



# **The fight against discrimination and the promotion of equality**

## **How to measure progress done**



European Commission



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**European Commission**

Directorate-General for Employment, Social Affairs and Equal Opportunities  
Unit G.4

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# Executive summary

This analytical study commissioned by the European Commission targets a *two-fold objective*:

- to develop a conceptual framework for evaluating progress in equality and anti-discrimination efforts and to formulate specific suggestions with a view to selecting a reasonable number of indicators (report Part 1);
- to start examining the statistical data available at the international, European and national levels that might contribute to an evaluation of the progress made in equality and anti-discrimination efforts, and to identify existing shortcomings and propose a series of corrective measures (report Parts 2 and 3).

## I. Building a conceptual framework

### 1.1. Principles and methodology

This first chapter lays the groundwork for the conceptual framework prior to identifying which data are needed to evaluate progress in equality and anti-discrimination efforts. It points out that the key involves taking the framework already provided by anti-discrimination law and translating it into practice via the requirements of the race and employment directives, within a range of indicators and categories useful for the implementation and evaluation of government initiatives.

In fact, evaluating how well the Member States will subscribe to the aims of the directives and comply with the goals set out therein lies at the very heart of *transposing the directives* and draws on the transposition process. In pursuit of this goal of evaluation, we sought to clarify what the law requires (i) *to be mobilised by potential victims*, (ii) *to be appropriated by those accountable*, and (iii) *to inform conduct and revise the rules and practices in use*.

It became evident that merely counting the number of complaints and legal proceedings is insufficient for evaluating the effectiveness of law and policy. To successfully translate law into active policy, the discriminatory wrong affecting certain 'groups' needs to be factualised in order to target related interventions, to evaluate the effectiveness of public policies adopted, and to improve upon them.

This enabled us to highlight the difficulties related to: (i) the absence of *a clear definition of the grounds* of discrimination (one set of grounds can have significantly different realities from one State to the next, which raises the issue of 'indicators' and the target 'populations' of a policy; (ii) *the meagre availability of statistical data* for measuring inequalities (with

the exception of data regarding age); and (iii) limitations regarding *the collection and processing of sensitive data*.

A good indicator can therefore be defined as one that can withstand these various limitations and requirements while still proving useful for government action and being acceptable to the public. Based on the above elements, we favoured the typology of indicators.

### 1.2. Three sets of indicators to answer three separate questions

Prior to drawing up a list of indicators, one must assess the quality of the categories that the various countries use to gather information about the various grounds mentioned in the European directives. The categories should be considered before the indicators, because the latter can be implemented only if the former are available and if we can be assured that they will adequately represent the individuals and/or groups exposed to discrimination on the main grounds covered by law.

We chose to distribute the indicators into three major, analytically distinct typologies. When invoking the measurement or evaluation of progress in equality and anti-discrimination efforts, a distinction must be drawn between three questions and three stages. They do not necessarily require statistical quantification work; in many cases, qualitative analyses that use other methods of judgement are required. These **three evaluation methods** address the three issues below (see the list of indicators in Annex 1).

(A) Measurement of discrimination indicators. These indicators, instead of 'measuring' discrimination, contribute to establishing and exposing disadvantages, gaps, inequalities and other differentials affecting the individuals and/or groups protected by anti-discrimination law and/or covered by equality policies' anti-discrimination policy instruments, in particular the 'positive action' instrument, the use of which depends on the existence of the disadvantage having previously been proven.

(B) Measurement of the progress of anti-discrimination policies indicators, the degree of mobilisation and implementation of legal tools and public policy instruments provided for by anti-discrimination laws. Such tools include legal provisions and guarantees (e.g. 'reasonable accommodation' in the context of disability), as well as principles (such as mainstreaming) and systems (independent authorities, monitoring methods, and methods of proof recognised as being legally valid).

(C) Measurement of the effects of anti-discrimination policies indicators. These serve to evaluate how well these policies are

able to effectively and efficiently combat the disadvantages and inequalities affecting the individuals and groups covered by anti-discrimination law and equality policies. Reaching beyond performance measurement in the strictest sense, the idea here is rather to evaluate the degree of enjoyment of the rights and values or principles on which these rights are founded.

## II. The conceptual framework set against the facts: progress by Member States in promoting equality and measuring discrimination

Three types of information proved useful for this part of the study:

- data on the various grounds of discrimination, available online from national statistics offices;
- the findings of the studies our experts carried out in the 10 countries chosen for a monograph.<sup>(1)</sup>
- the findings of the electronic questionnaire survey sent to the independent authorities, statistics bureaus and representatives of the main European NGOs involved in fighting discrimination in the 15 Member States not covered by the monograph; these questionnaires presented the previously established list of indicators; for the 10 countries covered by the monographs, the questionnaires were sent out by our team of experts.

### 2.1. Relevance

#### a) Type A indicators

The global acknowledgement of the relevance of these indicators must be emphasised. The rare limits referred to often concern the rejection of the categorisation of grounds, such as race and ethnic origin in some countries, or the absence of reflection on grounds such as sexual orientation in all the countries, as well as the current unavailability of data, which might lead some persons questioned to say that they cannot judge the relevance. Moreover, a certain number of reservations underline the respondents' unfamiliarity with or ignorance of the issue of the fight against discrimination.

The reservations made do not invalidate the types of indicator that are useful for describing discrimination, but are merely intended to stress the fact that their development requires

initial action. Therefore, the few reservations expressed and the low rate of response to our questionnaire lead us to emphasise the *importance of making players aware* of the significance and scope of the indicators questioned. An action to raise awareness, the form of which needs to be defined, might be implemented for this purpose.

#### b) Type B indicators

All indicators of this type appear strongly relevant in order to evaluate progress in anti-discrimination policy implementation. The need to pursue and strengthen the implementation of the directives leads us to suggest that our proposal for indicators be implemented in the short term. If the institutions responsible for these policies are favourable to this, they still need powers and resources that often appear insufficient.

### 2.2 Availability

#### a) Few available indicators

In many Member States, recognition of the 'discrimination' theme, in compliance with European directives, has not been accompanied by implementation of indicators allowing them to objectively assess the reality of discrimination. Thus, data for these indicators are sparse at best, and identified by proxy in the absence of an exact, shared definition of grounds of discrimination. Most of the time, data are unavailable.

The major and recurring absence is that of a coherent system for measuring progress in the fight against discrimination based on common rules, on the basis of which these data may be collected and used. Several factors explain this absence of shared rules at European level for measuring progress: (a) the implementation of actions called for in directives is still recent, and not all of the statistics have been adapted to correctly account for them; in addition, the directives do not formally call for reporting and the creation of a series of indicators; (b) the fight against discrimination in the Member States reflects an uneven translation of directives into law, particularly in terms of independence, authority and powers devolved onto the independent authorities.

#### b) Data existing in statistical systems that might provide information for type A indicators

While indicators are not available or not readily available in accordance with the terms described in the conceptual framework, numerous pieces of data are collected in the Member States on access to employment and working conditions, with the building of joint indicators on a European scale that might be used to build type A indicators.

<sup>(1)</sup> Countries covered by a monograph: Germany, Belgium, Spain, Finland, France, Hungary, Italy, Czech Republic, United Kingdom and Sweden.



For each ground for discrimination, we have identified and established: (a) the nomenclatures used in national public statistics; for each nomenclature, the gaps and discrepancies with the conceptual framework have been identified; (b) the information and data available and accessible via the sites of national statistics offices; (c) the information that exists at European level, in particular that collected within the scope of the Labour Force Survey, for which most of the themes and indicators proposed correspond to the type indicators, but are not presented using the grounds of discrimination.

### c) Poorly defined categories in Member States

Concerning the definition of categories, it offers varying, non-fixed definitions of the groups affected by discrimination, depending on the country. Such categorisation is sometimes absent, and when it does exist, its relevance occasionally seems off the mark. Thus, we are confronted with the categorisations below.

- Grounds of 'race and ethnic origin'. Categorisation for these grounds thus corresponds to different realities depending on the country. The sociological reference concept ('race' or 'ethnicity') is sometimes not translated. In certain cases, proxy variables are substituted: e.g. country of birth, parents' country of birth and 'citizenship'. Sometimes the concept of 'ethnicity and/or nationality' is used and there is confusion between nationality, religion and geographic origin, which leads one to think that categories will have to be revised in a number of countries. In countries like the UK and Ireland, a more precise categorisation is offered, and rules have been established on identifying individuals, which avoids people being classified without their agreement.
- Grounds of 'disability'. Depending on the country, the definition has either a medical or social orientation, leading to various definitions of the group of people who are discriminated against. People in certain countries may self-declare their disability, while in others a disability may only be certified by official acknowledgment.
- Grounds of 'religion and convictions'. These grounds correspond to very different realities, depending on the country. For example, the Baltic countries have an extensive set of categories that overlap the notion of ethnic origin. The relevance of these with respect to the fight against discrimination is questionable.
- Grounds of 'sexual orientation' are the most poorly defined and the least monitored in every Member State.
- Grounds based on age. There are objective and systematically collected categories, but questions remain concerning age groups for which monitoring should be carried out with an eye to possible employment discrimination. Depending on the country, the 'youth' and 'ageing worker' groups are not always based on the same range of ages. Moreover, the data relative to these indicators are hardly ever analysed in the Member States for purposes of monitoring discrimination.

### d) Weak availability of type B indicators

Information on type B indicators is largely unavailable, in part because the organisations responsible for equality have only been in existence a short time and, in some cases, lack independence. So that, currently, only very few Member States boast ad hoc tools for evaluating progress in the adoption of anti-discrimination policies and for assessing the ability of these policies to reform prevailing practices and inappropriate rules and procedures in the various relevant areas.

Moreover, It is not easy to determine where each country actually stands with regard to the status of its anti-discrimination policies, to say nothing of its ability to document the effectiveness of these policies. Although nearly every Member State has now transposed EU directives into national laws that come to terms with the principal concepts contained in these directives, this does not indicate that the fight against discrimination is proving effective or that its implementation is prompting discussion of how to evaluate its effects. Nor does it show that the victims of discrimination are making use of these laws.

## III. Recommendations

### 3.1. Create a European-level framework of understanding to define indicators

Creating such a framework involves defining shared rules and principles that might serve as guidelines for Member States.

Rules are put in place at European level, by the Commission, as described below.

- The identification and design of a limited number of key indicators shared by all Member States, which will be *implemented in the near future*. The goal is to create an initial information base, built on a series of similar indicators in every country, available at European level. These indicators should be subject to monitoring so that the state of all Member States' advancement on these questions is clearly visible.

- The definition of shared means of measurement, in an attempt to:
  - > *measure progress in each country; this means evaluating the annual variation for each indicator;*
  - > *measure levels of progress between countries; it is relevant to observe the level of progress in each country; this measurement of gaps in progress levels will play a role in evaluating the convergence or disparity between countries with respect to measuring inequality as well as the state of advancement equality and anti-discrimination policies.*
- Setting a European objective of ‘convergence’. A progress objective would be set at European level in order to reduce factual inequality as well as to monitor progress made in anti-discrimination policies.

**Indicators will be implemented at national level**, at least the key indicators that have been identified, and will produce data according to the shared European regulations proposed here.

This dual-level approach eliminates the hypothetical situation of a lack of feasibility based on specific national contexts. It also justifies a *European comparison*, which will have an impact on the degree to which the constituent elements of this European framework of understanding will be respected, and the extent to which convergence and progress-related objectives are met.

### 3.2. European-level recommendations

#### a) A data-production role

A great deal of **age** data is available and monitored at European level (Eurostat). These data are not currently reworked to take account of discrimination, but European Commission actions will allow them to be oriented in the following manner:

- regular annual information on the gap between the situations of those age groups susceptible to discrimination in the employment sector and the national average; these groups may be considered those aged 18 to 25 and those over 50; information about the discrepancies will render unequal age-related situations visible;
- annual communication at European level regarding age-related inequality on this basis.

#### b) A directional role

- A structuring project: undertake a survey on discrimination, coordinated at European level by Eurostat and supported by the European Commission. This project can be explicitly designed as the application framework of the grid of indicators in its final form. This survey should be set up so that the results may be the starting point for the creation of time series, and will commit the statistics offices to developing ongoing monitoring tools. In this way, indicators will achieve a certain consistency and thus demonstrate their usefulness.
- Support this survey with work on the categorisation for each ground of discrimination: a technical working group might thus be set up. We propose that this working group be led by both representatives of the European Commission and Eurostat and that experts in each type of discrimination be brought in. The work programme should offer more exact definitions of grounds of discrimination, the implementation of which should take place within a reasonable time frame.
- Propose a list of indicators under a shared heading, which will then be adapted at Member State level according to the definitions of categories of those liable to be discriminated against. Key indicators to be implemented in the short term will be taken from the list of indicators previously defined for each ground of discrimination. *These indicators should be rapidly implemented.* (See these key indicators in Annex 2.)

#### c) European guidance: supporting the implementation of a framework of understanding and its adaptation to local characteristics

- To support and guide Member States in the implementation of progress-monitoring indicators, an ad hoc guidance and support group for Member States might also be set up to deal with any gaps that may arise. Consisting of representatives from both the Employment, Social Affairs and Equal Opportunities DG and Eurostat, and with support from the Equinet network, the ad hoc group might, with assistance from discrimination experts, take on the following roles:
  - > *organising seminars for exchanges on practices for evaluating anti-discrimination policies;*
  - > *communicating on the importance to be given to the production of discrimination-related information;*
  - > *producing a practical, educational guidebook for both national institutions entrusted with the fight against*

*discrimination and the promotion of equality, as well as for statistics offices;*

- > building a model for presenting data relative to the measurement of inequality, presenting the short-term key indicators that have been selected, made accessible via the Internet; following this, each Member State will be encouraged to create a similar section on the website of their national statistic offices;*
- > responding to specific requests from Member State institutions concerning the implementation of these tools.*
- Integrate and take into account the aspect of ‘the fight against discrimination’ in every procedure for evaluating calls for tender launched by the European Commission.
- Aggregate the data produced by Member States in order to highlight progress made in the fight against discrimination and the promotion of equality at European level (Eurostat).

### 3.3. National-level recommendations

#### a) Constitution of indicators for evaluating progress in the fight against discrimination, depending on the directions that have been defined

In every Member State, this recommendation might be implemented by:

- launching working groups on the categorisation of each ground for discrimination based on the ‘framework of understanding’ that has been previously defined; these working groups have a ‘structuring’ effect and should have strong input from civil society in order to establish categories that are widely accepted and shared;
- integrating ‘the fight against all types of discrimination and the promotion of equality’ into the public procedures of calls for tender, with the knowledge that such an approach will make the theme more visible and public; this will introduce precise rules for selection of dossiers from candidates whose practices are egalitarian; this aspect must be emphasised in every evaluation to take stock of the awarding of contracts.

#### b) Measuring inequality (type A indicators) in order to quickly highlight existing discrimination

- Encouraging all Member States to *rapidly* adapt the various shared key indicators listed and to monitor them in a regular, systematic fashion according to harmonised rules set at European level. This recommendation can be implemented immediately. It will require that Member States and NGOs be sensitised to the issue so that the statistics offices can take action.
- Regularly publishing (yearly) data concerning inequality on the grounds of discrimination, based on monitored, documented indicators.
- Implementing a special ‘anti-discrimination’ section on statistics offices’ websites, presenting data relative to the short-term key indicators that have been selected. This section may be configured identically in all Member States.
- Over the medium and long term, expanding and strengthening the indicators that are monitored and moving toward monitoring the indicators proposed in the conceptual framework.

#### c) Measuring the state of advancement of anti-discrimination policies (type B indicators) in order to encourage rapid progress in measures and actions to promote equality

We propose to recommend that Member States regularly and systematically monitor the defined indicators and develop opinion surveys (or barometers) that will reflect trends in the state of opinions and representations concerning equality promotion and the fight against discrimination.

#### d) Placing this work within the framework of national discrimination observatories

Under the leadership of independent authorities, these observatories<sup>(2)</sup> might establish the state of advancement regarding equality promotion and anti-discrimination actions. We propose the creation of an *annual report on the state of discrimination*, commissioned by national statistics offices. Regular communication of information on these subjects (at least once per year with the publication of an annual report) should be made available online.

<sup>(2)</sup> Such observatories were called for in the first Community action programme entrusted with monitoring the 2000 directives.

This monitoring of data should be accompanied by a twofold recommendation to Member States:

- first, that their independent authorities be given a wider mandate so that they can use the entire set of anti-discrimination policy instruments, including the publication of codes of practices, sanctions for violators, positive actions, testing, and reasonable arrangements for certain grounds;
- second, that they systematise the monitoring and evaluation of complaints and their resolution for all types of discrimination; special attention should be paid to the ground of sexual orientation, which is particularly under-defined and insufficiently monitored in most Member States.

*We support the idea that the situation can be quickly put in motion with respect to the two levels of intervention (European and Member State), even though certain key projects — such as categorisation and the launch of a European-wide survey — will necessarily take place within a longer-term perspective.*



## Annex 1

### Typology A — ‘Factualisation of inequalities’ indicators

Employment (for all grounds) (A)	
Type of indicator	Illustrative list of indicators For type of grounds, in comparison with the national average reference population
<b>(a) Job access conditions</b>	
A.1. Overall indicators	<ul style="list-style-type: none"> <li>• Employment rate</li> <li>• Unemployment rate</li> </ul>
A.2. Difficulties in accessing jobs	<ul style="list-style-type: none"> <li>• Percentage of long-term unemployed among job-seekers</li> <li>• Length of job search</li> <li>• Frequency of postponed appointments or job interviews for individuals exposed to discrimination and the overall population</li> </ul>
A.3. Job visibility: public representation	<ul style="list-style-type: none"> <li>• Presence of main minority groups in media and culture</li> <li>• Representation in high positions of authority in public administration and government agencies</li> <li>• Percentage of elected officials — nationally, locally</li> <li>• Presence in community life and service sector</li> <li>• Make-up of boards of large corporations</li> </ul>
A.4. Job visibility: working in key sectors of public administration	<ul style="list-style-type: none"> <li>• Percentage among education professionals: schools, universities (administrators, teachers, researchers)</li> <li>• Percentage among law-enforcement professionals (according to rank and position)</li> <li>• Percentage among justice professionals</li> </ul>
<b>(b) Labour and working conditions</b>	
A.5. Job insecurity: length of work	<ul style="list-style-type: none"> <li>• Percentage of individuals working part time (less than 30 hours/week)</li> </ul>
A.6. Job insecurity: type of work	<ul style="list-style-type: none"> <li>• Percentage of workers in insecure work (temporary workers, substitute and day workers, seasonal workers, informal work, domestic labour)</li> </ul>
A.7. Job insecurity: job status	<ul style="list-style-type: none"> <li>• Type of employment contract (insecure or not)</li> <li>• Seniority</li> <li>• Percentage of salaried employees among groups subject to discrimination</li> <li>• Percentage of self-employed workers</li> </ul>
A.8. Horizontal segregation	<ul style="list-style-type: none"> <li>• Distribution of jobs via sector of activity</li> </ul>
A.8. Vertical segregation: professional status; ‘glass ceiling’	<ul style="list-style-type: none"> <li>• Distribution of jobs</li> <li>• According to professional category</li> <li>• Percentage of executives by target group</li> <li>• Percentage of senior executives</li> </ul>
A.9. Compensation	<ul style="list-style-type: none"> <li>• Hourly salary/groups subject to discrimination</li> <li>• Annual salary</li> <li>• Average position in the salary and income structure</li> </ul>
<b>(c) Affiliation with an organisation</b>	
A.10. Affiliation with a trade union or professional organisation	Percentage of individuals from groups subject to discrimination compared with national average
A.11. Affiliation with a political party	Proportion of political-party members from a minority group considered to be discriminated against

Other grounds (for ethnic origin and race) (A)	
Type of indicator	List of indicators
A.12. Poverty	<ul style="list-style-type: none"> <li>Percentage of recipients of welfare income</li> <li>Percentage of individuals living under the poverty line</li> </ul>
A.13. Work accidents	<ul style="list-style-type: none"> <li>Rate of work accidents</li> <li>Rate of work-related disability and incapacity</li> </ul>
A.14. Retirement	<ul style="list-style-type: none"> <li>Level of retirement pensions</li> </ul>
<b>Education</b>	
A.15. Secondary education	<ul style="list-style-type: none"> <li>Percentage of youth dropped out and/or excluded from school system</li> <li>Percentage having left school without a diploma or secondary qualification</li> <li>Percentage schooled outside the standard system in special schools</li> <li>Percentage in private school</li> </ul>
A.16. Secondary education — orientation	<ul style="list-style-type: none"> <li>Technical/general education track distribution</li> <li>Proficiency at end of secondary school</li> </ul>
A.17. Secondary education — segregation in school	<ul style="list-style-type: none"> <li>Percentage in schools in areas deemed 'sensitive' or troubled</li> <li>Parents' level of education</li> <li>Percentage whose parents do not speak national language fluently</li> </ul>
A.18. Higher education	<ul style="list-style-type: none"> <li>Percentage of students by level of study</li> <li>Percentage in university according to study track</li> <li>Percentage in high-status tracks or universities</li> <li>Proportion enrolling in police or judiciary schools</li> <li>Training in anti-discrimination law and the issue of discrimination in law and police schools</li> </ul>
A.19. Higher education — uni-versity segregation	<ul style="list-style-type: none"> <li>Percentage of students participating in ERASMUS-type programmes</li> <li>Percentage dropped out after first two years of university, by track</li> <li>Percentage leaving higher education without a degree</li> <li>Percentage having obtained a graduate/post-graduate degree (master's, PhD)</li> </ul>
<b>Housing</b>	
A.20. Housing: occupant's status	<ul style="list-style-type: none"> <li>Share of owners, first-time home owners and renters</li> <li>Share of individuals housed</li> </ul>
A.21. Type of housing	<ul style="list-style-type: none"> <li>Percentage according to type: apartment, room, hostels, trailer, hotel, retirement facility, etc.</li> <li>Share of homeless individuals</li> </ul>
A.22. Occupancy ratio	<ul style="list-style-type: none"> <li>Average number of m<sup>2</sup> per person</li> <li>Average number of occupants per housing unit</li> </ul>
A.23. Type of housing	<ul style="list-style-type: none"> <li>Comfort index</li> <li>Percentage of residents in areas deemed 'sensitive' or troubled</li> </ul>
<b>Transportation</b>	
A.24. Transportation: transportation autonomy — mobility	<ul style="list-style-type: none"> <li>Rate of possession of driving licence</li> <li>Time spent on public transportation per week</li> <li>Weekly home/work commute</li> </ul>
<b>Health</b>	
A.25. Health/inequality vis-à-vis death	<ul style="list-style-type: none"> <li>Post-cancer survival rate</li> <li>Percentage of individuals subject to severe depression and under medical or hospital treatment</li> </ul>
A. 26. Health/inequality vis-à-vis illness	<ul style="list-style-type: none"> <li>Post-cancer survival rate</li> <li>Percentage of individuals subject to severe depression and under medical or hospital treatment</li> </ul>
A.27. Healthcare/access to care	<ul style="list-style-type: none"> <li>Rate of individuals with referring (or family) physician</li> <li>Number of annual visits to dentist</li> <li>Number of annual visits to general practitioner</li> <li>Number of annual visits to specialised physician</li> <li>Percentage of those over 75 in retirement home with medical care</li> </ul>
A. 28. Health/inequality vis-à-vis prevention and access to social protection	<ul style="list-style-type: none"> <li>Percentage of individuals with public or private medical insurance</li> <li>Percentage of individuals with supplementary social insurance</li> <li>Percentage of individuals contributing to a supplementary retirement pension (non-mandatory)</li> </ul>
<b>Access to credit</b>	
A.31. Access to credit	<ul style="list-style-type: none"> <li>Share of individuals subject to discrimination having had a credit request denied</li> </ul>

### ***Typology B: Indicators for measuring the progress of anti-discrimination policies***

Type of indicator	Illustrative list of indicators
B.1. Victim complaint data	<ul style="list-style-type: none"> <li>• Number of discrimination complaints issued and reports made to relevant institutions</li> <li>• Number of complaints leading to legal proceedings</li> <li>• Breakdown of complaints by victim identity</li> <li>• Proportion of legal proceedings ending in judicial sanction</li> </ul>
B.2. Action by independent authorities	<ul style="list-style-type: none"> <li>• Establishment of monitoring</li> <li>• Ability to issue legally binding codes of practice (in which areas?)</li> <li>• Efforts to control and monitor codes of practice</li> <li>• Efforts to control and scrutinise monitoring</li> </ul>
B.3. Recognised powers of social partners	<ul style="list-style-type: none"> <li>• List of jurisdictions and powers</li> </ul>
B.4. Tools and measurements	<ul style="list-style-type: none"> <li>• Recognition of the use of statistical testing and proof in legal proceedings</li> <li>• Existence and implementation of legally binding codes of practice (in which areas?)</li> <li>• Existence and effective implementation of monitoring with regard to the labour force employed by private companies and government organisations</li> <li>• Existence and implementation of an equality action plan</li> <li>• Mobilisation of the 'positive actions' instrument</li> </ul>
B.5. Mainstreaming	<ul style="list-style-type: none"> <li>• Existence of tools (surveys, observatories, barometers, etc.) to monitor the degree to which anti-discrimination policies have been appropriated by the relevant ministries</li> </ul>

### ***Typology C: Indicators measuring the effects of anti-discrimination policies***

Type of indicator	Illustrative list of indicators
C.1. Monitoring fact-based inequality (A)	Change in gap between discriminated-against groups and the population (regular monitoring of period between T and T + N)
C.2. Effects of implementation of anti-discrimination policies (B)	<ul style="list-style-type: none"> <li>• Existence of tools (surveys, observatories, barometers, etc.) for monitoring public perception of inequality</li> <li>• Monitoring of changes in existing indicators (T, T + N)</li> </ul>

## Annex 2

From the entire list of **indicators for measuring inequality** listed in the conceptual framework, here is our proposal for shared indicators that might be rapidly put in place at national level

(a) Cross-cutting employment indicators	A.1. (a) Employment rate; (b) Unemployment rate A.2. Percentage of long-term unemployed (more than 12 months)	- Race/ethnic origin - Disability - Religion and convictions - Age; sexual orientation
(b) Employment condition indicators	A.7. Job precariousness: - percentage of persons working part time in a given group and deviation from the average - share of limited duration contracts	- Race/ethnic origin - Disability - Religion and convictions - Age; sexual orientation
(c) Employment conditions — remuneration	A.9. Deviations in remuneration between the group subject to discrimination and the national average	- Race/ethnic origin - Disability - Religion and convictions - Age; sexual orientation
(d) Social welfare	A.12. Poverty: percentage of individuals living below the poverty level	- Race/ethnic origin
(e) Education and training	A.15. Percentage of young school leavers without diplomas or qualifications	- Race/ethnic origin
(g) Access to goods and services	A.22. Housing: number of m <sup>2</sup> per person	- Race/ethnic origin

Proposal for a scorecard to monitor anti-discrimination policies with which every Member State should comply in the short term

B.1. Complaints by victims	- Number of complaints received and identified as discriminatory by the competent institutions - Number of complaints resulting in legal action - Percentage of complaints resulting in sanctions	- Race/ethnic origin - Disability - Religion and convictions - Sexual orientation - Age
B.2. Action by independent authorities	- Evolution in jurisdiction and powers of independent authorities - Capacity to produce and adhere to restrictive codes of practice	- Idem (all grounds of <i>discrimination</i> )
B.4. Tools and measures	- Testing and statistical proof - Implementation of codes of practice - Mobilisation of positive actions	- Idem (all grounds of <i>discrimination</i> )
B.5. Mainstreaming	- Survey of the degree to which policies have been appropriated by the various ministries	- Idem (all grounds of <i>discrimination</i> )
C.2. Policy monitoring	- Existence of survey of the public's perception of inequality	- Idem (all grounds of <i>discrimination</i> )



The background of the slide is a red-tinted image of architectural blueprints. Several rulers are placed diagonally across the page, and a compass is visible in the upper left. The blueprints contain various technical drawings, including circles, lines, and handwritten notes.

# Part I

Elaboration of a conceptual framework



## I. Context of the study and European Commission's request

In late 2000, just before the launch of the Community action programme to combat discrimination, the European Commission set out to document response capacities to this new need for 'data to measure the extent and impact of discrimination'. A questionnaire, 'established for the collection of data relative to discrimination affecting certain groups', was sent to each Member State<sup>(3)</sup> so as to establish whether each country was collecting 'data to measure the scope and impact of discrimination affecting certain groups', since 'the programme calls for the development and dissemination of comparable statistical data series regarding the scale of discrimination'<sup>(4)</sup>. Community legislation associated with the questionnaire establishes the outlines of a public policy following the *action en plan* (Thévenot, 1995; 2006) format, in which each step of the plan is statistically analysed. The *action en plan* format can be summarised as follows: *factualise and measure* a problem in order to *inform* the public of its scope and negative impact; use this data to *educate and mobilise*, so as to *identify* where government initiatives should take place; and then *evaluate* initiatives for their effectiveness. The study's findings revealed that national statistics programmes are limited in their production of data on discrimination; they also exposed a significant lack of knowledge regarding anti-discrimination law and the role statistics should play in waging and evaluating the fight against discrimination. It was therefore very early on, beginning in 2000, that the Commission grew interested in evaluation and the role of statistics therein.

Since then, significant but inadequate progress has been made. A near majority of Member States have transposed the European directives, although there continue to be significant disparities between legal systems regarding both the law in the strictest sense and equality measures.

Moreover, despite the availability of substantial expertise regarding statistics use in efforts to combat discrimination (MEDIS reports; Simon, 2004) and the expression of strong demand for data allowing for an assessment of discrimination's extent and impact — as revealed in the responses to the *Green Paper* and the study carried out by the government of Finland (Reuter, Makkonen and Oosi, 2004) — there continues to be a high level of mistrust. Almost no Member State has the capacity to provide data that can be used to reliably

measure discrimination or monitor equality policies. Indeed, the vast majority of Member States today have no data or indicators with which they can adequately establish the level of discrimination faced by individuals from a broad range of brackets (undermining their achievement of equal footing within the political community), nor can they establish levels based on grounds other than gender and age. In addition, significant reservations remain regarding the comparability of the data and indicators used today. As mentioned by J. Wrench in his capacity as a member of the RAXEN network and the national focal points coordinating team, comparability is a long way from being accomplished (Wrench, 2005), no matter what type of indicator is used<sup>(5)</sup>.

The States and competent authorities are reluctant to devote the necessary attention to measurements and evaluation, evidence of the difficulty involved in adapting to the anti-discrimination rationale and of a lack of understanding regarding the practical and logistical requirements for its implementation, particularly regarding the fight against 'indirect' discrimination, a notion which, in order to introduce it into the legal structure, would be akin to the far-reaching renovations of the legal framework brought about by the European directives. As expressed by the president of French anti-discrimination group GELD (*Groupe d'Étude et de Lutte contre les Discriminations*, an offshoot of the HALDE, France's official independent authority), 'Without a satisfactory conceptual grasp of "indirect discrimination" (...) it will be difficult, if not impossible, to get others to accept the reality of the situation. It is essential (...) and is the yardstick against which transposition of Community law into our national legislation will be assessed. Without a complete understanding of these concepts, we cannot expect a judge to rule against an employer for something that he or she did not appear to intend to do' (Marie, 2003, pp. 134–135).

<sup>(3)</sup> The discussion was confined to a committee heading up the Community action programme, comprising representatives of the 15 States. The questionnaire was delivered to committee members at the first meeting in December 2000; by February 2001, 11 States had responded.

<sup>(4)</sup> Discussion Paper A13/007/2001, Community anti-discrimination action programme 2001–06.

<sup>(5)</sup> The author distinguishes six major types (extending a breakdown he had used in previous studies (Wrench, 1996; Wrench and Modood, 2000)), one of which involves the type of study used ('testing', opinion poll, statistical analysis of resource distribution among groups, judicial statistics, etc.).



This lack of familiarisation with the new legal tools has, for many States, revealed *a difficulty in moving from the denunciation of racism and the expression of moral indignation to a bona-fide fight against discrimination* that makes use of the appropriate laws and public policies. The transition from one type of action to another does not just relate to ethnic and race-based discrimination, where reluctance to categorise and produce statistical data is most pronounced; it is equally relevant regarding discrimination on grounds of disability, given that *'in the context of anti-discrimination policies, disability takes on a different meaning from that used in the context of welfare-state policies'* (Degener, 2004, p. 11). As such, in most European countries the 'medical' model of disability continues to prevail, rather than the 'social' or 'ecological' model <sup>(6)</sup>. The difficulties related to these grounds of discrimination are therefore also significant, for when a disability is targeted by measures, including statistics, its characterisation is incompatible with the requirements and spirit of the fight against discrimination inspired by European directives and programmes. Several experts have noted a degree of indecision and wavering within the directives themselves, which, according to these experts, vacillate from one model to another. In an independent study carried out by the European Commission network of legal experts, T. Degener (op. cit.) wonders if one can in fact assert that European law truly integrates the *social model* of disability or instead merely perpetuates the *medical/individual model*.

Following and during the course of transposition, several reports were drafted in support of appropriating the anti-discrimination directives' new tools and action principles. These examine such issues as the various grounds of discrimination (Quinn, 2004; Waaldijk and Bonni-Baraldi, 2004; O Cinneide, 2005), the situations of specific groups (such as the Roma; see *The situation of the Roma in an enlarged European Union*, 2004), guarantees of recourse provided to those subject to the legal standards of the various member countries, and even the sources of the law likely to be mobilised for a more precise understanding of non-discrimination principles enshrined in the directives (De Schutter, 2005). Following the MEDIS studies, several publications re-examined the measurement of discrimination issues, and a handbook on measuring discrimination was written by T. Makkonen for the European Commission (Makkonen, 2007).

In other words, there continues to be insistent demand for statistics. In commissioning this study from us, the European Commission, with the support of a multitude of government and NGO players, has once again raised the issue of evaluating progress in equality and anti-discrimination efforts — a difficult issue, because evaluating progress is not straightforward when, in practice, there lacks an initial benchmark. In this regard, R. Holmaat, author of a report on the independent authorities (recently submitted to the European Commission), commented on how difficult it was to answer the question of how effective these bodies are. Indeed, he wrote, *'With regard to assessing the effectiveness of these institutions, it is very hard to measure. A true assessment of the effects of such institutions' work would require a so-called "zero" measurement (of the situation before the equality bodies became active) and an extended survey and analysis of the effects of their work in practice. With the exception of the UK, such zero measurement does not seem to exist in any of the Member States'* (Holmaat, 2007, p. 6). Nevertheless, this measurement indeed constitutes an internal requirement of anti-discrimination law itself.

This *analytical study* commissioned by the European Commission targets a *twofold objective* that we will present in two parts:

- to develop a conceptual framework for evaluating progress in equality and anti-discrimination efforts and to formulate specific suggestions with a view to selecting a reasonable number of indicators for measuring performance of the two aforementioned goals in such areas as employment, education, access to goods and services, social protection and employee benefits (report Part 1);
- to start examining the statistical data available at the international, European and national levels that might contribute to an evaluation of the progress made in equality and anti-discrimination efforts, and to identify existing shortcomings and propose a series of corrective measures (report Part 2).

<sup>(6)</sup> The 'individual' or 'medical' model is based on a medical characterisation of disability, with disabilities or pathologies established in comparison to standard medical norms. It focuses on the ill or handicapped individual, who requires specific assistance. In the 'social' ('ecological') model, the handicap results not from the disability as seen from a medical standpoint but rather from a social environment (physical and regulatory) that is inhospitable to differences in individual levels of ability. According to this model, a disability does not indicate an individual's deviance from a medical or health-related standard; instead, it derives from a social environment that is discriminatory for limiting or preventing a disabled person's equal access to a wide variety of goods, services, opportunities and activities.

## II. Building a conceptual framework: principles and methodology

### Summary

*This chapter lays the groundwork for the conceptual framework prior to identifying which data are needed to evaluate progress in equality and anti-discrimination efforts. It points out that the key involves taking the framework already provided by anti-discrimination law and translating it into practice via the requirements of the race and employment directives, within a range of indicators and categories useful for the implementation and evaluation of government initiatives.*

*In fact, evaluating how well the Member States will subscribe to the aims of the directives and comply with the goals set out therein lies at the very heart of transposing the directives and draws on the transposition process. In pursuit of this goal of evaluation, we sought to clarify what the law requires (i) to be mobilised by potential victims, (ii) to be appropriated by those accountable, and (iii) to inform conduct and revise the rules and practices in use.*

*It became evident that merely counting the number of complaints and legal proceedings is insufficient for evaluating the effectiveness of law and policy. To successfully translate law into active policy, it became evident that the discriminatory wrong affecting certain 'groups' needs to be factualised in order to target related interventions, to evaluate the effectiveness of public policies adopted and to improve upon them.*

*This enabled us to highlight the difficulties related to (i) the absence of a clear definition of the grounds of discrimination (one set of grounds can have significantly different realities from one State to the next, which raises the issue of 'indicators' and the target 'populations' of a policy), (ii) the meagre availability of statistical data for measuring inequalities (with the exception of data regarding age) and (iii) limitations regarding the collection and processing of sensitive data.*

*A good indicator can therefore be defined as one that can withstand these various limitations and requirements while still proving useful for government action and being acceptable to the public. Based on the above elements, we favoured the typology of indicators presented in the third chapter of Part I of this report.*

### 1. Starting from a legal perspective

The methodology we propose rests on the directives' tool and what these directives imply regarding the nature of equality and anti-discrimination policies. Rather than being built up from nothing at all, this conceptual framework must rest on the requirements (normative, legal and logistical) of the directives and the wishes articulated in and by the new framework strategy recently formulated by the Commission in a communication<sup>(7)</sup>. This framework strategy calls for a redesign of Community anti-discrimination law for an alternate use of its main instruments, front and centre of which are the race and employment directives. *When this is taken into account, the expected conceptual framework can be said to already exist in anti-discrimination law, as currently understood via the framework strategy.* At issue is thus the translation of this conceptual framework into practice via a range of indicators and categories for government action<sup>(8)</sup>.

