 20 (3) of the Anti-discrimination Law, defining the mandate of the NCCD in relation to discrimination triggered by legislative provisions, is unconstitutional.

[101] Romania/Curtea Constituțională/Decision 818 (3 July 2008) published in the Official Gazette 537 of 16 July 2008.

the principle of equality. As legal standing before the Constitutional Court is limited by the Constitution to specifically mentioned categories (courts of law or the Ombudsman), the Romanian legal framework currently has a *de facto* gap in the protection against discrimination induced by legislative provisions.

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

In Cyprus, the Law on Equal Treatment stipulates the repeal of any contrary provisions, even though under the doctrine of implied repeal these would not normally prevail over later legislation in the event of a conflict. It seems a recommendation of the Commissioner for Administration (the specialised equality body, otherwise known as the Ombudsman) following an investigation and finding of a discriminatory law or practice, can trigger the repeal of discriminatory laws, although it has not as yet done so. Prior to transposition of the Directives in the United Kingdom, 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 Article 16 Employment Equality Directive, but have not repealed any existing conflicting legislation. The Equality Act, adopted in 2006, retains this exception. 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.

In some jurisdictions, an entire agreement is invalidated if it includes a discriminatory clause. 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 are 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 is void. If annulled or successfully contested, the agreement is invalid (Article 9) and if invalidity results in loss, compensation must 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).

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 the Workers' Statute declares void any discriminatory clauses of collective agreements, individual

agreements, and unilateral decisions of discriminatory employers. The Finnish Non-Discrimination Act provides that a court may, in a case before it, change or ignore terms in contracts or 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, will, on entry into force of these regulations, be considered void. In the United Kingdom 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. This means that after January 2005 all collective agreements and internal rules of employment contrary to the Anti-discrimination Act could not be legally applied. Furthermore, regulations 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. Also, some specialised bodies (such as the Swedish Ombudsman and the Irish Equality Authority) likewise have the power to order changes to discriminatory rules of organisations and independent professions and associations.

Bram | 1987

Chapter 10
Conclusion

The transposition of the Racial Equality and Employment Equality Directives has immensely enhanced 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 EU law in certain instances and to discern that levelling up of protection across grounds has continued in a few countries (such as the United Kingdom). However, this fourth comparative overview[102] has revealed that, although some progress has been made in recent years and a few loop-holes have been plugged, a small number of apparent shortcomings in some Member States' legislation still remain and it is now imperative that they be resolved. Ultimately it is up to the courts to decide whether national law is inconsistent with European law, and case-law at national level is now slowly starting to emerge, although the number of cases in some countries remains very low (see below). There has been a large increase in the number of preliminary references lodged at the European Court of Justice on the grounds of disability and age, but it remains to be seen how these rulings will be applied at national level. Given the ambiguities in some of the Directives' texts, and therefore also many national provisions, judicial interpretation is vital to 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 on at least 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 three editions of this publication that the detail that has been added to the law in many countries, and in particular specific procedural rights in the remedies and enforcement rules, would change this situation. Although much of this machinery has been put in place by many Member States, it still remains too early to draw anything but tentative conclusions here. Initial observation may indicate a possible correlation between a low level of case law and countries which transposed the Directives by simply 'lifting' wording from the Directives for their national laws. There are also 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 to increase dialogue among governments, civil society and the social partners across all grounds.

[102] Three previous issues of this publication compared the situation in the then 25 Member States. They were completed in September 2005, November 2006 and July 2007.

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Chapter 11
Tables

Explanatory note to tables

These tables are based on the updated executive summaries and country reports compiled for the Network of Legal Experts in the non-discrimination field presenting information for the year 2008.[103] The list is non-exhaustive and contains only the main pieces of anti-discrimination legislation in each Member State. Inclusion of legislation in the tables does not imply that it is in compliance with Directives 2000/43 and 2000/78.

	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 the Austrian Constitution	Federal Equal Treatment Act, Federal Law Gazette I Nr.100/1993 as amended by Federal Law Gazette I Nr. 65/2004 and 97/2008	gender, ethnic affiliation, religion, belief, age, and sexual orientation
		Equal Treatment Act, Federal Law Gazette I Nr. 66/2004 as amended by Federal Law Gazette I Nr. 98/2008	gender, ethnic affiliation, religion, belief, age, and sexual orientation
		Law on the Equal Treatment Commission and the Office for Equal Treatment, Federal Law Gazette I Nr. 66/2004 as amended by Federal Law Gazette I Nr. 98/2008	gender, ethnic affiliation, religion, belief, age, and sexual orientation
		Disability Equality Act, Federal Law Gazette I Nr. 82/2005 as amended by Federal Law Gazette. I Nr. 67/2008	disability
		(Amendment to) Act on the Employment of People with Disabilities, Federal Law Gazette I Nr. 82/2005 as amended by Federal Law Gazette. I Nr. 67/2008	disability
		(Amendment to) Federal Disability Act, BGB1 I Nr. 82/2005 as amended by BGBI 1 Nr. 109/2008	disability
		Styrian Equal Treatment Act, Styrian Provincial Law Gazette Nr. 24/2004	gender, race or ethnic origin, religion or belief, disability, disability of a relative, age, sexual orientation
		Viennese Service Order, as amended by Viennese Provincial Law Gazette Nr. 36/2004	gender, race, ethnic origin, religion, belief, disability, age, sexual orientation
		Viennese Anti-Discrimination Act, Viennese Provincial Law Gazette Nr. 35/2004	race, ethnic origin, religion, belief, age, sexual orientation
		Lower Austrian Equal Treatment Act, Lower Austrian Provincial Law Gazette Nr. 69/1997 as amended by Nr. 65/2004	gender, ethnic affiliation, religion or belief, disability, age, sexual orientation
		Carinthian Anti-Discrimination Act, Carinthian Provincial Law Gazette Nr. 63/2004	gender, ethnic affiliation, religion or belief, disability, age, sexual orientation
		Voralbergian Act on Anti-Discrimination	gender, ethnic affiliation, religion, belief, disability age, and sexual orientation
		Upper Austrian Act on Anti-Discrimination	gender, ethnic affiliation, religion, belief, disability age, and sexual orientation
		Burgenland's Anti-Discrimination Act	all grounds of the two Directives
		Salzburg Equal Treatment Act Nr. 31/2006	all grounds

