

# REPORT ON MEASURES TO COMBAT DISCRIMINATION

## Directives 2000/43/EC and 2000/78/EC

### COUNTRY REPORT/UPDATE 2005

Luxembourg  
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This report has been drafted for the **European Network of Legal Experts in the non-discrimination field** (on the grounds of Race or Ethnic origin, Age, Disability, Religion or belief and Sexual Orientation), established and managed by:

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## INTRODUCTION

### 0.1 The national legal system

*Explain briefly the key aspects of the national legal system that are essential to understanding the legal framework on discrimination. For example, in federal systems, it would be necessary to outline how legal competence for anti-discrimination law is distributed between different levels of government.*

Luxembourg is a unitary and indivisible state. It is a constitutional monarchy, whereby the Grand-Duke has only very limited powers, as conferred by the Constitution. The Government or members of Parliament propose pieces of legislation. There is one single Chamber at the Parliament, the *Chambre des Députés*, which votes the draft bills. A statement of grounds originally accompanies these draft bills.

All bills must be submitted to the Council of State for its opinion, as well the professional chambers. For a bill to be passed, the Council of State must exempt the Chamber of the second constitutional vote. If the Council of State formally opposes the draft, a second vote must be taken in Parliament to pass the bill.

Secondary legislation is exercised by Grand-Ducal regulations. In practice, a regulation may only apply the bill itself and give some precisions. The Government, i.e. the minister in charge is responsible for drafting the regulation, which is submitted to the Council of State for its opinion and then signed by the Grand-Duke.

The constitution provides for exclusive competence of the Parliament in various fields, like social security and labour law.

There are a few basic codes of law, including the civil code (dating from the Napoleonic times), the criminal code, the code of commerce, the code of civil procedure, the code of criminal procedure and the code of social security.

The criminal code contains, mainly in articles 454 to 457 introduced by the law of 19 July 1997, various penal provisions forbidding discrimination against persons based on the grounds of their racial or ethnic origin, skin colour, sex, sexual orientation, family situation, state of health, disability, customs, political or philosophical opinions, trade union activities, their membership, actual or supposed, of an ethnic group, nationality, race or specific religion.

There is no code of labour law yet, but a draft bill has been deposited in this respect, so that the labour laws should be compiled in such a code during 2006. However it is still uncertain whether the code will be finalised this year, as it was already supposed to be completed in 2005, which was not the case. The basic law for the employment field is the law of 24 May 1989 on the working contract<sup>1</sup>.

As far as the public sector is concerned, there is a compilation of laws relating to the administration (*Code administratif*), out of which the general statute of civil servants provides for the rules relating to the relationship between them and the administration. Some laws

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<sup>1</sup> Loi du 24 mai 1989 sur le contrat de travail, *Mémorial (Official Gazette)* A, 05/06/1989 [Law on the working contract] ; [http://www.legilux.public.lu/leg/textescoordonnes/compilation/recueil\\_lois\\_speciales/TRAVAIL.pdf](http://www.legilux.public.lu/leg/textescoordonnes/compilation/recueil_lois_speciales/TRAVAIL.pdf)

apply both to the private and the public sector like the law of 8 December 1981 on equality of treatment between men and women.

As far as religions are concerned, in Luxembourg there is no separation between State and Church. The relations between the State and religious institutions are based on the principle of reciprocal independence, meaning that the State provides for a certain protection of religious groups i.e. recognized Churches.

The official recognition of a religion is materialized by a convention signed between the State and the religious representative body. A religious head of the Church/religious group represents the religion such as an Archbishop, a chief rabbi etc. Financial assistance is being also granted to the religious bodies (payment of some salaries of religious ministers). Such conventions exist between the state and the main religious communities (Catholic, Jewish, Protestant, Orthodox), but not with the Moslem community yet.

## 0.2 State of implementation

*List below the points where national law is in breach of the Directives. This paragraph should provide a concise summary, which may take the form of a bullet point list. Further explanation of the reasons supporting your analysis can be provided later in the report. Has the Member State taken advantage of the option to defer implementation of Directive 2000/78 to 2 December 2006 in relation to age and disability?*

It must be recalled that a first attempt was made by the Government to transpose into Luxembourg law the two anti-discrimination Directives.