#### 1.1. The purpose-driven character of the European directives' legislative technique

Evaluation lies at the heart of the directives' transposition. Given its *purpose-driven character* (Porta, 2006, p. 92), the directive requires that Member States establish measures for implementing anti-discrimination policies and assessing the law's progress. To issue an opinion on the transposition process and address its effectiveness would require Member States to have already developed evaluation instruments. As J. Porta notes, *'The directive imposes a purpose and goal on national governments'*, and if *'this property of the directive is unique'*, it is because *'the directive does not hand its recipients a model for conduct (permitted, prohibited, mandatory, optional) but does set a goal and purpose for them'* (ibid.). This means that, even if *'the measures set out in the directive do not necessarily take the shape of purpose-driven edicts'*, the fact remains that *'the directive, in the way it has been defined, serves as a model for interpretation by those on the receiving*

<sup>(7)</sup> 'A framework strategy for non-discrimination and equal opportunities for all', Brussels, 1 June 2005, COM(2005) 224 final.

<sup>(8)</sup> For government action, that is to say for its implementation *and* evaluation, since both stages are closely and operationally linked, as we have learned from those countries that have significant, longstanding experience in anti-discrimination efforts and that use *ethnic monitoring*. On this subject, see the national reports and the summary report of the MEDIS study coordinated by P. Simon (Simon, 2004), as well as issue 183 of the *International Journal of Social Science*, coordinated by D. Sabbagh and P. Simon.

*end that requires all of the provisions to be understood as parts of a purpose-driven programme (...) which stipulates a goal' to be achieved<sup>(9)</sup> (ibid.).*

We can therefore say that an evaluation of Member States' capacity to meet the goals set out in the directives is imposed by the directives themselves, and falls within the related transposition process. Furthermore, transposition must not be limited to enshrining the legal categories of Community law into national legislation, because that law must then be implemented, requiring political will and an environment consistent with the directives' aims. And if we refer to the anti-discrimination directives based on Article 13 of the Treaty signed in Amsterdam in 1997, for discrimination on grounds of race and ethnic origin the proposed set of indicators will be limited to that covered by Directive 2000/43/EC, 'Implementing the principle of equal treatment between persons regardless of racial or ethnic origin', and for all other grounds to that covered by Directive 2000/78/EC.

## 1.2. Where human rights and public policy meet

- Introduction of indirect discrimination

The anti-discrimination framework strategy falls in line with a type of initiative particularly appropriate for the '*second generation*' of problems encountered in the fight against discrimination (Sturm, 2001; De Munck, 2006). This sequencing into two '*generations*' explicitly corresponds to the move from a fight focused on 'direct' discrimination to an initiative that also takes into account 'indirect discrimination'. Directives 2000/43/EC and 2000/78/EC require EU Member States to enshrine the ban on indirect discrimination in their national legislation, something that for many of them was tantamount to a veritable *revolution* (Ferré, 2004) leading to the discovery of problems up to then unnoticed, though not in countries already familiar with the concept like United Kingdom and Ireland. Indeed, as J. De Munck notes, '*The problems of the second generation emerge when the intentional and conscious element of discrimination begins to disappear*' (De Munck, 2006, p. 251). In cases covered by a notion of indirect discrimination focused on the consequences of the behaviour considered, then '*one cannot (...) unambiguously identify violation of a rule*' (ibid.) without turning to methods of proof heretofore rarely used in most European Union countries.

- More-active public policies

Beyond the issue of proof, another major change is at hand, for '*taken as a cognitive tool, the rule does not allow for a grasp of the fluid and diffuse reality that is second-generation discrimination*', which '*takes place in an indirect and situation-based manner*' (ibid.). In other words, '*No rule, no matter how detailed it may be, can theoretically objectify its deviations*' (ibid.). Fighting this type of discrimination therefore requires of Member States that they consent to entirely new '*investments of form*' (Thévenot, 1986) if they are to grasp <sup>(10)</sup> and then act upon this new reality by supplying innovative legal tools. This *second generation* of *problems* gives rise to efforts focused on more active, reflective policies, which should make it possible to tackle structural and/or systemic inequalities and distribute real equality in all areas concerned, for example by increasing the number of '*intermediaries of the law*' (De Munck, 2006), a group that includes independent bodies responsible for promoting equality.

Fighting *second-generation* discrimination calls for a new type of government initiative, one that banks on the possibility of inter-relationships — at once normative, cognitive and functional — between human *rights*, the *law* (which provides general, open, incomplete legal principles rather than set, unambiguous rules) and the *public policies* implemented by States. The aim of this inter-relationship is to generate a collective learning process within society at large, in such a way that the behaviours and practices of both public and private players are changed to contribute to the *promotion* of equal rights for all members of the political community. To clarify this inter-relationship, it might be said that it outlines a '*policy of laws*', following on the observation that '*the law*' in the strictest sense falls short. In the communication regarding its framework strategy, the European Commission underlined this insufficiency of the law: '*It is clear that the implementation and enforcement of anti-discrimination legislation on an individual level is not enough to tackle the multifaceted, deep-rooted patterns of inequality experienced by some groups. There is a need to move beyond anti-discrimination policies designed to prevent unequal treatment of individuals*'.

This new form of policy, however, places the law at the source of government action as well as the *source of the definition and evaluation of government anti-discrimination efforts*. Laws and the law are understood via their inter-relationship with policy and mutual integration, but the

<sup>(9)</sup> Moreover, the directives are explained in the subsequent framework programme, and the programme committee, to which we referred in the introduction of Part I of this report, very specifically took on consideration of the issues related to mobilising government statistics within the framework of implementing anti-discrimination policies.

<sup>(10)</sup> More specifically, it should instead be said that the factuality of discrimination crime, in the case of indirect discrimination, is absolutely specific, and it is precisely this unique characteristic that requires the statistical issue to be addressed and makes this issue a key element in the fight to combat discrimination

source and driver of these policies remains the law itself, in this case the anti-discrimination directives that apply to all Member States. The law must be matched up with proactive forms of government action, some of which are in fact stipulated in the directives, which authorise 'positive actions', since it is not desirable (since it not very effective) to only rely on the negative dimension — i.e. the sanctioning ability — of the law.

To build the required conceptual framework and establish a list of indicators, we thus need to inquire into what anti-discrimination law requires (i) *to be mobilised by potential victims* (who must be able to establish the specific wrong they have suffered in order to exercise their rights) and (ii) *to be appropriated by those accountable* (who must be able to prevent the occurrence of discrimination so as to avoid exposure to legal sanctions), as well as, beyond that, (iii) *to inform conduct and revise the rules and practices in use* in order to design environments (regulatory and physical) free from the effects of discrimination (which can thus contribute to the attainment of equality). Since the law becomes the subject of a policy and equality must be attained by law <sup>(11)</sup>, merely counting the number of complaints and legal proceedings is insufficient for evaluating the effectiveness of government action.

### 1.3. Translating law into practice via active policies

The difficulties in translating the aims of European anti-discrimination law into practice, into the language of public problems and into the political culture of the various Member States are significantly more complex than the problems inherent in taking a concept generated in one language and lexically translating it into another.

#### ***The difficulties in translating the categories of law into the languages and legal systems of the various Member States: problems involving the concept of 'disability'***

*The concept of 'disability' cannot be easily translated into French. The meaning and scope of 'disability' are not in the least rendered by the French term handicap, which retains medical connotations. The notion of disability covers a broader spectrum of issues (both physical and mental) and more readily lends itself to comparison, in such a way that the approach regarding discrimination is more straightforward. Consequently, this notion, contrary to that of handicap in French (at least in its everyday acceptance <sup>(12)</sup>), does not refer to an irreparable incapacity and does not mark a discontinuous difference from those who are not affected by this decreased ability. Since this notion of disability is immediately comparative (less able in comparison to whom, and regarding what?) and because it indicates both a differential and a continuity (it only marks a 'less than') between persons, it lends itself well to the measurement of discrimination affecting those who, before they are 'handicapped', are thus 'less able' — a lesser ability that should not expose them to unfavourable treatment and should not deprive them of access to opportunities. This semantic change also allows us to better understand the proximity in the UK and Scandinavia between 'senior citizen' policies and those involving 'disabilities'. The reason is simple: the ageing process, understood as a gradual decrease in a person's skills and a slow erosion of their faculties, can also be seen as a 'disability' issue.*

Difficulties emerge as soon as there is mention of the grounds of discrimination. While the directives are explicit about a certain number of characteristics to be considered as grounds of discrimination, they do not provide a definition, and the list is neither exhaustive nor limited in scope. Likewise, the definition is not uniform in all European Union Member States. Transposition of the directives in certain States gave rise to an exponential increase in the number of grounds written into the corpus of anti-discrimination law. In Belgium, for example, no less than 18 grounds can be counted, distributed over three laws. The Act of 10 May 2007 aimed at combating certain forms of discrimination (which replaces the Act of 25 February 2003) now covers the following 12 grounds of discrimination: age, sexual orientation, marital status, birth, wealth, religious or philosophical belief, political belief, language, current or future state of health, disability, physical or genetic characteristics, and social origin. This previous act

<sup>(11)</sup> To paraphrase the title of the book by D. Sabbagh, *L'égalité par le droit* [Equality through law] (Sabbagh, 2003).

<sup>(12)</sup> For the 'everyday' French-speaking individual, the term *handicap* quite systematically conjures thoughts of a full, complete, irreparable loss of ability (motor, hearing, sight, expression, etc.). According to this everyday meaning, those considered 'truly' handicapped are thus those who are blind, deaf, mute or paraplegic, for example.



joined ranks with a law criminalising certain conduct inspired by racism and xenophobia (Act of 30 July 1981 aimed at cracking down on certain acts inspired by racism and xenophobia) that covered five grounds — which are still covered, but now at both the criminal and civil level. These are nationality, supposed race, skin colour, descent, and national or ethnic origin. Finally, the Gender Act (replacing the Act of 7 May 1999) covers discrimination on grounds of gender. The latter, however, also supposedly includes transgenderism, which would bring the total to 19 grounds of discrimination, as is the case in Hungary.

In and of itself, this increase in the number of grounds has an impact on the work that must be done in considering their transformation into categories that would withstand statistical processing, as we may also have to determine which of these grounds will be used for the exercise. Moreover, it is worth noting that this increase in the number of grounds can serve to complicate the exercise of categorising them. In France, some observers feel (and rightly so, in our opinion) that specifying, within anti-discrimination law, grounds rarely mentioned elsewhere (in this case, ‘physical appearance’ and ‘surname’<sup>(13)</sup> in particular) and leaving out other generally accepted grounds (such as ‘phenotype’ or ‘skin colour’) had no other purpose than to frustrate categorisation of the attributes of race and ethnic origin so as to avoid granting full status and existence to racial minorities and ethnic communities<sup>(14)</sup>.

In other cases and in certain countries, this proliferation can in part be cut back, in that generic grounds could cover others, which would then appear as ‘suffixes’, sub-specifications or variations of the first. In the United Kingdom, for example (as the title of the laws in fact indicates), for the *Race Relations Act* of 1976 and its amended version of 2000, the generic ground, or ‘meta-ground’, is ‘*race*’, which includes many suffixes and is subdivided into other grounds — this because the term ‘*race*’, used in the title, later appears in the plural. The question is then one of ‘*racial grounds*’, specified as follows: ‘*colour, race, nationality (including citizenship) or ethnic or national origin*’. This pluralism can also be found in the list of categories arranged in response to the ‘*ethnicity*’ question of the 1991 census, since these categories combine race (i.e. colour) and ethnicity, the latter addressing and informed by national or geographic origins. All in all, and in response to one question bearing a legend such as the ‘*ethnicity*’ question, the first set of categories eventually used in 1991 saw

the juxtaposition of designations apparently based on phenotype<sup>(15)</sup> (‘*white*’ and ‘*black*’<sup>(16)</sup>), national origin (‘*Pakistani*’ and ‘*Bangladeshi*’) and ‘continental’ origin (‘*Chinese*’)<sup>(17)</sup>.

Moreover, one and the same grounds can correspond to very different realities from one State to the next, which underscores the difficulty in simply translating the concepts without taking into account the national context. This raises another issue when developing indicators and designating ‘protected groups’ or target ‘populations’ for carrying out and evaluating a policy.

Finally, while age and gender statistics are usually available from national statistics bureaus and administrative data sources, the same cannot be said for race and ethnic origin, affiliation with a cultural or national minority, sexual orientation, disability and religion. The latter set of grounds do not easily fit into statistical categories and indicators, and collecting this information is not straightforward, since recording and sharing this type of data often inspires mistrust in the populations of Member States as well as in statisticians and government officials themselves. What is more, any collection of such data must comply with legislation regarding the processing of sensitive data. Despite these difficulties, this ‘translation’ is nonetheless required in order to factualise discriminatory wrongs affecting certain groups, to target related responses, and to evaluate the effectiveness of the public policies adopted and improve upon them.

## 1.4. ‘Intermediaries of the law’: experience and difficulties

As previously noted, EU anti-discrimination policy took on new life with Article 13 of the Amsterdam Treaty and the two directives adopted in 2000. This new type of policy requires a variety of ‘*intermediaries of the law*’ (De Munck, 2006), which include those bodies responsible for managing equality-related issues. The work of these bodies is important here, because it is precisely their responsibility to contribute to the

<sup>(15)</sup> ‘Apparently’, because the term ‘black’ was no longer exclusively or strictly used in reference to skin colour alone. Taken up by a politicised movement, it had come to designate all those who found themselves exposed to racial discrimination and opposed to such treatment. More than just colour, the term at the time indicated a ‘*political colour of opposition*’ (Solomos and Back, 2000). This way of interpreting and using the term ‘black’ remains relevant today, as it is still used in activist and militant circles. Some activist communities still use the term to designate, without distinction — grouping them together under one militant word — those of African and Indian origin, for example, because these individuals face racial discrimination and are not recognised as belonging to the political community with full rights and in their own right.

<sup>(16)</sup> The ‘*Black*’ category did not appear as such without additional details; it was followed by a hyphen and a qualifier. While the designation ‘*White*’ was written as is, ‘*Black*’ required qualification — ‘*Black-Caribbean*’, ‘*Black-African*’ — resulting in designations combining two semantic registers.

<sup>(17)</sup> ‘Continental’ because ‘*Chinese*’ did not refer specifically to individuals of Chinese nationality or Chinese national origin, but rather, at that time, to a category designating all individuals taken to be Chinese or identified as Chinese by a third party. Following the category’s operational logic, individuals of Vietnamese origin, for example, were apparently expected to check the ‘*Chinese*’ tick-box when filling out the ‘*ethnicity*’ question on the 1991 census form.

<sup>(13)</sup> The full list for France is as follows: origin, sex, marital status, pregnancy, physical appearance, surname, state of health, disability, genetic characteristics, morals, sexual orientation, age, political opinions, trade union activities, and belonging or not belonging — whether true or supposed — to a specific ethnicity, nation, race or religion (Article 225-1 of the French Criminal Code).

<sup>(14)</sup> Even if these communities would only group together individuals with the commonality of being equally liable for a wrong, that of the inequality and discrimination they suffer — inequality and discrimination that are difficult to factualise without categorising the relevant grounds of discrimination.

*dynamic inter-relationship between the law and policy work*, and the European Commission seems to want to rely on such bodies, as seen in the succession of reports that have been drafted about them <sup>(18)</sup>.

These independent bodies are thus responsible for initiating and supporting the translation of policy into practice and the social anchoring of the legal anti-discrimination requirements by assisting claimants with legal proceedings, calling for studies to be done on the reality of discrimination, pushing for the use of statistical systems for monitoring equality, preparing action plans likely to help reform local customs and practices that create inequalities, and even reconfiguring environments so that they may become more hospitable to the differences of certain groups <sup>(19)</sup>. One step of our analysis will thus involve reviewing the work of the independent authorities. *We will first consider those with significant evaluation experience; we will also consider newly created bodies, however, in order to understand the types of difficulty and reluctance that evaluation and measurement work encounters.*

- The United Kingdom's experience

Several independent authorities were instituted in the United Kingdom prior to the European directives (Commission for Racial Equality (CRE), Equal Opportunity Commission and Disability Rights Commission <sup>(20)</sup>). These authorities were among the first agencies to look into evaluation and the development of *evaluation tools*, which support the law in two ways:

first, *from the bottom up* (i), because the first step should involve getting 'violations', in the form of legal proceedings, to the courts. *In this regard, legal aid to individuals is one of the key missions of these bodies*; this work can also focus on goals that reach beyond the mere resolution of a dispute, and it is not uncommon to see a 'strategic' or 'contentious' use of the independent authority (Obura and Palmer, 2006, p. 16), which can work toward getting a court ruling considered as case-law and used to reconfigure the normative requirements that influence key players;

next, *from the top down* (ii), since the independent authority is also responsible for enforcing the rules of law and having the goals of anti-discrimination policy taken up on the very premises of companies or institutions — places where discrimination might be taking place; the work of the authority in charge of equality will thus involve raising public awareness, initiating studies, proposing action plans, monitoring operators, highlighting best practices and including those related to ethnic monitoring, and issuing codes of practice that fall in line with the goals of anti-discrimination policy.

Ever since the notion of indirect discrimination was enshrined in UK law in 1976, the claimants and judge have been authorised to go beyond the search for clear discriminatory intent by observing the consequences of practices and focusing on significant, statistically-observable differentials pointing toward the presence of discriminatory treatment. This led the CRE to generalise the use of ethnic monitoring <sup>(21)</sup>. In the 1990s, the CRE changed how it intervened after having noted the limited powers of the law (Clark and Speeden, 2001). Instead of focusing solely on the threat of sanctions, it promoted a certain number of measures while emphasising that the latter contributed to a '*quality*' policy ('*Equality means quality*') and that they were also compatible with commercial benefits and organisational efficiency. In this way, the CRE contributed significantly to instilling the ideas of '*diversity management*' and the '*business case*' of equality in British companies and institutions (Wrench, 2001 and 2003). It should be noted that ethnic monitoring programmes were distributed throughout British society thanks to this work as well as to the extra support received by having the '*ethnicity question*' appear on the 1991 census.

<sup>(18)</sup> An initial report on these bodies was released in 2002 (*Specialised bodies to promote equality and/or combat discrimination*, May 2002). A second report, *Strategic enforcement: Powers and competences of equality bodies, was recently published* (Obura and Palmer, 2006), as was a third report, *Catalysts for change?* (Holtmaat, 2007), which was referred to previously in this report. These bodies are grouped together within the Equinet network.

<sup>(19)</sup> Not just regulatory environments, but also physical environments; in the case of anti-discrimination law on grounds of disability, as well as religion and ethnic origin (two grounds of discrimination likely to be effectively taken into account via the 'reasonable accommodation' imperative, heretofore limited to disabilities within EU law).

<sup>(20)</sup> These authorities have now given way to the Commission for Human Rights and Equality, the only commission responsible for all grounds.

<sup>(21)</sup> Monitoring has become mandatory for public authorities, whereas, at least in a formal sense, it has only been recommended in the private sector; it is more than merely "advised," however, since, in the event of a complaint, not having implemented a monitoring system is taken into consideration by the judge, who may find that it constitutes liability for negligence.

## 2. Limitations

### 2.1. Conceptions of equality' and the European Council Framework Convention

- Various 'conceptions of equality'

Anti-discrimination law rests on '*conceptions of equality*', or '*models of equality*', which can be given varying levels of value in different countries and which must be taken into account when defining a conceptual framework for evaluating progress in equality and anti-discrimination efforts. Christopher McCrudden identifies four '*conceptions of equality*' operating within EU law (McCrudden, 2003), while Olivier De Schutter distinguishes three '*models of equality*' at work in case-law regarding the scope of the indirect-discrimination concept <sup>(22)</sup> (De Schutter, 2006).

- Extending the equality concept to multiculturalism

It should also be noted that the European Council's Framework Convention for the Protection of National Minorities, which entered into force on 1<sup>st</sup> January 1998, provides legal considerations that should be taken into account when fighting ethnic, racial and religious discrimination, because fighting these types of discrimination often intersects with the issue of protecting national minorities. This is the case, at least, in many of the European Union Member States that signed the Framework Convention. Moreover, this Framework Convention reinforces the sensitivity to multiculturalism that already appears to be present in the European directives and that renders the concept of equality underlying anti-discrimination law and policies (see text box) <sup>(23)</sup> even more complex.

In some countries, the intersection of the notions of ethnic, racial and religious discrimination with the category of national minorities is all the more probable in that the European anti-discrimination programmes, via the idea of valuing and protecting ethnic, cultural and religious diversity, make way for issues related to multiculturalism and religious pluralism by recognising a positive and substantial aspect in certain forms

of identity and membership. This inclusion of multiculturalism at the heart of anti-discrimination law and policy was first seen in the United Kingdom. Along with the resources provided via the indirect-discrimination concept, it singularly complicated equality issues.

Indeed, taking on equality, when what is at stake is the consequence of actions, practices or the environment itself (which can be more or less hospitable to certain cultures or ways of 'being' that are ethnically, religiously or culturally marked), is not an easy thing. Following a multiculturalist approach, **uniform enforcement and the generality of a rule, convention or practice no longer ensure, on their own, compliance with the equality principle and observance of the obligation not to discriminate.** Very much to the contrary, this uniformity and generality are now emerging as the matrices of potential discrimination (see text box).

Case-law sanctions two ways of challenging the non-discriminatory nature of a rule, procedure or practice of 'neutral' appearance (De Schutter, 2001; Stavo-Debaugé, 2004). **The first is retrospective in nature:** it presupposes the use of a statistical survey, which serves to determine whether the enforcement of certain rules, practices and procedures for selection or allocation have a 'disparate impact' (different effects) on candidates from certain ethnic and/or 'racial' groups. **The second, on the other hand, is prospective.** It involves evaluating the 'intrinsically' discriminatory propensity of certain rules and practices in force via questionable tests. Those subject to trial are thus responsible for asking themselves whether these rules or practices, when implemented, are likely to put at a disadvantage those who, because of their membership in a given ethnic or 'racial' group, share a certain number of characteristics that prevent them from meeting, in equal proportion to others, their requirements. It should be noted that this second approach nevertheless does not hold up without an implicit use of statistics. For this approach to be considered and used for the extrapolation work cited above, designed to determine the intrinsically discriminatory propensity of rules or practices, the characteristics considered must not only be publicly established, but also considered *normal* (i.e. frequent or regular) within and for a given group. When these characteristics do not relate to the expression of customs or beliefs conventionally attached to an ethnic identity that is publicly visible and declared, it is important to document them, i.e. to establish them and display their shared nature — all elements that might require statistical surveys on the communities defined by one set of prohibited grounds or another (Stavo-Debaugé, *op. cit.*).

<sup>(22)</sup> The difference with these 'models of equality' ties in with the partitioning of discrimination (into direct and indirect discrimination), rests on the dual interpretation of indirect discrimination, and takes into account the possibility of initiating 'positive action'. In the first case, the ban on discrimination focuses on a person's intent, which should at times be revealed when masked behind procedures that appear neutral. The second case, a more demanding interpretation of the concept of indirect discrimination, no longer focuses on cases of intentional discrimination. This second interpretation of indirect discrimination therefore removes itself from the idea of intentional discrimination and provides a tool that allows for a revision of practices, tests and procedures, the effects of which, no matter the intent of the individuals behind them, are unequal or unfavourable to certain people. The final model of equality falls in line with the positive action concept, aiming at the attainment of effective equality.

<sup>(23)</sup> For more detailed explanations on the areas in which this Framework Convention and the directives intersect, see O. De Schutter's work (De Schutter, 2007).



### Multiculturalism in Community anti-discrimination law

It is because issues related to cultural or religious pluralism were integrated, starting with the *Mandla v Dowell Lee* ruling (1983), into the scope of anti-discrimination law that tests for the selection of individuals and the distribution of goods — as well as the organisational rules and procedures of the professional or social environment — are now required to take into consideration the specific situation of the members of groups whose cultural or religious ‘practices’ differ from those of the ‘majority’ population. The aforementioned ruling was the first to explicitly dissociate ‘the concept of ‘ethnic origin’ from that of ‘race’, which has a biological rather than cultural connotation’ (De Schutter, 2001, p. 47) and was first to consider the multicultural ‘fact’ within and by European anti-discrimination law. Individuals consequently are no longer just protected from ‘racial’ discrimination, but also from ‘ethnic’ (i.e. cultural or religious) discrimination. The ‘non-discrimination’ requirement and the attainment of equality also involve an obligation to ‘adjust to’ (accommodate) the specific cultural and religious practices of the members of ethno-racial or religious minorities. These differences must also be publicly acknowledged so that rules, tests, practices, and an environment that does not systematically place them at a disadvantage can be designed<sup>(24)</sup>.

It should be noted that, even though the term ‘multiculturalism’ is less used today, these are similar issues, embraced by the notion of ‘diversity’, one often used by the European bodies responsible for fighting discrimination. While the directives can be made to resonate with the Framework Convention, the reverse is also true. The intersection happens in both directions, since Section II of the Framework Convention commits contracting parties to fighting all forms of discrimination suffered by ‘national minorities’ and promoting full and real equality between that population and the majority. In addition, this Framework Convention, without defining the ‘national minority’ concept<sup>(25)</sup>, gives signatory countries the option of declaring which groups they deem ‘national minorities’ and thereby eligible for special protection. **While this should not be neglected in this study, this is also because these groups are at times already recorded in the statistical system of some European Union countries.**

<sup>(24)</sup> In a judge’s eyes, what justifies this protection is the *obliging* character of ethnic affiliation, one that, by ordering the individual to display his/her support of beliefs or customs, places him/her in a situation of inequality with regard to the majority, when he/she can find himself up against the requirements of a rule (related, for example, to recruiting) appearing, in contradictory practice, with this obligation. A judge’s acknowledgement of this *obliging* character and the centrality of the belief or custom in the construction of the public identity of the ‘ethnic’ group to which the individual feels he/she belongs and to which the person intends to honour their belonging is what guards the person under consideration from the ‘renunciation argument’ (De Schutter, 2001). Assuring individuals that they will suffer no disadvantage due to their ethnic origin means that they may display an *affiliation* and preserve *customs* that they cannot be asked to renounce. The *obliging* character of an ‘identity’ (for the individual as well as those around him) should thus be recognised, either early in the process or by the judge. The effectiveness of this interpretation of the legislation thus hinges on an acknowledgement of ethnic affiliations for the individual who sees himself as a *member* of a community and the *heir* to *customs* and *ethnic, cultural or religious practices* that please him/her and that he/she intends to honour. Without this, when an individual feels that a test has discriminated against him, the author of the ‘suspicious measure’ would be wise to argue that this person can always renounce that which constitutes an obstacle to equality; in this case, renouncing the public expression of a belief or fulfilment of a cultural or religious ‘practice’. British law, indeed European law as well, seeks to protect individuals against this argument. Protection in this manner, however, requires a *legal* (not *political*) acknowledgement of the ethnicity and mention of the characteristics that *please* the individual and must therefore be granted *respect* (Stavo-Debaugé, 2004 b).

Just like the ‘*diversity of equality*’ mentioned previously, the **multiculturalism endogenous to the requirements of European anti-discrimination law**<sup>(26)</sup> must be taken into account in building a conceptual framework for evaluating the promotion of equality, for just as there are many facets to equality, evaluating equality must also be pluralist in nature and prove itself capable of adjusting to this variety of *conceptions*, or *models of equality*, while proposing adequate categories and indicators. Moreover, depending on the *equality model* that a country has in place, the nature of the indicators will vary, just as categorisation of the differences to which some of these grounds refer will vary. For equality models open to the multicultural question, the statistical categorisation of certain differences can serve as an initial modality for achieving an equality policy, and should be acknowledged here as belonging.

*To satisfy this variety of conceptions of equality, we decided to present basic indicators that can be refined according to*

<sup>(25)</sup> Page 2 of *Introduction to the Framework Convention for the Protection of National Minorities* (Document H(1998)005 rev. 11) indicates that the ‘CAHMIN’, ‘having opted for a pragmatic approach’, ‘decided not to include in the Framework Convention any definition of the notion of ‘national minority’; indeed, it turned out it was impossible at that stage to issue a definition liable to receive approval from all of the Council of Europe’s Member States.

<sup>(26)</sup> Something that some States refuse to see, such as France, which has yet to ratify the Framework Convention for the Protection of National Minorities.

*the needs and requirements of the various Member States, which are not all at the same level in terms of developing implementation of their anti-discrimination laws and policies.*

## 2.2. Limitations vis-à-vis data producers and individual reluctance

We should also be attentive to laws on the collection and processing of ‘sensitive data’, knowing that such data in part match up with discriminatory grounds (Krizsan, 2001). Even if most experts believe, and rightly so, that such laws do not in the least prohibit the collection and processing of data needed to evaluate anti-discrimination efforts, it remains no less true that individuals and States invoke privacy laws to translate their worries over statistical categories they distrust, and for good historical reasons (such as ‘state racism’ in the 1930s and 1940s, colonialism, and persecution of ethnic and religious minorities). We must therefore recall that privacy law does not constitute an insurmountable obstacle, because it does provide several resources for collecting and processing personal information while contributing a certain number of guarantees (Simon, 2007). It is also important to keep in mind, however, that any statistic, no matter what kind, supposes that individuals have agreed to be described by certain categories and agreed to information pertaining to them personally being made public. Such data must also be delivered in a format that complies with the standards established by statistics bureaus and that meets the needs of public policies. Regarding racial grounds specifically, or another functional substitute of any type, ‘stating’ one’s race is not a straightforward exercise in Europe. A good category, then, will be one that can withstand these various limitations and bring about a compromise between these various requirements while proving useful for public action and being viewed by the public as acceptable.

## 2.3. Limitations related to the political and institutional history of Member States

Finally, the study was attentive to history and the social and political situation in the various countries considered. This was to avoid falling into the trap of creating too-quickly-standardised categories and indicators and not defining a conceptual framework that, for these reasons, would have only limited validity. It should therefore be recalled here that, for several grounds of discrimination, in particular those related to race and ethnic origin, *the groups that can be considered discriminated-against minorities are not necessarily the same from one country to the next and are not designated via identical lexical means*. Despite the requirement of standardising the expected measurement methods, the variety of configurations in the various countries must be taken into account in order to best specify the groups considered for statistical input. The biggest challenge lies in building a standard framework for evaluation without necessarily proposing standard categories.

Before listing the *shortcomings* affecting national evaluation systems — which will be presented in Part II of this report — we must now present the indicators that we chose, given that it will be in relation to these grids of indicators, serving as yardsticks and built and shared on the basis of the survey method proposed above, that these shortcomings will appear.

### III. Three sets of indicators to answer three separate questions

#### *Preliminary remarks*

*Prior to drawing up a list of indicators, one must assess the quality of the categories that the various countries use to gather information about the various grounds mentioned in the European directives. The categories should be considered before the indicators, because the latter can be implemented only if the former are available and if we can be assured that they will adequately represent the individuals and/or groups exposed to discrimination on the main grounds covered by law. It is certainly possible to establish indicators in many countries, but these indicators will be developed on the basis of categories that do not match up with the grounds set out in anti-discrimination law or policy. This issue tops the list of obstacles and difficulties that Member States have encountered, as we observe in Part II of this report.*

We chose to distribute the indicators into three major, analytically distinct typologies. When invoking the measurement or evaluation of progress in equality and anti-discrimination efforts, a distinction must be drawn between three questions and three stages. They do not necessarily require statistical quantification work; in many cases, qualitative analyses that use other methods of judgement are required. These **three evaluation methods** address the three issues below.

- **(A) Measurement of *discrimination indicators*.** These serve to establish, in the form of ‘facts’, illegal inequalities and unjustified disadvantages affecting individuals and groups protected by anti-discrimination law or covered, in intent, by anti-discrimination policy instruments (in particular, the ‘positive action’ instrument, the use of which depends on the existence of the disadvantage having previously been proved).
- **(B) Measurement of the *progress of anti-discrimination policies indicators*.** These evaluate the degree of mobilisation and implementation of legal tools and public policy instruments provided for by anti-discrimination laws; such tools include legal provisions and guarantees (for example, ‘reasonable accommodation’ in the context of disability), as well as principles (such as mainstreaming) and systems (for example, independent bodies, monitoring methods, and methods of proof recognised as being legally valid).
- **(C) Measurement of the *effects of anti-discrimination policies indicators*.** These serve to evaluate how well these policies are able to effectively and efficiently combat the disadvantages and inequalities affecting the

individuals and groups covered by anti-discrimination law and equality policies. Reaching beyond performance measurement in the strictest sense, the idea here is rather to evaluate the degree of enjoyment of the rights and values or principles on which these rights are founded.

This typology rests on an analytical distinction, since these three sequences of evaluation can overlap in practice. We will nonetheless present them in the following order: first, (A) the ‘facts’ pointing to inequalities or disadvantages will be established; next, (B) involves the stage of implementing measures likely to tackle these facts; and, finally, (C) involves the stage of assessing how effective the measures taken have been.

This partitioning does not involve a distinction drawn in terms of the methods employed (since, as we shall see, each segment can require the use of a variety of methods), nor does it involve distribution according to grounds: what is important is rendering all indicators consistent and making way for the intersection of variables, in order, in particular, to **look into ‘multiple cases of discrimination’**.

#### **1. First set of indicators: Factualising inequalities**

We can say that these indicators, instead of ‘measuring’ discrimination, contribute to establishing and exposing disadvantages, gaps, inequalities and other differentials affecting the individuals and/or groups protected by anti-discrimination law and/or covered by equality policies. The statistical tool and the production of disaggregated data, which presupposes that the characteristics of the various grounds that should not lead to discrimination have already been categorised, are therefore required here. While other survey methods might also be used, the statistical instrument takes priority because the indicators relative to this first stage of evaluation must be able to provide comparisons between a variety of individuals (men/women, heterosexuals/homosexuals, etc.) and groups (minority ethnic groups versus majority ethnic groups, age groups, religious communities, etc.). In this context of evaluation, the idea is to survey the situation of the various groups falling under anti-discrimination law, while taking into account diverse positions, statuses, resources, tests and access to goods private, public and social in nature, with a view to producing a comparative picture of the situation, position and specific needs of the various individuals and/or groups that comprise the target population of

anti-discrimination policies or are expressly covered by anti-discrimination law.

## 1.1. Principles and methodology for this set of indicators

### 1.1.1. Cover areas equivalent to those in the directives and propose uniform indicators for various grounds

To begin and initiate the work, we believe it wise and more realistic to stick to the areas specified in and covered by the European directives. With Directive 2000/43/EC as our basis, the list of indicators we are proposing for this first evaluation framework must, for race and ethnic origin, cover the areas of employment (training and career counselling, access to employment, non-salaried work or labour, including recruitment and promotion, working and employment conditions, including compensation and dismissal, as well as an organisation's affiliation), social protection (social security and healthcare), employment benefits, education, and access to 'publicly available' goods and services, including housing. For the other grounds, pursuant to Directive 2000/78/EC, the list of proposed indicators will thus preferably cover the area of employment and labour. Additionally, given the weak progress by Member States in factualising discrimination and evaluating how effective equality policies have been, it would appear realistic to establish, as a start, a shortlist of areas in which they will be called upon to produce equality data.

For employment and training, the indicators should be categorically similar for all grounds. Of course, we do know that for some indicators it is hardly realistic to believe that substantial data might be extracted and reliable data produced, at least in the near term.

Nonetheless, despite the unequal documentation of the various forms or types of discrimination, we chose to propose a cross-cutting range of indicators. (By cross-cutting, we mean those likely to apply to the various grounds and also likely to allow for an intersection of these grounds.) By proceeding in this manner, we do not seek to neglect the differences between the various grounds of discrimination; we simply wish to point out that, in over-researching these differences, one can lose sight of the similarities and remain blind to what unites them. These similarities are, moreover, enshrined in the law itself, since the same legal provisions generally take them into account at both European and national level <sup>(27)</sup>.

This joint approach is also a way of showing the unequal statistical treatment of these various characteristics — in other words, to quickly visualise the statistical invisibility in which the situation of certain groups and individuals is left. The absence of statistical-data production and availability regarding several of the characteristics mentioned in the anti-discrimination laws also testifies to a failed realisation of human rights and state responsibility (Petrova, 2005). **Comparing how statistics related to grounds are treated would thus have a pedagogical role.** While some may be thoroughly considered from a statistical point of view, the shortcomings with regard to the others are not always justified from a technical or methodological standpoint; a lack of political will is often the cause. Secondly, this processing is necessary to survey so-called multiple discriminations and draw attention to the situation of a variety of subgroups — subgroups that are more highly exposed to disadvantages than others. In this regard, data relative to the various characteristics covered by an adequate categorisation and statistical survey process should reach an adequate degree of disaggregation, to bring about intersections among characteristics and uncover the subgroup situation at sufficiently high-quality levels of analysis.

### 1.1.2. Take into account the unique characteristics of categorisation by grounds

Integrating all grounds and characteristics into indicators of the same type does not mean that they are subject to the same methods and forms of government action, *nor does choosing uniform indicators mean that substantial data and reliable information can be collected as easily and quickly as for each one.* Finally, categorising the various grounds presents difficulties of varying degree.