BELGIUM	Arts. 10 and 11 of the Constitution	Racial Equality Federal Act of 30 July 1981 criminalising certain acts inspired by racism or xenophobia, as amended by the Acts of 12 April 1994, of 7 May 1999, of 20 January 2003 and of 10 May 2007	race, colour, descent, ethnic and national origin
		General Anti-Discrimination Act of 10 May 2007 on the fight against certain forms of discrimination and amending the Act of 15 February 1993 (as amended on 25 February 2003) setting up the Centre for Equal Opportunities and the Fight against Racism	all grounds in the two Directives and additional grounds
		Flemish Region/Community: Decree of 10 July 2008 establishing a Framework Decree for the Flemish equal opportunities and equal treatment policy	all grounds of the two Directives and additional grounds
		French-speaking Community: Decree of 12 December 2008 on the fight against certain forms of discrimination and Decree of 9 May 2004 on the implementation of the principle of equal treatment	all grounds of the two Directives and additional grounds
		Walloon Region: Decree of 6 November 2008 on the fight against certain forms of discrimination including between women and men, in the field of the economy, employment and vocational training	all grounds of the two Directives and additional grounds
		German-speaking Community: Decree of 17 May 2004 on the guarantee of equal treatment in the labour market	all grounds of the two Directives and additional grounds
		Region of Brussels-Capital: Ordinance of 4 September 2008 related to the fight against discrimination and equal treatment in the employment field	all grounds of the two Directives and additional grounds
		Region of Brussels-Capital: Ordinance of 4 September 2008 on the promotion of diversity and the fight against discrimination in the civil service of the Region	all grounds of the two Directives and additional grounds
		Commission communautaire française (Cocof): Decree of 22 March 2007 on equal treatment between persons in vocational training	all grounds of the two Directives (open list of suspect criteria)
BULGARIA	Art 6 (2) of the Constitution	Protection against Discrimination Act, 13 September 2003	all grounds of the two Directives and additional grounds
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 (appointing the Ombudsman as the Equality Body)
		The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004	racial and ethnic origin (transposing the Racial Equality Directive)
		The Equal Treatment in Employment and Occupation Law No. 58 (1)/2004	racial and ethnic origin, religion or belief, age, sexual orientation (transposing the Employment Directive)
		Law on Persons with Disabilities N. 127(I)/2000 as amended N. 57(I)/2004	disability

[103] As an exception, information regarding the Czech Republic is dated June 2009, and the new Polish Labour Code dated January 2009 has been included.

	Constitutional provisions	Main anti-discrimination legislation	Grounds covered
CZECH REPUBLIC[104]	Art 3.1 of the Charter of Fundamental Rights and Freedoms (part of the constitutional order)	Labour Code	no explicit grounds
		Anti-Discrimination Law of 17 June 2009	all grounds in the two Directives and sex
		Law n° 361/2003 Coll. on Service by Members of the Security Services	all grounds in the two Directives and additional grounds, except disability
		Law n°. 435/2004 Coll. on Employment	all grounds in the two Directives and additional grounds
		Law n°. 221/1999 Coll. on Service by Members of the Armed Forces, 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 the State Administration and on Remuneration of these Officials and other Employees	all grounds in the two Directives and additional grounds except disability
		School Law No. 561/2004 Coll.	race, ethnic origin, religion or belief 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 Unequal Treatment due to Race and Ethnicity	race, colour, national or ethnic origin, religion and sexual orientation
		Act No. 31 (2005) on the Prohibition of Differential Treatment in the Labour Market	race, colour, national, social or ethnic origin, religion, belief, age, disability, sexual orientation and political opinion
		Act No.374 (2003) on Ethnic Equal Treatment	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
		Act No. 387 of 27 May 2008 on the Board of Equal Treatment	all grounds in the two Directives and additional grounds
ESTONIA	Art 12(1) Constitution	Law on the Legal Chancellor of Justice of 25 February 1999 as amended on 11 February 2003	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
		Law on Equal Treatment of 11 December 2008	all grounds in the two Directives
		Penal Code	ethnic origin, race, colour, sex, language, origin, religion, political opinion, financial or social status, genetic risks

FINLAND	Section 6(1) and (2) Constitution	Non-Discrimination Act, 21/2004 as amended on 14 November 2008	all grounds in the two Directives and additional grounds
		Penal Code	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 the 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 on Social Modernisation n°2002-73 of 17 January 2002	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 on Social Cohesion of 20 December 2004	race and religion
		Law no 2005-846 of 26 July 2005 enabling 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
		Law n° 2008-496 relating to the adaptation of National Law to Community Law in matters of Discrimination	all grounds in the two Directives
		Law on Disability no 2005-102 of 11 February 2005	disability
GERMANY	Arts. 3 German Basic Law	Law on Promoting the Equality of the Disabled	disability
		Law on Protection against Unfair Dismissal	age and (severe) disability
		Social Code	age and (severe) disability
		Work Constitution Law 1972, amended 2004	religion, origin, sex, sexual identity, age
		Law on Federal Employee Representation 1974 as amended in 2005	religion, origin, sex (sexual orientation in some state legislation)
		Federal Law on Civil Servants 1999, amended 2005	sex, race, religion, origin
		Framework Law on Civil Servants 1999, amended 2005	sex, race, religion, origin (sexual orientation in some state legislation)
		General Law on Equal Treatment of 18 August 2006	all grounds in the two Directives and additional grounds (belief not in civil law)

[104] As major developments occurred in the first half on 2009, the cut off date for information on the Czech Republic is 17 June 2009.