Indeed, on 21 November 2003, two draft bills were deposited at the Parliament (Chambre des Députés). One, with the Nr. 5248<sup>2</sup> concerned the transposition of directive 2000/43. The second, with the Nr. 5249<sup>3</sup> concerned the transposition of directive 2000/78 and included the prohibition of discrimination based on racial and ethnic origin.

A number of shortcomings had been pointed out by the Council of State's, in its opinion on the two draft bills of 7 December 2004<sup>4</sup> and it formally opposed several items. This forced the Government to withdraw the two draft bills.

On 22 November 2005, the Government deposited one single new draft bill with the Nr. 5518 and withdrew the two former proposals of law<sup>5</sup>.

<sup>2</sup> *Projet de loi portant transposition de la directive 2000/43/CE du Conseil du 29 juin 2000 relative à la mise en oeuvre du principe de l'égalité de traitement entre les personnes sans distinction de race ou d'origine ethnique.*

[Draft bill transposing directive 2000/43/EC of the Council of 29 June 2000 relative to the implementing the principle of equal treatment between persons irrespective of racial or ethnic origin]

<sup>3</sup> *Projet de loi portant 1. transposition de la directive 2000/78/CE du Conseil du 27 novembre 2000 portant création d'un cadre général en faveur de l'égalité de traitement en matière d'emploi et de travail; 2. modification des articles 3 et 7 de la loi modifiée du 12 novembre 1991 sur les travailleurs handicapés; 3. abrogation de l'article 6 de la loi modifiée du 12 mars 1973 portant réforme du salaire social minimum.*

[Draft bill transposing 1. directive 2000/78/EC of the Council of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ; 2. modifying articles 3 and 7 of the amended law of 12 November 1991 on disabled people; 3. abrogating article 6 of the amended law of 12 March 1973 reforming the minimum social salary].

<sup>4</sup> *Avis du Conseil d'Etat n°46.452 et n° 46.458 ;*

<sup>5</sup> *Projet de loi portant*

*1. transposition de la directive 2000/43/CE du Conseil du 29 juin 2000 relative à la mise en oeuvre du principe de l'égalité de traitement entre les personnes sans distinction de race ou d'origine ethnique ;*

*2. transposition de la directive 2000/78/CE du Conseil du 27 novembre 2000 portant création d'un cadre général en faveur de l'égalité de traitement en matière d'emploi et de travail ;*

The draft bill uses the very definitions contained in the two directives, concerning direct and indirect discrimination, harassment and instruction to discrimination and thus the draft bill is satisfactory as far as the use of the legal definitions is concerned. Many items have been improved and can be analysed as transposing correctly the two directives. However a few points remain unsatisfactory.

These points will be analysed later on in this report. One can however already point out at following critical items:

- The scope of the draft bill has been widened – compared with the two former draft bills - so as to include self-employment. However, despite the critics of the Council of State, the public sector has remained excluded from the proposal as far as access to the public sector is concerned.
- Concerning the defence of rights, there is no special mechanism to ensure such defence in the general field of civil (only in the employment area), as specified in article 7-1 of Directive 2000/43/EC and in article 9-1 of Directive 2000/78/EC. The Government has not followed the criticism of the Council of State on this provision, as it pointed out the insufficient efficiency of existing legal remedies in this field.
- The same goes for victimisation, as the draft bill only provides for such a mechanism in the employment area.
- As far as sanctions are concerned, the Council of State criticized that there would be a new definition of discrimination, next to the one existing in the penal code: however the Government has not incorporated the definitions of the Directives into the penal code.

Luxembourg has not used the possibility to defer implementation of Directive 2000/78 to 2 December 2006 in relation to age and disability.

The new legislation should be an improvement compared to the current situation, whereby articles 454 to 457 of the criminal code are lacking many of these requirements of both directives 2000/43 and 2000/78. The existing law is only a criminal law, while the new law will add some remedies in civil law and labour law as well as new criminal sanctions.

The existing law prohibits discrimination, defined as ‘any kind of distinction’, which is a relatively vague definition. The law transposing the directives will introduce the concept of indirect discrimination, as well as the one of harassment, which does not exist yet.