<sup>(27)</sup> When this is not the case, and the separate grounds fall under specific legislative frameworks (in England, for example, where there is a Race Relations Act, a Disability Discrimination Act, etc.), we are now seeing a desire to develop a sole piece of legislation covering all of the various grounds of discrimination and submitting them to just one legal framework.



### a) 'Sensitive' data (or not)

For the statistician, *'discriminations do not raise the same issues, depending on whether they relate to gender, age, ethnic or cultural affiliations, disabilities or sexual orientations'* (Thévenot, 2007), if only because certain grounds listed in the European directives do not fall within the *'sensitive data'* category. The same is true for age or gender, two instances of grounds that indeed do not face heavy limitations regarding the collection and processing of sensitive data likely to directly or indirectly reveal other grounds of discrimination.

### b) Differences that are more or less difficult to uncover (and categorise)

If, as O. De Schutter writes, *'when properly understood, the non-discrimination requirement lays down an obligation to take certain differences into account, which implies that these differences are visible'* (De Schutter, 2001, p. 39), then making these differences visible and designating categories presents different difficulties, depending on the grounds, even though all of the differences relevant to anti-discrimination law raise the categorisation issue <sup>(28)</sup>.

In this regard, it is useful to review how the European directives *name* the differences they consider important and specify the related potential discrimination. Indeed, short of proposing definitions of the various grounds, the directives use specific semantics and draw clear distinctions — semantics and distinctions that must not be overlooked, especially when one has to consider the quality of the categories in order to better evaluate those that are used in the Member States.

Before branching into the distinction between race and ethnic origin and showing that this distinction provides criteria for assessing the relevance of the categories used by the Member States to input, designate and name those groups falling under anti-discrimination initiatives, we can straightaway note that the test is simple. Assessing the quality of the categories can, in fact, be done via the use of a simple test of semantic consistency: are these categories, or are they not, **semantically consistent** with the motives of anti-discrimination and equality law and

policy? In Ireland, for example, the equality charts for 2007 show an effort to create consistency between the statistics and public policy categories and the grounds in the law (see the *Equality in Ireland Report 2007*) — a fine approach, in fact, when dealing with policies that aim to normatively, logistically and operationally integrate law and government action.

Using this requirement for consistency and lexical standardisation as a basis, the categories *'foreign'*, *'immigrant'* and *'from an immigrant family'* used in many west European countries (France, Spain, Germany, Italy, Sweden and Belgium) are not only minimally reliable (they disregard, in France for example, black individuals from the country's overseas territories, and also lose all relevance beyond two generations because the category is based on the country where one was born or where one's parents were born), but are also semantically inconsistent with the goal of fighting discrimination and promoting equality. Inasmuch as the discrimination that affects individuals is always a way not to recognise their full place in society as well, by setting obstacles in the path of their equal participation in many areas of social life, it is semantically inconsistent and pragmatically counterproductive to base a system for evaluating the progress of an equality and anti-discrimination policy on categories that perpetuate the reminder of a foreign origin and carry, whether we like it or not, a suspicion regarding the affiliation of those individuals they represent, in public debate as well as in demographic statistics and surveys (Stavo-Debaugé, 2004 and 2005).

As previously mentioned, this problem not only exists in France. In Germany, for example, the pre-eminence for many years of the *gastarbeiter* (guest worker) category in public debate has been partly responsible for German society's difficulty in considering ethnic and racial discrimination. Without even speaking to the reliability problems associated with these variables, the categories relative to the situation of individuals with regard to *immigration* depart from the mere requirement of consistency and contribute to a blurring of the readability of the objectives and expectations of anti-discrimination law and policy. At this point we should remember that the British statisticians who created the *'ethnicity'* question on the 1991 census saw, among the many political advantages of this initiative, the opportunity to *'break with the terminology of immigration and immigrant groups'* (Ni Bhrolchain, 1990) and to symbolically establish the common and equal footing in society of individuals heretofore represented via that *'terminology'* (ibid.).

<sup>(28)</sup> Here again, we can follow O. De Schutter, who notes that *'the indirect discrimination approach, starting from the disproportionate impact that such an apparently neutral measure has on the various groups present — that is, starting from a statistics-type test — does not just assume that one can clearly identify the "reference group", but also that one can determine, within both a "starting group" and a "finishing group", representation of each of the categories about which the non-discrimination requirement is formulated. This requirement is not problematic in the context of male/female equality, where each of these categories is easily identifiable. It is, however, more so when the ban on indirect discrimination is formulated regarding a requirement that does not accept a clear separation between two categories of individuals, being an affair of degree (the case for disability, age, and even, to some degree, race or ethnic origin)'* (op. cit., p. 105).

## • Race and ethnic origin

Certainly, the race directive does not define the grounds, but it does draw a distinction between discrimination on grounds of race and that on grounds of ethnic origin <sup>(29)</sup>. The distinction between ‘ethnic group’ and ‘race’, which first appeared in the UK, was later taken up by the European directives. According to O. De Schutter, *‘Far from being redundant with the ban on discrimination on grounds of race, the reference to “ethnic origin” in Article 13 EC designates — according to the inspiration that Britain’s House of Lords drew, in 1983, from New Zealand’s case-law in this matter — an individual’s affiliation with a group characterised by a common history and set of traditions that the members of the group wish to preserve’* (De Schutter, 2001, p. 46).

The implications of the distinction between this ‘origin’ and the notion of race are significant for the statistician, as this means he/she will have to do two separate categorisation operations that require him/her to pay attention to and survey figures of dissimilar ‘differences’ relative to ‘groups’ that, in the way they came about and the principle of their existence, are not the same. Indeed, the ‘groups’ (the word ‘community’ would in fact be more appropriate) and ‘affiliations’ likely to be counted as ‘ethnic’ and to require a certain categorisation method are not similar to those that can be categorised as ‘racial’. A ‘racial group’, within the meaning of anti-discrimination law and policies, refers back to a certain negativity in the principle behind its constitution, given that its outlines are drawn mostly from the outside, since it was discrimination, either past or present, that brought about its existence. This is not the case, however, for an ‘ethnic group’; ‘ethnic’, on the contrary, refers back to a positivity and properties that, even if inherited, outline a community supported and fulfilled by its members. This community, therefore, is in some sense intentional <sup>(30)</sup>. The community grows out of a legacy, certainly, but prospers via support from a collective ‘intentionality’, which is supported and taken on by all those who feel they belong to that community and who intend to realise, pursue and express their affiliation without suffering undue disadvantages or being exposed to discrimination. It appears, then, that when we refer to ‘racial group’ and ‘ethnic group’, these terms can refer to two different forms of ‘group’, which in the framework of an anti-discrimination policy would fully accept the double promise of a plural equality, calling for

separate methods of categorisation that each present specific difficulties (Stavo-Debaugue, op. cit.).

If we are dwelling here on the distinction between ‘racial’ and ‘ethnic’, as does Community law, this is not just because it has consequences regarding the categorisation and statistical processing of the differences as they relate to anti-discrimination policies; it is also because the distinction points out a twofold promise provided by anti-discrimination law. ‘Affiliation’ and ‘group’ are understood in a *positive* sense when used in reference to affiliation with certain ‘ethnic groups’. In other words, individuals relate to these groups as members and feel that they belong to them; the groups possess customs and specific characteristics that the members must honour and see third parties respect; and the non-discrimination requirement, given the opening in case-law to the ‘fact’ of multicultural and religious pluralism, means, for these individuals, that their ability to exercise their beliefs and have an ‘ethnic’ or ‘religious’ identity are guaranteed, with no cost to them. While we can refer to an affiliation with ‘groups’ on a ‘racial’ basis, however, the two terms (affiliation and group) are understood here in an entirely different sense. ‘Race’ is conferred only a modality of existence — descriptive and normative — that is completely *negative* <sup>(31)</sup>. Or, to quote what A. Morning and D. Sabbagh <sup>(32)</sup> state regarding the United States: *‘In fact, the only currently legitimate positive definition of the term “race” reduces it to a basis of illegitimate inequalities, destined, in all hope, to disappear over time. “Race” represents a certain type of social disadvantage resulting from identification with a group formerly stigmatised as an inferior “race”’* (Morning and Sabbagh, 2004, p. 1). Here, the promise of non-discrimination and equal treatment activated by the law involves making sure that those likely to be ‘racialised’ do not suffer disadvantageous treatment because some rely on the visibility of certain clues (which would refer back to ‘race’) to overestimate their conduct or qualities (including on the basis of a probabilistic calculation of risks, as in what is customarily referred to as ‘statistical discrimination’) and block their access to certain social positions or to a variety of private and public goods. To not discriminate, then, in the first case means to make way for and maintain identity-related expressions, and in the second case, to ren-

<sup>(29)</sup> All the more so since, as previously mentioned, many European countries recognise cultural and national minorities, and even native peoples (in Finland, for example), which shows that anti-discrimination law concerns more substantial and less negative groupings than those covered by the idea of race-related discrimination.

<sup>(30)</sup> This is unlike the ‘racial group’, which can only exist because third-party discrimination was committed, without the individuals who are said to belong to that group needing to harbour any feelings of belonging to that group and to establish that affiliation as a relevant public identity.

<sup>(31)</sup> By which one must understand that this ‘race’ is not written into law and relates to anti-discrimination policies only because it is unduly taken into account and has unequal effects or consequences in the evaluation and treatment of those individuals who could be ‘racially’ characterised. ‘Racial group’ must therefore be understood in two ways: it either refers to the susceptibility of certain individuals to being discriminated against because they carry certain signs (phenotype, face type, name, place of residence, etc.) that are read as an index of ‘race’ and a mark of difference, and on which unlawful assessments are based and illegitimate stereotypical assumptions fuelled; or it relates to the group, because the legacy and repetition of discrimination and disadvantages, at times institutionalised, have generated socioeconomic (as well as symbolic) conditions and situations of clear inequality, which should be highlighted (particularly via *positive action*, i.e. affirmative action) by initiating legal proceedings and policies calling for the target population to be delimited.

<sup>(32)</sup> Regarding the ‘race’ category in affirmative action policies, see also Sabbagh (2003).

der the 'race' (surname, skin colour, origin) inoperable and irrelevant in the treatment of people <sup>(33)</sup>.

- **Sexual orientation**

It is currently very difficult to document grounds of sexual orientation, for the latter is rarely processed in government statistics beyond areas related to epidemiology. As of now, no census has included sexual orientation, in Europe or elsewhere in the world, and the United Kingdom alone has proposed including it in the 2011 census (ONS, 2006). Experts agree that it is not necessarily relevant to produce standard categories for use in all surveys and all areas under investigation; for example, epidemiological and health-related surveys most often need to rely on data regarding sexual practices and behaviour and not sexual orientation, identity or preferences (MacManus, 2003; Breitenbach, 2004). Experts therefore often advocate the use of geometrically-variable categories based on open questions or that present multiple definitions in order to meet the terminology used by the individuals surveyed. According to most experts, to obtain relevant data, the type of category used should change according to the area under investigation and the socio-demographic characteristics of those surveyed <sup>(34)</sup>, the nature of the information it has to represent, and the questions via which that information is collected from those surveyed. On the basis of elements from the very thorough report drafted by S. MacManus for the Scottish government, E. Breitenbach also believes that research on sexually transmitted diseases should focus on sexual behaviour, whereas research on housing will find an appropriate definition in the cohabitation of two individuals of the same sex, and studies on homophobic violence and harassment will include the experiences of those who were victims of such behaviour, regardless of their actual and stated sexual identity at the time of the incidents (Breitenbach, 2004, p. 19), in such a way that, for this last type of study, the aspects of identity relative to visibility clearly hold more importance (MacManus, 2003, p. 17). It should be noted that both researchers are advocating that statistical categories be aligned according to the designation method used in anti-discrimination law; the questions asked and the categories used in government statistics should therefore fall under the title of sexual orientation.

<sup>(33)</sup> In both cases, efforts to categorise and record relevant differences are required. Indeed, to actively ensure that the subjects of legal standards do not make such errors, which is also well within their interest (i.e. shielding oneself from sanctions), it turns out that one has to categorise two things — ethnic (and/or religious) appearance and race — because barring this categorisation step, which can also show recognition of the existence of a historical wrong suffered and/or a publicly-highlighted identity, the detrimental effects of discrimination remain and will continue to remain hopelessly invisible and opaque. Nonetheless, these are not the same differences that need to be categorised, and they cannot be designated in the same way.

<sup>(34)</sup> For example, in terms of age, generation or ethnicity, or whether they live in large, urban centres or the countryside (MacManus, 2003).

- **Religion and beliefs**

As with sexual orientation, race and ethnic origin, religion and beliefs also fall within the category of '*sensitive*' data. This category shares another characteristic with the two previous ones. The ambivalence of the characteristics of the individuals that the statistical categories must be able to represent and record does not just apply to the grounds involved in discrimination for reasons of race and/or ethnic origin; this difficulty also applies to religion. The ban on discrimination on grounds of religion applies as much to cases where individuals are in fact practicing a religion and feel committed to religious beliefs and denominational customs specific to their religion and separate from the majority population's <sup>(35)</sup> as for those cases where the individuals do not practise the religion but nonetheless have been identified by a third-party discriminator (given a certain number of characteristics such individuals present) as belonging to a religious group toward which that third party has proved hostile <sup>(36)</sup>. The so-called '*islamophobia*' phenomenon to which European bodies have been sensitive serves as a good example of this twofold possibility, for it affects the followers of a religion as much as those who are identified — rightly or wrongly — as such, and who also come up against hostility, no matter their beliefs and religion and regardless of the nature of their attachment to the faith or their reverence for Islam. The work to categorise religious grounds, as needed for an evaluation of progress in fighting discrimination, therein appears to be just as uncertain and complex, since it must adapt to the following two possible forms of discrimination: (i) a form based on actual differences (relative to the customs, beliefs, faiths and religious manners of the majority population) that involves refusing to take them into account or disregarding them; and (ii) a form based on imagined differences that are unduly taken into account in assessing individuals and that expose these individuals to real disadvantages and inequalities <sup>(37)</sup>. The semantic ambivalence surrounding the specification of discrimination on grounds of religion can therefore cause problems when categorising such grounds.

<sup>(35)</sup> And discrimination will therefore occur if equal hospitality is not accorded to the religious practices of these individuals, if their difference is not taken into account, or if this difference regarding religion exposes them to inconveniences.

<sup>(36)</sup> Discrimination will therefore occur if the presumed religious affiliation of individuals is the pretext for activating stereotypes or prejudices leading to unfavourable treatment.

<sup>(37)</sup> More generally, one can even say that the ambivalence pointed out here also applies to all grounds (including those related to gender and age), even if the ambivalence in these other cases is less immediately apparent. In this vein, O. De Schutter recently noted the existence of such ambivalence in the context of discrimination on grounds of disability (De Schutter, 2007).



## • Disability

Although it remains controversial, overall it can be said that the employment directive, via the 'reasonable accommodation' obligation, rests on the 'social' or 'ecological' model of disability. Considering this model and building on the way it understands discrimination on grounds of disability provides an effective filter for considering the relevance of the data already available in the statistical systems of Member States. Several of the questions now considered in the context of equality and anti-discrimination efforts previously fell within other domains, and in the past were attended to differently. Because of this, some data may already have been produced regarding populations for which the lexical designation theoretically appears as secant to the 'protected groups' set out in the objectives of anti-discrimination law and policies. However, there is a significant risk that the categories and data in question are incompatible with issues related to anti-discrimination policies. This is especially the case with disability. Much data has been produced on this topic, but the concept of disability on which that data rests is incompatible with the *ecological model* of disability used in anti-discrimination policies. The categorisation of disability, and thus how it is treated in statistics, radically changes when the non-discrimination requirement rests on an understanding of disability based on a *social* and/or *ecological model* and not a medical, *insurance-centric* or *welfare-centric* (i.e. welfare state) model. Some experts are even wondering if statistical tools and proof are required to establish a discrimination event on the grounds of disability. As one such expert writes, '*Reliance on the use of statistical data to establish an adverse impact is inappropriate in the context of disability, even where reference can be made to persons with a "particular" disability*' (Whittle, 2002, p. 7). This is most certainly true in terms of the law (since the 'reasonable accommodation' requirement in no way requires such proof to apply), but our scope reaches beyond that of the law in the strictest sense, since we must address anti-discrimination public policies and their evaluation. On this level, disability presents new difficulties, especially when the fight against discrimination on grounds of disability fully rests on a *social* and/or *ecological* interpretation of the cause and the sources of the disadvantages encountered by disabled individuals.

*The social and/or ecological model of disability adjusts the focus to the environment* (social, regulatory, architectural and technical) by concerning itself with the exclusionary and/or humiliating effects the environment has on disabled individuals, and by asking the question of its ease of use. Quite often, the fight against discrimination on grounds of disability will involve aiming for *equal accessibility and/or equal hospitality of environments*, which should no longer behave in an intimidating, exclusionary or difficult to use manner for individuals

with a deficiency, disability or lessened ability of any kind (whether physical and motor-related or psychic and mental). This new understanding of disability leads us to consider the ordinary physical and regulatory environment and to evaluate that *environment in terms of its accessibility and hospitality*. *Through the prism of this ecological model of disability, it is in fact the environment that must be evaluated, since it is the environment that is disabling and discriminatory*. Even though a disability often leads eventually to the restriction of an opportunity or exclusion from a certain use, the social model of disability teaches us that it is on the environment that we should focus our attention. Transformation of any ability into disability is to be attributed to the inappropriate character of an environment that asks too much of individuals, presupposes that they have standard abilities (those abilities conventionally attributed to a '*normal adult male*' — imaginary, to say the least), or excessively distresses them by requiring them to expend a level of energy that might otherwise be reduced.

Given that the environment was not designed and appointed to receive these individuals and to render itself easily negotiable by them, it invalidates them and transforms (de facto, and given its inhospitality) the least ability or a differential of abilities into a bona-fide disability. Within the framework of the law against discrimination on grounds of disability, the evaluation stage is therefore key. Nonetheless, what should be studied involves not so much the individuals as the environment itself, in order to determine whether it accommodates everyone and takes into account this variation in the abilities of users and the difficulties some face <sup>(38)</sup>. As can be easily understood given these small developments, the *social* and/or *ecological model* of disability raises relatively new questions regarding efforts to evaluate the progress of equality and anti-discrimination policies <sup>(39)</sup>. That is why we have proposed

<sup>(38)</sup> If surveys are implemented as such, it is to identify the ways in which the environment has 'barriers' acting against those who are most vulnerable and least assured in their abilities — barriers that render such individuals unequal in the face of ordeals presented by the environment and that make said environment the source of discrimination that deprives them of access to certain goods. The environment is thus understood to be a potential source of harm to equality because it may possess several *barriers*, which, in appearing insurmountable for some individuals, render the environment *discriminatory*, i.e. *systematically* more or less negotiable for a range of users characterised by one or more disabilities. The *disabilities* are input from consideration of the '*impairments*' they inflict on individuals and their ability to accomplish basic, *day-to-day activities*; this will require a breakdown — for identification purposes — of the various abilities and/or aptitudes involved in their conduct and realisation.

<sup>(39)</sup> Concretely, following the requisites of such a law therefore involves an attempt to design spaces and objects that do not systematically infringe upon certain individuals because they take into account (in their design and actual operation) the impediments generated by a variety of disabilities; in doing so, they can therefore adjust, without harm, and comply with these ability differentials. The bulk of the work therefore concerns the environment, one that must be considered and evaluated against the yardstick of the needs of those weakest and least able. Complying with a requirement such as this seems, then, to require thorough work in inspecting and categorising the environment — to be able to identify a range of barriers to use — rather than a categorisation of individuals. The two are nonetheless connected. How a person can negotiate an inconvenience caused by the environment depends on the specific nature of the disability they face. Determining the disability and the nature of the impediments inflicted on the individual is thus also key.

including the degree of appropriation and application of the principle of ‘universal design’ or ‘inclusive design’ among the indicators of progress regarding these policies (see below).

- **Age**

As previously mentioned, age does not fall within the category of ‘sensitive data’. As a general rule, age and sex data are collected by government administrations; they can also be collected by companies, and are listed among the ‘core social variables’ of Eurostat <sup>(40)</sup>. Although age data are collected as a variable of the most standard type, this does not necessarily mean that things are as straightforward as they appear. To survey potential discrimination, one has to determine relevant age groups, which can be established in several ways, for example by division into age groups or according to generations. Agreement over the relevant groups and the formula for their creation is not necessarily the simplest thing to accomplish, particularly since separating these groups out is not a clear-cut process and is a question of degree. In addition, as with disability, age in the context of discrimination does not constitute a set piece of data but is, rather, transitory in essence.

### **1.1.3. Straightforward, meaningful indicators rather than composites**

The indicators we will propose are intended to be straightforward and are therefore not ‘ratings’ that combine a variety of indicators, the sum of which would be used to establish a hierarchical classification of countries in order to then place them on a common scale that claims to measure their

‘performance’. This ratings method is used by the MIPEX <sup>(41)</sup>, but the data produced in that case appear difficult to use in anti-discrimination efforts, whether for informing these efforts or evaluating them. In this case, when we look at the indicators MIPEX uses for discrimination — chosen from over 100 indicators (140, to be exact) covering six areas — it appears that such ratings are issued on the strength of what is shown via given laws and policies, and are not based on results obtained but rather on publicly displayed provisions and declared programming intentions. These evaluations rest on ‘a legalist belief that takes adoption of the law to be a sufficient guarantee of its effectiveness’ (Porta, 2006, p. 30).

The indicators we are going to present will preferably rest on basic principles of comparison, placing potentially discriminated-against populations in comparison with a reference population for each country. The idea will then be to objectify the differentials between individuals by focusing on separating them out according to the main grounds of discrimination and covering the areas set out in the European directives, provided that these areas can be observed and categorisation work has been completed prior to that step.

To proceed in this way falls in line with the recommendations found in a European Council document, ‘Identifying and developing policy and legal responses to discrimination’, a document originally drawn up for *The Non-Discrimination Review*, a project carried out in the context of the Stability Pact for South-Eastern Europe. These recommendations relate to ‘facts’ likely to indicate and allow for identification of the presence of discrimination.

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<sup>(40)</sup> Nonetheless, this apparent availability can be deceiving, since the categories and/or data that inform the grounds under consideration are not always compatible with the access and presentation methods required for evaluating equality and monitoring possible discrimination. Here, the main problem is frequently their level of disaggregation and the impossibility of crossing them with other variables.

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<sup>(41)</sup> MIPEX stands for the *Migrants Integration Policy Index*, which was created by the Migration Policy Group and the British Council, with the participation of several experts, and funded by the European Commission.

They include the following elements of 'fact' regarding the area of employment and working conditions:

- *under-representation of members of certain minority groups in certain sectors of activity (including various areas of the public sector at national and local levels: public administration, the judiciary, the police force, medical practice, national education, housing authorities, etc.);*
- *over-representation of members of minority groups in areas of economic activity that are marginal, low status, poorly paid, inadequately regulated or informal;*
- *members of minority groups over-represented in jobs or sectors with poor work conditions (safety, health, minimum wage, lengthy hours);*
- *members of minority groups receiving fewer benefits than others performing similar work;*
- *members of minority groups over-represented in entry- or lower-level positions and correspondingly under-represented in higher-level and senior positions of employment (i.e. not being promoted);*
- *dismissal of members of minority groups unconnected to performance; when economic conditions require dismissals, members of minority groups losing their jobs before others without regard to seniority; lower compensation awarded to members of minority groups than others upon dismissal<sup>(42)</sup>.*

#### 1.1.4. An example of basic indicators: the Equal Opportunity Commission roadmap

Currently, very few of the standard indicators ordinarily employed have included new developments in empirical research and sociological or philosophical thinking, with the exception of those proposed by the members of the *Equalities Review Working Group*, who set out to re-found the evaluation of equality and anti-discrimination efforts on the 'capabilities' theory of A. Sen. Additionally, their work focused attention on the issue of indicators.

Rather than building on the high-value work of The Equalities Review — the proposed model being too elaborate for Member States to rapidly implement it immediately — we preferred to study the list of figures that the Equal Opportunity Commission (later dissolved into the Commission for Equality and Human Rights — CEHR) recently released to the public in the document, *Completing the revolution: the leading indicators* (EOC, 2007). The indicators checked by the EOC and grouped together in a document that serves as a roadmap for the CEHR have the merit of being clear and immediately understandable; because of this, they can be used to raise public awareness of the gaps that persist between the social conditions of men and women in the UK. Below are a few of the indicators found in the document.

<sup>(42)</sup> 'Identifying and developing policy and legal responses to discrimination. Extracted from the guide for *The Non-Discrimination Review*, developed under the Stability Pact for South-Eastern Europe' (SP/NDR(2003)007 e).

Gender equality index			
Indicators	Latest statistics (percentages rounded to the nearest 1 %)	Recent trend for statistic in bold- face	Number of years to reach equality (to nearest five years)
<b>Income</b>			
Full-time gender pay gap	In full-time work, female employees earn 17 % less per hour on average than male employees.	Improving	20 years
Part-time gender pay gap	Female employees in part-time work earn 38 % less than the hourly rate for men in full-time work.	Improving	25 years
High-level flexible jobs, including part-time jobs	Managers and senior officials are only 59 % as likely as employees in other jobs to work flexibly or part time.	Improving	20 years
Retirement income	Retired women's income is 40 % lower than retired men's.	Improving	45 years
Segregated occupations	65 % of occupational groups are dominated by either women or men.	No change	Never, unless action is stepped up
<b>Family</b>			
Pregnancy discrimination	45 % of pregnant female employees experience tangible discrimination.	Data not available	Sufficient data not available
Use of flexible working (flex work)	Amongst employees, men are 61 % as likely as women to use at least one flexible working arrangement — 16 % of men compared with 26 % of women.	No change	Never, unless action is stepped up
Chores gap	On average, women spend 180 minutes per day on housework — that's 78 % more time than men, who spend only 101 minutes per day.	Worsening	Never, unless behaviour changes
Parents' care of children	Mothers recorded an average of two hours and 32 minutes per day looking after their own children, compared with two hours and 16 minutes by fathers, a gap of 12 %.	Improving	Sufficient data not available
Carers	14 % of women are carers, compared with 11 % of men. So women are 28 % more likely than men to be carers.	Data not available	Sufficient data not available
<b>Policy &amp; services</b>			
Children per childcare place	There is only one place for every 3.6 children under eight with a child-minder, in full daycare or in out-of-school care.	Improving	15 years until there is one place for every child
GCSE gender gap	Boys' achievement of five or more high-grade GCSEs or equivalent qualifications is 16 % lower than girls', at 52 % compared with 62 %.	Improving	15 years
Subject choice at A level	48 % of subjects at A level or equivalent are dominated by either girls or boys.	No change	Never, unless action is stepped up
<b>Justice and safety</b>			
Women experiencing abuse from their partner	An estimated one million women in the UK and Wales experienced abuse from a current or former partner in the last year.	Data not available	Sufficient data not available
Fear of going out alone after dark	Women aged 16 or over are five times as likely as men to feel very unsafe walking alone in their area after dark.	Worsening	Never, unless action is stepped up
Violent crime	13 % of young men were victims of a violent crime in the past year, 80 % higher than for young women (7 %). Young men in this age group are most at risk of being a victim of violent crime.	Improving	20 years for men's rate to fall to same level as women's

## 1.2. The limitations of 'factualisation of inequalities' indicators

### 1.2.1. Gaps or disproportions, not discrimination in the strictest sense

First, it is important to specify that the type of indicators referred to here does not allow for a determination, strictly speaking, of the reality of discrimination and the way it operates. At most, they highlight the gaps and inequalities between the populations established and described by the statistics. The gap observed can only be understood as constituting discrimination if it can be linked to a practice from

which it resulted, and if that practice cannot, furthermore, satisfy the justification requirement. The existence of a gap not explained by the variables used from the start determines, at most, a suspicion that discrimination might be at work, a suspicion that can be further investigated or not. Nonetheless, because they reveal gaps and significant differentials between populations, they are likely to indicate the presence of discriminatory phenomena that may contribute to unequal distribution, across the various groups, of the positions, goods, resources or results under evaluation. In this regard, such indicators are essential for awareness efforts. In other words, there is recognisable virtue in the use of statistics beyond — or rather falling short of —

their contribution to enforcing the law; as Michael Banton writes on the subject of racial discrimination and the ethnic monitoring system, *'Although the analysis of ethnic data, in most cases, cannot suffice to prove the existence or non-existence of racial discrimination'*, this method of analysis can nonetheless *'bring visibility to a situation that would otherwise remain hidden and stimulate implementation of those changes needed to stop unjust or illegal methods of personnel management'* (Banton, 1999). Before any use for expressly judicial purposes, knowing that *'methods of management'* can be *'unjust'* without necessarily being *'illegal'* (ibid.), the use of statistics would make it possible to focus attention on otherwise invisible negative effects: *'Ethnic monitoring can lead to a change in the culture of institutions, by pushing individuals to explicitly take into account elements that, if left in an implicit state, might just as well continue to be disregarded'* (ibid.).

### 1.2.2. A cursory conception of equality that requires more thorough analysis

The second limitation relates to the quite cursory conception of equality that the use of these indicators supports. Indeed, equality is understood here as a calculation of proportion. We can illustrate this limitation with the inequalities between men and women: for example, we can say that there are only 17% (an imaginary figure) of women at a certain level of responsibility in a certain sector compared with 83% men, and that this gap, which will be understood as under-representation, indicates inequality or hides discrimination, since women comprise 50% of the total population. Perceiving equality in this way presupposes an equal distribution of the aspirations of men and women. Likewise, understanding equality as such assumes that both men and women can count on the availability of similar resources, granting access to one position or another. The study therefore needs to be extended in two directions: first, by taking into account the fact that resources are not evenly distributed, and, second, by taking into account the fact that certain individuals see their aspirations as limited by inequality, given the subjective *'internalisation'* of inequality. These two ways of extending the survey are, furthermore, often implemented by sociologists who integrate certain implicit or explicit theories of fairness into their surveys.

### 1.2.3. The gap between the legal mobilisation scale and the government statistics scale

Another important limitation relates to the description scale used with this type of indicator and to the nature of the data produced — a scale and data that often are not adjusted to mobilisation of the law by potential victims.

While the law has value in a general sense and for all of the subjects of a given State, it can only be mobilised locally, in specific situations. In the context of cases of indirect discrimination that have led to legal proceedings, the judge is not responsible for making a ruling on the degree of equality between the sexes or ethnic groups at the overall national level, but rather must consider a specific rule, practice or procedure by calling on the person responsible for that rule, practice or procedure to justify its legitimacy, if this rule has unequal consequences and disproportionately affects individuals who can be described via one or more of the characteristics listed in anti-discrimination law. *In some sense, in order to measure this disproportion, one must just keep in mind that the subjects of the law are 'individuals'* <sup>(43)</sup>, whereas the traditional subjects of large-scale public statistics surveys are *'populations'* treated at high levels of aggregation.

Nonetheless, some of the data produced at this scale can then be used to set the parameters of the anti-discrimination policies implemented locally by companies and organisations (public and private). In the UK and the Netherlands, the ethnic monitoring used locally by companies regarding the composition of their labour force rests on knowledge of the proportion of ethnic minorities in their job pool — information gained from census data (Coombes, 1996; Dex and Purdam, 2005; Guiraudon, Phalet and Wall, 2005). This is applied in such a way that this type of indicator, using a high level of data aggregation, in no way allows for the economy of setting up local monitoring systems, which are the only type able to maintain watch on the very premises of companies and institutions.

This applies to all indicators, regardless of grounds.

### 1.2.4. Limitations of the *'fact-based'* indicators proposed by the Council of Europe

Difficulties lie beneath the apparent simplicity of the elements of *'fact'* listed in the Council of Europe document mentioned above. The main problem lies in the difficulty of qualifying and evaluating those positions and jobs likely to reveal fracture lines.

The difficulty also lies in the fact that the lexicon used to describe certain indicators (for example, the notion of *'areas of economic activity that are marginal, low status, poorly paid, inadequately regulated or informal'* or that of *'sectors with poor working conditions'*) has no equivalent in the ways labour and employment are measured via national statistical instruments. Indeed, in statistical tools and administrative language it is rare to find a categorisation and evaluation of

<sup>(43)</sup> Even though the subjects of legal standards — in this way separate from the recipients of law — can be legal entities (such as companies, institutions and States).



professions and sectors of activity that would match up with the qualifications used in this guide. Moreover, this way of establishing a public hierarchy of professions, job positions and activity sectors would, without doubt, open itself up to heated controversy and be received by the representatives of the said professions and activity sectors with difficulty. Some have even invoked this difficulty in support of burying any project related to assessing the forms of discrimination at work within certain sectors of activity. This was the case for Gwénaëlle Calvès in France, a law professor and former research director at the Centre d'Analyse Stratégique, who appears to have given in to this excess in a report on diversifying recruitment in the civil service <sup>(44)</sup>. She writes: *'More generally, the idea that the ethnic make-up of civil service personnel must be arranged in such a way as to rectify negative stereotypes would imply, if truly taken seriously, the drawing of distinctions between high-status and low-status professions, as well as between professions where the presence of immigrant children is "expected" (the social professions, for example) and those where it is not'* (Calvès, 2005, p. 38). Here, it appears that the author believes one cannot hope to intervene by aiming to arrange the *'ethnic make-up of civil service personnel'*, because that presents a significant moral issue: in this case, evaluating and establishing a hierarchy of *professions* according to criteria condemned because they are considered too subjective or insufficiently honourable <sup>(45)</sup>.

And yet, qualifications and evaluations of this type make it possible to reveal fracture lines in distinguishing properties of jobs held by members of minority groups and to show the nature of the tasks and working conditions of the jobs they hold. To unearth potential discrimination and reveal the ethnic or racial penalty affecting certain individuals, **it may therefore be necessary to propose new ways of qualifying and categorising the jobs held and their related working conditions.** British researchers have, for example, noted during qualitative studies involving ethnographic work that individuals belonging to racial or ethnic minorities are confined to jobs that accord them little professional (or social) visibility and no contact with a target audience of users or clients, and even with other employees — users, employees or clients that will therefore find no opportunity to deflect the stereotypes and prejudices they harbour about them. These researchers found that the *ethnic monitoring* used in British companies and institutions subscribing to the principles of *'diversity management'* and the *'business case for equality'* argument were insufficient, since data on the ethnic make-up of the employee pool did not end up revealing this fracture line between jobs that confer social or professional visibility and opportunities for promotion and those that have low visibility and are devoid of prospects for promotion <sup>(46)</sup>.

<sup>(44)</sup> *Renouveau démographique de la fonction publique de l'État: vers une intégration prioritaire des Français issus de l'immigration?* Paris, La Documentation Française, 2005.

<sup>(45)</sup> It nonetheless appears that this is not the actual problem stoking the defiance of G. Calvès, if only because her report is full of references to the 'social ladder' (*ascenseur social*), and in it she promotes firm refocusing on the 'social mobility' objective. Yet this expression and objective both rely on a differential between professions that involves a status scale, whether we like it or not.

<sup>(46)</sup> Along similar lines, British researchers showed that there could be an advantage to considering the division of labour via feminist sociological, economic and philosophical categories of 'care' when looking into discrimination on grounds of sex, race and ethnic origin. In reading this research, it appears that most 'care' work (roughly all professions related to the maintenance and upkeep of persons and things — professions ranging from nurse's aid to street cleaner to custodian) is, in western societies, overwhelmingly carried out by women and individuals (men and women) belonging to the most disadvantaged ethnic and racial minorities. Some well-known researchers (such as Joan Tronto, Susan Moller Okin and Eva Fedr Kitay) therefore think that it is by freeing themselves of these essential jobs (essential yet diminished, invisible, difficult, subject to deregulation or subcontracted and poorly paid) and delegating them to minorities that members of the majority (including some women) are able to manage their professional career, autonomously participate in a rich and intense social life and bloom in their individuality. The reason we mention these two points here is that they relate to these reflections and results of empirical studies that call for a reconsideration of the usual methods of categorising labour and the traditional ways of breaking down activities.