	Constitutional provisions	Main anti-discrimination legislation	Grounds covered
GREECE	Art.4.1, 5.2.a, 5.5, 9A, 16.4, 21.1, 21.1, 2, 25.1, 116.2 Constitution	Law n. 927/1979 against discrimination on the grounds of racial or ethnic origin or religion	racial or ethnic origin and religion
		Law no. 3304/27.01.2005 on the implementation of the principle of equal treatment regardless of racial or ethnic origin, religion or other beliefs, disability, age or sexual orientation (General Framework)	all grounds in the two Directives
		Law no. 2643/1998 on the compulsory employment of disabled persons and of people of special groups as revised by Law n. 3144/2003 on social dialogue on the promotion of occupation and social protection	disability
HUNGARY	Art. 70/A Constitution, extended by decision 61/1992 Constitutional Court	Act CXXV of 2003 on Equal Treatment and the Promotion of Equality of Opportunities, last amended in January 2007 (Equal Treatment Act)	all grounds in the two Directives and additional grounds
		Government Decree 362/2004 on the Equal Treatment Authority and the Detailed Provisions of its Proceedings	all grounds in the two Directives and additional grounds
		Act XXVI of 1998 on the Rights of Persons with Disabilities and the Guaranteeing of their Equal Opportunities	disability
IRELAND	Arts. 40.1, 40.3.1, 40.3.2, 44 Constitution	Employment Equality Act 1998-2007	all grounds in the two Directives and additional grounds
		Equal Status Act 2000-2004	all grounds in the two Directives and additional grounds
		Equality Act 2004	all grounds in the two Directives and additional grounds
		Pensions Act 1990-2004	all grounds in the two Directives and additional grounds
		Protection of Employment Act 2007	age
		Intoxicating Liquor Act 2003	all grounds in the two Directives and additional grounds
		Unfair Dismissals Act 1977 – 2007	all grounds in the two Directives and additional grounds
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 the 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 in discrimination claims	racial and ethnic origin
		Legislative Decree No. 216 of 9 July 2003 transposing Directive 2000/78, amended by Legislative Decree no. 256 of 2 August 2004	religion or belief, age, disability and sexual orientation

LATVIA	Art. 91 Constitution	Labour Law, adopted 2001, amended 07.05.2004 and 02.11.2006 (includes civil service and sexual orientation but still excludes self-employment)	open-ended list of grounds
		Law on Consumer Protection of 18 March 1999 as further amended	race, ethnic origin and gender
		Law on Social Security 1995, amendments containing the equality guarantee in force from 03.01.2006	open-ended list of grounds: sexual orientation is still not explicitly mentioned among prohibited grounds
		State Civil Service Law of 7 September 2000 and further amendments	grounds not specified
		Law on Ombudsman of 6 April 2006	grounds not specified
		Law on Organisations and Foundations of 30 October 2003 as further amended	grounds not specified
LITHUANIA	Art. 29 Constitution	Law on Equal Treatment, January 2005 as amended in June 2008	all grounds in the two Directives and additional grounds
LUXEMBOURG	None (Arts. 10bis and 111 Constitution do not contain an explicit non-discrimination clause)	Penal Code of 19 July 1997	all grounds in the two Directives
		General Anti-Discrimination law of 28 November 2006	all grounds in the two Directives
		Public Sector Law of 29 November 2006	all grounds in the two Directives
MALTA	Article 45 of the Constitution	Employment and Industrial Relations Act 2002	all grounds in the two Directives and additional grounds
		Legal Notice 461 of 2004 issued under the Employment and Industrial Relations Act	all grounds in the two Directives and additional grounds
		Equal Opportunities (Persons with Disabilities) Act 2000	disability
		Equal Treatment of Persons Order, 2007	race and ethnic origin
NETHERLANDS	Art. 1 Constitution	General Equal Treatment Act of 1994, amended by EC Implementation Act 2004 and by Law of 15 September 2005 amending the General Treatment Act	all grounds in the two Directives and additional grounds
		Act on Equal Treatment on the Ground of Age in Employment of 1 May 2004	age
		Act on Equal Treatment on the Grounds of Disability and Chronic Disease of 3 April 2003	disability and chronic disease
		Criminal Code	race, religion or belief, hetero- or homosexual orientation and disability
POLAND	Art. 32(1) and (2) Constitution (general). Arts. 19, 25, 27, 33, 35, 72, 76 Constitution (specific categories)	Labour Code (last amended 18 January 2009	all grounds in the two Directives and additional grounds
		Act of 20 April 2004 on the Promotion of Employment and the Institutions of the Labour Market	all grounds in the two Directives and additional grounds

	Constitutional provisions	Main anti-discrimination legislation	Grounds covered
PORTUGAL	Art. 13 of the Constitution	Law 18/2004 on Racial and Ethnic Origin Discrimination as amended by Decree Law 86/2005	race, and ethnic origin
		Decree Law 251/2002 as amended by Decree Law 27/2005 (High Commissariat for Immigration and Ethnic Minorities)	race and ethnic origin
		Labour Code Law 99/2003	all grounds in the two Directives and additional grounds
		Law 134/99	race, colour, nationality and ethnic origin
		Law 35/2004 of 29 July 2004 r amending Law 99/2003 (Labour Code)	all grounds in the two Directives and additional grounds
		Law 251/2002 (creation of ACIME)	race, ethnic origin and nationality
		Law 38/2004 on Measures for the Rehabilitation and Participation of Persons with Disabilities	disability
		Decree-law 163/2006 of 8 August 2006 approving the accessibility regime to buildings and public premises	disability
		Law 46/2006 of 28 August 2006 prohibiting and punishing discrimination based on disability and on the grounds that a person has a pre-existing aggravated risk to their health	disability
ROMANIA	Arts. 4 and 16 Constitution	Anti-Discrimination Law 324/2006	all grounds in the two Directives and additional grounds
SLOVAKIA	Art. 12 Constitution	Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination, amending and supplementing certain other laws	all grounds in the two Directives
		Act No. 308/1993 Coll. on establishing the Slovak National Centre for Human Rights, last amended in 2004 Coll.	all grounds in the two Directives
		Labour Code no. 311/2001 Coll. last amended in 2004	non-exhaustive list
SLOVENIA	Art. 14 Constitution	Implementation of the Principle of Equal Treatment Act 2004 as amended on 22 June 2007	all grounds in the two Directives and additional grounds
		Employment Relations Act 2003 as amended on 29 October 2007	all grounds in the two Directives and additional grounds
		Vocational Rehabilitation and Employment of Disabled Persons Act 2004	disability