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3. *modification des articles 8 et 13 de la loi du 12 septembre 2003 relative aux personnes handicapées ;*

4. *abrogation de l'article 6 de la loi modifiée du 12 mars 1973 portant réforme du salaire social minimum*

Dépôt: Ministre du Travail et de l'Emploi, le 22/11/05

[Draft bill transposing 1. Directive 2000/43/EC of the Council of 29 June 2000 relative to the implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

2. Directive 2000/78/EC of the Council of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ;

3. modifying articles 8 and 13 of the law of 12 September 2003 on disabled people;

4. abrogating article 6 of the amended law of 12 March 1973 reforming the minimum social salary]

<http://www.chd.lu/servlet/DisplayServlet?id=44293&path=/export/exped/sexdpata/Mag/064/412/046131.pdf>

Some mechanisms of protection against discrimination, like the sharing of the burden of proof, the introduction of positive action or the clauses relating to victimisation do not yet exist in the current laws in Luxembourg and their adoption will be a progress, once instated.

However these bills have still not been adopted at the end of the year 2005, so that Luxembourg is clearly in breach of its obligations of transposing the two directives within the foreseen time limits.

### 0.3 Case-law

*Provide a list of any important case-law within the national legal system relating to the application and interpretation of the Directives. This should take the following format:*

- a. Name of the court
- b. Date of decision and reference number (or place where the case is reported). If the decision is available electronically, provide the address of the webpage.
- c. Name of the parties
- d. Brief summary of the key points of law (no more than several sentences)

There is currently no case-law on the Directives. This is due to the fact that they have not been transposed. Also nobody, as far as the undersigned may know, has asked a court to apply directly the two Directives.

As far as the author of this report is concerned, no case relating to discrimination, which has been brought to court has been published or written upon in the year 2005, so that no known case-law may be described or written on.

## 1. GENERAL LEGAL FRAMEWORK

### **Constitutional provisions on protection against discrimination and the promotion of equality**

*a) Briefly specify the grounds covered (explicitly and implicitly) and the material scope of the relevant provisions. Do they apply to all areas covered by the Directives? Are they broader than the material scope of the Directives?*

On the national level, the principle of equal treatment can be found in the general legal principle found in article “10 bis” of the Constitution, according to which all Luxembourgers are equal before the Law. This implies that no discrimination shall apply for whatever ground.

However this principle applies only *stricto sensu* to the Luxembourg nationals and not the foreign citizens. Although it is understood to be a general principle of law, implying equality for all inhabitants, it clearly is not sufficient to guarantee in all situations and in all court cases that any breach of the principle of equality will be sanctioned. There is no mention of the prohibition of discriminations in the Constitution. Up to now, there has been no proposal to insert a clear prohibition of discriminations, for whatever ground, in the Constitution.

There are a few articles in the Constitution, which are also relevant to the different grounds of discrimination, as foreseen by both Directives.

Article 111 of the Constitution of the Grand Duchy of Luxembourg states the following “Any alien on the territory of the Grand Duchy shall enjoy the protection accorded to persons and

*property, without prejudice to exceptions established by law*". As discriminations based on racial origin, religion or belief are often linked to the foreign origins of a person, the statement is important, although not precise enough to protect foreigners from all discriminations.

The Constitution contains several articles relating to religion in a broad sense. Article 19 guarantees freedom of worship in all its forms. Article 20 guarantees freedom of conscience and provides for the liberty *not* to take part in any religious ceremony, to respect any religious festival or to respect any day of rest. Thus any discrimination based on religion and opposing these liberties is not allowed<sup>6</sup>.

*b) Are constitutional anti-discrimination provisions directly applicable?*

Constitutional provisions are only directly applicable when they are clear enough. In general it is the case only with a bill. Administrative courts apply sometimes directly the principles of fundamental rights as laid down in the Constitution. This may also be the case for criminal courts. In civil courts however, the direct application of the Constitution is problematic, as the definitions are too broad.

Luxembourg has a Constitutional Court, which decides upon the conformity of legislation with the Constitution. A preliminary question can only be put to this Constitutional Court by another court, a civil or administrative court. The judges decide on whether they put the question to the Constitutional Court. This Court may decide that an article in a bill violates the constitution and thus is not applicable. It is up to the legislator to amend the law when such a judicial statement of unconstitutionality has been made.