### 1.3. List of chosen indicators

**Table 1: Employment (for all grounds) (A)**

Type of indicator	List of indicators For type of grounds, in comparison with the national average reference population
<b>(a) Job access conditions</b>	
A.1. Overall indicators	<ul style="list-style-type: none"> <li>• Employment rate</li> <li>• Unemployment rate</li> </ul>
A.2. Difficulties in accessing jobs	<ul style="list-style-type: none"> <li>• Percentage of long-term unemployed among job-seekers</li> <li>• Length of job search</li> <li>• Frequency of postponed appointments or job interviews for individuals exposed to discrimination and the overall population</li> </ul>
A.3. Job visibility: public representation	<ul style="list-style-type: none"> <li>• Presence of main minority groups in media and culture</li> <li>• Representation in high positions of authority in public administration and government agencies</li> <li>• Percentage of elected officials (national, local)</li> <li>• Presence in community life and service sector</li> <li>• Make-up of boards of large corporations</li> </ul>
A.4. Job visibility: working in key sectors of public administration	<ul style="list-style-type: none"> <li>• Percentage among education professionals: schools, universities (administrators, teachers, researchers)</li> <li>• Percentage among law enforcement professionals (according to rank and position)</li> <li>• Percentage among justice professionals</li> </ul>
<b>(b) Labour and working conditions</b>	
A.5. Job insecurity: length of work	<ul style="list-style-type: none"> <li>• Percentage of individuals working part time (less than 30 hours/week)</li> </ul>
A.6. Job insecurity: type of work	<ul style="list-style-type: none"> <li>• Percentage of workers in insecure work (temporary workers, substitute and day workers, seasonal workers, informal work, domestic labour)</li> </ul>
A.7. Job insecurity: job status	<ul style="list-style-type: none"> <li>• Type of employment contract (insecure or not)</li> <li>• Seniority</li> <li>• Percentage of salaried employees among groups subject to discrimination</li> <li>• Percentage of self-employed workers</li> </ul>
A.8. Horizontal segregation	<ul style="list-style-type: none"> <li>• Distribution of jobs via sector of activity</li> </ul>
A.8. Vertical segregation: professional status; 'glass ceiling'	<ul style="list-style-type: none"> <li>• Distribution of jobs</li> <li>• According to professional category</li> <li>• Percentage of executives by target group</li> <li>• Percentage of senior executives</li> </ul>
A.9. Compensation	<ul style="list-style-type: none"> <li>• Hourly salary/groups subject to discrimination</li> <li>• Annual salary</li> <li>• Average position in the salary and income structure</li> </ul>
<b>(c) Affiliation with an organisation</b>	
A.10. Affiliation with a trade union or professional organisation	Percentage of individuals from groups subject to discrimination compared with national average
A.11. Affiliation with a political party	Proportion of political-party members from a minority group considered to be discriminated against

**Table 2: Other grounds (for ethnic origin and race) (A)**

Type of indicator	List of indicators
A.12. Poverty	<ul style="list-style-type: none"> <li>Percentage of recipients of welfare income</li> <li>Percentage of individuals living under the poverty line</li> </ul>
A.13. Work accidents	<ul style="list-style-type: none"> <li>Rate of work accidents</li> <li>Rate of work-related disability and incapacity</li> </ul>
A.14. Retirement	<ul style="list-style-type: none"> <li>Level of retirement pensions</li> </ul>
<b>Education</b>	
A.15. Secondary education	<ul style="list-style-type: none"> <li>Percentage of youth dropped out and/or excluded from school system</li> <li>Percentage having left school without a diploma or secondary qualification</li> <li>Percentage schooled <i>outside the standard system</i> in special schools</li> <li>Percentage in private school</li> </ul>
A.16. Secondary education — orientation	<ul style="list-style-type: none"> <li>Technical/general education track distribution</li> <li>Proficiency at end of secondary school</li> </ul>
A.17. Secondary education — segregation in school	<ul style="list-style-type: none"> <li>Percentage in schools in areas deemed ‘sensitive’ or troubled</li> <li>Parents’ level of education</li> <li>Percentage whose parents do not speak national language fluently</li> </ul>
A.18. Higher education	<ul style="list-style-type: none"> <li>Percentage of students by level of study</li> <li>Percentage in university according to study track</li> <li>Percentage in high-status tracks or universities</li> <li>Proportion enrolling in police or judiciary schools</li> <li>Training in anti-discrimination law and the issue of discrimination in law and police schools</li> </ul>
A.19. Higher education — uni-versity segregation	<ul style="list-style-type: none"> <li>Percentage of students participating in Erasmus-type programmes</li> <li>Percentage dropped out after first two years of university, by track</li> <li>Percentage leaving higher education without a degree</li> <li>Percentage having obtained a graduate/post-graduate degree (master’s, PhD)</li> </ul>
<b>Housing</b>	
A.20. Housing: occupant’s status	<ul style="list-style-type: none"> <li>Share of owners, first-time home owners and renters</li> <li>Share of individuals housed</li> </ul>
A.21. Type of housing	<ul style="list-style-type: none"> <li>Percentage according to type: apartment, room, hostels, trailer, hotel, retirement facility, etc.</li> <li>Share of homeless individuals</li> </ul>
A.22. Occupancy ratio	<ul style="list-style-type: none"> <li>Average number of m<sup>2</sup> per person</li> <li>Average number of occupants per housing unit</li> </ul>
A.23. Type of housing	<ul style="list-style-type: none"> <li>Comfort index</li> <li>Percentage of residents in areas deemed ‘sensitive’ or troubled</li> </ul>
<b>Transportation</b>	
A.24. Transportation: transportation autonomy — mobility	<ul style="list-style-type: none"> <li>Rate of possession of driving licence</li> <li>Time spent on public transportation per week</li> <li>Weekly home/work commute</li> </ul>
<b>Health</b>	
A.25. Health/inequality vis-à-vis death	<ul style="list-style-type: none"> <li>Mortality rate</li> <li>Excess mortality/reference group</li> </ul>
A.26. Health/inequality vis-à-vis illness	<ul style="list-style-type: none"> <li>Post-cancer survival rate</li> <li>Percentage of individuals subject to severe depression and under medical or hospital treatment</li> </ul>
A.27. Healthcare/access to care	<ul style="list-style-type: none"> <li>Rate of individuals with referring (or family) physician</li> <li>Number of annual visits to dentist</li> <li>Number of annual visits to general practitioner</li> <li>Number of annual visits to specialised physician</li> <li>Percentage of those over 75 in retirement home with medical care</li> </ul>
A.28. Health/inequality vis-à-vis prevention and access to social protection	<ul style="list-style-type: none"> <li>Percentage of individuals with public or private medical insurance</li> <li>Percentage of individuals with supplementary social insurance</li> <li>Percentage of individuals contributing to a supplementary retirement pension (non-mandatory)</li> </ul>
<b>Access to credit</b>	
A.31. Access to credit	<ul style="list-style-type: none"> <li>Share of individuals subject to discrimination having had a credit request denied</li> </ul>

## 1.4. Comments on chosen indicators

### 1.4.1. Employment

#### a) Overall access to employment indicators

(see Table 1: Indicator type A.1)

Above, we have unfolded a list of indicators starting with the most general, cursory indicators and ending with more precise, refined indicators.

An initial set of indicators reflects the traditional indicators used by the European Union and for which the conventions, in terms of equivalence and measurement, have already been established by Eurostat: **employment rate and unemployment rate**.

These rates should be established in each country and for each of the statistical populations constituted on the basis of the grounds of discrimination — grounds and characteristics with which, then, the disaggregation of the overall data will take place, so as to create subgroups that are homologous on a semantic and practical level to the various characteristics listed in the European directives. Next, these rates should not just be compared with the overall population; it is especially important to compare them with the relevant control population or referent group, which vary according to the grounds under consideration. Using grounds related to gender as an illustration, the employment/activity/unemployment rate for women would be compared directly to the employment/activity/unemployment rate for men. It should be noted that, regarding gender-related grounds, this type of measurement is already in use throughout Europe.

For grounds related to race and ethnic origin, one should compare the employment/activity/unemployment rate for ethnic and racial minorities with the employment/activity/unemployment rate for the ethnic and racial majority. The next step would be to proceed in a similar fashion for the other grounds (age, religion, sexual orientation, disability).

*Inter-group* as well as *intra-group* differences (according to age, gender and religion, for example) should also be evaluated. In this light, categorisations with which it would not be possible to distinguish between a plurality of minorities, discern different religions, specify a range of age groups or separate out female homosexuality from male homosexuality should be considered inadequate.

#### b) Difficulties in accessing job indicators

(see Table 1: Indicator type A.2)

This first list of indicators must be added to, for it says nothing about the nature and quality of jobs held and remains silent with regard to job status. This method of overall categorisation leads one to believe that all jobs apply <sup>(47)</sup>. R. Salais, who has been very critical regarding the use of this indicator to measure the ‘*performance*’ of the various Member States in fulfilling the quantified European-level objectives, writes: ‘*The Commission is thus standing by statistics as a scientific truth reflecting a state of nature that is not up for discussion. A job is a job; the homogeneity of employment situations is complete, everywhere, all the time and for all involved. Only the quantitative performance would have meaning, which is also evaluated at the most general level. Any job, no matter what it is, should be included, for it increases performance*’ (Salais, 2007). Furthermore, this indicator, beyond its purely political faults <sup>(48)</sup> and despite the fact that it provides ‘information’ about access to the job market, does not shed any light on the discrimination taking place *on* and *within* the job market (which is, furthermore, highly segmented). Likewise, the unemployment rate also provides no information about the specific obstacles and difficulties encountered by individuals potentially exposed to discrimination in the job market. At a minimum, data should be added, for all grounds, allowing for a comparison of the population subject to discrimination and the relevant control population with regard to **the share of long-term unemployed people among job-seekers and the length of the job search**.

The information obtained via these indicators might be usefully refined via ‘**testing**’ procedures (extended to all grounds and not just grounds related to race and ethnic origin) to identify the differentials in the **frequency of postponed appointments or job interviews among individuals exposed to discrimination as compared to the overall population**.

<sup>(47)</sup> The statistical convention establishing what counts as a job and used to calculate the employment rate is as follows: ‘*Individuals with a job are those that, during the reference week, did any type of paid work (or work generating a profit) for at least one hour, and those who may not have worked but have a job from which they were temporarily absent*’.

<sup>(48)</sup> In a forthcoming text, R. Salais writes the following regarding the statistical convention that defines ‘job’ for the calculation of employment rate: ‘*Translated into political convention, the definition takes on another meaning. It implies that, regardless of the task in terms of quality (salary level, working conditions, type of contract, etc.), it can be considered a job if it has lasted at least one hour. We need to refer to a “quality-devoid job convention”. A political convention such as this is far from trivial. A quality-devoid job is ultimately a task stripped of any legal guarantees (in terms of recruitment, protection from dismissal or minimum wage) and social protection (social and economic rights), because those specifications have no importance in the shaping of tables. By eliminating these quality criteria and using mere quantitative benchmarking, the WTO automatically encourages Member States to lower the quality of their own job conventions in order to increase their quantitative performance and ultimately adopt the quality-devoid job convention as the reference in their structural reforms*’ (Salais, 2008).

### c) Job insecurity indicators

(see Table 1: Indicator types A.6–A.7)

A second set of indicators should deal with distinguishing jobs according to the social protection and work benefits generally associated with them. It is difficult to propose a standard formulation, given the disparity in labour law and methods of regulating employment contracts in the various European Union countries. It should therefore be based on different categories per Member State. It is nonetheless possible to outline some overarching categories that can be used in a wider sense, with the various European Union countries responsible for refining them according to their national context regarding labour law and the plurality of employment contracts, and the social guarantees set out in that law. As for previous indicators, here, too, the idea is to make comparisons and reveal any disproportions that are detrimental to individuals and groups specifically exposed to discrimination. We will refer here to job **insecurity** indicators.

### d) Horizontal and vertical segregation of job indicators

(see Table 1: Indicator types A.8–A.9)

The most recent indicators lead us directly to other ways of breaking down jobs (or activities), which are grouped and melded together in the employment rate (or the labour force participation rate). This breakdown must occur at the sector of activity level, by type of profession, field, position held, quality of working conditions and the position's place in the structural hierarchy of the companies or organisations. These distinctions are necessary because they pave the way to revealing potential effects of segregation, whether horizontal or vertical, and to showing limitations in access to professions, positions, sectors or levels of responsibility. These methods of evaluation are widely implemented for gender-related grounds. Indeed, researchers and statisticians have long been working to reveal the gendered structure of the distribution of individuals over all professions, to establish the sexed character of that distribution in the hierarchy of fields, and to factualise the unequal access women have to leadership positions, despite having similar skill levels; via adequate data, what is at issue here is what's commonly described as a '*glass ceiling*'. Likewise, women's *pay gap* disadvantage has for a long time been measured, and European bodies regularly produce such figures.

For grounds related to race and ethnic origin, this evaluation method would serve to quantitatively define and evaluate '*racialisation*' or '*ethnicisation*' (as well as professional specialisation or labour market segmentation) phenomena for certain professions, certain areas of work or certain job positions <sup>(49)</sup>. Regarding these phenomena, one should also note that the term '*ethnicisation*' is only rarely understood in a positive light, and yet, much as we often refer to a '*feminisation*' requirement for certain fields or professions, we might also speak of an '*ethnicisation*' requirement. This would refer to the need to take areas or professions that appear to be monopolised by individuals sharing certain characteristics which officially have little to do with the requisite skills, and to open them up to various minorities that stand out due to their absence or under-representation.

We must note that it is difficult to immediately propose a range of standard indicators, given that the various Member States have different ways of breaking down areas of activity and categorising fields and professions, and also have specific, unshared conventions establishing the hierarchy of positions and status, both at a general level and within various sectors, fields and professions.

We can nonetheless bet that there are classifications and methods of equivalence that have already been implemented and are widely used by European bodies and Eurostat in particular, which is continually confronted with the lack of standardisation of national statistics. In the *Annual report on equality between women and men*, measurements of segregation at the profession level on the labour market use the CIP <sup>(50)</sup> classification, while measurements of segregation at the sectoral level use the NACE classification <sup>(51)</sup>.

<sup>(49)</sup> '*Racialisation*' or '*ethnicisation*' generally refers to the disproportionate representation in certain areas, positions or fields of one or another minority group whose members are generally found to be confined to one area of work, stuck in subordinate positions or retained at a lower level in the hierarchy. It must nonetheless be noted that these two ideas can also apply in the reverse sense, and it can also be said that an activity (such as political activity) or a profession is '*racialised*' or '*ethnicised*' when it appears to be monopolised by members of the so-called majority group because they comprise the — often vast — majority of those individuals taking part therein. In both cases, however, these phenomena conventionally signal a disadvantage or show a persistent inequality, in such a way that they call for corrective measures, particularly those allowing for the positive action measures designed for this purpose.

<sup>(50)</sup> And it is '*calculated as the average national share of women and men employed in each profession; these differences are added to establish the total men/women imbalance as a proportion of total employment*' (*Report on equality between women and men*, 2005, Employment and Social Affairs, European Commission).

<sup>(51)</sup> Which is '*calculated as the average national share of women and men employed in each sector; these differences are added to establish the total men/women imbalance, as a proportion of total employment*' (op. cit.).



Finally, the degree of the breakdown and level of analysis of the effects or phenomena of horizontal segregation (by sectors and professions) and vertical segregation (situation and position in the hierarchy, salary-related and decision-related structure) should seek to be in phase with the scale required by anti-discrimination instruments, and the positive action instrument in particular.

In total, then, two series of indicators should be established, the first relative to horizontal segregation and the second relative to vertical segregation. The first series should be divided into sectors of activity and then into professions. The second series will focus on the positions held by minority populations in companies, organisations and institutions, as well as on the distribution and proportion of these same populations at different levels of the hierarchical structures of companies, organisations and institutions.

These indicators should be supplemented by more focused clarifications regarding the share held by individuals belonging to minority groups in specific areas of activity; the latter would be chosen for their scope with regard to participation in civic life, i.e. in terms of the powers and visibility they confer as well as their symbolic nature.

#### e) The 'power index' indicators

(see Table 1: Indicator type A.3)

It is likewise advisable to more specifically survey what places and positions so-called minority groups hold within certain professions or institutional (and/or economic) positions, as is done in several Member States as well as at European level.

Such indicators are used, for example, by Britain's Equal Opportunity Commission, which studies the under-representation of women in high-ranking and authority positions (the idea of 'authority' being interpreted in the general sense, as discussed below). The Commission includes a variety of indicators in its annual publication, *Sex and power: who runs Britain?*, the latest version of which was released in 2007. It includes a statistical table establishing the average representation of women in the areas of politics <sup>(52)</sup>, business <sup>(53)</sup>, media and culture <sup>(54)</sup>, as well as the 'public and voluntary

sectors' <sup>(55)</sup>. The figures, appearing as percentages of women represented, were produced for the past four years, and each table entry (i.e. each area) includes a numeric header indicating the average representation of women, for example '*Media and culture: average representation of women = 17 %*'. It should also be noted that figures regarding women belonging to ethnic and racial minorities are presented in a different section of the document, thus showing that the Equal Opportunity Commission is open to processing subgroups and drawing its attention to the question of ethnicity, which can have unique consequences on the situations and experiences of some women. It is notable that these figures are not presented as percentages, as their value is too negligible for that format. The communication of this type of data is above all instructive, given its shock value, with results such as: '*Ethnic minority women at the top: 0 in the Scottish Parliament and the National Assembly for Wales, 0 chief executives of media companies in the FTSE 350 companies, one in the Cabinet, one UK representative in the European Parliament and one in the senior judiciary*'.

Formatting these figures is straightforward, and accessing the data technically is not very difficult, given that in many cases the individuals about whom the data are produced are often public figures, and certain characteristics that should be recorded can be input into a database with only a little survey work. Ethical issues related to privacy, however, can crop up when the characteristics at play are not related to gender; the dynamics are different for sexual orientation <sup>(56)</sup>, ethnic origin, race, religion and disability. Furthermore, we find that mixing these various indicators in a sort of power index, beyond the fact that this rests on an implicit theory of power that in our eyes is not well developed <sup>(57)</sup>, appears particularly valid for countries that are already well acclimated to the fight to combat discrimination and that are capable of producing solid data.

<sup>(52)</sup> Area broken down as follows: 'Members of Parliament', 'the Cabinet', 'Members of the House of Lords' and so on, down to the ranks of local government.

<sup>(53)</sup> Area represented in two entries: 'Directors in FTSE 100 companies (executive and non-executive directors)' and 'Small businesses with women as the majority of directors'.

<sup>(54)</sup> Including the following items: 'Chief executives of media companies in the FTSE 350 and the directorate-general of the BBC', 'Editors of national newspapers', 'Directors of major museums and art galleries', 'Chairs of national arts companies' and 'Chief executives of national sports bodies'.

<sup>(55)</sup> There are more items here. Figures regarding the following appear: "public appointments," "local authority chief executives," "senior ranks in the armed forces," "senior police officers," "senior judiciary, high-court judges and above," "civil service top management", "chief executives of voluntary organizations", "head teachers in secondary schools", "FE college principals", "university vice chancellors", "health service chief executives," "trade union general secretaries" and "heads of professional bodies."

<sup>(56)</sup> As indicated by the controversies surrounding the "outing" practices that certain militant gay activist groups threaten to use.

<sup>(57)</sup> Incidentally, this is far from being an absolute fault, particularly since at issue are discrimination and inequality, phenomena that are difficult to combat but are easily established and understood.

#### f) Indicators in specific sectors and areas of activity

(see Table 1: Indicator type A.4)

Of these sectors, the public sector and government work activities should be examined first. If data cannot be produced for all civil servants and government and civil service officials (at the local and national levels), data should at least be produced on two of the loftiest state functions, justice and law enforcement, as well as on education.

The areas of law enforcement and justice are especially important because they play a role in the mobilisation and implementation of anti-discrimination law, in particular because their agents receive and process discrimination complaints. In this regard, the indicators related to these two areas could also appear among those for measuring the progress of anti-discrimination policies.

#### g) 'Social partners' and the independent authorities

(see Table 1: Indicator types A.10–A.11)

Moreover, given the role the directives grant to 'social partners' in implementing the law, it would also be useful for these bodies, which are called upon to serve as *'intermediaries of the law'* (De Munck, 2006), to be observed. Related indicators should therefore also be proposed, in particular those with regard to trade unionisation, participation in unions, affiliation with professional organisations, and even affiliation with a political party.

These indicators, as with those relative to justice and law enforcement, could also be added to the second group of indicators and contribute to other measurement methods aimed at objectifying the sensibilities and mobilisation of social partners with regard to discrimination issues. The independent authorities in charge of equality and anti-discrimination efforts might also analyse their staff and employees, thereby revealing the feasibility and significance of this type of monitoring. Analyses such as this are regularly carried out in the UK and Ireland.

#### h) 'Pay gap' indicators

(see Table 1: Indicator type A.9)

Still in the area of employment, one penultimate type of indicator should refer to pay. Evaluations of the *pay gaps* between men and women have long been carried out by Member States and at European level. Measurements of this particularly tenacious form of inequality have been implemented for quite some time and should now be extended to other grounds, and should look into the possibility of pay gaps affecting other groups covered by anti-discrimination policy.

As of today, there has been only limited extension of this calculation and the potential exposure of *pay gaps* to other grounds, despite the fact that some work has been done on this, in particular regarding immigrants and the descendants of immigrants in France and Sweden, among others. It should be noted that several examples can nonetheless be found in the UK and Ireland, in particular with regard to ethnic and race-related grounds (which, moreover, can be broken down according to the gender criterion pursuant to the 1998 Employment Equity Act, as is the case in South Africa).

#### 1.4.2. 'Poverty risk' and 'social protection' (see Table 2: Indicator types A.12–A.14)

Although they remain few and far between, Europe is nonetheless proposing some 'social protection' indicators, for the most part relating to gender inequality. Among them is an indicator relative to what is described as a 'poverty risk' or 'at-risk-of-poverty' rate. The indicator is defined and calculated as follows: *'at-risk-of-poverty rate after social transfers — the share of persons with an equivalised disposable income below the risk-of-poverty threshold, which is 60 % of the national median equivalised disposable income (after social transfers). Gender breakdown is based on assumption of equal sharing of resources within a household'*. As can be seen, an indicator such as this relates to the **area of social protection and assistance**, as indicated by its definition and calculation. Consequently, an analysis of the breakdown of income and welfare recipients might also be carried out, which might lead to information about access to rights as well as the existence of any disadvantage. Regarding social protection, it would be useful to also focus on the situations of the various minority groups (and subgroups resulting from a crossing of variables — for example, women belonging to an ethnic or racial minority) with regard to retirement pensions and other income outside of the legal period of occupational activity. The attention drawn to this issue crosses the age question and would fall within one concern that can be found in several countries where so-called 'labour' immigration takes place. This would show the disadvantages to which underskilled immigrant workers appear exposed once outside of their occupational activity, given that they often do not receive a high degree of protection.

Finally, and in conclusion, a significant number of studies have shown that individuals belonging to certain ethnic or racial minorities often hold jobs in which they are exposed to significant occupational strain and danger. Even though gradients measuring the dangerousness and strenuousness of work exist, in areas such as ergonomics and occupational psychopathology in particular, it is not necessarily easy to implement these evaluation methods on a large scale and to use them to categorise fields, professions and positions. Work on this should therefore be done. In the meantime,

however, it might be useful to analyse data relative to work accidents, disabilities resulting from work accidents or strain, and even illnesses contracted during occupational activity. Initial elements may be found in the data from agencies and institutions in charge of such issues, particularly regarding diagnostics and methods of compensation. These elements would also be of interest in shedding light on the types of indirect discrimination related to age: an increase in work accidents and occupational illnesses among older workers might be a sign of indirect discrimination for lack of reasonable accommodation of jobs.

This last indicator could also be presented among more customary indicators related to the field of health.

### 1.4.3. Other areas

The following areas will be less densely equipped with indicators. These 'other areas' are in fact subject to less stringent requirements and do not apply to all grounds (age, religion, sexual orientation and disability), which can clearly be seen as regrettable. Once a new legal tool has been implemented and has jurisdiction over these other areas, it will be possible to extend the framework of indicators proposed herein, which should nonetheless be adapted to the specific characteristics of those grounds.

#### a) Indicators related to education

(see Table 2: Indicator types A.15–A.19)

As with the area of employment, standard indicators and methods of categorisation are not relevant here, since they would have to be adapted to the specific characteristics of the education systems of each Member State, despite the path toward harmonisation of the Bologna process.

With regard to secondary education, also noteworthy is the fact that one has to be in possession of data relative to the location, at different levels and scales (and sensitive scales are required), of individuals belonging to ethnic or racial minorities and the schools they attend, in order to study school segregation phenomena. Overall indicators related to the shared and artificially consistent space (since it would be established without geographical specifications or the demographic, sociological or economic specifications of the various territories) would only provide information of low relevance and very little significance. It therefore appears absolutely necessary to first obtain data on the geographic distribution of ethnic and racial minorities within a national space, the territories of which must be differentiated at multiple scales (from region to city to neighbourhood), then ordered and

qualified with various indicators and distinction criteria<sup>(58)</sup>. These criteria, with which the spaces can be differentiated and established as areas of government action, given their distinguishing properties, also relate to the political history, public issues and administrative methods of each Member State.

This being clarified, possible indicators related to the **area of education, at the primary and secondary level**, are listed in Table 2: Indicator types A.15–A.17.

Indicators regarding **higher education** in particular are also required, starting with overall indicators before moving toward more specific indicators (see Table 2: Indicator types A.18–A.19).

The overall indicator providing the proportion of ethnic minority students with access to higher education is not adequate. As with employment, all training programmes and degrees issued by institutions of higher education are not valid. Distinctions should thus be drawn and higher education should be subject to more precise categorisation, for relevant differences to appear. An initial distinction could be drawn, at the university level, regarding the type of subjects and areas covered. The types of professions sought upon graduation from higher education might follow, with special focus on the most prestigious universities and schools that train officers for the principal state functions (law enforcement and justice in particular). Moreover, ethnic monitoring should also be done on the number of students enrolled in the most prestigious *business* and management *schools*. The information provided by the first indicator should be able to be broken down and disaggregated, then, according to the various divisions mentioned above.

What is more, given Europe's insistence on student mobility, an evaluation of the ethnic and racial make-up of students participating in programmes such as Erasmus might be of interest. This would also be an opportunity for Europe to set an example of best practice, by setting out to monitor one of its programmes.

Access and enrolment are not in the least predictors of success in one's higher education track or the degree received at the close of that education. Other data are therefore essential. In some countries, when enrolment is not officially subject to selection criteria, university-level academic failure and drop-outs during the first or second years of university are widespread, and it is important to have data on the ethnic and racial profiles of students (data that must be correlated to socioeconomic data). The

<sup>(58)</sup> For example, (in no particular order): poverty rate, level of equipment in urban planning resources, presence and activity of main utilities, economic health, degree of isolation or restrictions on mobility, population density, age structure, etc.

length of higher education studies is also quite variable, as is the case with the degrees and qualifications acquired.

## **b) Other areas of access to goods and services**

Drawing up a list of standard indicators for this broad domain is not an easy task. This difficulty can first be attributed to the extension and incredible variety of objects, goods and services likely to fall within this domain. An initial sorting can be done by choosing to focus on access to the social goods and public services related to state-level initiative or public policy. Even when narrowed as such, however, the field remains vast and it is no less difficult to design indicators that transcend the range of state-level services and initiatives. In the UK, for example, the recent laws requiring that the *public authorities* adopt a positive and proactive approach to the promotion of equality break that requirement down into two parts; a generic or general requirement and a specific requirement (Stavo-Debaugé, 2004). The second requirement demands that the relevant agencies and institutions monitor the effects their policies have on equality and enjoins them to monitor whether the needs of minority groups are being met, in terms of the provision of goods and services as well as in the pursuit of their missions. Although the law sets a general framework for the exercise and monitoring of these requirements, on the other hand it leaves it up to the institutions to break down their activities, missions and policies, given that they are the most well suited to do so. Each *public authority*, then, has its own set of indicators that it relies on to evaluate the degree of compliance with the positive requirement, measure the effectiveness of its equality policy and report on that policy.

Given the difficulties unique to this large field, we have chosen to first focus on **four main areas: housing, transportation, healthcare and credit access.**

**We have not, at this point, chosen to include the areas related to justice, law enforcement and the penitentiary in the table of indicators proposed to Member States, but we will mention them at the close of this chapter and will show how they in some ways constitute ‘negative’ goods.**

- **Housing** (see Table 2: Indicator types A.20–A.23)

Several essential indicators must be implemented. They must be able to cover housing status, the quality of that housing, its location and to what territory it belongs — one for which the economic, socio-demographic, planning-related and other properties should be known and specified. These indicators, as with the preceding indicators, should rest on the conventions, standards and norms in use in each country,

in particular regarding the decency of the housing and housing facilities, as well as regarding the ways of qualifying the territories in which the housing is located. In all cases, the minimum indicators must be broken down into whether they relate to the status of the occupant of the housing unit, the type of accommodation, the occupancy rate and the nature or quality of the housing.

- **Transportation and mobility**  
(see Table 2: Indicator type A.24)

In addition to housing, some indicators related to transportation must also be established. These might refer to autonomy of movement and restrictions on movement. When correlated with indicators related to housing sites, then, these indicators might also shed light on inequalities from the perspective of isolation, by producing data on how well the dwelling places of minorities can be adequately serviced by accessible public transportation, and on the distance between the dwelling place and the workplace. The transportation-related indicators line item would merit further development. This can be done if data allow for measurements of the service capacities and/or level of isolation of territories with a high percentage of individuals belonging to ethnic and racial minorities.

- **Health** (see Table 2: Indicator types A.25–A.28)

For this area, given its wide scope, we will propose a battery of basic indicators. More refined indicators can be placed within this classic framework. This battery of indicators can be broken down into four line items: first, health is assessed from the perspective of **inequalities vis-à-vis death**, next from that of **inequalities vis-à-vis illness**, thirdly from the perspective of **inequalities vis-à-vis access to care**, and lastly from that of **inequalities vis-à-vis prevention and access to social protection**. The items chosen to illustrate these various stages can be changed; they are presented as a rough guide and were chosen by referring to sets of commonly-used indicators that are not specifically dedicated to discrimination issues.

- **Justice, law enforcement and the penitentiary system**

Before knowing if these areas of public initiative would be chosen, since they might or might not be considered as areas falling within the provision of the goods and services covered by the race directive, we did want to underline the importance these areas hold regarding access to goods and services.

In relation to the functioning of the judicial system, particularly its criminal side, it would also be instructive to look into the prison system, particularly since one can consider that the penitentiary system distributes what we can call, along with the philosopher M. Walzer (Walzer, 1997), negative so-



cial goods — negative social goods that in this case take the form of sentences, fines and forfeitures of freedom. Moreover, many studies have shown that individuals are not equal before these forms of penalty and several countries have pursued anti-discrimination policies to that effect, with regard to judicial institutions as well as prison establishments. The UK's prisons are required to undergo monitoring, for example, and it should even be pointed out that this was the case well before monitoring took place in companies or other public establishments. From this understanding of access to goods or services, which incorporates negative goods, it might also be appropriate to look into law enforcement activities, since the difficulties between law enforcement and ethnic and racial minorities are notorious. Here again we see remarkable examples in this country of *ethnic monitoring* applied to law enforcement, which underwent significant and far-reaching reforms following the MacPherson Report (MacPherson, 1999), which had well-known effects and has helped shed light on 'institutional discrimination' and/or 'institutional racism' phenomena <sup>(59)</sup>.

## 2. Second set of indicators: Operationalising the law and implementing anti-discrimination policies

### 2.1. Principles and methodology

This second wide range of indicators reflects a desire to evaluate the appropriation, mobilisation and effective implementation of anti-discrimination legal instruments and policy instruments by the subjects of the legal standards they target. It should be noted that the subjects of the legal standards here are numerous and quite diverse, as they include various States (European Union Member States), legal entities of various sizes (institutions, companies, organisations) and individuals. Monitoring progress of the law's enjoyment, i.e. determining whether the 'normative model' that the rule of law 'prescribes has established itself', while also ensuring 'transformation' of the 'context' in which it plays out 'according to the normative expectancies' it brings forth (Porta, 2006, p. 27) is even more complicated and requires the use of several methods of evaluation.

Moreover, and particularly with law such as anti-discrimination law, which calls for the involvement of several *intermediaries of the law* (De Munck, 2006), **it is not simply a question of inquiring into application of one of the main legal instruments of Community law** — i.e. the mere trans-

position of the provisions of the European directive into national law. This is because it must also be ensured that the States, just as the other subjects of legal standards, have created instruments (along the lines of 'soft law' and equality policies) that help ensure or support the effective enjoyment of anti-discrimination law by effectively pursuing the normative objectives it prescribes. What is required for this, then, is at once consideration of enjoyment of the law and a focus on the accommodations or tools that enjoyment appears to require in order to increase the likelihood of its success. Such consideration, alas, is not standard, and the issue of legal enjoyment up until now has not truly been given much thought <sup>(60)</sup>. As is well known, however, particularly in the area of anti-discrimination, the enactment of legislation (or, in this case, transposition of the directives by the Member States) is not in the least a guarantee of its effectiveness. This was recognised, in fact, by the European Commission in its most recent communication regarding its framework strategy for the fight against discrimination, which reads: *'In addition to legislative transposition, further measures will continue to be required for some time in order to ensure that anti-discrimination legislation is effectively implemented and enforced across the EU'*.

Consideration of and thought regarding enjoyment of the law are close to nil or very poorly developed in the various research areas that focus on the law (Stavo-Debaugue, 2007; Thévenot, 2007). Despite this, we can count on the existence of some practices and tools with which certain Member States (the UK and Ireland in particular) have tried to better establish implementation of anti-discrimination law and monitor its effectiveness. It should be noted that some of these tools are required by the European directives and others have been listed among the best practices highlighted by European bodies, along with *ethnic monitoring* (MEDIS, 2004). We will therefore draw from these practices and tools, in such a way that this second portion will in large part involve asking Member States if these *practices* and tools exist and how widely they are implemented. Such requests will be structured around indicators that will thus not necessarily assume the use of statistics and will call for a much more qualitative form of assessment.

<sup>(59)</sup> Here we could consider the racial profiling issue in law enforcement, which was taken very seriously in Great Britain, and a sociological study on the phenomenon is under way in France.

<sup>(60)</sup> It is possible to see prejudice at work in the fact that so little consideration is given to enjoyment of the law, as J. Porta notes in remarking that, *'The feeble interest in studying enjoyment can first be explained by a common and often denounced prejudice regarding the required effectiveness of the rule of law'* (Porta, 2006, p. 30). On the road to consideration of enjoyment of the law, then, the following obstacle appears: *'a legalist belief that takes enactment of the law to be an adequate guarantee of its effectiveness'* (ibid.).



## 2.2. List of proposed indicators

**Table 3: Indicators for measuring the progress of anti-discrimination policies (B)**

Type of indicator	Illustrative list of indicators
B.1. Victim complaint data	<ul style="list-style-type: none"> <li>• Number of discrimination complaints issued and reports made to relevant institutions</li> <li>• Number of complaints leading to legal proceedings</li> <li>• Breakdown of complaints by victim identity</li> <li>• Proportion of legal proceedings ending in judicial sanction</li> </ul>
B.2. Action by independent authorities	<ul style="list-style-type: none"> <li>• Establishment of monitoring</li> <li>• Ability to issue legally-binding codes of practice (in which areas?)</li> <li>• Efforts to control and monitor codes of practice</li> <li>• Efforts to control and scrutinise monitoring</li> </ul>
B.3. Recognised powers of social partners	<ul style="list-style-type: none"> <li>• List of jurisdictions and powers</li> </ul>
B.4. Tools and measurements	<ul style="list-style-type: none"> <li>• Recognition of the use of statistical testing and proof in legal proceedings</li> <li>• Existence and implementation of legally-binding codes of practice (in which areas?)</li> <li>• Existence and effective implementation of monitoring with regard to the labour force employed by private companies and government organisations</li> <li>• Existence and implementation of an equality action plan</li> <li>• Mobilisation of the 'positive actions' instrument</li> </ul>
B.5. Mainstreaming	<ul style="list-style-type: none"> <li>• Existence of tools (surveys, observatories, barometers, etc.) to monitor the degree to which anti-discrimination policies have been appropriated by the relevant ministries</li> </ul>

## 2.3. Comments on indicators

### 2.3.1. Victim complaint indicators (see Table 3: Indicator type B.1)

Surveying the progress of anti-discrimination efforts presupposes first knowing if and how much individuals exercise their rights and call upon the law. Here again, it should be noted that the Commission is well aware of this, since it comments in the framework strategy that, 'Anti-discrimination legislation relies heavily on the willingness and capacity of disadvantaged individuals to engage in complex adversarial litigation'. This legislation also requires judicial authorities to be hospitable to discrimination cases and judges of the competent courts to be receptive to these cases. We will then be able to say — to paraphrase the Commission — that anti-discrimination legislation relies heavily on the willingness and capacity of judges to hear complex adversarial litigation relative to this legislation and to be receptive to the wrongs that so appear.

#### a) Casebook of complaints and identity of putative victims

In order to cover both of these areas, we are proposing a **first type of indicator** that relates to the implementation and enjoyment of the law as a tool for the formulation of complaints, direct reports and referral to the courts. We would place statistics regarding complaints or reports as well as judicial statistics under this first type of indicator. Although we

do not find these statistics in the least credible for measuring discrimination, i.e. establishing the prevalence and frequency of discriminatory phenomena in the social world, we do, on the other hand, find them absolutely relevant for providing an indication of the degree to which putative victims turn to the law and also how hospitable the courts and judicial arenas are to the discrimination cases brought before them. In one of these recent reports, *Equality at work: Tackling the challenges*, the ILO is close to saying the same thing: 'Paradoxically, the number of discrimination complaints, if high and on the rise, is usually an indicator of progress, reflecting a better understanding of what discrimination is, and mirrors trust in the impartiality and efficiency of the judiciary and other systems of redress' (ILO, 2007, p. 11).

During the collection and recording of complaints, the identity of the putative victim must be recorded, i.e. the grounds upon which the victim believes he or she has been discriminated against as well as the minority group to which the victim belongs. This breakdown of the identity of the individual filing the claim (real and stated identity, or the supposed identity upon which the discriminator has based his/her action) will then clarify the groups that should be targeted for awareness and information initiatives. The characteristics required to accomplish this will have to be refined, for example in order to identify the specific race or ethnic origin of the victim and even whether the person is gay or a lesbian in cases where the reported discrimination was on the grounds of sexual orientation.

## b) Monitoring complaints

This first indicator must be developed, since not all complaints and reports lead to legal proceedings or litigation. It is therefore necessary to find out how many complaints and reports give rise to legal proceedings and how many of these reach the trial stage.

This indicator should also allow for drawing a fine distinction regarding which bodies the various reports were addressed to. Here, we should look into what becomes of complaints and discrimination cases and the variety of intermediaries of the law (such as independent authorities and victims associations) to which they are directed.