SPAIN	Arts. 1.1; 9.2, 10, 13.1, 14, 16, 49 and 53 Constitution	Law 62/2003, of 30 December 2003, on fiscal, administrative and employment measures	all grounds in the two Directives
		Legal Decree 5/2000, 4 August 2000 (Law on offences and penalties in employment matters)	all grounds in the two Directives and additional grounds
		Law 51/2003 of 2 December on Equal Opportunities, Non-discrimination, and Universal Access for Persons with Disability	disability
		Decree 1865/2004 creating the National Disability Council	disability
		Law 14/2005 of 1 July 2005	age
SWEDEN	Chapter 1, Sec 2 and Chapter 2, Sec. 15 Constitution	Discrimination Act (2008:567)	all grounds in the two Directives and sex and transgender identity or expression
		Penal Code	ethnicity, religion and other belief, sexual orientation
UNITED KINGDOM	No written constitution	Great Britain: Race Relations Act 1976 last amended by Race Relations Regulations in 2003	racial and ethnic origin, colour, nationality and national origin
		Northern Ireland: Race Relations (NI) Order 1997, last amended by Race Relations Order Regulations 2003	racial and ethnic origin, colour, nationality and national origin
		Great Britain: Disability Discrimination Act 2005 amending the Disability Discrimination Act 1995	disability
		Great Britain: Special Educational Needs and Disability Act 2001	disability
		Northern Ireland: Disability Discrimination Act 1995 (Amendment) Regulations (NI) 2004	disability
		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	sexual orientation
		Northern Ireland: Employment Equality (Sexual Orientation) Regulations (NI) 2003: The Civil Partnership Act 2004 (Amendments to Subordinate Legislation) (No2) Order 2005	sexual orientation
		Great Britain: Employment Equality (Religion and Belief) Regulations 2003	religion and belief
		Northern Ireland: Fair Employment and Treatment (NI) Order 1998, last amended by Fair Employment Regulations in 2003.	religious belief and political opinion
		Great Britain: The Equality Act 2006	all grounds including sex
		GB: Employment Equality (Age) Regulations 2006	age
		NI: Employment Equality (Age) Regulations 2006	age

	Direct discrimination	Indirect discrimination	Harassment	Instruction to discriminate
AUSTRIA	All Federal and Provincial laws	Equal Treatment Act; Act on the Employment of People with Disabilities; Disability Equality Act; and similar wording in most provincial acts	Equal treatment Act; Criminal Code; Act on the Employment of People with Disabilities; Disability Equality Act and all provincial acts	Federal and Provincial laws; Act on the Employment of People with Disabilities; Disability Equality Act
BELGIUM	Racial Equality Federal Act and the General Anti-Discrimination Federal Act; decrees adopted by the German-speaking Community, the French-speaking Community and the Walloon Region, and the Flemish Region/Community	Racial Equality Federal Act and the General Anti-Discrimination Federal Act; decrees adopted by the German-speaking Community, the French-speaking Community and the Walloon Region, and the Flemish Region/Community	Racial Equality Federal Act and the General Anti-Discrimination Federal Act; Decree of the Flemish Region/Community; Law of 11 June 2002 on the protection against violence and moral or sexual harassment at work; Penal Code	Racial Equality Federal Act and the General Anti-Discrimination Federal Act; decrees adopted by the German-speaking Community, the French-speaking Community and the Walloon Region, and the Flemish Region/Community; Penal Code
BULGARIA	Protection against Discrimination Act	Protection against Discrimination Act	Protection against Discrimination Act	Protection against Discrimination Act
CYPRUS	Law on Equal Treatment irrespective of Race or Ethnic Origin; Law on Equal Treatment in Employment and Occupation; and Law on Persons with Disabilities	Law on Equal Treatment irrespective of Race or Ethnic Origin; Law on Equal Treatment in Employment and Occupation; and Law on Persons with Disabilities	Law on Equal Treatment irrespective of Race or Ethnic Origin; Law on Equal Treatment in Employment and Occupation; and Law on Persons with Disabilities	Law on Equal Treatment irrespective of Race or Ethnic Origin; Law on Equal Treatment in Employment and Occupation); and Law on Persons with Disabilities
CZECH REPUBLIC	Law No. 435/2004 Coll. on Employment; Law No. 361/2003 on Service by Members of the Security Services; Ant-Discrimination Law	Law No. 435/2004 Coll. on Employment; Law No. 361/2003 on Service by Members of the Security Services; Ant-Discrimination Law	Law No. 435/2004 Coll. on Employment; Law No. 361/2003 on Service by Members of the Security Services; Law No. 221/1999 on Service by Members of the Armed Forces and Anti-Discrimination Law	Law on Service by Members of the Armed Forces; Law on Service by Members of the Security Services and Anti-Discrimination Law
DENMARK	Act on the Prohibition of Differential Treatment in the Labour Market and Act on Ethnic Equal Treatment	Act on the Prohibition of Differential Treatment in the Labour Market and Act on Ethnic Equal Treatment	Act on the Prohibition of Differential Treatment in the Labour Market and Act on Ethnic Equal Treatment	Criminal Code; Act on the Prohibition of Differential Treatment in the Labour Market and Act on Ethnic Equal Treatment
ESTONIA	Law on Equal Treatment	Law on Equal Treatment	Law on Equal Treatment	Law on Equal Treatment
FINLAND	Non-Discrimination Act; Provincial Act on the Prevention of Discrimination in the Province of the Åland Islands	Non-Discrimination Act; Provincial Act on the Prevention of Discrimination in the Province of the Åland Islands	Non-Discrimination Act; Provincial Act on the Prevention of Discrimination in the Province of the Åland Islands	Non-Discrimination Act; Provincial Act on the Prevention of Discrimination in the Province of the Åland Islands
FRANCE	Law 2008-496	Law 2008-496	Law 2008-496	Law 2008-496
GERMANY	General Law on Equal Treatment	General Law on Equal Treatment	General Equal Treatment Law	General Law on Equal Treatment
GREECE	Law on the Implementation of the Principle of Equal Treatment 3304/2005	Law on the Implementation of the Principle of Equal Treatment 3304/2005	Law on the Implementation of the Principle of Equal Treatment 3304/2005	Law on the Implementation of the Principle of Equal Treatment 3304/2005
HUNGARY	Equal Treatment Act	Equal Treatment Act	Equal Treatment Act	Equal Treatment Act