This information should indicate a success rate for legal proceedings, supplemented by more thorough analyses. Cases should be differentiated according to grounds of discrimination in particular, as well as according to the provisions invoked and the legal rules mobilised by the litigant (ban on direct discrimination, ban on indirect discrimination, failure to proceed with reasonable accommodation, harassment, etc.). It should likewise indicate the percentage of cases 'settled' out of court, i.e. via mediation or settlement. Once this has been done, it might be relevant to compare how receptive the courts and judges were regarding the rule of reference, to which the complaining party directed the litigation, as well as regarding the grounds of discrimination involved in processing the putative discrimination that led to legal proceedings. When cases are won, indications about the sentence handed down, the sanctions declared and the compensation package granted would appear necessary; these various elements should also be documented. The analysis, however, should not just focus on successes, but also failures. Regarding the reasons for such failures, it would help to know if they were due to the refusal or invalidation of certain types of evidence ('situation test', statistical proof), the victim's status, the nature of the discriminatory grounds for which the legal proceedings were initiated, and even the legal rule that was unsuccessfully mobilised. Among the elements for which information should be provided, it would be relevant to then examine when, on what occasions, and with what rate of success the law banning indirect discrimination had been invoked, given that up to now this rule has rarely been mobilised. The various lessons learned from this first list of indicators should make it possible to discern the degree to which new anti-discrimination provisions have penetrated and been mobilised in the various Member States. Such indicators have value even beyond an assessment of the law's mobilisation, for they raise questions about what is happening in the courts and leave room for the opportunity to update laws, since, according to E. Serverin, the courts appear to be one of the places where 'laws are updated' (Serverin, 2007).

## 2.3.2. Indicators relative to measures by intermediaries of the law and equality instruments

(see table above, indicator types B.2–B.5)

Let us now consider a **second type of indicator**, which is relative to the implementation and enjoyment of the law and relates to the range of measures that support the law. This second type of indicator corresponds to '*soft law*' instruments as well as all techniques and measures that may play a role as intermediaries of the law, as aids to enjoyment of the law, and even as accelerators toward meeting the normative objectives of the law. First, a set of indicators should be dedicated to these large-scale intermediaries of the law. We refer here to the independent authorities and other equality bodies, as well as social partners and associations with or without the power to press civil charges and go to court, plus organisations representing minorities.

These indicators should primarily refer to the work of the independent authorities, which should look into their missions, powers and activities as well as the successes they achieve in these activities.

The work of the independent authorities should be broken down into several line items according to their missions as set out in the directives. First, **one item should relate to independent authority efforts in researching and factualising discrimination**. Specifically, it might record the independent authority's commitment to supporting the collection and processing of statistical data on the inequalities it is mandated to study, as well as its ability to use the data in both the realisation of its efforts and their evaluation.

**Another indicator should cover the recognised powers of social partners, employers and employees.** It would have to be capable of assessing how involved they are in formulating the fight against discrimination and their roles. While assessing the powers formally accorded to them is not difficult, stabilising the indicators likely to evaluate their involvement and efforts is more difficult. This is particularly true given that, in several Member States, anti-discrimination policy exists on the surface only, and having companies sign a 'charter' (as in France) that has no obligation regarding results and no procedure for having a third party with sanctioning authority monitor its enforcement cannot be considered a true initiative.

Indicators might record the tangible contributions of these intermediaries of the law, with the issuance of legally-binding codes of practice, by equipping agents with the capacity to watch out for discriminatory misdeeds (particularly those related to indirect discrimination), by establishing a monitoring procedure, or by implementing equality action plans based on

objectives that can be evaluated with the establishment of *targets* and impact measurement. These various instruments were created in States that had to tackle the difficulties related to implementing anti-discrimination law very early on and in which a long learning process emerged — in Ireland the UK especially, as well as in the Netherlands. Also of note is the fact that the British — in an attempt to respond to problems in operationalising a law that, as early as 1976, gave way to the notion of indirect discrimination — progressively matched it to these three types of measure <sup>(61)</sup>.

On the basis of Britain's experiences, we can furthermore say that the indicators relative to each of these instruments should not just focus on learning whether or not such measures exist, but should also try to find out their level of appropriation by the various bodies (public and private) and how effectively they have been implemented. This analysis should include evaluation according to areas, sectors of activity and grounds.

**Indicators should also record the appropriation and use of the positive-measures instrument.** The European Commission appears distressed regarding how scarcely Member States have

used this provision, and has reminded them that, *'It is difficult for legislation alone to tackle the complex, deep-rooted patterns of inequality experienced by some groups. Positive measures may be necessary to compensate for longstanding inequalities suffered by groups of people who, historically, have not had access to equal opportunities'*.

Finally, still with regard to these **indicators dedicated to instruments**, it would be helpful to look into another type of instrument, one that is found both upstream and downstream in the process: **action principles**, the enactment and monitoring of which appear to be necessary for progress in the fight against discrimination. We will retain two of these principles: **the principle of mainstreaming and the principle of 'inclusive' or 'universal' design**, which specifically relates to discrimination on grounds of disability. This principle supports the updating of provisions relative to reasonable accommodation, and makes it possible to focus on an anti-discrimination initiative that would incorporate the social and/or ecological model of disability. The ability of these two principles to inform anti-discrimination efforts will have to be evaluated, then, with the first principle applying to all grounds and the second mainly to disability.

### 3. Third set of indicators: Evaluating improvements — impact and performance

#### 3.1. List of indicators

**Table 4: Indicators measuring the effects of anti-discrimination policies (C)**

Type of indicator	Indicative list of indicators
C.1. Monitoring fact-based inequality (A)	Change in gap between discriminated-against groups and the population (regular monitoring of period between T and T + N)
C.2. Effects of implementation of anti-discrimination policies (B)	<ul style="list-style-type: none"> <li>Existence of tools (surveys, observatories, barometers, etc.) for monitoring public perception of inequality</li> <li>Monitoring of changes in existing indicators (T, T + N)</li> </ul>

<sup>(61)</sup> A particularly pressing and elaborate operationalisation, because it benefited from the expertise and efforts of an independent authority — the Commission for Racial Equality (CRE) — specifically dedicated to the implementation, study and revision of anti-discrimination law. This commission created and certified most of the tools allowing for the legal requisites to be brought back down to the areas of action, translating them locally into effective transformations of the practices in place. It first instituted *'ethnic monitoring'*, which locally evaluates the effects and consequences of actions and procedures regarding the 'race' and ethnic origin of individuals. Next, it built and then refined — after numerous studies, made easier as *monitoring* became more widely used — *'codes of practice'* capable of translating the general requisites of the law into operational initiatives that were sensitive to local restrictions on the initiative and likely to be appropriated by agents. Thirdly, it sent out *'equality plans'* to agents that were based on *ethnic monitoring* and informed by the *codes of practice* supporting the promotion and aim of equality in and vis-à-vis events.

### 3.2. Comments on indicators

Indicators for the first two areas having already been presented, indicators for evaluating the improvements brought about by anti-discrimination policies should also be proposed. **Under consideration are the impact of anti-discrimination law and/or the performance of equality policies and their various instruments.** Although it may disappoint readers, this last section will have to be very short. With most Member States in the very early stages of developing programmes to produce data on discrimination, we feel it would hardly be possible to propose indicators capable of measuring, or rather evaluating, the actual changes brought about by anti-discrimination law and policies, and to do so credibly and conclusively. Regarding the so-called performance indicators, given the current state of affairs one could hardly do more than propose the list of indicators developed in Parts III.1 and III.2, and then call for a detailed follow-up on the decrease in the gaps recorded via the indicators in Part III.1, as well as the increase in results recorded for the indicators in Part III.2.

It is currently impossible to create so-called *impact* or *performance* indicators because, for most grounds of discrimination and in most countries, there is not enough data to establish a starting point or situation relative to the disadvantages and inequalities affecting the main minority groups. With this element lacking, we thus cannot set a quantified value, appearing in one or more of the previously chosen areas, as a goal to be reached — a goal for which it would then be necessary to determine the degree to which it was taken up by the Member States. Consequently, one of the few things that it would be reasonable to propose is the monitoring of changes in the results of the evaluations made possible by the proposed indicators. An assessment of the impact (if the impact concept still applies) will become possible, then, only via the improvements — if any — that come about between the evaluations done at **time T** and those done at **time T + N**. In this light, two series of indicators can be developed.

#### a) Monitoring of fact-based inequalities (see Table 4: Indicator type C.1)

For the first, work will focus on the changes — regarding the relative inequalities and disadvantages minority populations face — in the range of areas that will have been evaluated.

#### b) Monitoring of the effects of anti-discrimination policies (see Table 4: Indicator type C.2)

With the second, it should be possible to assess progress in the mobilisation, effectuation and enjoyment of the law, as well as to inquire about the degree of appropriation and implementation of the main instruments, measures and principles we have identified.

*Barometer*-type opinion polls might nonetheless be added to the process, or victimisation studies, another type of study that can be used for this last type of indicator. While these types of survey are not in the least adequate for gaining information about the factuality of inequalities <sup>(62)</sup>, they do provide some indications as to the knowledge individuals have of their rights (and responsibilities), and can also shed light on the public sensibilities of the population group surveyed regarding discrimination.

This does not allow us to deduce, however, that these individuals are capable of detecting the discrimination, no more than it means they might appear capable of drawing legal attention to the discrimination and effectively mobilising resources to initiate legal proceedings to exercise their rights, if by chance they find themselves exposed (as victim or witness) to discriminatory treatment. They do not provide a conclusive representation of efforts as resources engaged in the fight against discrimination.

Despite these reservations, these opinion polls may nonetheless have a role to play in this last type of indicator, as long as they are carried out according to standardised procedures and at regular intervals.

<sup>(62)</sup> It can be noted, for example, that opinion polls like this will very likely have nothing to say regarding indirect discrimination, which in large part escapes attention given that it is revealed once the negative effects and consequences of officially-neutral rules or practices are exposed. In other words, this form of discrimination, unlike direct (open and blatant) forms of discrimination, is not apparent without the support of equipment and reasonable statistics. It does not become apparent and cannot take on a fact-based existence until it has been established via a statistics-based comparative study aimed at revealing the 'disparate impact' of a procedure, rule or practice on those individuals belonging to a minority group duly protected by law.





# Part II

**The conceptual framework set against the facts**



# I. Methodological benchmarks

## 1. Goals and methods of data collection

This second part of the report will cover the measures Member States have established for evaluating progress in equality and anti-discrimination efforts. The realities observed in Member States will be evaluated against the previously defined conceptual framework, the theoretical referent that Member States might strive to attain. Our field study aimed to accomplish the following:

First, verify the extent to which:

- the indicators proposed in Part I were deemed **relevant** by the players concerned in assessing the realities of discrimination, and how far corrective measures taken have progressed;
- the indicators are likely to be informed by data **available** from national statistics offices or other existing sources;
- officially similar indicators are **used** to highlight and measure inequality and report on equality and anti-discrimination policy efforts carried out;

Next, identify where some Member States have fallen short in the areas of data and indicators, evaluate what needs to be done to acquire a useful system of indicators, and identify notable differences in the design and development of evaluation measures;

Issue recommendations to the European Union.

Three types of information proved useful for this part of the study:

- data on the various grounds of discrimination, available online from national statistics offices: we deployed a rapid screening process to determine whether easily-accessible indicators that take into account the categories corresponding to each of the grounds of discrimination exist, and to identify the information available in these categories;
- the findings of the studies our experts carried out in the 10 countries chosen for a monograph <sup>(63)</sup>;

<sup>(63)</sup> Countries covered by a monograph: Germany, Belgium, Spain, Finland, France, Hungary, Italy, Czech Republic, United Kingdom and Sweden.

- the findings of the electronic questionnaire survey sent in October 2007 to the independent authorities, statistics bureaus and representatives of the main European NGOs involved in fighting discrimination in the 15 Member States not covered by the monograph <sup>(64)</sup>.

These questionnaires presented the previously established list of indicators, with a view to soliciting opinions about them from a panel of experts and representatives chosen in consultation with European Commission offices. For the 10 countries covered by the monographs, the questionnaires were either sent out by our team of experts to researchers and representatives from such bodies as the independent authorities, national statistics offices and NGOs, or commented on by these individuals during in-depth interviews.

List of agencies and networks contacted for the electronic questionnaire survey
National statistics bureaus
High authorities and/or institutions in charge of combating discrimination
For age-based discrimination: AGE network — European Older People's Platform
For discrimination based on ethnic and racial origin: ENAR — network of European NGOs working to combat racism in all European Union Member States
For discrimination on grounds of disability: European Disability Forum (EDF)
For discrimination based on sexual orientation: International Lesbian and Gay Association (ILGA)

## 2. Feedback from questionnaire survey

### 2.1. Questionnaires <sup>(65)</sup> on the relevance and availability of indicators

We presented the indicators in the questionnaire as they appear in Part I of this report. For each of the grounds of discrimination and each indicator, survey recipients were asked the following questions.

- To indicate if those groups or individuals likely to be discriminated against had been identified ('If yes, what are they?'), how they were defined ('How are they defined?'), what indicators were used to render their identification operable ('What indicators are used to identify them?'),

<sup>(64)</sup> All European Union Member States as of December 2006 were taken into account in this study. Questionnaires were sent out to those Member States not covered by a monograph, with the exception of Bulgaria and Romania.

<sup>(65)</sup> The questionnaire is appended to this report.

and via what types of survey the grounds of discrimination were identified ('How are these grounds of discrimination identified [census, employment survey, poll, etc.]?'). If survey respondents indicated that the individuals and groups for a particular type of grounds had not been identified, they had the option of explaining why (reasons and causes) these populations had not been taken into account. To this end, they were to choose between two pre-qualified items and an 'Other' item ('If not, could you explain why?' Choice 1: Question of principle: refusal to use indicators 'categorising' individuals discriminated against, Choice 2: Technical limitations related to how collection systems are organised and updated and statistics used).

- To speak to the relevance of the indicators chosen. The question for the first set of indicators — those aiming to factualise discrimination by measuring inequality — was the following: *'Do you think these indicators are relevant for measuring inequality on these grounds, in comparison with the rest of the population?'* The questions related to the relevance of indicators were closed questions, but survey recipients had the option of including comments or adding to one of the proposed choices.
- To clarify whether they were aware of the *availability* of the data needed to implement each of the indicators (*'Regarding the indicators you have reviewed, can you tell us whether or not — to your knowledge — data related to these grounds is available?'*).
- To speak to the *shortcomings* of the array of indicators they were asked to evaluate (*'In your opinion, which indicators for measuring inequality are essential, yet have not been mentioned for these grounds?'*).

This twofold focus on relevance and availability was repeated for the other two sets of indicators presented in Part I of this report.

## 2.2. Limitations of the questionnaire survey

Information was collected from the questionnaires filled out by our experts for the monographs and from the 115 questionnaires sent out, of which only 31 were returned despite several follow-up efforts. This low response rate alone merits comment, suggesting as it might that the direct intended recipients of these questions — those armed with the required information — are few in number, were not motivated to respond, did not feel they were in a position to fill out the questionnaire, or all of the above.

A review of the responses received showed, for example, that several recipients preferred not to respond for certain types of indicator given the expertise required or the sensitive nature of the data to which they referred. This was also true for those who responded to the questionnaire for the 10 monographs. In addition, several survey recipients provided responses only for indicators relative to one or two types of grounds, i.e. those for which they felt they were in a position to respond.

In other cases, responses on the availability of indicators were provided, but turned out to be mistaken, highlighting the gap that can exist, on such a sensitive subject, between the individual knowledge of those involved in the fight against discrimination (the question inquired as to what the players knew) and the fact-based reality. This raises two problems: the absence of visible information (at the very least) and/or indicators likely to provide indications regarding inequality and results of equality and anti-discrimination policies on one hand, and the inadequate preparation (knowledge or training) of certain players who are nonetheless directly involved in these issues on the other. The 'errors' were not just due to respondents' lack of familiarity with the national statistics system's resources; they were also related to the legal and regulatory measures or provisions in use. The frequency of these 'errors' leads us to believe that the range of measures likely to be implemented for the realisation of anti-discrimination law remains poorly understood or misinterpreted, despite efforts to disseminate and highlight the value of best practices.

Evaluating the quality of available data is also complicated, since many approximate (indeed, often very approximate) functional equivalents of the various grounds of discrimination are taken into account by national statistics offices <sup>(66)</sup>. The notion of the 'availability' of such data is not as unequivocal as it may appear, for survey recipients' responses to the question on that subject might be interpreted several ways.

More specifically, whether one type of data or another is available does not mean that data are used in the context of equality policy, monitoring or 'positive measures', for example. Moreover, the data in question often turn out to be inadequate from this point of view, given that they were not initially collected for this purpose. Such has been the case in

<sup>(66)</sup> The difficulty in agreeing upon what one should understand 'availability of data' to mean is most likely revealed in the responses provided by the recipients of the questionnaire at national level. In some cases, various recipients from the same country came to different conclusions about the availability of data. What is more, we also received responses from several recipients (including representatives from equality bodies) that blatantly contradicted information provided by national statistics bureaus. Such contradictions appeared in countries such as Slovenia, Lithuania and Italy. The problem is that it is sometimes difficult to determine whether this is due to a mere lack of knowledge regarding the resources available from statistical sources or whether it is due to requirement differences between recipients regarding the nature and type of data needed to measure discrimination by grounds. For some grounds, certain players are less demanding and tend to be satisfied with substitute variables (proxies) of low reliability in order to avoid categorisation work that they mistrust and intend to resist. This is the case for grounds related to race and ethnic origin in particular.



central and east European countries, for example, which have been looking into and collecting ethnicity data (referred to more commonly as ‘nationality’ data) for some time now. As Patrick Simon points out, this ‘tradition of collecting ethnicity data is not related to anti-racial discrimination policies, but rather to policies regarding the protection of the rights of national minorities’ (Simon, op. cit., p. 50).

Finally, it should be pointed out that survey recipients representing associations or academia and working on issues related to discrimination on grounds of sexual orientation produced some of the most substantial and well-documented responses. That they participated with such enthusiasm and their assessments were so sharp can be attributed to an awareness of the obstacles to action generated by the lack of data about individuals or groups discriminated against on these grounds <sup>(67)</sup>. The interest these individuals have in measurement at times even provides them with a broader view of the issue of factualising discrimination and evaluating equality promotion, as seen in this comment from a questionnaire sent in by M. Grigolo of the European University Institute of Florence, Italy: *‘To my knowledge, official statistics and data have never included categories with which specific groups might be defined according to their exposure to discrimination — and certainly not for discrimination on grounds of sexual orientation’*. The fact that these individuals are familiar with the overall problem related to measuring discrimination for all grounds allows them to denounce the uneven treatment and statistical analysis of the various grounds, among which those related to sexual orientation are worst off <sup>(68)</sup>.

All in all, the following agencies and NGOs from the second group of 15 countries officially participated in this consultative process.

Second group of countries	Agencies that responded to an electronic questionnaire
Austria	No response
Cyprus	KISA — Action for Equality, Support and Antiracism (ethnic/racial origin) Statistical Service of Cyprus (all grounds)
Denmark	Statistics Denmark (all grounds) DSI EDF
Estonia	No response
Greece	Greek ombudsman (all grounds) 50+Hellas (age)
Ireland	No response
Latvia	Alliance of LGBT and their friends, ‘Mozaika’ (sexual orientation)
Lithuania	Lithuanian Gay League (LGL) (sexual orientation) Age: the European Older People’s Platform (age) Statistics Lithuania Office of the Equal Opportunities Ombudsperson
Luxembourg	No response
Malta	National Commission for the Promotion of Equality (NCPE) Malta Gay Rights Movement
Netherlands	SCP Statistics Netherlands (all grounds)
Poland	Foundation for Women’s Issues Coordinator of FORUM 50+ (age) Campaign Against Homophobia (sexual orientation)
Portugal	Associação ILGA Portugal (sexual orientation)
Slovakia	No response
Slovenia	Office of the Government of the Republic of Slovenia for Equal Opportunities (all grounds)

<sup>(67)</sup> An awareness that spurred a mobilisation within academic and activist circles. The ILGA, for example, developed an entire study process involving the idea of measurement. Incidentally, that the national representatives of this organisation more or less played the game is therefore not surprising. Of all the non-governmental networks contacted, representatives of the ILGA returned the most questionnaires.

<sup>(68)</sup> This uneven statistical analysis of the various grounds is interpreted as a sign of the unequal attention government authorities have accorded to the range of discrimination, an inequality detrimental to LGBT individuals, who consequently are less able to use statistical resources for revealing and politicising the discriminatory wrongs at play against them. In this regard, British NGOs have been calling, for quite some time, for measures to combat discrimination on grounds of sexual orientation to be aligned with those designed and used for other grounds like race and ethnic origin. Among them, Stonewall has been advocating the implementation of a sexual-orientation monitoring programme similar to ethnic monitoring in companies and institutions. That public institutions recently expanded the ‘positive requirement’ of promoting equality to other grounds, including sexual orientation, after previously limiting that requirement to race and ethnic origin (2000 amendment of the 1976 Race Relations Act) falls directly in line with Stonewall’s calls for monitoring. Public institutions will now have to proceed with such monitoring. Given this new law, the UK Office for National Statistics made an official proposal to include a question on sexual orientation in the 2011 census. After several tests, authorities nonetheless decided not to include such a question since the non-response and even refusal rates for the census appeared too high.

## II. Assessment of the relevance of chosen indicators

### 1. An overall positive (even very positive) view of the proposed indicators

Despite the limitations mentioned and precautions to be taken with regard to the factual information provided in the questionnaires, none of the respondents expressed reservations or hesitation with regard to splitting the indicators into three types. Partitioning the indicators into three separate sets was thus viewed as quite relevant. The second type of indicator (related to the status or degree of progress in anti-discrimination law and policy), positioned between the traditional areas of measuring discrimination and measuring the impact or effects of policy, appears to have been well received, despite disturbing a few respondents, such as representatives from statistics bureaus, who did not always feel they were in a position to deliver an opinion about this range of indicators.

The Director of France's Institut National d'Études Démographiques (INED), for example, chose not to reply to questions about indicators involving the progress of anti-discrimination policy, since he did not feel he was a 'specialist in the evaluation of public policy'. The representative from Statistics Denmark (head of section, population division) abstained, in her electronic questionnaire, from providing reactions to this same set of indicators, but in this case because they did not primarily relate to government statistics.

Another clearly positive point involved the indicators proposed: none attracted a widespread or even shared negative reaction from a significant number of respondents. If respondents chose not to respond to one or more sets of indicators, it was due to the real or assumed lack of available data necessary for implementing such indicators, or rather the lack of categorisation methods needed to produce such data. Cases of this type were nonetheless few in number.

Aside from such cases, few indicators were deemed weak or irrelevant, and when they were, it was not always the same ones from one respondent to the next. Consequently, no trend has emerged indicating that certain types of indicator did not receive the consent of those consulted.

We should furthermore point out that when various respondents justified their rejection of similar indicators, it was neither for the same reasons nor due to the same obstacles —

which, incidentally, can likely be overcome, at least in part, as in the case of collecting data of 'sensitive' nature.

Lastly, among the countries that responded to the questionnaire there were none that specifically and strongly rejected certain types of indicator, whether with regard to groups of indicators or the grounds the indicators were intended to track.

### 2. Relevance of the 'race and ethnic origin' statistical category under review

#### 2.1. France: concepts deemed 'unacceptable'

The relevance of indicators designed to report on inequality on grounds of race or ethnic origin was at times questioned. The most notable instance was on a questionnaire filled out by HALDE, France's independent authority. The rejection was explicitly explained as a refusal to categorise on grounds of race and ethnic origin.

In its responses, HALDE rejected the entire first set of indicators (those related to measuring inequality) for grounds related to race and ethnic origin alone due to the categorisation method to which individuals and groups would have to be subjected in order to implement these indicators. This reflects a position held at European level.

Although HALDE is aware of the difficulties in identifying and measuring discrimination based on origin, it regrets that all discussions on the matter focus on the concepts of race and ethnic origin, concepts it finds 'unacceptable', and emphasises that this is slowing down efforts and discussions on the development of other frames of reference for measuring discrimination on grounds of 'origin'.

An excerpt from HALDE's questionnaire responses addresses this:

*'In France, the problem lies not so much in the opportunity for a "racial" discrimination indicator, but rather in the requirement to define what one is measuring and the fact that ethnicity and race are unacceptable concepts. Asking the question of measurement tied to "race and ethnicity" eliminates the possibility of considering development of a new*



*approach to measuring discrimination and discussing the relevance of existing categories. Granting too much significance to the “ethno-racial” frame of reference leads us astray from the necessary discussion about the relevance of the “ethno-racial” category and the choice of other frames of reference for measuring discrimination on grounds of origin. In France, this approach has opened the door to development of other categories of reference (for example, origin) for identifying the relevant population (national, foreign, immigrant, from an immigrant family) and measuring discrimination. The approach has made it possible to delve further into discussions about methodology and the choice of what is being measured, how, and to deduct what. Since discussion of the opportunity to develop objective indicators leads us away from the controversial notions of race and ethnicity, we feel it is an essential element too often overlooked in presentations about the challenges related to measurement efforts... Those individuals likely to become victims of racial discrimination are identified via what is referred to as “objective” data, related to descent... With these data, inequality of treatment encountered by such groups on their social and professional tracks can be identified.’*

This response clearly addresses the issue of identifying categories for documenting grounds of discrimination and determining which individuals and groups are affected, in practice, by the discriminatory wrong. The relevance of the categories proposed (foreign, immigrant, from an immigrant family), however, has been called into question by the ILO, which, in its 2007 report, *Equality at work: Tackling the challenges*, recalled that ‘it is important (...) not to use variables such as ‘nationality’ or ‘country of birth’ of respondents or their parents as proxies to measure the racial or ethnic composition of a society. ‘Country of birth’ is not a reliable indication of ‘colour’ or other features associated with ethnic origin. Moreover, it gives the wrong impression that racism is a phenomenon limited to the results of immigration’ (ILO, 2007, p. 12).

## 2.2. Germany: no discussion on the measurement of discrimination

Germany’s responses are also of particular interest. While HALDE focused in on the unacceptable nature of categories documenting race or ethnicity, our team’s expert pointed out that, in Germany, ‘Overall, discrimination does not inspire heated debate, whether in regard to ethnic origin in particular or other grounds in general; efforts to combat discrimination do not attract much interest (...) and do not inspire bona-fide debate’.

An inheritance of immigration-focused policies appears to be keeping discrimination off the agenda and blocking the ability to adequately designate those individuals or groups concerned. As in France and many other west European countries, it appears that discrimination on grounds of race or ethnic origin is being blended in with the ‘inclusion’ of ‘immigrant’ populations, which are always referred to publicly as such.

## 2.3. Czech Republic: discussion of statistical categories

For other countries, the relevance of the categories used — for grounds related to race and ethnic origin in particular — was questioned. Statistical categories have raised debate with regard to Roma communities in the Czech Republic and Hungary in particular.

In the Czech Republic, for example, the Labour Ministry’s responses to the questionnaire emphasise several difficulties with regard to how grounds related to race and ethnic origin are articulated. According to the point of view expressed, the employment indicators used for measuring inequality are of low relevance, for several reasons: first, due to the *lack of reliable data* on ‘nationality’ or ‘ethnicity;’ next, due to *criticisms expressed by some NGOs* (for example, attempts by employment departments to take the ‘ethnic’ aspect into account in favour of job-seekers are highly criticised by NGOs, which consider this a discriminatory attitude); and finally, the relevant individuals (in the Czech Republic, the Roma) generally do not like to declare their origin.

Although data on affiliation with an ethnic minority was collected in a Czech Republic census <sup>(69)</sup>, the concerned populations do not willingly declare their origin and this type of data has no equivalent in labour force surveys, making it difficult to measure inequality and discrimination in employment. What is more, these data are collected mainly to inform anti-exclusion social policies before informing anti-discrimination policies, which raises questions about the categories and questioning methods used to document ethnicity (or any other grounds) and their adequacy with

<sup>(69)</sup> As stated by the national statistics bureau of the Czech Republic in its responses to the questionnaire. The bureau nonetheless confirms that data with regard to ethnic minority membership are only collected in censuses via a question requiring self-identification. That this information is not collected in other studies and is absent from other statistical sources is due to the law relative to the protection of personal information.

regard to measuring discrimination and conclusively determining the relevant groups <sup>(70)</sup>.

It would seem that the inclusion in government statistics of a variable (in this case, ethnic origin) that is officially taken into account by European Union directives indicates that this variable is appropriate to meet the objective of assessing discrimination.

### 3. Indicators that measure inequality (type A indicators)

While there are no widespread negative opinions on the relevance of a given indicator, the following details deserve to be taken into account for each of the grounds chosen.

#### 3.1. Race and ethnic origin

In the area of access to employment, the relevance of indicators for measuring inequality that contribute to *job visibility of groups subject to discrimination and/or their involvement in civil society* was marginally called into question by national statistics offices, independent authorities and an NGO (see following table). We emphasise that it is the capacity to provide information for such indicators, as well as the link between the measurement of a fact and the characterisation of discrimination *in light of the field covered by the race*

*directive*, that are in question here <sup>(71)</sup>, as was clearly stated by those interviewed.

In the field of working and employment conditions, indicators that were deemed not very relevant or not relevant in assessing inequality on grounds of racial and ethnic origin are, in particular, *the percentage of persons working part-time, employed or self-employed persons, or membership in a trade union or professional organisation (which is nevertheless quoted in the race directive)*. Here again, the main issue concerns the principal reason that might explain differences between people. The issue of whether or not origin is a decisive characteristic is therefore raised, as some do not wish to equate ostensible employment inequality with an instance of discrimination in the absence of proof. We still believe that these indicators remain relevant, in particular to reveal forced vocational specialisations imposed on ethnic minorities, since numerous studies show that the self-employed trades performed by members of certain minorities are hardly a genuine choice; rather, such people resort to working methods that are less exposed to discrimination, since those so employed are not part of the job market in the strictest sense. As for indicators regarding membership in a trade union or professional organisation, we believe these are essential for learning about workers' access to forms of democratic participation in the working world.

Concerning the field of education and training, the issue of relevance, in particular, is raised by certain isolated respondents concerning indicators related to access to university study tracks, schooling outside the regular system, or access to study tracks that prepare students for vocations that lie at the heart of the workings of the state of law (justice system, police, etc.). Here again, the small number of respondents who called into question the relevance of these indicators, as well as the fact that these stakeholders did not put forward any arguments in support of their reservations, means that we do not believe we should call into question their entry in the list of standard indicators proposed — all the more so since these reservations might indeed reflect concern over results that reveal the use of such indicators.

Finally, though most of the indicators concerning social protection are almost unanimously deemed relevant, some indicators concerning access to services raise issues, in particular those we used regarding inequality in terms of healthcare and

<sup>(70)</sup> The populations in question must be targeted by an anti-discrimination policy. According to the individuals with whom our expert in charge of the Czech Republic monograph met, the Roma policy is less focused on the fight to combat discrimination and more so on the fight against exclusion via social measures. In Hungary and the Czech Republic, controversies surrounding statistics on the Roma community point to the available data being ill-adapted to the discrimination suffered by this community, given the difficulty in statistically defining this population and including all of its members. In the most recent census carried out in the Czech Republic, approximately 12 000 individuals declared they were Roma, whereas approximately 250 000 Roma are estimated to live in the country (see the report, *Toward common measures on discrimination* (Olli and Kofod Olsen, 2005)). Furthermore, the response rate for the 2001 census had dropped, since 33 000 had declared they were Roma in the 1991 census. Two years earlier, in 1989, 145 738 Roma had been recorded by local authorities — figures also thought to fall very short of the actual numbers. This under-representation was furthermore explicitly confirmed by the Czech Republic's national statistics bureau in its responses to the questionnaire: 'The rate of individuals who declare themselves [in the census] to be a member of an ethnic minority is much lower than estimates indicate (particularly for the Roma)'. The response then indicates that this gap is detrimental since, because of the gap, 'It is impossible to identify them in other data sources and to combine that data with other indicators'. On the strength of the experience in the Czech Republic, the authors of *Towards common measures for discrimination* write that, in some countries, 'The census therefore provides no realistic picture of the composition of at-risk groups' (op. cit., p. 23). Rather than coming to that conclusion, it would be beneficial to consider the categories used to define and represent Roma ethnicity, as researchers and NGOs in Hungary did (Farkas, 2004). Finally, data being available does not mean that they are useful, that they are used, that government officials use them to their full advantage, that they are usable, or that they could at some point be useable if certain adjustments were made.

<sup>(71)</sup> A researcher at the European University of Florence Institute accordingly states that, with regard to instances of discrimination due to race or ethnic origin on which he is working, information could not currently be provided for any of the indicators in the first three groups that we proposed (which clearly require the use of public statistics), but that he considers nearly all these indicators relevant, with the exception of indicators on 'public representation', 'membership in a political party', 'work accidents', 'transportation', and the section on 'inequality vis-à-vis illness' in the 'health' indicators. This Italian researcher expressed reservations over indicators concerning political positions and professions, which, in his view, would fall outside the scope of the 'immediate action field' of the race directive.

social protection, death rates (morbidity and mortality indicators) and housing. If inequality exists, the issue of the 'race and/or ethnic origin' reason's relevance as a basis for such inequality is raised, but ultimately only in a marginal way.

### 3.2. Age

While indicators proposed to measure aged-related inequality are deemed relevant, as a general rule, the supposed limits of certain data concerning employment conditions have been highlighted: differences in pay (indicator type A.9), as well as type of work (employment/self-employment — indicator type A.6), are sometimes seen as being disconnected from inequality linked to age-based discrimination.

However, this observation does not apply uniformly to all countries. Concerning the type of work, the high percentage of self-employed workers among seniors might hide a form of inequality vis-à-vis job access, which statistics do not always make it possible to reveal. This observation was made by a respondent in Greece, for example, but is also valid for other Europeans. In this case, 'self-employed' status seems to be the only — or principal — means of access to jobs for seniors, as it is more flexible and less subject to the demands linked to salaried employment. An investigation into this point might be particularly useful to determine more precisely the relevance that was called into question regarding certain indicators. In this respect, it is necessary to know which senior workers have no choice other than to become self-employed because they cannot find employment and which have no choice other than to choose a decrease in pay to keep their job.

Moreover, in certain countries specific age groups are not considered to be subject to discrimination. In this case, there is admittedly abundant data for which analysis is not deemed significant since, at first glance, the category has no specific relevance.

### 3.3. Disability

For this ground, the proposed indicators were widely approved. On the fringes, there are some questions as to the relevance of indicators concerning 'job visibility' (representation in public life and civil society).

### 3.4. Sexual orientation

For this ground, several statistics offices and/or independent authorities have raised the issue of relevance regarding a large majority of the indicators for measuring employment-access inequality. The issue raised here concerns the difficulty to be deduced from the indicators, given that the group subject to

discrimination is hardly identified in the public statistics and does not always wish to be.

As one NGO stresses, 'The specificity of this discrimination involves the "invisibility" of the sexual orientation that the indicators should take into account. For this NGO, the relevance of these indicators is based on the following premise: *"The stated sexual orientation (or the possibility of being "out" in the workplace) should be the most relevant variable"*'

Moreover, the fields that constitute job access or job conditions have also been deemed peripheral by certain respondents, who believe that other indicators not covered here are a priority (for example, indicators covering workplace harassment, parenting and access to housing, which do not fall directly within the scope of this study). As for the field of jobs, some NGO members of the ILGA stated that it would be useful to document the discrimination that might be inflicted once the threshold of the job market has been crossed. We were told that discrimination based on sexual orientation occurred once a person had been hired and once the information on the person's sexuality had been revealed, whether willingly or not. The issue is therefore to ascertain what becomes of those whose sexual orientation has been revealed, in terms of *career and pay*. Similar remarks were made concerning disability-based discrimination, which, on this point, has a group of characteristics shared with sexual orientation, in particular with regard to being invisible (for certain categories of disability). Indeed, some respondents emphasised the fact that discrimination might occur in employment when a person's disability manifests itself or is unintentionally revealed. In such cases, process-related indicators that are likely to follow paths or careers are therefore required, as is comparing them with the relevant control population — which requires close liaison with businesses, since it is at their level that such studies might be undertaken.

For discrimination due to sexual orientation, the representative of the Danish Statistics Office suggested some examples of indicators that might be worth developing but which fall under the category of anti-discrimination policies and are not a measurement of inequality in the field of employment, such as, for example, workplace harassment in certain sectors of activity (the assessment of which is not necessarily based on the use of major enquiry resources from public statistics, but instead requires ethnographical studies).

*'For this area of discrimination, civil rights, like rights for couples, to be registered under similar conditions as heterosexual married couples, which influences pensions, insurance and other economic aspects, rights to adopt children. Harassment in specific job sectors, casual violence/hate crime.'*

*A general aspect of administrative registry data, which Statistics Denmark uses for generating vital statistics, is that subjective categories are not stated.'*

Accordingly, taking into account the ground of sexual orientation and providing categorisation are an essential first step. The indicators used to measure inequality in the field of employment (type A indicators) could then be applied, as a priority, to objective data concerning *careers and pay*. Among the types of indicator identified within the conceptual study framework, indicator type A.3 (job visibility and public representation), type A.6 (type of work), type A.8 (horizontal segregation) and type A.9 (pay discrepancies) might be given specific focus in order to describe discrimination on this ground. *There are still difficulties in building such indicators, and mobilising them is not realistic as matters currently stand.*

### 3.5. Religion and convictions

For this ground, most indicators were deemed relevant; only certain indicators concerning job visibility were identified by some enquiries as being not particularly appropriate for revealing inequality. This judgment should be moderated and put into perspective: job visibility (presence of groups of persons who may be discriminated against) is a sign of mobility and the openness of the job market, which is not an obstacle to categories of people who may potentially suffer discrimination. *We believe this indicator type (A.3) is not only important but that it is essential to maintain it for this ground as with previous grounds, and to explain it to the NGOs.*

We emphasise the position of an institution such as France's HALDE, which deemed all indicators in this group irrelevant and thus reiterated its defiance regarding where certain grounds are categorised, as religion is deemed to be too near race and ethnic origin. The HALDE stresses that public statistics enquiries contain questions on religious practices (frequency and intensity) and the importance given to religion; however, these enquiries do not ask what type of religion is practised. In general and for many stakeholders, religion is a 'proxy' for ethnicity or is even indistinguishable from ethnicity, at least for certain ethnicities. The representative of the Netherlands' office of statistics feels that:

*'In the Netherlands, religion (or, more specifically, being a Muslim or not) is increasingly a ground that people are discriminated upon. Most surveys that include measures of ethnicity also include items on religious affiliation, although young children (in school) are most probably not asked about their religion. Other survey results indicate, however, that religion and ethnic background most often go together in groups that will suffer the most from discrimination (Turks and Moroccans almost all consider themselves Muslim). Therefore, it will be hard to disentangle ethnic and religious discrimination against such groups if discrimination is indirect rather than open and direct.'*

The following table illustrates this by presenting the indicators deemed not very relevant or irrelevant by several institutions consulted. (These institutions responded 'no' or 'no opinion' to the issue of assessing relevance.)