IRELAND	Employment Equality Act 1998-2007; Equal Status Act 2000-2004	Employment Equality Act 1998-2007; Equal Status Act 2000-2004	Employment Equality Act 1998-2007; Equal Status Act 2000-2004	Employment Equality Act 1998-2007; Equal Status Act 2000-2004
ITALY	Decree 215/2003 and Decree 216/2003	Decree 215/2003 and Decree 216/2003	Decree 215/2003 and Decree 216/2003	Decree 215/2003 and Decree 216/2003
LATVIA	Labour Law	Labour Law	Labour Law	Labour Law
LITHUANIA	Law on Equal Treatment	Law on Equal Treatment	Law on Equal Treatment	Law on Equal Treatment
LUXEMBOURG	General Anti-Discrimination Law	General Anti-Discrimination Law	General Anti-Discrimination Law	General Anti-Discrimination Law
MALTA	Legal Notice 461 of 2004 and Equal Treatment of Persons Order	Legal Notice 461 of 2004 and Equal Treatment of Persons Order	Legal Notice 461 of 2004 and Equal Treatment of Persons Order	Legal Notice 461 of 2004 and Equal Treatment of Persons Order
NETHERLANDS	General Equal Treatment Act; Age Discrimination Act; Disability Discrimination Act	General Equal Treatment Act; Age Discrimination Act; Disability Discrimination Act	General Equal Treatment Act; Disability Discrimination Act; and 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
PORTUGAL	Law 18/2004 (race and ethnic origin); Law 35/2004 (employment); Law 46/2006 (disability)	Law 18/2004; Law 35/2004; Law 46/2006	Law 35/2004	Law 18/2004; Law 35/2004; Law 46/2006
ROMANIA	Anti-Discrimination Law	Anti-Discrimination Law	Anti-Discrimination Law	Anti-Discrimination Law
SLOVAKIA	Equal Treatment Act	Equal Treatment Act	Equal Treatment Act	Equal Treatment Act
SLOVENIA	Equal Treatment Act; Employment Relations Act; Vocational Rehabilitation and Employment of Disabled People Act	Equal Treatment Act; Employment Relations Act; Vocational Rehabilitation and Employment of Disabled People Act	Equal Treatment Act; Employment Relations Act	Equal Treatment Act; Employment Relations Act
SPAIN	Law 62/2003; Organic Law 4/2000	Law 62/2003	Law 62/2003	Law 62/2003
SWEDEN	Discrimination Act	Discrimination Act	Discrimination Act	Discrimination Act

	Direct discrimination	Indirect discrimination	Harassment	Instruction to discriminate
UNITED KINGDOM	GB: Disability Discrimination Act; 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 2006	Judicial interpretation needed as there is no definition of indirect discrimination. 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; Reg. 3 of the 2006 age regulations; Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006	Judicial interpretation might be needed. GB: Race Relations Act; Employment Equality (Sexual Orientation) Regulations; Disability Discrimination Act; Employment Equality (Religion or Belief) Regulations; Equality Act 2006; NI: Race Relations Order; Fair Employment and Treatment Order; Employment Equality (Sexual Orientation) Regulations	Judicial interpretation might be needed. GB: Race Relations Act; Disability Discrimination Act; NI: Race Relations Order; Fair Employment and Treatment Order. Reg. 5 of the 2006 Age Regulations also prohibits instructions to discriminate in both GB and NI

	Employment	Social protection	Social advantages	Education	Goods and services (including 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 Disability Act; Provincial Equal Treatment Acts and/or Provincial Anti-Discrimination Acts	Equal Treatment Act (only on the ground of ethnic affiliation); for all grounds in most of the provincial acts (except Lower Austria)	Equal Treatment Act; for all grounds in most of the provincial acts (except Lower Austria)	Equal Treatment Act; for all grounds in most of the provincial acts (except Lower Austria)	Equal Treatment Act (ethnic affiliation); Disability Equality Act (disability); for all grounds in most of the provincial acts (except Lower Austria)
BELGIUM	Racial Equality Federal Act and the General Anti-Discrimination Federal Act; Decrees adopted by the German-speaking Community, the French-speaking Community and the Walloon Region, and the Flemish Community/Region; not fully implemented in the Region of Brussels-Capital by Ordinance of 22 March 2007	Racial Equality Federal Act and the General Anti-Discrimination Federal Act	Racial Equality Federal Act and the General Anti-Discrimination Federal Act; decrees passed by the Flemish Community/Region, the French-speaking Community and the Walloon Region	Decrees of the Flemish Community/Region and French-speaking Community	Racial Equality Federal Act and the General Anti-Discrimination Federal Act; decrees of the Flemish Community/Region, French-speaking Community and the Walloon Region. Social housing is a regional competence and is covered by the Framework Anti-discrimination Decree of the Flemish Community/Region, the Anti-discrimination Decree of the Walloon Region and a specific Ordinance of the Region of Brussels-Capital
BULGARIA	Protection against Discrimination Act	Protection against Discrimination Act	Protection against Discrimination Act	Protection against Discrimination Act	Protection against Discrimination Act
CYPRUS	Law on Equal Treatment irrespective of Race or Ethnic Origin; Law on Equal Treatment in Employment and Occupation; Law concerning Persons with Disabilities and Law on Unfair Dismissal	Law on Equal Treatment irrespective of Race or Ethnic Origin, Law on Equal Treatment in Employment and Occupation; Law concerning Persons with Disabilities; and Law on Public Assistance	Law on Equal Treatment of Persons Irrespective of Racial or Ethnic Origin and concerning Persons with Disabilities	International agreements; Law on Equal Treatment of Persons Irrespective of Racial or Ethnic Origin	Law on Equal Treatment of Persons Irrespective of Racial or Ethnic Origin; Law amending the Ratification Law of the Convention on the Elimination of All Forms of Discrimination of 1967