***Inequality measurement indicators (type A):  
Indicators not very relevant or irrelevant by several institutions consulted***

Grounds of discrimination	Job access conditions	Labour and working conditions	Education — training	Social security	Access to property and services
Race and ethnic origin	Indicators of representation in public administrations: statistics offices (2) ( <sup>(72)</sup> ); independent authority (1) Representation in community life and the service sector: statistics offices (3); independent authority (1) Public representation (media, culture): independent authorities (2); statistics office (1); university expert (1) Make-up of boards of large corporations: NGO (1), statistics office (1); independent authority (1) All other indicators: independent authority (1)	Seniority in job: NGO (1); independent authorities (2) Percentage working part time: statistics offices (3); independent authority (1) Percentage of employed and self-employed workers: statistics offices (2); independent authorities (2) Membership in a trade union or professional organisation: NGO (1); independent authorities (2) All other indicators: statistics office (1); independent authority (1)	Percentage of pupils schooled outside the regular system and in private schools: statistics offices (2); independent authority (1) Percentage at university by study track: statistics offices (2); independent authority (1) Percentage in police or law school programmes: statistics offices (2); independent authority (1) All other indicators: statistics office (1), independent authority (1)	Rate of work accidents: statistics offices (3); independent authority (1) All other indicators: statistics office (1); independent authority (1)	Medical cover or social security: statistics offices (3); independent authorities (2) Demographic indicators concerning health: NGO (1); statistics office (1); independent authority (1) Type of housing: independent authority (1); statistics office (1); independent authority (1) All other indicators: statistics office (1); independent authority (1)
Age		Type of work: statistics office (1); independent authority (1) Percentage of persons working part time: independent authority (1) Pay discrepancy: statistics offices (2); NGO (1)			
Disability	Representation in community life: statistics offices (2) Indicators of representation in public administrations: NGO (1) Representation in the police force and the judicial system: statistics office (1)	Percentage of persons working part time: statistics office (1) Percentage employed and self-employed workers: statistics office (1) Indicators of type of work: statistics office (1) Divergence in salaries: statistics office (1)			
Sexual orientation	All indicators: statistics offices (3); independent authority (1)	All indicators: statistics offices (2); independent authority (1) Percentage working part time: NGO (1); independent authorities (2) Pay discrepancies: NGO (2)			
Religion and convictions	Make-up of boards of large corporations: statistics office (1); independent authority (1) Indicators of representation in public administrations: statistics office (1); independent authority (1) Representation in community life and in the services sector: statistics office (1); independent authority (1) All other indicators: independent authority (1)	All indicators: statistics office (1); independent authority (1)			

<sup>(72)</sup> The figure states the number of respondents who found the item not very relevant or irrelevant; in this case, read, 'The representatives of two statistics offices found the relevance of the indicator of representation in public administrations not very relevant or irrelevant'.



## 4. Indicators for measuring the progress of anti-discrimination policies (type B indicators)

As stated previously, these indicators are deemed relevant by a large majority of those questioned and interviewed. In some cases, as for type A indicators, the representatives of the institutions concerned call the relevance of the indicators into question. We have presented them here in order to refine the grid shown previously and the related indicators.

### 4.1. Data concerning complaints by victims

The need to collect this type of data is widely supported by the organisations contacted, for all grounds of discrimination. However, there are numerous players who have emphasised the fact that a given indicator in no way made it possible to evaluate the extent of discrimination's effective presence in society. As we saw previously, this tells us only about people's capacity to defend their rights and mobilise the law. A given indicator must therefore, above all, not be deemed to provide reliable information on the frequency and/or nature of discriminatory phenomena. The only fact an indicator can document is related to the subjects' awareness of the legal standards that govern their rights, their ability to use the law and the receptiveness of institutions to the problem of discrimination (subject to this indicator resulting in the establishment of the proportion of complaints that lead to legal proceedings).

The 'collection of victims' complaints' indicators and their *breakdown according to the identity of the victims* are widely deemed relevant and useful in the fight against discrimination, *for all grounds of discrimination*. Only a small number of players (a statistics office and independent authority) distinguish themselves and did not state that they were able to judge the relevance of the submission of indicators not put together by the statistics office.

It should be noted that 'proportion of *complaints that result in a judicial sanction*' is an indicator for which the relevance was not validated by one independent authority and one statistics office for the ground of race and ethnic origin, perhaps due to the fact that it is difficult to cast a positive light on data for which the development or production involve other institutions and require partnerships that are sometimes complex in light of the institutions involved or the reliability of the data likely to be submitted.

### 4.2. Report on the activity of independent authorities

'Design and implement indicators to report on action by independent authorities' is the category of indicator that provoked the most frequent reactions (even if limited in number) concerning relevance.

- Accordingly, as regards the implementation of a monitoring system, some statistics offices and independent authorities viewed this negatively, for all grounds of discrimination.
- The same applies to 'ability of independent authorities to issue legally-binding codes of practice' and to monitor and control such guides. The implementation of indicators that make it possible to monitor the extent to which such codes have been implemented in order to guide and orient anti-discriminatory action is disputed by several statistics offices and independent authorities, for all the grounds.

The implementation of such indicators has nevertheless been found to be crucial from the point of view of effectiveness of the law, of assessment of anti-discriminatory policies' development and their implementation at local level, and of action and remits granted to independent authorities and the way in which they develop.

### 4.3. Tools and measures

Globally, the tools and measures proposed with the conceptual framework to report on the implementation of the policies are deemed relevant, even if some contrasting opinions were expressed marginally, in particular by some statistics offices for which the reservations are sometimes linked to their limited understanding of these measures, as some of them acknowledged.

- *Mobilisation of the 'positive actions' instrument*: deemed relevant by most of those who responded to our questions, for all the grounds of discrimination. The rare dissenting opinions come from a few statistics offices on the grounds of race and ethnic origin (2), age (3) and disability (1), which seems to indicate that the reticence expressed pertains rather to the method implemented for collecting useful information, the monitoring of the effects of positive actions and the ability to collect such data, rather than the usefulness of such an instrument. This observation underlines the need to consider the principle expressed and supported here differently, as its implementation can sometimes appear delicate.

- ‘The use of statistical testing and proof in legal proceedings’<sup>(73)</sup>: the building of an indicator that is liable to produce information on the existence or not of this resource is deemed relevant by almost all the players and institutions consulted; only a few statistics offices expressed any reservations.
- The existence and effective implementation of legally-binding codes of practice are, for their part, not considered very relevant by two statistics offices consulted for the ‘race and ethnic origin’, ‘age’ and ‘religion and convictions’ grounds. We do not have any information that makes it possible to ascertain the reasons for this reservation, but we can assume that the monitoring of this type of device is foreign to statistics offices, which might raise questions on the monitoring of indicators they are not familiar with.
- The existence of an instrument for measuring the progress of an action plan to promote equality is viewed positively for all grounds of discrimination by almost all those consulted. Here again, the only reservations expressed come from a statistics organisation’s concern about ‘race and ethnic origin’ grounds.

#### 4.4. Mainstreaming and adapted developments

Two trends can be highlighted.

- The tool for monitoring the degree of appropriation within anti-discrimination ministries is widely deemed relevant, as the following table shows.
- The same seems to apply for the implementation of *barometer*-type tools (initially classified among type C indicators) intended to follow the progression of the perception of inequality by the public, for all grounds of discrimination.

As for the implementation of suitable developments concerning the ground of disability, no opinion has invalidated the relevance of this item.

*The following table, which illustrates this, lists the main indicators for which the relevance was called into question by at least two institutions consulted (several negative-opinion or no-opinion answers to the question of assessment of relevance). The table emphasises the weakness of the reservations concerning the relevance of type B indicators.*

<sup>(73)</sup> A distinction should be made between ‘use of testing’ and ‘statistical proof’. Although the testing is based on statistical reasoning, it is rarely described by lawyers as contributing to ‘statistical proof’, which is commonly submitted in cases of indirect discrimination, whereas testing is only valid for direct discrimination. As far as we are concerned in this section, these two systems are grouped together, and what is important is whether or not elements of discrimination exist.

**Indicators to measure the progress of anti-discrimination policies (type B):  
indicators deemed not very relevant or not relevant by several institutions consulted**

Grounds of discrimination	Data concerning complaints by victims	Action by independent authorities	Tools and measures	Mainstreaming
Race and ethnic origin	Proportion of court actions resulting in judicial sanctions: statistics office (1); independent authority (1)	Establishment of monitoring: independent authority (1); statistics offices (2) Ability to issue legally-binding codes of practice: independent authority (1); statistics offices (2); government office (1) Control and monitoring actions: independent authority (1); statistics offices (3)	Mobilisation of the positive actions instrument: statistics offices (2) Scope of the powers of social partners: statistics offices (3) Existence and implementation of legally-binding codes of practice: statistics offices (2) Acknowledgement of the use of statistical testing and proof in legal proceedings: statistics office (1)	Monitoring tools (enquiries, observatories, barometers, etc.) on the perception of inequality by the public: statistics offices (2); independent authority (1) Monitoring tools (enquiries, observatories, barometers, etc.) on the degree of appropriation by ministries for anti-discrimination policies: statistics office (1)
Age		Ability to issue legally-binding codes: statistics offices (2); government office (1); NGO (1) Actions to control and monitor codes of practice and monitoring: statistics offices (3)	MMobilisation of the positive actions instrument: statistics offices (3) Scope of the powers of social partners: statistics offices (2) Existence and implementation of legally-binding codes of practice: statistics offices (2); NGO (1) Acknowledgement of the use of statistical testing and proof in legal proceedings: statistics offices (2)	Monitoring tools (enquiries, observatories, barometers, etc.) on perception of inequality by the public: statistics offices (2) Monitoring tools (enquiries, observatories, barometers, etc.) on the degree of appropriation by ministries for anti-discrimination policies: statistics office (1), NGO (1)
Disability	All indicators: NGO (1), statistics office (1)	All indicators: NGO (1); statistics office (1) Ability to issue legally-binding codes of practice: government office (1) Control and monitoring actions: independent authority (1); statistics office (1)	All indicators: NGO (1); statistics office (1) Mobilisation of the positive actions instrument: statistics office (1) Scope of the powers of social partners: statistics office (1)	All indicators: NGO (1); statistics office (1)
Sexual orientation		Implementation of monitoring: independent authority (1) Ability to issue legally-binding codes of practice: independent authority (1); government office (1) Actions to control and monitor codes of practice and monitoring: independent authority (1); statistics office (1)	Acknowledgement of the use of statistical testing and proof in legal proceedings: NGO (1) Scope of the powers of social partners: statistics office (1)	Tools for monitoring the degree of appropriation of anti-discrimination policies by the ministries concerned: independent authority (1); statistics office (1)
Religions et convictions		Implementation of monitoring: independent authority (1); statistics office (1) Ability to issue legally-binding codes of practice: independent authority (1); government office (1); statistics office (1)	Existence and implementation of binding codes of practice: independent authority (1) Existence and effective implementation of work-force monitoring: independent authority (1); statistics office (1)	Tools for monitoring the degree of appropriation of anti-discrimination policies by the ministries concerned: independent authority (1); statistics office (1)

## 5. Conclusion

*In conclusion, we can draw the following lessons.*

### a) Type A indicators: measurement of inequality

The global acknowledgement of the relevance of the indicators proposed during the building of the conceptual framework must be emphasised. The limits referred to often concern the rejection of the categorisation of certain grounds — such as race and ethnic origin in some countries — or the absence of reflection on grounds such as sexual orientation in all the countries, as well as the current unavailability of data, which might lead some persons questioned to say that they cannot judge the relevance. Moreover, a certain number of reservations underline the respondents' unfamiliarity with or ignorance of the issue of the fight against discrimination.

We propose drawing two types of conclusion from this observation.

- The reservations made show us the difficulties that can exist in building certain indicators and the unrealistic nature, as matters stand, of their mobilisation, in particular for certain grounds such as sexual orientation.

This remark does not invalidate the types of indicator that are useful for describing discrimination, but is merely intended to stress the fact that their development requires initial action, as we explained previously. For example, we showed that for the ground of age, the indicators regarding the variances in type of work or salary discrepancies warrant refinement, which, although necessary, does not call into question their relevance. In the same way, indicators concerning professional and salary progress linked on the ground of sexual orientation are, in our opinion, relevant despite current mobilisation difficulties and the few reserved opinions expressed by certain respondents.

To give another example, the relevance of the indicators of representation and visibility (indicator types A.3 and A.4) was questioned. However, we believe it is indispensable to maintain these types of indicator, given that they are simple to establish, in our opinion, and particularly useful in terms of making the reality of discrimination on the grounds of age and ethnic origin, disability or religion visible.

As for indicators concerning 'membership in a trade union organisation', which are clearly defined in the scope of application of the two directives, it is necessary to make Member States aware in order to explain the usefulness of this type of data in reporting on discrimination.

- Therefore, the few reservations expressed and the low rate of response to our questionnaire lead us to emphasise the **importance of making players aware** of the significance and scope of the indicators questioned. An action to raise awareness, the form of which needs to be defined, might be implemented for this purpose.

### b) Type B indicators: measurement of anti-discrimination policies' progress and the promotion of equality

Despite the questions raised here and there on the development of the independent authorities' powers <sup>(74)</sup> or on a given tool or measure proposed, all indicators of this type appear not only relevant but also vital in terms of development, in order to evaluate progress in anti-discrimination policy implementation.

The need to pursue and strengthen the implementation of the directives leads us to suggest that our proposal for indicators be maintained. If the institutions responsible for these policies are favourable to this, they still need powers and resources. As the network of European experts on non-discrimination emphasised <sup>(75)</sup>, these powers and means often appear insufficient.

<sup>(74)</sup> We will develop this point on the powers and remits of the independent authorities in Section III.3, on the availability of type B indicators.

<sup>(75)</sup> *Catalysts for change?*, Holtmaat, 2007.

### III. The availability of the chosen indicators

#### 1. Very inadequate availability of data concerning conceptual framework indicators in most Member States

##### 1.1. Main observations

Analysis of the available data, performed via the monographs, the survey conducted through questionnaires and research on the sites of national statistics offices, confirmed the observations of numerous European experts: with the exception of the UK and Ireland and of the Netherlands (the No 2 country for being generally up to date on these issues, regarding certain grounds at least), *no country* has implemented a measure for evaluating progress in the promotion of equality and the fight against discrimination as defined in the first part of this report, regardless of type of indicator (types A, B and C) and grounds laid down by Directives 2000/43/EC and 2000/78/EC. Finland alone has just drawn up an ambitious programme for collecting data based on 44 proposals (*'Monitoring discrimination in Finland'*, 2007) after its Labour Ministry, together with the European Commission and Education Ministry, launched the MERA project in 2005 (*'Making equality a reality with adequate data'*, 2005).

*More precisely, the main observations that concern type A indicators are as follows:*

- *non-existent data in all countries for the ground of sexual orientation;*
- *categories not aligned with the grounds mentioned by the directives for ethnic and racial origin and disability grounds;*
- *categories that are available in certain countries but not mobilised for the fight against discrimination on the grounds of ethnic and racial origin and religion/convictions;*
- *categories on age that are available (age is systematically collected in all countries) but which are not adequately treated in order to enable facts to be gleaned on inequality.*

##### 1.2. Anti-discrimination law requirements unmet in terms of information collection

In this shortage of indicators, it is difficult not to read a certain lack of interest in the issue of measuring and evaluation or perhaps a sign of the unease this issue causes among the players. The new categories of anti-discrimination law that result from the European directives have not yet been really integrated. This means that failure of consultation via questionnaires is relative and predictable, and only confirms what we already knew: *the enquiries and measures specially devoted to the issue of measuring discrimination and equality promotion are still scarce and not systematic in the majority of Member States* (except with regard to the ground of gender, and excluding some isolated States that are very well equipped <sup>(76)</sup>), *as the issues on this matter are only just beginning to arise* <sup>(77)</sup>. T. Makkonen had already noted EU Member States' very poor familiarity with the use of statistics as a means of proving 'the factual nature' of discrimination <sup>(78)</sup>.

There are grounds to link the lack of commitment and investment shown by the majority of European Union Member States regarding the issue of measurement, and the scant expertise acquired nationally on the issue, to the very low (or even non-existent) mobilisation of the concept of 'indirect' discrimination in these same countries. In the majority of them, the notion of indirect discrimination has not yet been activated within the scope of any legal action whatsoever, successful or not <sup>(79)</sup>.

<sup>(76)</sup> The leaders of which include the United Kingdom.

<sup>(77)</sup> Under European pressure, which can sometimes generate other forms of reticence and lead to policies that some researchers deem misleading. We might refer here to the general spirit of shadow reports compiled in the Czech Republic by independent experts who, with regard to the fight against discrimination due to gender, point to the weakness of the measures implemented by the public powers. According to such experts, these measures are used to give the impression of 'institutional activism' caused by European pressure and not due to a clear desire to achieve politically authentic equality of opportunity between men and women (Pavlik, 2006).

<sup>(78)</sup> The author clearly shows that 'only some rare Member States of the European Union (the United Kingdom, Ireland and the Netherlands) have a solid tradition of using statistical proof in the context of legal proceedings against discrimination due to the grounds covered in this report. There is very little, if any, experience in this area in any other European Union countries' (Makkonen, 2007, p. 6).

<sup>(79)</sup> As G. Cardinale of the ECRI observes in the *Review of European Law on Non-Discrimination* (No 5, July 2007), 'The need for greater awareness does not only concern positive action measures. Despite major progress made in recent years, the very notion of discrimination must be better understood at pan-European level. In this regard, among both the general public and the authorities as well as in the legal community, we see a particularly inadequate degree of awareness of indirect discrimination being raised' (Cardinale, 2007, p. 42). He adds that, 'in addition to the issue of sources of law, in the knowledge that indirect racial discrimination is now prohibited in the Member States of the EU, 'It appears that there is need for a wider use of the concept of indirect discrimination in the practice of law. Currently, 'In a large number of national structures where indirect discrimination is prohibited, we cannot ascertain clearly whether these provisions have until now been used sufficiently by exploiting all the potential they possess' (ibid.)



If there is 'a need to make wider use of the concept of indirect discrimination', this is also because it appears that statistics are not just necessary to evaluate the anti-discriminatory action after the fact, once the action has failed and solely to measure their efficiency. With indirect discrimination, the statistics are therefore at the heart of implementation and application of the law, inasmuch as they make it possible to give visibility to the wrongdoing that affects people due to their membership in certain 'groups' or possession of certain characteristics, whether genuine or presumed, liable to give rise to inequality or expose them to disadvantages that might be deemed discriminatory.

In other words, *'The request for collection and processing of data, aligned with the grounds of discrimination under European law, is not met'* (Makkonen, 2006). This requirement to produce statistics and implement measurement devices is not always fully understood by the vast majority of Member States. This lack of understanding goes as far as the question asked regarding availability of the data required to feed the design of an instrument to evaluate anti-discrimination policies and the mobilisation of the law.

## 2. Data existing in statistical systems that might provide information for type A indicators

### 2.1. Existing data

Our research did show, however, that, while indicators are not available or not readily available in accordance with the terms described in the conceptual framework, numerous pieces of data are collected in the States on access to employment and working conditions, with the building of joint indicators on a European scale that might be used to build type A indicators.

For each ground for discrimination, we have identified and established:

- the nomenclatures used in national public statistics, whether these data are collected within the scope of a census or interlinked systems of files; for each nomenclature, the gaps and discrepancies with the conceptual framework have been identified;
- the information and data available and accessible via the sites of national statistics offices regarding access to employment, employment, and work conditions, as well as data available on access to property and services, etc.;

- the information that exists at European level, in particular that collected within the scope of the Labour Force Survey, for which most of the themes and indicators proposed correspond to the type indicators, but are not (or are hardly ever) presented using the grounds of discrimination.

The grids used for the 25 Member States, summarising the information available for each ground of discrimination, are presented as an appendix to this report.

### 2.2. The ground of ethnic and racial origin

#### a) The nomenclatures available in the census and other statistical sources covering the fields of the directives

##### *Considerable diversity of nomenclatures*

The collection of data concerning ethnic and racial origin is governed by Directive 95/46/EC of the European Parliament and Council and also by the Council of Europe Convention STE 108 for the protection of individuals with regard to automatic processing of personal data. As a result, the Member States have, for the most part, included laws in their national legislation that very precisely govern the collection, processing and disclosure of this sensitive data.

The variety of historical and political configurations in countries and national statistics offices, as well as the importance given to the fight against discrimination, are all factors that weigh heavily on the nomenclatures used and processing of data, as we can see from the examples of Germany, France, Sweden, Lithuania and the UK.

##### *Mapping of countries*

Patrick Simon's report, produced in 2007 at the request of the ECRI for the Council of Europe, lifted any remaining doubts as to the impossibility of collecting data on ethnic origin due to laws regarding the protection of personal data.

This point was also confirmed by our research, which collected very detailed data on ethnic and racial origin in certain countries. These data, which are available via national statistics offices, were very rarely built for the purpose of fighting discrimination, however, except in the United Kingdom and Ireland.

From a highly schematic standpoint, we propose drawing up a map of data availability in the countries studied, according to the level of proximity and consistency with our proposals for assessing progress made against discrimination and for equality promotion. This map takes into account several criteria:

- the level of detail provided in the description of persons and groups exposed to racial and ethnic discrimination;
- the semantic consistency of the nomenclatures used with the 'ethnic and racial origin' ground;
- the logic that motivated building of the nomenclatures used (according to whether the categories were designed to fight discrimination or not);
- the adaptation of national statistics offices to the building of indicators to measure inequality at national level.

	Nomenclatures used	Country
Very poor level of detail to characterise origin, no semantic consistency, no set approach with regard to the fight against discrimination, an approach involving integration/immigration	Among others, citizenship and immigrant origin (nationals, foreigners and naturalised citizens)	Austria, Greece, Germany <sup>(80)</sup> , Italy, Luxembourg, Malta, Portugal
	Countries that only have information centralised at regional or federal level and not at national level	Belgium, Spain
High level of detail, reasonably good semantic consistency, no set approach with regard to the fight against discrimination	Nationality/ethnicity: nomenclatures built independently of policies to fight against discrimination	Cyprus, Estonia, Hungary, Latvia, Lithuania, Poland, Czech Republic, Slovakia, Slovenia
Average level of detail to characterise origins, little semantic consistency, a set approach with regard to the fight against discrimination	Citizenship, immigrant origin and ascendancy (second-generation immigrants)	Denmark, the Netherlands, Sweden, France <sup>(81)</sup> , Finland
High level of detail, semantic consistency and set approach with regard to the fight against discrimination	Categories of ethnic group designed specifically for the fight against discrimination	Ireland, the UK

This map of the nomenclatures used by national statistics offices in various European countries also provides clarification of the situation in these countries in light of the diversity of their populations and of their conception of equality.

### b) Existing data in national statistics offices

In this context, we have observed that, for indicators to measure inequality on this ground, while there are numerous pieces of accessible information on employment and job and work conditions, very few are specifically processed in a way that would make it possible to identify differences in treatment that are likely to reveal the existence of discriminatory phenomena or consequences.

The national examples presented here illustrate this.

**Germany: categories of groups that are potentially discriminated against are summarily defined, and statistical data scarcely take these categories into account**

Existing definitions (categories)	Sources, availability, reliability
<ul style="list-style-type: none"> <li>- Nationality, or solely by the name German/foreign</li> <li>- Germans not of immigrant origin, foreigners, Germans of immigrant origin</li> <li>- <i>Migrationshintergrund</i>, built using a combination of the nationality and the country of birth or directly using information concerning the parents (parents' country of birth introduced into the Mikrozensus in 2005)</li> <li>- Language spoken in the family</li> </ul>	<ul style="list-style-type: none"> <li>- No records, but a centralised file on foreigners built using vital records</li> <li>- Job agency statistics (Bundesagentur für Arbeit Statistik)</li> <li>- Other enquiries: Mikrozensus et Sozio-oekonomische Panel (SOEP) Ministry of Education</li> </ul>

Until the reform of the law on nationality in 2000, Germany was a strictly blood-right country where German nationality was reserved for Germans born of German parents (the situation in Italy is comparable). Calling immigrant populations *gastarbeiter*, literally 'guest workers', shows this closed policy on nationality. By changing its legal framework, Germany progressively recognised that certain migrants were destined to settle and integrate. However, the creation of a new 'immigrant' nomenclature in public statistics is part of integration policies and not policies for fighting against discrimination. Germany very recently transposed the European directives, and the issue of the fight against discrimination is only just starting to emerge here.

However, as our country expert noted, *'The biggest problem with regard to monitoring is technical and organisational in nature, at the level of public statistics. The organisation of the statistical system makes federal law the common basis for all Länder. This law cannot be imposed, however, at the risk of being only an empty framework: in terms of statistical observation, the procedures are as important as the design, and the law cannot codify all the statistics operations in detail'*. In conclusion, the fight against discrimination is only a very small source of debate and is only taken into account in public policies on a very small scale.

Currently, the data on access to employment are supplied by the job agency (Bundesagentur für Arbeit Statistik), which only takes into account the German/foreigner categories in its statistics. In terms of education, the Minister for Education carried out a PISA enquiry, which used data on 'children and young people of immigrant origin'.

<sup>(80)</sup> Germany also has numerous limits linked to its statistics office.

<sup>(81)</sup> France initially designed its nomenclatures with regard to a set approach of immigration and integration policies.

### France: nomenclatures and data built within the context of integration policies and not to measure discrimination

Existing definitions (categories)	Sources, availability, reliability
Categories for information collected: nationality (French by birth, French by naturalisation, foreign) or country of birth, or their combination in the variable 'immigrant' (person born foreign abroad, regardless of his/her current nationality) Another category used in the public statistics (excluding information collection): the categories 'young people descended from immigrants' or 'persons of foreign origin' (addition of the parents' country of birth: this means that those born in France of an immigrant parent are deemed to be 'of immigrant origin')	INSEE, census (annual enquiry, 2004) Special inquiries performed by institutes or national statistics offices (INSEE, INED, CEREP, DARES) Studies: MGIS 1992, EHF 1999, FQP 2003, Génération 98 and 2001, HDV 2003, Enquête Emploi 2006, Enquête Trajectoires et Origine (2008)

These categories are built within the scope of integration policies to observe the way in which immigrants become integrated, and not as part of the fight against discrimination. There is also a strong contradiction between the position and doctrine of certain major players in the fight against discrimination and the demand for the method of categorisation required for this ground. These players assert that only 'objective' data can be entered. The opinion of 15 November 2007 by the French Conseil Constitutionnel (Constitutional Council) on Article 63 of the Bill on the Control of Immigration, Integration and Asylum, is a good illustration of this French position <sup>(82)</sup>. France has numerous specificities and particularities that complicate and hinder the production of data to measure discrimination: confusion between integration and anti-discrimination policies, a cultural model of integration that aims for internal consistency <sup>(83)</sup> (unlike a multicultural model), and weighty historic episodes, such as the records kept on Jews by the Vichy regime or on Muslim populations by the colonial administration.

France is beginning a process of building an operational anti-discrimination system, although discussions between demographers on 'ethnic' statistics go back 10 years. Indeed, most of the players in charge of these issues are only just starting to become aware of indirect discrimination and what this implies in terms of measurement, data collection and the updating of differences in treatment and/or inequality. In this regard, it is not surprising that institutional, scientific and community players have not yet reached the consensus required to build a single model.

While the HALDE (independent authority responsible for fighting discrimination and for equality) stands by a doctrine that prevents any implementation of a system of inequality evaluation for a certain number of grounds referred to by law (ethnic and racial origin, religion and convictions, sexual orientation), some of its agents nevertheless observe that they are severely lacking powers to make the law effective and that they have few operational tools to assert claims made by victims.

Moreover, France is well equipped in the field of public statistics. It has a major public statistics system, the performance and efficiency of which are recognised by France's European neighbours <sup>(84)</sup>. Problems linked to the questioning and statistical exploitation of data on origin gave rise to the establishment of ethics rules and doctrines, which have changed as and when needs arise in the area of measuring inequality. These prior changes give hope that they might still change further in order to provide a better response to the requirements of the fight against discrimination.

In terms of data collected by public statistics offices, the employment enquiry covers all the themes of indicators on access to employment and working conditions: these already include the category, 'of immigrant descent'.

<sup>(82)</sup> ( ) The Conseil Constitutionnel declared that Article 63 of the Bill on the Control of Immigration, Integration and Asylum was contrary to the French Constitution. This article reiterated one of the recommendations of the CNIL (French data protection agency) on the 'measurement of the diversity of origins, discrimination and integration'. The recommendations of the CNIL 'allowed, for the purpose of performing studies on the measurement of diversity of origins, discrimination and integration, and, subject to its authorisation, the processing of personal data that shows, directly or indirectly, racial or ethnic origins'. Excerpt from introductory note 29: 'Whereas, if the processing required to perform studies on the measurement of the diversity of origins of persons, discrimination and integration can involve objective data, it cannot, without violating the principle set forth in Article 1 of the Constitution, be based on ethnic origin or race; whereas, in any event, the amendment from which Article 63 of the law under consideration is taken was devoid of any link to the provisions that were contained in the bill from which it was taken; whereas, given that Article 63 was adopted through a non-compliant procedure, it should be declared contrary to the Constitution'.

<sup>(83)</sup> In this regard, see the report by Patrick Simon, 'Ethnic statistics and protection of data in Council of Europe countries', performed for the ECRI, p. 40.

<sup>(84)</sup> The report on the peer evaluation of the French Statistics Institute (INSEE) on the implementation of the European Code of Best Statistical Practices of 24–26 January 2007 is available on the Eurostat site.

### Sweden: data that are up to date but not generally used for measuring inequality

Existing definitions (categories)	Sources, availability, reliability
Country of birth, citizenship, country of origin, ancestry (parents' country of birth) Categories: Swedish, Nordic countries other than Sweden, Europe other than the Nordic countries, Africa, Asia, North America, South America, other countries.	Statistics Sweden (2006–07) No census System of interconnected files

Sweden does not conduct a census. The country does have a system of interconnected files with data that, when updated, could be used to generate measurements of inequality (type A indicators), but to date this has not been done. However, numerous ad hoc studies have been conducted. With regard to education, there are extensive data that include highly detailed information on young people from immigrant families.

Monograph abstract: *'The complex, relatively updated and reliable organisation of the register system allows the production of equality data and the analysis of equality in society, at least from a consequentialist or "equality of results" perspective (Makkonen 2006a, p. 14), but this has not been done in Sweden yet'... 'There are several surveys that have been used to tackle perceived discrimination or attitudes towards some discriminated groups of people. All these surveys are elaborated by a team from Statistics Sweden, and the data are not readily available. Some of these surveys are the Follow-up Surveys of Pupils, the Labour Force Survey, the National Employer Survey, the Swedish Discrimination Survey, and the Integration Barometer. The last two were commissioned by the Swedish Integration Board and, as this institution does not exist any more, it is not clear if they will be issued again.'*

*'Statistics Sweden treats data on country of birth, citizenship, country of emigration, date of immigration, time spent in Sweden, reason for the stay and the Swedish/foreign background of the person (thanks to country of birth and country of birth of the parents), but even this information does not appear in structuring statistical reports (see for example Statistics Sweden 2006, 2007). These variables are used within the analysis of labour market and education statistics. Information on ethnic background is equally employed in statistics with regard to social topics, health matters, economic welfare matters and statistics on citizen influence.'*

### Lithuania: an 'ethnic' identification that is not used to combat discrimination

Existing definitions (categories)	Sources, availability, reliability
Categories: foreigner, immigrant, ethnic community Comment: the variables collected include citizenship, country of birth and membership of an ethnic group (described as 'nationality'). Data on native language and languages spoken are also collected. Ethnic groups: Lithuanians, Poles, Russians, Belarusians, Ukrainians, Jews, Germans, Tatars, Latvians, Roma (Gypsies), Armenians, Azerbaijanis, Moldovans, Georgians, Estonians, Karaites, Chuvashs, etc.	Census (2001); Statistics Lithuania

Based on census data and nomenclatures used, Lithuania could generate nearly all of the indicators for employment access, work and employment conditions, education, and access to goods and services (housing and transport). It appears, however, that for the time being data are not being mobilised in the fight against discrimination.

### The UK: categories and indicators consistent with the conceptual framework and focused on the fight against discrimination

Existing definitions (categories)	Sources, availability, reliability
Categories specially devised for the introduction of anti-discrimination policies were added to the census in 1991. These categories are used for an 'ethnic question'. They were revised for the 2001 census. In 1991, the list of categories was as follows: White, Black-Caribbean, Black-African, Black-other, Indian, Pakistani, Bangladeshi, Chinese, other ethnic group. In 2001, the list was revised as follows: White (British, Irish, any other White background), Mixed (White and Black Caribbean, White and Black African, White and Asian, any other Mixed background), Asian or Asian British (Indian, Pakistani, Bangladeshi, any other Asian background), Black (Black or Black British, any other Black background), Chinese or other ethnic group (Chinese, any other). Note that the qualifications added to the major categories (White, Mixed, Black, Asian and Chinese) change depending on the area of the UK. For example, in Scotland the category Black Scottish is used in place of Black British.	There is a wealth of statistics reflecting race and ethnicity data, since, as a result of Britain's anti-discrimination legislation, parties bound by legal standards are strongly encouraged to adopt an ethnic monitoring procedure for their activities. With regard to government statistics, the following surveys include a question on this topic (the links are to pages providing information on the surveys): Black and Minority Ethnic Groups in the UK, British Crime Survey, British Household Panel Study, British Social Attitudes Survey, Census, Drug Use, Smoking and Drinking Among Young People in the UK, Ethnic Minority Psychiatric Illness Rates in the Community (EMPIRIC), English House Condition Survey, Expenditure and Food Survey, Family Resources Survey, Family and Working Lives Survey, Fourth National Survey of Ethnic Minorities, General Household Survey, Health Survey for the UK, Home Office Citizenship Survey, Labour Force Survey, (Annual Local Area) Labour Force Survey, (ONS) Longitudinal Study, Millennium Cohort Study, Morbidity Statistics from General Practice, National Pupil Database, National Survey of Sexual Attitudes and Lifestyle, Population Estimates by Ethnic Group, Psychiatric Morbidity Among Adults In Private Households, Pupil Level Annual School Census, Sports Participation and Ethnicity in the UK, Survey of English Housing, Time Use Survey, Workplace Employee Relations Study, Youth Cohort Survey, Youth Lifestyles Survey



There are no notable gaps or deviations with respect to the proposed conceptual framework, since the latter is very largely inspired by the UK's anti-discrimination laws and actions.

In the UK generally and England more specifically, category definitions are being standardised in two documents designed to serve as a definitive guideline for implementing *ethnic monitoring* procedures in organisations, businesses and institutions: *Ethnic group statistics: A guide for the collection and classification of ethnicity data*, produced by National Statistics, and *Ethnic monitoring: A guide for public authorities*, issued by the Commission for Racial Equality (CRE). In addition to a question on ethnicity, the census includes one on country of birth. Questions on national identity and languages spoken are expected in the 2011 census, and a question on religion has already been added to the 2001 census.

### c) Other sources of information: ad hoc surveys

This review of data available in Europe on ethnic and racial discrimination is not representative of the actual work being carried out, and we have already repeatedly noted the limitations of the surveys we have conducted. These limitations arise from the lack of a more in-depth examination of how discrimination can be measured in the great majority of European Union countries.

Nonetheless, the monographs prepared by our experts have made it possible to identify numerous ad hoc studies in a number of countries that can be used to establish factual evidence of discrimination. These studies are often conducted by national statistics offices, government institutions, researchers and civil society.

These monographs have also revealed that certain obstacles regarding the methods of categorising this form of discrimination are more often the result of government institutions than civil society.

*Sweden, for example, has carried out numerous studies that have generated data on discrimination related to ethnic and racial origin.*

*Excerpt from the Sweden monograph: 'The amount of data and analysis we can find about discrimination on grounds of ethnic origin is impressive. The two most relevant publications: one conducted by Paul Lappalainen, former member of the Green Party and also worker in the — already closed down — Swedish Integration Board, and the other by sociologist Masoud Kamali and historian Paulina de los Reyes. This last research produced a 4 000-page outcome distributed via various individual inquiries and summarised in the Green Paper "Integrationens svarta bok — Agenda för jämlikhet och social sammanhållning" ("Black Book of integration — An agenda for equality and social cohesion").'*

*Although (as indicated previously) official doctrine within the government rules out any reference to race or ethnicity, in France surveys conducted privately on behalf of associations use categories that are similar in semantic terms to those required in the fight against discrimination.*

*The Club Averroès survey on 'Blacks, Whites, Arabs and Asians and their representation in the media': each year, Club Averroès <sup>(85)</sup> publishes a report on diversity in the media. Although the authors of the study emphasise that it is not a work of research, the study is interesting insofar as it opens up new avenues for analysing the representation of 'diversity' in the media. The study uses the terms 'visible' or 'ethno-cultural' minorities without relying on the 'categories' of government statistics (foreigners, immigrants via immigration).*

*On the other hand, the study is based on descriptive observations, although the method governing the procedure for categorising persons and groups is not described, and no quantitative indicators are developed.*

<sup>(85)</sup> Founded in 1997, Club Averroès brings together nearly 350 media professionals with the goal of promoting diversity in French media, and publishes an annual report on the matter.



## 2.3. Age discrimination

### a) Extensive data that are not very helpful for describing discrimination

Age is not considered sensitive data and can therefore be included in government files, business data, censuses and so on. Data on this ground of discrimination are widely available and easily accessible via national statistics office sites.

With regard to type A indicators, data exist for practically every subset of eligibility for employment and working and employment conditions.

The only information not available is data on affiliation with a professional organisation, trade union or political party, with the exception of Spain (Instituto de la Juventud, response to questionnaire, Encuesta de Poblacion Activa (Labour Force Survey)).

However, very little of this information is used to establish factual evidence of inequality or combat discrimination. Instead, in various countries these data are used to more effectively tailor employment and labour policies to senior citizens and young people.

### b) Nomenclature: age groups and generations identified on sites of national statistics offices

Most of the countries surveyed take part in the EU-wide Labour Force Survey, which is very often the source of the employment data available from sites operated by national statistics offices. The data are presented by age group in five-year brackets, starting from age 15.

The EU survey includes workers aged 55 or older, but the age used to define 'older' workers in policy incentives targeting this population varies considerably from country to country.

### c) Available data and information on access to employment

The majority of the countries surveyed take part in the EU Labour Force Survey, which includes indicators that go well beyond those contained in the table of proposed indicators.

*Information routinely collected in the EU Labour Force Survey*

- > *Demographic background (sex, year of birth, marital status, etc.).*
- > *Employment status (type of employment sought, methods used to find employment, etc.).*
- > *Employment characteristics of the principal activity (professional status, country of employment, permanence of employment and the reasons, etc.).*
- > *Working time (number of hours usually worked per week, number of hours actually worked, etc.).*
- > *Second job (existence of more than one job, professional status, etc.).*
- > *Visible underemployment (looking for another job and reasons for doing so, type of employment sought, etc.).*
- > *Search for employment (type of employment sought full time or part time, duration of search for employment, etc.).*
- > *Education and training (participation in education or training programmes during previous four weeks, purpose of this education or training, level, total length, etc.).*
- > *Previous work experience of person not in employment (existence of previous employment experience, professional status in last job, etc.).*
- > *Situation one year before survey, optional for quarters 1, 3 and 4 (main employment status, professional status, country of residence, etc.).*
- > *Main employment status (optional).*
- > *Income (optional).*

Lastly, the Labour Force Survey offers ad hoc modules. With regard to older workers, the module on accidents at work and work-related health problems <sup>(86)</sup> generates data that might be used to provide a factual basis for inequality and the lack of reasonable accommodation for older workers.

<sup>(86)</sup> Commission Regulation (EC) No 341/2006 of 24 February 2006 adopting the specifications of the 2007 ad hoc module on accidents at work and work-related health problems provided for by Council Regulation (EC) No 577/98 and amending Regulation (EC) No 384/2005.

## 2.4. Disability discrimination

No country has a comprehensive system for measuring inequality on the basis of a disability for the areas affected by the EU directive.

### a) Nomenclatures available on the sites of national statistics offices

Certain countries use nomenclatures that break down the disabled by category and provide some data on this population at the sites maintained by their statistics offices.

In schematic terms, two definitions are used:

- countries that use medical recognition of the disability (Estonia, Germany, Spain);
- countries that use the definition of activity limitation: a person who has been limited in his or her activity for a relatively long period of time (over six months to more than a year);
- countries that combine the type of disability (sensory, physical, intellectual, psychological or emotional, etc.) and the form of disability (learning limitation, independent living, independent mobility, work-related disability, participation in recreation, independent use of transport).

*Table showing how disabilities are defined on sites maintained by national statistics offices*

Medical recognition	Activity limitation	Type of disability and form of disability	No information available on site or elsewhere
Germany Spain Estonia Czech Republic	Austria Finland Hungary Ireland (several definitions identified) Italy Slovenia France (for employment-related indicators, medical recognition only)	UK Ireland (several definitions identified) Latvia Portugal (type of disability only) Sweden	Cyprus Greece Luxembourg The Netherlands Slovakia Lithuania (by type and cause of disability) Malta (by type of disability) Poland (perception of activity limitation combined with medical recognition)

Regardless of the definitions used by each country, indicators have been established with the aim of revealing discrimination and proposing ways of addressing it, notably with regard to employment as outlined in the EU directive, but these measures still vary quite significantly by country.

Even in the UK, where the availability and reliability of data are largely consistent with the definition required by the 'ecological/social' model of disability, the government's statistical surveys are not consistently guided by such a model.

The extremely important data gathered by Italy's Ministry of Social Solidarity on the disabled should also be highlighted. As part of the national survey, the Disabilita in Cifre office (Disability in Figures office) publishes extensive data on each indicator measuring unequal access to employment and work and employment conditions at the Italian Institute of Statistics (ISTAT) website.

### b) The ad hoc module contained in the Labour Force Survey

A number of countries participate in a European Union survey introduced in 2002, **designed to gather data on employment and unemployment among the disabled**. The disabled population was defined using three criteria.

- Persons reporting a disability or health problem lasting more than six months. Responses are subjective but provide some sense of the scope of the health problem or disability. This criterion was used to select survey respondents. Accordingly, it encompasses those who responded affirmatively to one of the two following criteria.
- Persons reporting a disability or health problem that limits the nature or quantity of their employment or their commute between their residence and place of employment. This criterion takes account of the impact of the disability or health problem on integration into the labour market.
- Persons reporting that they have obtained government recognition of the disability as it applies to the obligation by employers to employ the disabled. This criterion

provides a means of tracking a population similar to that monitored by reporting or in government sources on the disabled, but on a broader scale.

This ad hoc study within the Labour Force Survey is scheduled to be carried out again in 2011, with each of the 27 Member States taking part.

## 2.5. Sexual orientation discrimination

Despite the existence of laws in the majority of Member States to implement EU employment Directive 2008/78/EC relating to discrimination based on sexual orientation <sup>(87)</sup>, the major surveys conducted by government statistics offices *include no reporting on* sexual orientation as a basis for discrimination. This is true of every country.

Here again, the UK emerges as an exception. It does not collect data on sexual orientation discrimination (although National Statistics intends to tackle this project very soon; see the *Report from the review of equality data* <sup>(88)</sup>), but the Equality and Human Rights Commission is proposing the following definitions on its website:

*'Your sexual orientation means the general attraction you feel towards people of one sex or another (or both). Most people are generally attracted to people:*

- who are the same sex as they are;
- who are of the opposite sex to them;
- of both sexes.

Same-sex attraction is called homosexuality. On this site, we call men and women who are homosexual either "gay" (for men) or "lesbian" (for women).

Opposite-sex attraction is called heterosexuality. On this site, we describe people who are heterosexual as "straight".

Both-sex attraction is called bisexuality. On this site, we use the word "bisexual" or occasionally just "bi" to describe people who are attracted to both sexes.'

## 2.6. Discrimination based on religion and convictions

The nature of the data identifying religious affiliation, beliefs and convictions varies quite significantly among Member States. For example, the Baltic countries offer particularly detailed religious information, sometimes cross-referenced with ethnic origin, while in other nations no data exist at all.

### Summary of information available on the sites of national statistics offices

No information available	Information available but not mobilised for the fight against discrimination	Information available and compiled for use in the fight against discrimination
Czech Republic Denmark France Greece Italy Luxembourg Malta Spain	Austria Cyprus Estonia Germany Hungary Latvia Lithuania Poland Portugal Slovakia Slovenia The Netherlands and Sweden (data not collected, but information is incorporated into ethnic categories, notably for Muslims in surveys on discrimination)	UK: different categories by nation (Wales, Scotland, etc.) Northern Ireland Finland (included under discrimination on the basis of race or ethnic origin) Ireland (mandatory reporting)

<sup>(87)</sup> In this regard, see Kees Waaldijk and Matteo Bonini-Baraldi (eds), *Combating sexual orientation discrimination in employment: legislation in 15 EU Member States*, report of the European Group of Experts on Combating Sexual Orientation Discrimination about the implementation, up to April 2004, of Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, European Commission, November 2004.

<sup>(88)</sup> [http://www.statistics.gov.uk/downloads/theme\\_social/EDR\\_Final.doc.pdf](http://www.statistics.gov.uk/downloads/theme_social/EDR_Final.doc.pdf)

In addition, we should note that the data and information on national focal points provided by the RAXEN network reveal a paucity of statistical data on employment by religion. The information that is available involves broad general categories of migrants, occasionally broken down by nationality and ethnicity. Accordingly, in the absence of data collected specifically on religious groups, nationality and/or ethnicity are generally the closest indirect categories available.

### 3. Type B indicators

Unless we pursue this investigation even further, it is not easy to determine where each country actually stands with regard to the status of its anti-discrimination policies, to say nothing of its ability to document the effectiveness of these policies. Although nearly every Member State has now transposed EU directives into national laws that come to terms with the principal concepts contained in these directives, this does not indicate that the fight against discrimination is proving effective or that its implementation is prompting discussion of how to evaluate its effects. Nor does it show that the victims of discrimination are making use of these laws.

Currently, only very few States boast ad hoc tools for evaluating progress in the adoption of anti-discrimination policies and assessing the ability of these policies to reform prevailing practices and inappropriate rules and procedures in the various relevant areas. In March 2006, the European network of legal experts in the non-discrimination field, attempting to make an initial evaluation of the effectiveness of the organisations responsible for combating discrimination, described the difficulty of such an analysis, noting that numerous organisations had formed only very recently (*Catalysts for change?*, Holtmaat, 2007).

Their report also noted that some of these institutions have only very limited autonomy. This lack of independence, as the example of Germany shows (see below), can significantly limit their room to manoeuvre in ensuring the successful implementation of anti-discrimination policies.

‘From this survey, it appears that their independence is fragile. The political climate in some Member States contributes greatly to this. In **Belgium** and **Ireland**, for example, the equality bodies have managed to preserve their independence, despite the very delicate nature of the areas in which they have been conducting their activities and the often-hostile political climate. In **Poland** and **Denmark**, by contrast, a change in the political climate has indeed led to the withdrawal of the mandate of previously existing equality bodies’ (op. cit., p. 44).

As we noted in our survey, information on type B indicators is largely unavailable, in part because the organisations responsible for equality have only been in existence a short time and, in some cases, lack independence.

However, the lack of information on complaints filed and the poor record of action and minimal resources among these bodies are attributable to other factors as well. Among these, the report by the European network of legal experts in the non-discrimination field also noted ‘a wide range in the powers, competencies, budgets and staffing of the 30 equality bodies included in the research’ (op.cit., p. 30).

We will begin by describing conditions in each country for generating data on victim complaints and the limitations on the information currently available.

Then, as an illustration of best practices, we will describe some experiences regarding actions, resources and programmes in certain Member States:

- the United Kingdom, which has just completed a thorough review of the problems involved in assessing equality, drawing on the important work of the *Equalities Review*;
- the Catalonia region of Spain, which recently launched an interdepartmental campaign to combat discrimination against homosexuals and transsexuals;
- Italy and the UK, which have established procedures for evaluating reasonable accommodations for the disabled.

#### 3.1. The production of data on victim complaints and the limitations on information currently available in Member States

With regard to the availability of information on the number of complaints filed and the monitoring of these complaints, every representative from independent bodies who returned the questionnaire responded that this indicator was available. However, on looking further into the availability of these data in each Member State, we found that, although ample information exists, it does not yet conform to the ideal model defined in the first part of this report.

Two types of data are required:

- the collection of complaints submitted or descriptions provided by victims, whether sent to the independent authority or other institutions;
- legal data and the tracking of legal action.

Equality bodies confront several difficulties in their attempts to collect and distribute an exhaustive, countrywide tally of complaints broken down by ground of discrimination and sector:

- the organisation's level of autonomy (see Germany, for example, where the body is highly dependent on other government authorities);
- the level of centralisation in responding to victims' complaints (Spain offers one example of a highly decentralised approach);
- the grounds of discrimination addressed by the organisation (the body recently established in Italy addresses only one form of discrimination);
- the latitude given to equality bodies with regard to offering support for victims.

### **Examples of some obstacles to tallying and tracking complaints**

#### **Germany**

Germany's *Antidiskriminierungsstelle* (ADS) has fairly limited powers, and its activities are dictated by the tasks specifically assigned to it by parliamentary and government mandate. Specifically, it is empowered to advise victims only when parliamentary or government bodies are not permitted to do so. As a result, the indicator showing the number of complaints received by the ADS does not reflect the actual number of complaints lodged by victims, since no tally is made of complaints submitted to these parliamentary or government bodies. In sum, the ADS's scope of action is limited, defined by the AGG <sup>(89)</sup> and by parliamentary and government mandates (and therefore indirectly by parliamentary and government decisions), and its degree of independence is unclear. The organisation's potential activity and independence are also limited by the meagre budget allocation for its operations: just EUR 3 million <sup>(90)</sup>, an amount wildly inadequate for successfully carrying out the task assigned to it. The ADS began operation in September 2007, currently has a staff of 21, and focuses on advisory services, communications, explanation of the AGG and awareness-raising.

#### **Spain**

Spain does not have an independent, central organisation addressing all grounds of discrimination, and the authority to handle complaints and take action to combat discrimination has been divided among a range of institutions; moreover, there are substantial disparities between actions taken at the federal and regional levels. It appears that, for the moment, it is not even possible to tally the number of complaints filed across the country.

#### **Italy**

Italy's independent authority compiles a tally of complaints only with regard to racial discrimination. A report by this body, UNAR, states the following: 'Pursuant to Article 7 of the decree implementing Directive 2000/43/EC, the *Ufficio per la promozione della parità di trattamento e la rimozione delle discriminazioni fondate sulla razza e sull'origine etnica* (UNAR) was created within Italy's Presidency of the Council of Ministers — Department of Equal Opportunities. This body plays an advisory role, tracks data and serves as a source of information, and can propose studies and research, investigate alleged cases of discrimination and assist victims during court and government proceedings. UNAR collects statistics on the basis of reports received via its toll-free number or via electronic mail. The Justice Ministry's statistics department has signed a protocol with UNAR, distributed to each court of record and court of appeal in the country, to encourage the collection of statistics on discrimination-related offences. In addition, Italy's national statistics office, ISTAT, plans to create a category for "racial discrimination" among its criminal court statistics'.

### **Authority invested in equality bodies to provide assistance to victims**

*The Catalysts for change?* report notes that '22 of 30 equality bodies have some sort of mandate to hear and investigate complaints about discrimination'. Although we cannot draw any conclusions from this regarding the availability and accessibility of data on the number of complaints, it does suggest that this type of data can be easily compiled.

However, as the authors of the report emphasise, some precautions must still be taken.

<sup>(89)</sup> Germany's general law on equality, the *Allgemeines Gleichbehandlungsgesetz*.

<sup>(90)</sup> The itemised budget can be examined via the following address: <http://www.bundesfinanzministerium.de/bundeshaushalt2007/pdf/epl17/s1706.pdf>



- The tally of complaints will depend in part on the mandate given to these independent authorities, as well as on the resources at their disposal (both human and financial) to carry out their mission. These resources have a direct impact on the number of cases that an organisation will be able to monitor.
- Moreover, it is important that we be cautious in how we examine the results, insofar as these figures (the number of hearings and investigations of complaints) will vary by country based on the scope of each organisation's process for collecting claims and complaints. As the report's authors point out, *'In several instances the body is a "single body", meaning that it is the single equality body for all non-discrimination grounds; sometimes it is a general human rights body, considering complaints about other human rights infringements as well.'*

Thus, independent authorities empowered to tally and monitor complaints might do so in a more visible manner, but we should bear in mind the human resources (*e.g. the total number of employees and expertise*) and financial resources (*annual budget*) at each body's disposal in order to carry out its mission.

Thus, the 'mandate to hear and investigate complaints', the 'power to give binding judgments' and the 'power to impose sanctions' all provide a basis for compiling a systematic tally of complaints.

The table below, taken from the report in question, identifies the Member States that have assumed the task of monitoring complaints and imposing sanctions. The countries listed are those for which data are available, whether published (as in several cases) or unpublished.

### **European Union Member States in which independent authorities have the following responsibilities**

Hear and investigate complaints	Render binding judgments	Impose sanctions	Possibility to mediate
Austria Cyprus Denmark Estonia France Greece Hungary Ireland Italy Latvia Lithuania Netherlands Slovenia Sweden United Kingdom	Cyprus Hungary Ireland Lithuania Portugal	Cyprus Estonia Hungary Ireland Lithuania Portugal	Cyprus Denmark Finland France Greece Hungary Ireland Italy Latvia Lithuania Netherlands Portugal Slovakia Sweden United Kingdom
Hear but not investigate complaints Portugal Slovakia Spain	Estonia (for individuals found guilty of discrimination)		Estonia (for discrimination by public bodies)

## **3.2. Experiences that illustrate best practices**

With regard to other indicators of this type, we have observed a very wide range of actions, tools and mechanisms, which, to a great extent, mirror the range of organisational structures, powers and resources found among institutions fighting discrimination, as well as the extent to which anti-discrimination policies are recent or longstanding.

We thought it would be useful to share some notable undertakings in a number of countries, including the UK, where policies to combat discrimination have been in place for quite some time, as well as Italy and Spain, where such policies are much more recent. Experiences such as these might offer in-

spiration to EU Member States as they develop programmes for monitoring their own anti-discrimination policies.

## **3.3. The UK's overhaul of its evaluation system**

As Patrick Simon remarks, the United Kingdom 'offers a relatively isolated example of implementing an extremely coherent programme for fighting discrimination and promoting equality using systematic statistical monitoring' (Simon, 2007, p. 52). Although Simon is speaking here of ethnic and racial discrimination, his analysis can be expanded, since it

applies to nearly every ground of discrimination found in EU directives. These grounds are then converted into categories used to generate data and statistical tables.

In addition to ensuring consistent data on type A indicators, the United Kingdom recently undertook a thorough review of the problems involved in assessing equality, drawing on the important work of the Equalities Review. The members of this body had concluded that they needed a viable, practical definition of equality. They proposed a version of equality expressed in terms of the ‘capabilities’ approach formulated by Amartya Sen. This concept, which uses one’s actual freedoms as a starting point and provides a way to discuss human rights as goals to be attained (such that rights become ‘rights-goals’; De Munck, 2006), has been adopted by a significant number of international organisations working in human rights and social and economic development.

Using this theory as a guide, the authors of the Equalities Review reports hoped to propose a definition of equality that would elicit a consensus, tied to the notion of fairness <sup>(91)</sup>.

They argue that an equal society can be defined as a two-stage process: ‘An equal society protects and promotes equal, real freedom and substantive opportunity to live in the ways people value and would choose, so that everyone can flourish. An equal society recognises people’s various needs, situations and goals and removes the barriers that limit what people can do and can be’ (ibid.).

The work carried out by the Equalities Review is noteworthy because the commission took on the task of defining a conceptual framework with which it might tackle the issue of equality from a different angle and obtain a set of indicators which could inform a policy for promoting equal opportunity aimed at ensuring that real opportunities were open to everyone and that each person’s capabilities, in all their diversity, might be unleashed and equally and effectively fulfilled. (With this in mind, the report provides a structured list of such capabilities.)

This approach to equality encompasses every characteristic found in anti-discrimination legislation, since each of these is ‘beyond individual control’. This prompts the conviction that inequality attributable to such characteristics is fundamentally unjust (Burchardt, 2006, pp. 7–8). The concept of

equality on which this policy is based aims to incorporate every aspect of life for those bound by legal norms.

*‘We need a new definition of equality that will be relevant to our society now and in the future. Traditional approaches — based on equality of outcomes, opportunities, process and respect — either have resulted in a focus on income or wealth rather than on all the aspects of life that are important to people in leading a fulfilling life, or have not taken serious consideration of the economic, political, legal, social and physical conditions that constrain people’s achievements and opportunities’* (The Equalities Review, 2007, p. 6).

The work performed to date provides a fairly exhaustive overview of inequality in the UK. Moreover, the researchers who took part in the project attempted to calculate the cost of inequality, as well as the time it would take (considerable, unless more proactive policies are adopted) to reduce inequality. *No equivalent initiative, in terms of its investment of intellectual and practical resources, has been undertaken anywhere else in Europe.*

### 3.4. An interdepartmental campaign in Spain on behalf of homosexuals and transsexuals

#### *The experience in the Catalonia region*

To our knowledge, no action plan has been established by the Spanish central government. However, numerous plans have been developed in the country’s autonomous communities either by regional parliaments or by NGOs and associations linked to the autonomous government.

In late 2006, the Catalan government approved a plan aimed at preventing discrimination against homosexuals and transsexuals. This document, the first of its kind in Spain, establishes an interdepartmental initiative to eliminate homophobia and transphobia in Catalonia. The plan includes action on numerous fronts involving 18 government departments, and its impact will be felt in eight areas: the courts and legislation, labour, health, education, culture, communication, well-being, participation and solidarity. Its primary goal is to promote the elimination of every form of discrimination on the basis of sex or gender. The plan establishes a standing advisory body that will facilitate communication among associations, institutions and various social welfare policy representatives.

<sup>(91)</sup> This definition encompasses equality of process and worth, but is richer in its scope. It takes a fuller account of variations in need and the diversity of people’s values and preferences than a definition based purely on equality of outcome, and while it builds very firmly on equality of opportunity, it more clearly recognises the role that society and its structures and institutions play in restricting or releasing people’s full potential. As we shall see later in this report, we believe that this definition supports the broader, less technical idea of “fairness” so precious to our society’ (The Equalities Review, 2007, p. 19).

### 3.5. Evaluation of reasonable accommodation in the United Kingdom and Italy

#### *Evaluation methods adopted by Britain's Disability Rights Commission*

The Disability Rights Commission (DRC) in the UK works with the *disabled* to establish or order enquiries that, in some respects, resemble a so-called situation test. This approach yields an understanding of the specific basis for the disability and the appropriate way to address the relevant instances of discrimination. The DRC uses these tests and audits to verify that material environments comply with the accommodations required by the Disability Discrimination Act adopted in 1995 (prior to European Union directives).

#### *The Italian experience with employment agency accessibility*

At the website of Italy's National Institute of Statistics (ISTAT), on the page devoted to databanks and information systems, the topic of disabilities is prominently featured, including a link to comprehensive statistical data on the disabled (<http://www.disabilitaincifre.it/>) that provides extensive information on access to the labour market as well as employment and working conditions. Specifically, we found a notable indicator that details the level of accommodation and accessibility for the disabled among employment agencies, cross-referenced with the support measures these agencies have implemented on behalf of the disabled.

## 4. Type C indicators

As we indicated in the initial section of our report, given that the development of programmes for generating discrimination data is still at a very embryonic stage in the majority of EU Member States, indicators that could be used to measure, or rather assess, the actual impact of anti-discrimination policies and legislation in a credible and convincing way remain largely unavailable.

Nor have we identified in our research any surveys of how discrimination is perceived by the public, or of general familiarity with anti-discrimination laws, that are carried out at regular intervals in accordance with standardised procedures and might be used to measure the effects and impact of policies to fight discrimination.

In this regard, we should note the special Eurobarometer <sup>(92)</sup> survey conducted by the European Commission on discrimination within the European Union.

The most recent Eurobarometer survey at the time the present report was prepared, conducted in 2006 with results published in 2007, included a wide-ranging set of questions regarding:

- perceptions and attitudes toward discrimination by category (ethnic origin, disability, sexual orientation, age, religion and convictions, sex);
- opinions on equal opportunities in employment (criteria that might penalise applicants, access to employment, training and promotion, and support for measures to promote equal opportunities with regard to employment);
- the public's view of efforts to combat discrimination and of those parties with an important role to play in this process;
- knowledge or awareness of anti-discrimination legislation.

The survey did not previously provide information on how these data have evolved over time. An earlier special Eurobarometer survey on discrimination in Europe was conducted in 2002, and in the summaries published in 2007 no comparisons were made between the 2002 and 2006 results. However, the 2007 Eurobarometer survey, the results of which are expected in early 2008, was conducted in similar fashion to the 2006 survey; therefore, it will likely be possible to compare data in order to discover whether Europeans' views on discrimination have changed.

<sup>(92)</sup> [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_263\\_sum\\_fr.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_263_sum_fr.pdf)



# Part III

## Principal lessons learned and recommendations



# I. Principal lessons learned

## 1. Advances made in the implementation of race and employment directives

In proposing to finalise a set of common and comparable indicators that will enable monitoring of progress in equality and anti-discrimination, the European Commission wishes to measure the effects of the application of race and employment directives in all Member States. It also wants to take stock of the efforts made by each country to promote equality, as well as the overall results obtained in the fight against inequality for every type of discrimination, in order to advance the analysis and evaluation of the fight against all discrimination.

In all Member States, application of race and employment directives is under way, even if the rate of implementation required by these directives varies, as does the degree of autonomy and the competence with which the various independent authorities are entrusted.

The design of indicators is taking place within a favourable context, and the people and institutions involved in designing and implementing equality and anti-discrimination policies are rapidly going to need to assess their results in order to direct their efforts and increase their efficiency.

## 2. Few available indicators, and poorly-defined categories of those who might be subject to discrimination

Paradoxically, in many Member States recognition of the ‘discrimination’ theme — in compliance with European directives (and in particular with the establishment of independent authorities) — has not been accompanied by implementation of indicators allowing them to objectively assess the reality of discrimination or even the type of advances that have been made in terms of public policy. Thus, as we saw in Part II, although the institutional representatives surveyed thought that the majority of indicators were relevant, data for these indicators are sparse at best, and identified by proxy in the absence of an exact, shared definition of grounds of discrimination. Most of the time, data are unavailable.

The conceptual framework and the indicators that we have proposed for classifying data on a national level indicate that

there are a number of gaps in nearly every country, but that these gaps differ depending on country and grounds of discrimination. More than an absence of indicators, however, the major and recurring absence is that of a coherent system for measuring progress in the fight against discrimination based on common rules, on the basis of which these data may be collected and used.

Several factors explain this absence of shared rules at European level for measuring progress.

The implementation of actions called for in the directives is still recent, and not all of the statistics have been adapted to correctly account for them. In addition, the directives do not formally call for reporting and the creation of a series of indicators to take stock either of the reality of the situation (type A indicators) or the state of progress in the implementation of anti-discrimination policies (type B indicators).

The fight against discrimination in the Member States:

- covers a wide range of grounds that sometimes fall outside those listed in the directives;
- reflects an uneven translation of the directives into law (particularly in terms of independence, authority and powers devolved onto the independent authorities);
- offers varying, non-fixed definitions of the groups affected by discrimination, depending on the country; such categorisation is sometimes absent, and when it does exist, its relevance occasionally seems off the mark.

Thus, we are confronted with the issues below.

- > *Grounds of ‘race and ethnic origin’. The sociological reference concept (‘race’ in the English sense of the term, or ‘ethnicity’) is sometimes not translated. This is true of France, Germany and many other countries. In certain cases, proxy variables are substituted; these include the country of birth, the parents’ country of birth and ‘citizenship’. Sometimes the concept of ‘ethnicity and/or nationality’ is used. In certain cases there is confusion between nationality, religion and geographic origin, which leads one to think that categories will have to be revised in a number of countries. In countries like the United Kingdom and Ireland, a more precise categorisation is offered, and rules have been established on identifying individuals, for example through self-declaration, which avoids people being classified without*



their agreement. Certain opinion polls emphasise the ongoing introduction of questions on the representation of groups subject to discrimination. Categorisation for these grounds thus corresponds to different realities depending on the country.

- > Grounds of 'disability'. Depending on the country, the definition has either a medical or social orientation, leading to various definitions of the group of people who are discriminated against. Here as well, people in certain countries may self-declare their disability, whereas in others a disability may only be certified by official acknowledgment by the medical establishment.
- > Grounds of 'religion and convictions'. These grounds correspond to very different realities, depending on the country. For example, the Baltic countries have an extensive set of categories that overlap and sometimes bring in the notion of ethnic origin. The relevance of these with respect to the fight against discrimination is questionable.
- > Grounds of 'sexual orientation' are, without doubt, the most poorly defined and the least monitored. This is true for every Member State.
- > When it comes to grounds based on age, there are of course objective and systematically collected categories, but questions remain concerning age groups for which monitoring should be carried out with an eye to possible employment discrimination. Depending on the country, the 'youth' and 'ageing worker' groups are not always based on the same range of ages. In addition, as we have seen, data do exist. Eurostat publishes data on employment based on age (the Labour Force Survey). Its key indicators include the rate of employment or unemployment broken down by age category. Nevertheless, the data relative to these indicators are hardly ever followed up and analysed in the Member States for purposes of monitoring discrimination against certain categories of ageing worker, for example.

### 3. The creation of indicators: a central issue for mobilising Member States in the fight against discrimination

Unequal, insufficient and sometimes non-existent categorisation need not be a sticking point or lead to inaction.

Of course, when States do have information, it is taken from sources whose reliability is not always certain. There is a lack of harmony in the ways in which data are collected (census, survey, estimate or administrative data), the definition of reference categories for each ground of discrimination, and the frequency with which data are collected and updated. This limits data comparison between States.

However, the main issue is the *measurement of progress*, with the goal of moving forward everywhere in Europe. Regardless of the point of departure or the quality of each country's current definition of grounds of discrimination, *the important thing is to get the process under way*.

From our point of view, the issue of measuring progress is ambitious but crucial, not only for the Commission but also for Member States. The building of a system of indicators is a solid, credible basis for assessing both the efforts made to consolidate this issue and the overall results observed in terms of improvement in local employment settings and other domains.

## II. Recommendations

### 1. Create a European-level framework of understanding to define indicators for measuring progress in the fight against discrimination

Creating a framework of understanding involves defining *shared rules and principles* with respect to the definition, implementation and use of indicators. These shared rules might serve as useful guidelines for Member States in the process of creating indicators.

**Rules are put in place at European level.** The shared rules we are proposing, which will structure this framework of understanding and be set by the Commission, are as follows.

- *The identification and design of a limited number of key indicators shared by all Member States, which will be **implemented in the near future**.* The goal is to create an initial information base, built on a series of similar indicators in every country, available at European level. Later, we will specify the indicators that should be subject to monitoring so that the state of all Member States' advancement on these questions is clearly visible.
- *The definition of shared means of measurement, in an attempt to:*
  - > *measure progress in each country. This means evaluating the annual variation for each indicator in each country, i.e. calculating in relative terms and not in absolute values. This will allow us to know if the situation of groups subject to discrimination with respect to reference groups (the majority) in a given country has improved with regard to the previous year;*
  - > *measure levels of progress between countries. Although these indicators cannot be compared for all countries, it is relevant to observe the level of progress in each country. We cannot ask less-advanced Member States to achieve the same results as others that are more advanced; every country can show that it has progressed, however, and it is the rate of progress that is measured. This measurement of gaps in progress levels will play a role in evaluating the convergence or disparity between countries with respect to measuring inequality (type A indicators) as well as the state of advancement of*

*equality and anti-discrimination policies (type B indicators).*

These shared means of measurement require recommending to Member States that they update existing or planned data on an annual basis.

- *Setting a European objective of 'convergence'.* A progress objective (expressed as a percentage) would be set at European level in order to reduce factual inequality in the principal employment indicators, as well as to monitor progress made in anti-discrimination policies.

**Indicators will be implemented at national level** — at least the key indicators that have been identified and are presented below — and will produce data according to the shared European regulations proposed here.

This dual-level approach eliminates the hypothetical situation of a lack of feasibility based on specific national contexts. It also justifies a *European comparison*, which will have an impact on the degree to which the constituent elements of this European framework of understanding will be respected, and the extent to which convergence and progress-related objectives are met.

### 2. European-level recommendations

The European level could thus have three roles: (a) *as the direct source of information* regarding age-related discrimination, for which data concerning access to employment and working conditions are currently available and generated according to shared, homogeneous regulations throughout Europe; (b) *as a directional force with respect to indicators* that Member States should develop and monitor in the short term; and (c) *as a support* for Member States to guide and communicate with them in the use of the indicators.

#### a) A data-production role

Today, a great deal of **age-related discrimination** data is available and monitored at European level, including data from Eurostat's Labour Force Survey. These data are not currently reworked to take account of discrimination, but European Commission actions will allow them to be oriented in the following manner:

- *regular annual information* on the gap between the situations of those age groups susceptible to discrimination in the employment sector and the national average; at European level, these groups may be considered those aged 18 to 25 and those over 50 <sup>(93)</sup>, and information about the discrepancies will render unequal age-related situations visible; *five indicators can be filled in very quickly and monitored regularly*;
- *annual communication* at European level regarding age-related inequality on this basis.

#### b) A directional role

- *A structuring project: undertake a survey on discrimination, coordinated at European level by Eurostat and supported by the European Commission.* This project can be explicitly designed as the application framework of the grid of indicators in its final form.
- *This survey should be set up so that the results may be the starting point for the creation of time series, and will commit the statistics offices to developing ongoing monitoring tools.* In this way, indicators will achieve a certain consistency and thus demonstrate their usefulness.
- *Support this survey with work on the categorisation for each ground of discrimination: a technical working group might thus be set up.* Particular attention should be paid to how the group is structured so that it produces useful, operational categories and allows the current roadblocks to be overcome.
- *We propose that this working group should support the launch of the European survey.* Led by both representatives of the European Commission in charge of the fight against discrimination and Eurostat, the work programme that it will implement should offer more exact definitions of grounds of discrimination, the implementation of which should take place within a reasonable time frame (by mid-2009, for example). With respect to the guidelines and working plan for the group, we propose that experts in each type of discrimination be brought in.

- *Finally, when the categorisation is defined, players in each of the Member States should be made aware of them (statistics offices and independent authorities).*
- *Propose a list of indicators under a shared heading, which will then be adapted at Member State level for each ground of discrimination according to the definitions of categories of those liable to be discriminated against, which have been specifically defined in each country <sup>(94)</sup>.*

*Key indicators to be implemented in the short term* will be taken from the list of indicators previously defined for each ground of discrimination. These indicators should be rapidly implemented. They may in large part (but not only) be an adaptation of indicators of grounds of discrimination taken from the key data produced by Eurostat (in particular the Labour Force Survey), and among *those thought to be relevant* within the framework of our field study. Other shared indicators should be defined at European level and implemented by each Member State.

This national-level adaptation will allow the lingering question of insufficient shared categorisation to be avoided, and to reconcile the specificity of each country with the general orientations put in place. We propose hereinafter the list of indicators that must, from our point of view, be monitored by every Member State.

To be monitored in all countries: *Nine indicators for measuring inequality (type A indicators) are proposed for the grounds of 'race and ethnic origin' and five for the other grounds <sup>(95)</sup>.*

*For monitoring the progress made in anti-discrimination policies (type B indicators), we recommend that the Commission encourage all Member States to retain the entire list of 'indicators' or descriptors identified in our conceptual framework, which constitute a scorecard of progress made in the implementation of the fight against discrimination and the promotion of equality.*

<sup>(93)</sup> The relevance of this categorisation may be questioned with respect to the fight against discrimination, since differences exist depending on the country, differences based, for example, on age-related employment initiatives, and the parameters of the 'youth' and 'ageing worker' categories may vary somewhat.

<sup>(94)</sup> We should also emphasise that the classification of grounds will overlap at first with that used by the various Member States and explained in the section on availability of data in order to access information quickly. Nevertheless, it will at first be difficult to gather information about the grounds of 'sexual orientation' for type A indicators.

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From the entire list of **indicators for measuring inequality** listed in the conceptual framework, here is our proposal for shared indicators that might be rapidly put in place at national level.

(a) Cross-cutting employment indicators	A.1. (a) Employment rate; (b) Unemployment rate A.2. Percentage of long-term unemployed (more than 12 months)	- Race/ethnic origin - Disability - Religion and convictions - Age; sexual orientation
(b) Employment condition indicators	A.7. Job precariousness: percentage of persons working part time in a given group and deviation from the average share of limited duration contracts	- Race/ethnic origin - Disability - Religion and convictions - Age; sexual orientation
(c) Employment conditions — remuneration	A.9. Deviations in remuneration between the group subject to discrimination and the national average	- Race/ethnic origin - Disability - Religion and convictions - Age; sexual orientation
(d) Social welfare	A.12. Poverty: percentage of individuals living below the poverty level	- Race/ethnic origin
(e) Education and training	A.15. Percentage of young school leavers without diplomas or qualifications	- Race/ethnic origin
(g) Access to goods and services	A.22. Housing: number of m2 per person	- Race/ethnic origin

*Proposal for a scorecard to monitor anti-discrimination policies with which every Member State should comply in the short term*

B.1. Complaints by victims	Number of complaints received and identified as discriminatory by the competent institutions Number of complaints resulting in legal action Percentage of complaints resulting in sanctions	- Race/ethnic origin - Disability - Religion and convictions - Sexual orientation - Age
B.2. Action by independent authorities	Evolution in jurisdiction and powers of independent authorities Capacity to produce and adhere to restrictive codes of practice	Idem (all grounds of discrimination)
B.4. Tools and measures	Testing and statistical proof Implementation of codes of practice Mobilisation of positive actions	Idem (all grounds of discrimination)
B.5. Mainstreaming	Survey of the degree to which policies have been appropriated by the various ministries	Idem (all grounds of discrimination)
C.2. Policy monitoring	Existence of survey of the public's perception of inequality	Idem (all grounds of discrimination)

### c) European guidance: supporting the implementation of a framework of understanding and its adaptation to local characteristics

At European level, the measures below are proposed.