	Employment	Social protection	Social advantages	Education	Goods and services (including housing)
CZECH REPUBLIC	Labour Code 2007; Anti-Discrimination Law; Law on Employment; Law on Self-Employment; Law on Wages; Law on Salaries; Law on Service by Officials of the State Administration; Law on Service by Members of the Armed Forces; School Law; Law on Higher Education; and Law on Associations	Anti-Discrimination Law; Law on State Social Support; Law on Social Services; Law on Pension Insurance; Law on Employees' Sickness Insurance; Law on Healthcare of the Population	Civil Code; Law on Contracts; and Anti-Discrimination Law	Civil Code; Law on Pre-school, Primary, Secondary and Higher Vocational Education and other; Anti-Discrimination Law	Law on Consumer Protection and Anti-Discrimination Law
DENMARK	Act on the Prohibition of Differential Treatment in the Labour Market	Act on Ethnic Equal Treatment	Act on Ethnic Equal Treatment	Act on Ethnic Equal Treatment	Act on Ethnic Equal Treatment
ESTONIA	Law on Equal Treatment; Law on Wages	Law on Equal Treatment	Law on Equal Treatment	Law on Equal Treatment	Law on Equal Treatment
FINLAND	Non-Discrimination Act; Provincial Act on the Prevention of Discrimination in the Province of the Åland Islands[105]	Non-Discrimination Act; Provincial Act on the Prevention of Discrimination in the Province of the Åland Islands	Non-Discrimination Act; Provincial Act on the Prevention of Discrimination in the Province of the Åland Islands	Non-Discrimination Act; Åland Islands: Provincial Act on the Prevention of Discrimination; Provincial Act on Åland's Music Institute; Provincial Act on Education at High-School Level; Provincial Act on Ålands Folk High School; Provincial Act on Åland University	Non-Discrimination Act; Provincial Act on the Prevention of Discrimination in the Province of the Åland Islands
FRANCE	Law 2008-496	Law 2008-496	Law 2008-496	Law 2008-496	Law 2008-496; Penal Code
GERMANY	General Law on Equal Treatment	General Law on Equal Treatment	General Law on Equal Treatment	General Law on Equal Treatment	General Law on Equal Treatment
GREECE	Law on the Implementation of the Principle of Equal Treatment 3304/2005	Law on the Implementation of the Principle of Equal Treatment 3304/2005	Law on the Implementation of the Principle of Equal Treatment 3304/2005	Law on the Implementation of the Principle of Equal Treatment 3304/2005	Law on the Implementation of the Principle of Equal Treatment 3304/2005
HUNGARY	Equal Treatment Act	Equal Treatment Act	Equal Treatment Act	Equal Treatment Act	Equal Treatment Act; Consumer Protection Act Housing: Equal Treatment Act

IRELAND	Employment Equality Act 1998-2007; Pensions Act 1990-2004; Unfair Dismissals Act 1977-1993; Equal Status Act 2000-2004; Section 22 of the Social Welfare Act 2004	Equal Status Act 2000-2004	(interpretation of Equal Status Act 2000-2004 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 Housing: Equal Status Act 2000-2004; Housing (Traveller Accommodation) Act 1998; Housing (Miscellaneous Provisions) Act 2002
ITALY	Decree 215/2003 and Decree 216/2003	Decree 215/2003[106]	Decree 215/2003	Decree 215/2003	Decree 215/2003
LATVIA	Labour Law; State Civil Service Law; and Law on Education	Law on Social Security and Law on Consumer Protection	Law on Social Services and Law on Consumer Protection	Law on Education (except grounds of age, disability, and sexual orientation)	Law on Consumer Protection and Law on Social Security
LITHUANIA	Law on Equal Treatment (not self-employment)	Judicial interpretation needed of the Law on Equal Treatment	Judicial interpretation needed of the Law on Equal Treatment	Law on Equal Treatment	Law on Equal Treatment (judicial interpretation needed regarding housing)
LUXEMBOURG	General Anti-Discrimination law	General Anti-Discrimination Law	General Anti-Discrimination Law	General Anti-Discrimination Law	General Anti-Discrimination Law
MALTA	Employment and Industrial Relations Act 2002; Legal Notice 461 of 2004; Employment and Training Services Act	Equal Treatment of Persons Order	Maltese Legislation does not expressly address the category of 'social advantages'; some specific provisions can be found in various legislation	Equal Treatment of Persons Order; Equal Opportunities (Persons with Disability) Act 2000	Equal Treatment of Persons Order
NETHERLANDS	General Equal Treatment Act; Age Discrimination Act; Disability Discrimination Act	General Equal Treatment Act (only regarding race)	General Equal Treatment Act (only regarding race)	General Equal Treatment Act	General Equal Treatment Act
POLAND	Labour Code (partially)	Judicial interpretation needed of the Act on the Social Security System; the Act on Social Assistance; and the Act on Medical Treatment	Judicial interpretation needed (grounds not listed) of the Act on Family Benefits; the Act on Retirement and Disability Pensions from the Social Insurance Fund	Education Act; Act on National and Ethnic Minorities; Act on the Education System	Judicial interpretation needed of the Code of Minor Offences (no explicit anti-discrimination clause in the relevant laws regarding housing)

[105] The 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.

[106] Regarding social protection, social advantages, education and goods and services including housing, religion and nationality are covered by Act 286/1998.

	Employment	Social protection	Social advantages	Education	Goods and services (including housing)
PORTUGAL	Law 35/2004; Labour Code; Law 38/2004; Law 46/2006	Law 18/2004; Law 4/2007 (basic law on the social security system)	Law 18/2004; Law 4/2007 (basic law on the social security system)	Law 115/1997 (basic law on the educational system); Law 134/1999; Law 46/2006; Labour Code	Law 18/2004; Law 46/2006; Law 134/99
ROMANIA	Anti-Discrimination Law	Anti-Discrimination Law	Anti-Discrimination Law	Anti-Discrimination Law	Courts need to assess the conditions of the exceptions included in the Anti-Discrimination Law
SLOVAKIA	Labour Code; Equal Treatment Act	Equal Treatment Act	Equal Treatment Act	School Act; Equal Treatment Act; Act on Higher Education; Act on the Primary and Secondary School System	Equal Treatment Act; Consumer Protection Act; Housing: Equal Treatment Act in a limited manner
SLOVENIA	Employment Relations Act; Equal Treatment Act	Equal Treatment Act	Equal Treatment Act	Equal Treatment Act	Equal Treatment Act
SPAIN	Law 62/2003	Law 62/2003	Law 62/2003	Law 62/2003	Law 62/2003
SWEDEN	Discrimination Act	Discrimination Act (age is not covered)	Social advantages is not a category under the Discrimination Act	Discrimination Act	Discrimination Act (age is not covered)
UNITED KINGDOM	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	In UK, partially covered in GB: Race Relations Act; Disability Discrimination Act; Equality Act. NI: Race Relations Order; Fair Employment and Treatment Order; Disability Discrimination Act	GB: Race Relations Act; Disability Discrimination Act; Equality Act. NI: Race Relations Order	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)	GB: Race Relations Act; Disability Discrimination Act; Equality Act. NI: Race Relations Order; Fair Employment and Treatment Order Disability Discrimination Order 2006

	REASONABLE ACCOMODATION FOR DISABLED PEOPLE	GENUINE AND DETERMINING OCCUPATIONAL REQUIREMENT
AUSTRIA	Act on the Employment of People with disabilities and Disability Equality Act	All federal and provincial acts
BELGIUM	Racial Equality Federal Act and the General Anti-Discrimination Federal Act	Racial Equality Federal Act and the General Anti-Discrimination Federal Act
BULGARIA	Protection against Discrimination Act; Integration of Persons with Disabilities Act; Labour Code; and Healthy and Safe Work Conditions Act	Protection against Discrimination Act
CYPRUS	Law on Persons with Disabilities	Law on Public Service; Law on Persons with Disabilities; and Law on Equal Treatment irrespective of Race or Ethic Origin
CZECH REPUBLIC	Labour Code 2007; Anti-Discrimination Law; Law on Employment	Labour Code 2007 and Law on Employment
DENMARK	Act on the Prohibition of Differential Treatment in the Labour Market	Act on the Prohibition of Differential Treatment in the Labour Market
ESTONIA	Law on Equal Treatment	Law on Equal Treatment
FINLAND	Non-Discrimination Act[107]	Non-Discrimination Act; Provincial Act on Prevention of Discrimination in the Province of Åland Islands
FRANCE	Law on Disability; Labour Code; Law 83-634	Law 2008-496 and Labour Code
GERMANY	Social Code; Disabled Equality Law	General Law on Equal Treatment
GREECE	Law on the Implementation of the Principle of Equal Treatment 3304/2005	Law on the Implementation of the Principle of Equal Treatment 3304/2005
HUNGARY	Partially in the Act XXVI of 1998 on the Rights of Persons with Disabilities and the Guaranteeing of their Equal Opportunities	Equal Treatment Act
IRELAND	Employment Equality Act 1998-2007	Employment Equality Act 1998-2004
ITALY	No general duty on employers	Decree 215/2003 and Decree 216/2003
LATVIA	Labour Law	Labour Law
LITHUANIA	Judicial interpretation needed of the Law on Equal Treatment	Law on Equal Treatment
LUXEMBOURG	General Anti-Discrimination Law	General Anti-Discrimination Law
MALTA	Equal Opportunities (Persons with Disability) Act 2000 and Equal Treatment in Employment Regulations	Legal Notice 461 of 2004; Employment and Industrial Relations Act and Equal Treatment of Persons Order
NETHERLANDS	Disability Discrimination Act	General Equal Treatment Act (for race and sex only)
POLAND	Act on Vocational and Social Rehabilitation and Employment of Disabled Persons amended in 2003; partially in the Labour Code	Labour Code
PORTUGAL	Art. 73 and 74 of Labour Code; Decree-law 163/2006 of 8 August 2006 which approves the accessibility regime to buildings and public premises and implements the principles laid down in Law 38/2004	Law 18/2004; Law 35/2004; Labour Code
ROMANIA	No provisions	Anti-Discrimination Law

[107] 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.

	REASONABLE ACCOMODATION FOR DISABLED PEOPLE	GENUINE AND DETERMINING OCCUPATIONAL REQUIREMENT
SLOVAKIA	Equal Treatment Act	Equal Treatment Act; Labour Code
SLOVENIA	Vocational Rehabilitation and Employment of Disabled Persons Act; Pension and Disability Insurance Act; Convention on the Rights of People with Disabilities (directly applicable)	Employment Relations Act; Equal Treatment Act 2004
SPAIN	Law 51/2003 (disability, in general terms); Law 13/1982 on the Social Integration of the Disabled (employment)	Law 62/2003
SWEDEN	No legal basis is necessary, the prohibition of discrimination is asymmetric regarding disability	Discrimination Act
UNITED KINGDOM	Disability Discrimination 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