1. To *support* and guide Member States in the implementation of progress-monitoring indicators. *An ad hoc guidance and support group for Member States* might also be set up to deal with any gaps that may arise.

Consisting of representatives from both the Directorate-General for Employment, Social Affairs and Equal Opportunities and Eurostat, and with support from the Equinet network, the ad hoc group might, with assistance from discrimination experts, take on the following roles:

- *organising seminars for exchanges* and training on practices for evaluating anti-discrimination policies;
- *communicating* on the importance to be given to the production of discrimination-related information, including the launch of an information campaign among Member States to encourage them to build these indicators and publish them on a regular basis (at least annually);
- *producing a practical, educational guidebook* for both national institutions entrusted with the fight against discrimination and the promotion of equality, as well as for statistics offices. This guidebook would explain the usefulness of indicators and how to put them in place; it could also reprint part of the recommendations concerning indicator implementation and monitoring;

- *building a model for presenting data relative to the measurement of inequality*, presenting the short-term key indicators that have been selected, made accessible via the Internet (e.g. a special ‘fight against discrimination’ section of the Eurostat website); following this, each Member State will be encouraged to create a similar section on the website of their national statistics offices;
  - *responding to specific requests* from Member State institutions concerning the implementation of these tools.
2. *To integrate* and take into account the aspect of ‘the fight against discrimination’ in every procedure for evaluating calls for tender for public projects (project selection procedures), including procedures for calls for tender launched by the European Commission. Member States may also be encouraged to integrate this element into their own selection procedures.
  3. *To aggregate* the data produced by Member States according to the shared rules and for the indicators proposed, in order to highlight progress made in the fight against discrimination and the promotion of equality at European level (Eurostat).

### 3. National-level recommendations

The vague categorisation of grounds of discrimination proposed in each country forms a basis, albeit an imperfect one, on which to collect data. If the question of discrimination on the grounds of race or ethnic origin is raised, for example, each country has its own monitoring system and sources. In qualifying people who are victims of discrimination, France uses proxies, for example, such as the concept of ‘persons of immigrant origin’, or an individual’s country of birth or that of his/her parents. In the UK and Ireland, however, categorisation is particularly precise concerning these grounds. The important thing is to get the process started. The possibility of short-term use of non-adjusted data for the categories required by anti-discrimination legislation will be based on the agreement of Member States to do what is necessary to define and build consistent categories.

To this end, we would like to make four recommendations concerning the effective implementation of indicators designed to make up for gaps observed in Member States. For the grounds of race and ethnic origin, these recommendations should, at national level, contribute to strengthening actions carried out within the framework of the RAVEN programme.

#### a) Constitution of indicators for evaluating progress in the fight against discrimination, depending on the directions that have been defined

In every Member State, this recommendation might be implemented by:

- *launching working groups on the categorisation* of each ground for discrimination based on the ‘framework of understanding’ that has been previously defined. Categorisation working groups might be launched at the same time as the similar, European-level reflections that we have suggested. Each Member State can thus benefit from the experience and practices developed in other countries. These working groups have a ‘structuring’ effect, and should be carried out over time and have strong input from civil society in order to establish categories that are widely accepted and shared;
- *integrating ‘the fight against all types of discrimination and the promotion of equality’* into the public procedures of calls for tender, with the knowledge that such an approach will make the theme more visible and public. Over and above the statement of the non-discriminatory nature of the procedure for calls for tender, this will introduce precise rules for selection of dossiers from candidates whose practices are egalitarian (for example, in the creation of teams, as has already been done for the grounds of ‘gender’ in European calls for tender). This aspect must be emphasised in every evaluation to take stock of the awarding of contracts.

#### b) Measuring inequality (type A indicators) in order to quickly highlight existing discrimination on the basis of a limited number of indicators

- *Encouraging all Member States to rapidly adapt the various shared key indicators* listed above and to monitor them in a regular, systematic fashion according to harmonised rules set at European level. It is crucial to begin now, despite insufficient, questionable and non-harmonised European-level categorisation for most of the grounds of discrimination. The issue is progress in taking discrimination into account in order to assess the phenomenon and use it to inform equality and anti-discrimination policies. This recommendation can be implemented immediately. It will require that Member States and NGOs be sensitised to the issue so that the statistics offices can take action.



- *Regularly publishing (yearly) data concerning inequality on the grounds of discrimination, based on monitored, documented indicators.*
- *Implementing a special 'anti-discrimination' section on statistics offices' websites, presenting data relative to the short-term key indicators that have been selected. This section may be configured identically in all countries.*
- *Over the medium and long term, expanding and strengthening the indicators that are monitored and moving toward monitoring the indicators proposed in the conceptual framework.*

**c) Measuring the state of advancement of anti-discrimination policies (type B indicators) in order to encourage rapid progress in measures and actions to promote equality**

We propose to encourage Member States and recommend that they:

- regularly and systematically monitor the defined indicators;
- develop opinion surveys (or barometers) that will reflect trends in the state of opinion and representations concerning equality promotion and the fight against discrimination (this does not mean a question within a barometer, but rather a monitored and regular opinion survey).

**d) Placing this work within the framework of national discrimination observatories**

Under the leadership of independent authorities, these observatories <sup>(96)</sup> might establish the state of advancement regarding equality promotion and anti-discrimination actions. On an operational level, we would like to propose that the priority actions of these centres include:

- the creation of an *annual report on the state of discrimination*, commissioned by national statistics offices; the measures proposed above could contribute to this;

- *regular communication of information on these subjects (at least once per year with the publication of an annual report), within the context of the observatories' work, to be made available online, either on the centre's dedicated website or the site of independent authorities and/or statistics offices.*

This monitoring of data should be accompanied by a twofold recommendation to Member States:

- first, that their independent authorities be given a wider mandate so that they can use the entire set of anti-discrimination policy instruments, including the publication of codes of practice, sanctions for violators, positive actions, testing, and reasonable arrangements for certain grounds (race and ethnic origin, disability, religion and convictions);
- second, that they systematise the monitoring and evaluation of complaints and their resolution for all types of discrimination; special attention should be paid to the ground of sexual orientation, which is particularly under-defined and insufficiently monitored in most Member States.

*The recommendations we have made are thus based on a close link that must be established between actions involving promotion, orientation and support, which can be carried out at European level (in particular by the Directorate-General for Employment, Social Affairs and Equal Opportunities and Eurostat, with support from Equinet-type networks), and actions involving the generation of information, reinforcement of anti-discrimination policies and communication on this theme, which must of necessity be carried out at the level of each Member State.*

*We support the idea that the situation can be quickly put in motion with respect to the two levels of intervention (European and Member State), even though certain key projects — such as categorisation and the launch of a European-wide survey — will necessarily take place within a longer-term perspective.*

<sup>(96)</sup> Such observatories were called for in the first community action programme entrusted with monitoring the 2000 directives.

The background of the image is a collage of architectural blueprints. Overlaid on this is a semi-transparent red layer. Various measuring tools are scattered across the scene: a long metal ruler with a hole at the 180 cm mark, a flexible measuring tape, and a smaller ruler with a hole at the 40 cm mark. The word "Annex" is centered in white text.

# Annex

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The background of the slide is a dark red overlay on a photograph of architectural blueprints. Several rulers are placed diagonally across the blueprints. A compass is visible in the upper left corner. The blueprints contain various technical drawings, including circles, lines, and handwritten notes.

# Phase II Questionnaire

**Study of a conceptual framework for use  
in evaluating progress made in combating  
discrimination and promoting equality**

## I. Introduction

The European Commission's Directorate-General for Employment, Social Affairs and Equal Opportunities has asked BPI to conduct a study regarding a '*conceptual framework for use in evaluating progress made in combating discrimination and promoting equality*'.

In practice, this study is designed to suggest a reasonable number of indicators for measuring progress in efforts to combat various forms of discrimination and promote equality.

**To accomplish this, we need your help.**

We have already prepared a lengthy list of indicators for each form of discrimination defined in European Directives 2000/43/EC and 2000/78/EC.

- With regard to 'race and ethnic origin', the indicators involve the areas of employment, health, and access to goods and services.
- For other discriminatory grounds (age, disability, sexual orientation and religious beliefs), the indicators relate specifically to the field of employment.

**These indicators are presented by way of illustration. They are intended to be simple, founded on basic comparative principles** in order to contrast populations that are potentially subject to discrimination with a control population and to measure changes over time in the gap between groups at risk of discrimination and the control population or the general population.

The indicators are presented in accordance with the following typology.

- (A) Indicators for **measuring discrimination**. These are designed to establish 'factual' examples of unlawful inequities and unjustified disadvantages confronted by persons or groups who are protected by anti-discrimination laws or targeted by anti-discrimination policy measures.
- (B) Indicators for **measuring progress in the implementation of anti-discrimination policies**. This involves evaluating the degree to which legal tools and public policy instruments established in anti-discrimination legislation have been mobilised and implemented.

- (C) Indicators for **measuring the impact of anti-discrimination policies**. These indicators assess the ability of such policies to effectively combat the disadvantages and inequities affecting persons and groups targeted by both anti-discrimination laws and policies aimed at promoting equality.

**We are contacting you today because we would like your opinion on these proposed indicators.**

Our challenge is to identify those indicators that are relevant and feasible for each European Union Member State. Your expertise is essential in helping us determine:

- whether the proposed typology — *organised by indicators that (A) measure discrimination, (B) measure progress in implementing anti-discrimination policies and promoting equality, or (C) measure the impact of anti-discrimination policies* — can be used in and adapted to your national context;
- whether the proposed indicators appear relevant, or if other, more suitable indicators exist;
- if the indicators are available in your country;
- the indicators that can be used in your national context;
- and, finally, those indicators that are not present (either in your country or on the proposed list) but that, in your view, should ideally be developed.

**Please accept our sincere thanks in advance for completing this online questionnaire. It should take no more than 30 minutes (per form of discrimination) to complete.**

## II. Your institution

### 1. Contact information

Institution name	
Address	
Tel./fax	
Name and title of the person completing the questionnaire	

### 2. Status of your institution

Public		Private		Joint public/ private		Non-profit/ philanthropic	
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### 3. Your primary activities (tick all that apply)

Public service administration		Protecting the interests of groups discriminated against	
Receiving and informing the public		Mediation	
Production of statistical data		Lobbying	
Dissemination of statistical data		Other (specify)	

### 4. Forms of discrimination addressed by your institution

Age discrimination	
Ethnic and racial discrimination	
Sexual discrimination	
Discrimination due to disability	
Discrimination due to religious beliefs	
Discrimination due to sexual orientation	
Other forms of discrimination not indicated (specify)	

➔ Filter by form of discrimination (tick all that apply)

### 5. Indicators relating to ethnic and racial discrimination

#### 5.1. In your country, are groups or persons who are subject to discrimination on racial or ethnic grounds clearly identified in official statistics?

Yes/No

#### 5.2.A. If the answer is yes:

	Specify
Who are they? (How are they commonly defined?)	
What indicators are used to identify them (e.g. country of birth, patronymic (surname), nationality of parents, etc.)?	
On what occasion are they identified (national census, Labour Force Survey, specific statistics)?	

## 5.2.B. If the answer is no, can you explain why?

	Yes/No	Specify
(a) A refusal on principle to use indicators that 'categorise' persons who are subject to discrimination		
(b) Technical limitations relating to the organisation of systems for collecting, updating and mining statistical data		
(c) Other		

## 5.3. From the list of three types of indicator (A, B, C) given below

### 5.3.A. Measuring inequality

Type of indicator	List of key indicators	5.3.A.1. In your opinion, is this indicator relevant for measuring inequality arising from this form of discrimination?	5.3.A.2. To your knowledge, is information relating to this indicator available for this form of discrimination?
(a) Conditions for access to employment	Based on ethnic or racial origin in comparison with the national average or a control population	Yes/No/No opinion	Yes/No/No opinion
A.1. Aggregate indicators	Employment rate Unemployment rate		
A.2. Difficulty in finding employment	Percentage of long-term unemployed among job-seekers Length of job search Frequency with which appointments and hiring interviews are deferred among those subject to discrimination and in the overall population		
A.3. Job visibility: public representation	Presence of principal minority groups in media and culture Representation among high-ranking officials in the civil service and government authorities Share of elected officials (national, local) Presence in non-profit and philanthropic organisations Composition of major corporate boards of directors		
A.4. Job visibility: employment in key areas of the civil service	Percentage among educational personnel at schools and universities (administrators, teachers, researchers) Percentage among the police force (by rank and position) Percentage among personnel in the justice system		
(b) Employment and working conditions (according to ethnic and/or racial background)			
A.5. Job insecurity: length of the working week	Percentage of persons employed part time (less than 30 hours per week)		
A.6. Job insecurity: nature of the work	Percentage of workers in precarious situations ( <i>temporary workers, replacement and day workers, seasonal workers, informal workers, domestic workers</i> )		
A.7. Job insecurity: employment status	Type of employment contract (secure or insecure) Job seniority Percentage of employees among groups subject to discrimination Percentage of self-employed workers		
A.8. Horizontal segregation	Distribution of employment among business and industrial sectors		
A.8. Vertical segregation: professional status, 'glass ceiling'	Distribution of employment: by professional category percentage of managerial staff for each group targeted percentage of executive managers		
A.9. Compensation	Hourly wage among groups subject to discrimination Annual wage Average position in wage and income structure		
(c) Organisational affiliation			
A.10. Affiliation with a professional or trade union organisation	Rate of membership among groups subject to discrimination compared with the national average		

A.11. Affiliation with a political party	Rate of political party membership among minorities who are deemed subject to discrimination		
(d) Social security and welfare services			
A.12. Poverty	Percentage of social income recipients Percentage of persons living below the poverty line		
A.13. Workplace accidents	Workplace accident rate Work-related disability and incapacity rate		
A.14. Retirement	Level of retirement pensions		
(e) Education and training			
A.15. Secondary education	Percentage of young people who leave school early and/or are excluded from the school system Percentage of young people who leave school without obtaining a diploma or secondary qualification Percentage of pupils attending special schools <i>outside the standard school system</i> Percentage of pupils in private schools		
A.16. Secondary education: guidance	Distribution between vocational and academic tracks Level of qualification upon leaving secondary school		
A.17. Secondary education: school segregation	Percentage in schools located in areas categorised as sensitive or disadvantaged Parents' level of education Parents' level of income Percentage whose parents are not fluent in the national language		
A.18. Higher education	Percentage of students by level of study Percentage at university by field of study Percentage in prestigious universities or academic fields Proportion entering police or judicial training academies Training in anti-discrimination law and in problems relating to discrimination in police and judicial training academies		
A.19. Higher education: university segregation	Percentage of students taking part in Erasmus or similar programmes Percentage leaving university during the first two academic years, by field of study Percentage leaving higher education without obtaining a degree Percentage obtaining a graduate degree (masters, doctorate)		
(f) Access to goods and services			
A.20. Housing: status of occupant	Share of home owners, home buyers and tenants Share of persons with housing		
A.21. Type of housing	Percentage by type: apartment, room, group residence, mobile home, hotel, retirement home, etc. Share of homeless persons		
A.22. Occupancy rate	Average number of m <sup>2</sup> per person Average number of occupants per housing unit		
A.23. Nature of the housing	Comfort index Percentage of residents in areas categorised as sensitive or disadvantaged		
A.24. Transport: level of mobility	Percentage having a driving permit Amount of time spent on mass transit per week Amount of time spent per week on commuting to and from work		
A.25. Health: inequality in mortality	Mortality rate Excessive mortality/reference group		
A.26. Health: inequality in illness	Cancer survival rate Percentage of persons subject to serious depression requiring medical or hospital supervision		
A.27. Health: access to care	Percentage of those with an attending (or family) physician Annual number of visits to a dentist Annual number of visits to a general medical practitioner Annual number of visits to a specialist Percentage of those over the age of 75 living in assisted-living facilities		



A.28. Health: unequal access to preventive healthcare and social welfare services	Percentage of those with access to public or private healthcare Percentage of those with supplemental social security Percentage of contributors to supplemental (optional) retirement pension insurance		
A.31. Access to credit	Share of persons subject to discrimination who have had a credit application rejected		

### 5.3.A.3. Omitted indicators

'In your view, which indicators for measuring inequality that you consider essential have not been mentioned for this form of discrimination?'


### 5.3.B. State of progress in anti-discrimination policies

Type of indicator	List of key indicators	5.3.B.1. In your opinion, is this indicator relevant for measuring inequality arising from this form of discrimination?	5.3.B.2. To your knowledge, is information relating to this indicator available for this form of discrimination?
B.1. Data relating to victim complaints	Number of discrimination complaints or reports filed with the relevant authorities Number of complaints resulting in legal actions Breakdown of complaints by the racial or ethnic identity of the victims Proportion of legal actions resulting in court-imposed sanctions	Yes/No/No opinion	Yes/No/No opinion
B.2. Action by independent authorities	Implementation of ethnic monitoring Ability to publish legally-binding codes of practice (indicate in which fields) Actions to audit and monitor codes of practice Actions to audit and follow up on the monitoring process		
B.3. Valid exercise of powers by workplace partners	Detailed description of powers and areas of competence		
B.4. Tools and resources	Valid use of testing and statistical proof in legal proceedings Existence and implementation of legally-binding codes of practice (indicate in which fields) Existence and effective deployment of monitoring programmes for the labour force employed by private companies and public institutions Existence and implementation of an action plan for promoting equality Mobilisation of a tool for 'positive action'		
B.5. Mainstreaming	Existence of tools (surveys, research units, barometers, etc.) for monitoring the degree to which anti-discrimination policies have been embraced by the relevant ministries		

### 5.3.B.3. Omitted indicators

'In your view, which indicators that you consider essential for measuring the state of progress in anti-discrimination policies have not been mentioned for this form of discrimination?'


### 5.3.C. Measuring the impact of policies

Type of indicator	List of key indicators	5.3.C.1. In your opinion, is this indicator relevant for measuring inequality arising from this form of discrimination?	5.3.C.2. To your knowledge, is information relating to this indicator available for this form of discrimination?
C.1. Monitoring of factual inequality (A)	Change in the gap between conditions among groups subject to discrimination and those of the general population (regular tracking from time t until t + n)	Yes/No/No opinion	Yes/No/No opinion
C.2. Impact of the implementation of anti-discrimination policies (B)	Existence of tools (surveys, research units, barometers, etc.) for monitoring public perception of inequality Tracking of changes in existing indicators (t, t + n)		

#### 5.3.C.3. Omitted indicators

'In your view, which indicators do you consider essential for measuring the impact of anti-discrimination policies that have not been mentioned for this form of discrimination?'


#### 5.4. Do you have any additional comments or remarks?


## 6. Indicators relating to age-based employment discrimination

**6.1. In your country, are groups or persons who are subject to discrimination *on the job or with regard to employment opportunities because of their age* clearly identified in official statistics?**

Yes/No

#### 6.2.A. If the answer is yes, who are they?

	Yes/No	Specify
Young workers (up to what age?)		
Older workers (beginning at what age?)		
What type of data can be used to update discrimination statistics (census, employment survey, polling)?		

## 6.2.B. If the answer is no, can you explain why?

	Yes/No	Specify
(a) Technical limitations relating to the organisation of systems for collecting, updating and mining statistical data		
(b) Other		

## 6.3. From the list of three types of indicator (A, B, C) given below

### 6.3.A Measuring inequality

Type of indicator	List of key indicators	6.3.A.1. In your opinion, is this indicator relevant for measuring inequality arising from this form of discrimination?		6.3.A.2. To your knowledge, is information relating to this indicator available for this form of discrimination?	
(a) Conditions for access to employment	For persons aged under 25 or over 50, in comparison with the national average	Yes/No/No opinion		Yes/No/No opinion	
A.1. Aggregate indicators	Employment rate				
	Unemployment rate				
A.2. Difficulty in finding employment	Percentage of long-term unemployed among job-seekers Length of job search				
(b) Employment and labour conditions					
A.5. Job insecurity: length of the working week	Percentage of persons employed part time (less than 30 hours per week)				
A.6. Nature of the work	Percentage of workers in precarious situations (temporary workers, replacement and day workers, seasonal workers, etc.)				
A.7. Employment status	Type of employment contract (secure or insecure) Percentage of employees Percentage of self-employed workers				
A.9. Compensation	Hourly wage Annual wage Average position in wage and income structure				
(c) Organisational affiliation					
A.10. Affiliation with a professional or trade union organisation	Percentage of young people and seniors				

### 6.3.A.3. Omitted indicators

'In your view, which indicators that you consider essential for measuring inequality have not been mentioned for this form of discrimination?'


### 6.3.B. State of progress in anti-discrimination policies

Type of indicator	List of key indicators	6.3.B.1. In your opinion, is this indicator relevant for measuring inequality arising from this form of discrimination?	6.3.B.2. To your knowledge, is information relating to this indicator available for this form of discrimination?
B.1. Data relating to victim complaints	Number of discrimination complaints and reports filed with the relevant authorities Number of complaints resulting in legal actions Proportion of legal actions resulting in court-imposed sanctions	Yes/No/No opinion	Oui / Non / pas d'avis
B.2. Action by independent authorities	Implementation of monitoring Ability to publish legally-binding codes of practice (indicate in which fields) Auditing and monitoring activities		
B.3. Valid exercise of powers by workplace partners	Detailed description of powers and areas of competence		Yes/No/No opinion
B.4. Tools and resources	Valid use of testing and statistical proof in legal proceedings Existence and implementation of legally-binding codes of practice (indicate in which fields) Existence and effective implementation of labour force monitoring programmes Existence and implementation of action plans for promoting equality Mobilisation of a tool for 'positive action'		
B.5. Mainstreaming	Existence of tools (surveys, research units, barometers, etc.) for monitoring the degree to which anti-discrimination policies have been embraced by the relevant ministries		

#### 6.3.B.3. Omitted indicators

'In your view, which indicators that you consider essential for measuring the state of progress in anti-discrimination policies have not been included for this form of discrimination?'


### 6.3.C. Measuring the impact of policies

Type of indicator	List of key indicators	6.3.C.1. In your opinion, is this indicator relevant for measuring inequality arising from this form of discrimination?	6.3.C.2. To your knowledge, is information relating to this indicator available for this form of discrimination?
C.1. Monitoring of factual inequality (A)	Change in the gap between conditions among groups subject to discrimination and those of the general population (regular tracking from time t until t + n)	Yes/No/No opinion	Yes/No/No opinion
C.2. Impact of the implementation of anti-discrimination policies (B)	Existence of tools (surveys, research units, barometers, etc.) for monitoring public perception of inequality Tracking of changes in existing indicators (t, t + n)		

### 6.3.C.3. Omitted indicators

'In your view, which indicators do you consider essential for measuring the impact of anti-discrimination policies that have not been mentioned for this form of discrimination?'


### 6.4. Do you have any additional comments or remarks?


## 7. Indicators relating to disability-based employment discrimination

### 7.1. In your country, are groups or persons who are subject to discrimination *on the job or with regard to employment opportunities* because of their disability clearly identified in official statistics?

(Note that this does not mean medical statistics related to the disability, but specific data regarding discrimination or inequality on the job or in access to employment to which the disabled may be subject.)

Yes/No

### 7.2.A. If the answer is yes, please describe when this occurs and/or the type of data (inventory, Labour Force Survey, specific statistics, etc.).

Specify:


### 7.2.B. If the answer is no, can you explain why?

	Yes/No	Specify
(a) Inadequate indicators 'categorising' the disabled		
(b) Technical limitations relating to the organisation of systems for collecting, updating and mining statistical data		
(c) Other		



### 7.3. From the list of three types of indicator (A, B, C) given below

#### 7.3.A. Measuring inequality

Type of indicator	List of key indicators	7.3.A.1. In your opinion, is this indicator relevant for measuring inequality arising from this form of discrimination?	7.3.A.2. To your knowledge, is information relating to this indicator available for this form of discrimination?
(a) Conditions for access to employment	For the disabled population in comparison with the general population	Yes/No/No opinion	Yes/No/No opinion
A.1. Aggregate indicators	Employment rate Unemployment rate		
A.2. Difficulty in finding employment	Percentage of long-term unemployed among job-seekers Length of job search		
A.3. Job visibility: public representation	Representation among high-ranking officials in the civil service and government authorities Share of elected officials(national, local) Presence in non-profit and philanthropic organisations Composition of major corporate boards of directors		
A.4. Job visibility: presence in key areas of the civil service	Percentage among educational personnel at schools and universities (administrators, teachers, researchers) Percentage among the police force (by rank and position) Percentage among personnel in the justice system		
(b) Employment and labour conditions			
A.5. Job insecurity: length of the working week	Percentage of persons employed part time (less than 30 hours per week)		
A.6. Job insecurity: nature of the work	Percentage of workers in precarious situations (temporary workers, domestic workers)		
A.7. Job insecurity: employment status	Type of employment contract (secure or insecure) Percentage of employees Percentage of self-employed workers		
A.8. Horizontal segregation	Distribution of employment among business sectors		
A.8. Vertical segregation: professional status	Distribution of employment by professional classification Percentage of managerial staff for each group targeted Percentage of executive managers		
A.9. Compensation	Hourly wage Annual wage Average position in wage and income structure		
(c) Organisational affiliation			
A.10. Affiliation with a professional or trade union organisation	Percentage of members		

#### 7.3.A.3. Omitted indicators

'In your view, which indicators for measuring inequality that you consider essential have not been mentioned for this form of discrimination?'


### 7.3.B. State of progress in anti-discrimination policies

Type of indicator	List of key indicators	7.3.B.1. In your opinion, is this indicator relevant for measuring inequality arising from this form of discrimination?	7.3.B.2. To your knowledge, is information relating to this indicator available for this form of discrimination?
B.1. Data relating to victim complaints	Number of discrimination complaints or reports filed with the relevant authorities Number of complaints resulting in legal actions Rate of success for legal actions initiated	Yes/No/No opinion	Yes/No/No opinion
B.2. Action by independent authorities	Implementation of monitoring Ability to publish legally-binding codes of practice (indicate in which fields) Auditing and monitoring activities		
B.3. Valid exercise of powers by workplace partners	Detailed description of powers and areas of competence		
B.4. Tools and resources	Valid use of testing and statistical proof in legal proceedings Existence and implementation of legally-binding codes of practice Existence and effective implementation of labour force monitoring Existence and implementation of action plans for promoting equality Mobilisation of a tool for 'positive action'		
B.5. Mainstreaming	Existence of tools (surveys, research units, barometers, etc.) for monitoring the degree to which anti-discrimination policies have been embraced by the relevant ministries Existence of appropriate facilities Mobilisation of the 'inclusive design' approach		

#### 7.3.B.3. Omitted indicators

'In your view, which indicators that you consider essential for measuring the state of progress in anti-discrimination policies have not been mentioned for this form of discrimination?'


### 7.3.C. Measuring the impact of policies

Type of indicator	List of key indicators	7.3.C.1. In your opinion, is this indicator relevant for measuring inequality arising from this form of discrimination?	7.3.C.2. To your knowledge, is information relating to this indicator available for this form of discrimination?
C.1. Monitoring of factual inequality (A)	Change in the gap between conditions among groups subject to discrimination and those of the general population (regular tracking from time t until t + n)	Yes/No/No opinion	Yes/No/No opinion
C.2. Impact of the implementation of anti-discrimination policies (B)	Existence of tools (surveys, research units, barometers, etc.) for monitoring public perception of inequality Tracking of changes in existing indicators (t, t + n)		

### 7.3.C.3. Omitted indicators

'In your view, which indicators do you consider essential for measuring the impact of anti-discrimination policies that have not been mentioned for this form of discrimination?'


### 7.4. Do you have any additional comments or remarks?


## 8. Indicators relating to employment discrimination on the basis of sexual orientation

**8.1. In your country, are groups or persons who are subject to discrimination *on the job or with regard to employment opportunities* because of their sexual orientation clearly identified in official statistics?**

Yes/No

### 8.2.A. If the answer is yes, who are they?

	Specify
How are they defined?	
What indicators are used to identify them?	
On what occasion(s) is this form of discrimination identified (census, employment survey, polling)?	

### 8.2.B. If the answer is no, can you explain why?

	Yes/No	Specify
(a) A refusal on principle to use indicators that 'categorise' persons who are subject to discrimination		
(b) Technical limitations relating to the organisation of systems for collecting, updating and mining statistical data		
(c) Other		

### 8.3. From the list of three types of indicator (A, B, C) given below

#### 8.3.A. Measuring inequality

Type of indicator	List of key indicators	8.3.A.1. In your opinion, is this indicator relevant for measuring inequality arising from this form of discrimination?	8.3.A.2. To your knowledge, is information relating to this indicator available for this form of discrimination?
(a) Conditions for access to employment	For the population that is subject to discrimination on the grounds of sexual orientation, in comparison with the general population	Yes/No/No opinion	Yes/No/No opinion
A.1. Aggregate indicators	Employment rate Unemployment rate		
A.2. Difficulty in finding employment	Percentage of long-term unemployed among job-seekers Length of job search		
A.3. Job visibility: public representation	Representation among high-ranking officials in the civil service and government authorities Share of elected officials (national, local)		
(b) Employment and labour conditions			
A.5. Job insecurity: length of the working week	Percentage of persons employed part time (less than 30 hours per week)		
A.6. Job insecurity: employment status	Type of employment contract (secure or insecure) Percentage of employees Percentage of self-employed workers		
A.7. Horizontal segregation	Distribution of employment among business sectors		
A.8. Vertical segregation: professional status	Distribution of jobs by professional classification Percentage of managerial staff Percentage of executive managers		
A.9. Compensation	Hourly wage Annual wage		
(c) Organisational affiliation			
A.10. Affiliation with a professional or trade union organisation	Percentage of members		

#### 8.3.A.3. Omitted indicators

'In your view, which indicators for measuring inequality that you consider essential have not been mentioned for this form of discrimination?'


### 8.3.B. State of progress in anti-discrimination policies

Type of indicator	List of key indicators	9.3.B.1. In your opinion, is this indicator relevant for measuring inequality arising from this form of discrimination?	9.3.B.2. To your knowledge, is information relating to this indicator available for this form of discrimination?
B.1. Data relating to victim complaints	Number of discrimination complaints or reports filed with the relevant authorities Breakdown of complaints by the identity (gay, lesbian, bi or trans) of the victims Number of complaints resulting in legal actions Rate of success for legal actions initiated	Yes/No/No opinion	Yes/No/No opinion
B.2. Action by independent authorities	Implementation of monitoring Ability to publish codes of practice that are legally binding Auditing and monitoring activities		
B.3. Valid exercise of powers by workplace partners	Detailed description of powers and areas of competence		
B.4. Tools and resources	Valid use of testing and statistical proof in legal proceedings Existence and implementation of legally-binding codes of practice Existence and effective implementation of labour force monitoring Existence and implementation of an action plan for promoting equality Mobilisation of a tool for 'positive action'		
B.5. Mainstreaming	Existence of tools (surveys, research units, barometers, etc.) for monitoring the degree to which anti-discrimination policies have been embraced by the relevant ministries		

#### 8.3.B.3. Omitted indicators

'In your view, which indicators that you consider essential for measuring the state of progress in anti-discrimination policies have not been mentioned for this form of discrimination?'


### 8.3.C. Measuring the impact of policies

Type of indicator	List of key indicators	9.3.C.1. In your opinion, is this indicator relevant for measuring inequality arising from this form of discrimination?	9.3.C.2. To your knowledge, is information relating to this indicator available for this form of discrimination?
C.1. Monitoring of factual inequality (A)	Change in the gap between conditions among groups subject to discrimination and those of the general population (regular tracking from time t until t + n)	Yes/No/No opinion	Yes/No/No opinion
C.2. Impact of the implementation of anti-discrimination policies (B)	Existence of tools (surveys, research units, barometers, etc.) for monitoring public perception of inequality Tracking of changes in existing indicators (t, t + n)		



### 8.3.C.3. Omitted indicators

'In your view, which indicators do you consider essential for measuring the impact of anti-discrimination policies that have not been mentioned for this form of discrimination?'


### 8.4. Do you have any additional comments or remarks?


## 9. Indicators relating to employment discrimination on the basis of religion or religious beliefs

9.1. In your country, are groups or persons who are subject to discrimination *on the job or with regard to employment opportunities* because of their religious beliefs clearly identified in official statistics?

Yes/No

### 9.2.A. If the answer is yes, who are they?

	Specify
What indicators are used to identify them?	
On what occasion(s) is this form of discrimination identified (inventory, employment survey, polling)?	

### 9.2.B. If the answer is no, can you explain why?

	Yes/No	Specify
(a) A refusal on principle to use indicators that 'categorise' persons who are subject to discrimination		
(b) Technical limitations relating to the organisation of systems for collecting, updating and mining statistical data		
(c) Other		

### 9.3. From the list of three types of indicator (A, B, C) given below

#### 9.3.A. Measuring inequality

Type of indicator	List of key indicators	9.3.A.1. In your opinion, is this indicator relevant for measuring inequality arising from this form of discrimination?	9.3.A.2. To your knowledge, is information relating to this indicator available for this form of discrimination?
(a) Conditions for access to employment	For persons who are subject to discrimination because of their religious beliefs, in comparison with the population belonging to the majority religious group and the overall population	Yes/No/No opinion	Yes/No/No opinion
A.1. Aggregate indicators	Employment rate Unemployment rate		
A.2. Difficulty in finding employment	Percentage of long-term unemployed among job-seekers Length of job search		
A.3. Job visibility: public representation	Representation among high-ranking officials in the civil service and government authorities Share of elected officials (national, local) Presence in non-profit and philanthropic organisations Composition of major corporate boards of directors		
A.4. Job visibility: presence in key areas of the civil service	Percentage among educational personnel at schools and universities (administrators, teachers, researchers) Percentage among the police force (by rank and position) Percentage among personnel in the justice system		
(b) Employment and labour conditions			
A.5. Job insecurity: length of the working week	Percentage of persons employed part time (less than 30 hours per week)		
A.6. Job insecurity: nature of the work	Percentage of workers in precarious situations (temporary workers, replacement and day workers, seasonal workers)		
A.7. Job insecurity: employment status	Type of employment contract (secure or insecure) Percentage of employees Percentage of self-employed workers		
A.8. Horizontal segregation	Distribution of employment among business sectors		
A.8. Vertical segregation: professional status	Distribution of employment: percentage of managerial staff percentage of executive managers		
A.9. Compensation	Hourly wage Annual wage Average position in wage and income structure		
(c) Organisational affiliation			
A.10. Affiliation with a professional or trade union organisation	Percentage of members		

#### 9.3.A.3. Omitted indicators

'In your view, which indicators for measuring inequality that you consider essential have not been mentioned for this form of discrimination?'


### 9.3.B. State of progress in anti-discrimination policies

Type of indicator	List of key indicators	9.3.B.1. In your opinion, is this indicator relevant for measuring inequality arising from this form of discrimination?	9.3.B.2. To your knowledge, is information relating to this indicator available for this form of discrimination?
B.1. Data relating to victim complaints	Number of discrimination complaints or reports filed with the relevant authorities Breakdown of complaints by the religious identity of the victims Number of complaints resulting in legal actions Rate of success for legal actions initiated	Yes/No/No opinion	Yes/No/No opinion
B.2. Action by independent authorities	Implementation of monitoring Ability to publish codes of practice that are legally binding (indicate in which fields)		
B.3. Valid exercise of powers by workplace partners	Detailed description of powers and areas of competence		
B.4. Tools and resources	Valid use of testing and statistical proof in legal proceedings Existence and implementation of codes of practice that are legally binding (indicate in which fields) Existence and effective implementation of labour force monitoring Existence and implementation of an action plan for promoting equality Mobilisation of a tool for 'positive action'		
B.5. Mainstreaming	Existence of tools (surveys, research units, barometers, etc.) for monitoring the degree to which anti-discrimination policies have been embraced by the relevant ministries		

#### 9.3.B.3. Omitted indicators

'In your view, which indicators that you consider essential for measuring the state of progress in anti-discrimination policies have not been mentioned for this form of discrimination?'


### 9.3.C. Measuring the impact of policies

Type of indicator	List of key indicators	9.3.C.1. In your opinion, is this indicator relevant for measuring inequality arising from this form of discrimination?	9.3.C.2. To your knowledge, is information relating to this indicator available for this form of discrimination?
C.1. Monitoring of factual inequality (A)	Change in the gap between conditions among groups subject to discrimination and the general population (regular tracking from time t until t + n)	Yes/No/No opinion	Yes/No/No opinion
C.2. Impact of the implementation of anti-discrimination policies (B)	Existence of tools (surveys, research units, barometers, etc.) for monitoring public perception of inequality Tracking of changes in existing indicators (t, t + n)		

**9.3.C.3. Omitted indicators**

'In your view, which indicators do you consider essential for measuring the impact of anti-discrimination policies that have not been mentioned for this form of discrimination?'


**9.4. Do you have any additional comments or remarks?**






European Commission

**The fight against discrimination and the promotion of equality – How to measure progress done**

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This analytical study commissioned by the European Commission targets a *two-fold objective*:

- To develop a conceptual framework for evaluating progress in equality and anti-discrimination efforts and to formulate specific suggestions with a view to selecting a reasonable number of indicators.
- To start examining the statistical data available at the international, European and national levels that might contribute to an evaluation of the progress made in equality and anti-discrimination efforts, and to identify existing shortcomings and propose a series of corrective measures.

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