	Designated specialised body under Article 13 of the Racial Equality Directive	Instrument of designation	Body for other grounds	Provides independent assistance to victims[108]	Independent surveys	Issues recommendations
AUSTRIA	National Equality Body (NEB) and the 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	NEB: yes ETC: yes	NEB: yes ETC: no	NEB: yes ETC: no
BELGIUM	Centre for Equal Opportunities and the Fight against Racism at federal level; Protocols of collaboration or collaboration agreements have to be concluded between the federal government and the government of each region and community	General Anti-Discrimination Act of 10 May 2007 on the fight against certain forms of discrimination and amending the Act of 15 February 1993 (as amended on 25 February 2003) setting up the Centre for Equal Opportunities and the Fight against Racism	All grounds under Art. 13 EC Treaty except gender and additional grounds	yes	yes	yes
BULGARIA	Protection against Discrimination Commission	Protection against Discrimination Act, 13 September 2003	All grounds covered by the two Directives and additional grounds	Judicial interpretation of the Protection against Discrimination Act may be required	yes	yes

[108] 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 an 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 to those bodies which investigate and hear discrimination complaints (quasi-judicial bodies). For more information on this issue see the thematic report by Professor Rikki Holtmaat *Catalysts for Change? Equality Bodies according to Directive 2000/43* produced for the European Network of Legal Experts in the Non-discrimination Field (March 2006).

	Designated specialised body under Article 13 of the Racial Equality Directive	Instrument of designation	Body for other grounds	Provides independent assistance to victims[108]	Independent surveys	Issues recommendations
CYPRUS	Commissioner for Administration (also referred to as the Ombudsman); two separate authorities have been set up within the Ombudsman's office: the Equality Authority (employment issues) and the Anti-discrimination authority (race and ethnic origin)	The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law	All grounds covered by the two Directives and additional grounds	yes	yes	yes
CZECH REPUBLIC	The Public Defender of Rights (Ombudsperson) should be established as the specialised body in 2010	Anti-Discrimination Law	All grounds in the two Directives and sex	Will	Will	Will
DENMARK	Danish Institute for Human Rights	Act on the Centre for 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 the Chancellor of Justice	All grounds in the two Directives and additional grounds	yes	no	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
FRANCE	High Authority against Discrimination and for Equality (HALDE)	Law no 2004-1486 of 30 December 2004; Law on Equal opportunities of 30 March 2006	All grounds in the two Directives and additional grounds	yes	yes	yes
GERMANY	Federal Anti-discrimination Agency	General Law on Equal Treatment	All grounds in the two Directives and sex	yes	yes	yes

GREECE	Ombudsman	Law on the Implementation of the Principle of Equal Treatment 3304/2005	All grounds in the two Directives and additional grounds	no	yes	yes
HUNGARY	Equal Treatment Authority	Equal Treatment Act and Government Decree 362/2004 on the Equal Treatment Authority and the Detailed Rules of its Proceedings; Amendments of the ETAD of December 2006	All grounds in the two Directives and additional grounds	yes	yes	yes
IRELAND	Equality Authority (EA) and the Equality Tribunal (ET)	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 the two Directives and additional grounds	EA: yes ET: no	EA: yes ET: no	EA: yes ET: no
ITALY	National Office against Racial Discrimination (UNAR)	Legislative Decree 215/2003	No	yes	yes	yes
LATVIA	The Ombudsman	Law on Ombudsman of 6 April 2006	Grounds not specified	yes	yes	yes
LITHUANIA	Equal Opportunities Ombudsman	Law on Equal Treatment	All grounds in the two Directives and sex	no	no	yes
LUXEMBOURG	Centre for Equality of Treatment	General Anti-discrimination Law	All grounds in the two Directives	yes	yes	yes
MALTA	Equality Commission (previously the National Commission for the Promotion of Equality for Men and Women)	Equal Treatment of Persons Order 2007	Gender, race and ethnic origin	yes	yes	yes
NETHERLANDS	Equal Treatment Commission (ETC)	No official designation by law. However, the 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 Racial Equality Directive has already been accomplished as the Netherlands has the ETC	All grounds under in the two Directives and additional grounds	yes	yes	yes

	Designated specialised body under Article 13 of the Racial Equality Directive	Instrument of designation	Body for other grounds	Provides independent assistance to victims[108]	Independent surveys	Issues recommendations
POLAND	No specialised body has been designated following Art. 13.2 of Directive 2000/43.	Not designated	Not designated	-	-	-
PORTUGAL	ACIDI (High Commission for Immigration and Intercultural Dialogue)	Decree Law 167/2007	Race, nationality or ethnic origin	yes	yes	yes
ROMANIA	National Council on Combating Discrimination	Governmental Decision 1194 of 27 November 2001				
SLOVAKIA	Slovak National Centre for Human Rights	Equal Treatment Act amending Act No. 308/1993 Coll. on Establishing the Slovak National Centre for Human Rights	All grounds in the two Directives and additional grounds	yes	yes	yes in practice
SLOVENIA	Advocate of the Principle of Equality/Council of the Government for the Implementation of the Principle of Equal Treatment	Equal Treatment Act	All grounds in the two Directives and additional grounds	Judicial interpretation needed of the Equal Treatment Act	no	yes
SPAIN	Council for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. Not operational in 2008	Law 62/2003; Royal Decree 1262/2007	no	unknown yet	unknown yet	unknown yet
SWEDEN	Equality Ombudsman	Discrimination Act	All grounds in the two Directives and sex, transgender identity or expression	yes	yes	yes
UNITED KINGDOM	Great Britain: Commission for Equality and Human Rights. Northern Ireland: Commission for Racial Equality for Northern Ireland (ECNI)	GB: Equality Act 2006; NI: Northern Ireland Act 1998	GB: All grounds in the two Directives; NI: All grounds in the two Directives and political belief	CRE: yes ECNI: yes	CRE: yes ECNI: yes	CRE: yes ECNI: yes

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The Comparative Analysis provides a detailed comparison of the anti-discrimination legislation in the 27 EU Member States, as comprehensively described in the country reports written by the European Network of Legal Experts in the Non-discrimination Field and summarised in this publication. The grounds of discrimination listed in the Directives 2000/43/EC and 2000/78/EC are considered individually and collectively, while the overall purpose of this document is to provide an overview of the national legal framework across the EU.

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