According to the Constitutional Court, the principle of equality "*cannot be construed in an absolute sense, but requires all those who are in the same situation of fact and law to be treated in the same way*"<sup>7</sup>.

According to the judgments of the Constitutional Court, "*the legislature may subject certain categories of persons to different legal regimes without infringing the constitutional principle of equality, provided that the difference introduced derives from objective disparities, and that it is rationally justified, adequate and proportional to its aim*"<sup>8</sup>.

*c) In particular, where a constitutional equality clause exists, can it (also) be enforced against private actors (as opposed to the State)?*

The principle of equality can be enforced against any actor, public or private, by any court, with the limitations stated under b), i.e. the provision must be clear enough and not too wide.

## 2. THE DEFINITION OF DISCRIMINATION

### 2.1 Grounds of unlawful discrimination

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<sup>6</sup> According to article 19, freedom of worship, including in public, as well as the liberty to express ones' religious opinions are guaranteed but penal infringements may still be prosecuted when abusing this freedom. Article 20 protects everyone against being forced to participate in any deed or ceremony of worshipping and to respect religious holidays.

<sup>7</sup> Constitutional Court, Judgment 2/1998 of 13.11.98, Mémorial (Official Gazette) A - no. 102 of 8.12.98, page 2499, <http://www.legilux.public.lu/leg/a/archives/1998/1020812/index.html>

<sup>8</sup> Constitutional Court, Judgment 09/2000 of 5.5.2000, Mémorial (Official Gazette) A - no. 40 of 5.5.2000, page 948, <http://www.legilux.public.lu/leg/a/archives/2000/0403005/0403005.pdf#page=2>

*Which grounds of discrimination are explicitly prohibited in national law? All grounds covered by national law should be listed, including those not covered by the Directives.*

The forbidden grounds of discrimination are to be found in the penal code, in articles 454 to 457 of the penal code, as introduced by the law of 19 July 1997<sup>9</sup>. Individual and collective discrimination are thus forbidden and can lead to a fine or imprisonment up to two years.

Article 454 of this code defines discrimination as “*any difference of treatment applied to natural persons on grounds of their racial or ethnic origin [etc.]*”.

Moreover, a law of 27 July 1993 on the integration of foreigners in the Grand Duchy of Luxembourg and on social action for foreigners states that “*all discrimination against a person, group of persons or a community on the grounds of race, colour, descent, national or ethnic origin or religion of that person, or all or some members of the group or community is prohibited*”. However there is no sanction attached to this prohibition and it seems that the law has never been invoked in court.

Article 454 of the penal code states more exactly: “*any difference of treatment applied to natural persons on grounds of their racial or ethnic origin, skin colour, sex, sexual orientation, family situation, state of health, disability, customs, political or philosophical opinions, trade union activities, their membership, actual or supposed, of an ethnic group, nationality, race or specific religion shall constitute discrimination*”.

“*Equally [any difference of treatment] applied to legal entities, groups or communities of persons, or to some or all members of these legal entities, groups or communities on grounds of their racial or ethnic origin, skin colour, sex, sexual orientation, family situation, state of health, disability, customs, political or philosophical opinions, trade union activities, their membership, actual or supposed, of an ethnic group, nationality, race or specific religion, shall constitute discrimination*”.

Thus the grounds of racial and ethnic origin are covered, as well as religion, disability and sexual orientation. However, the word belief is not included, although it might be covered by the word religion. Age is missing as a ground.

One has also to underline that belief is a notion provided by article 9 of the European Convention of Human Rights, which is directly applicable into Luxembourg law<sup>10</sup>. According to this article, “*everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance*”. No definition of belief has been provided by the E.C.H.R.

<sup>9</sup> loi du 19 juillet 1997 complétant le code pénal en modifiant l’incrimination du racisme et en portant incrimination du révisionnisme et d’autres agissements fondés sur des discriminations illégales, [law of 19 July 1997 completing the penal code by amending the accusation of racism and introducing the accusation of revisionism and other acts based on illegal discriminations], Mémorial 07/08/1997 (054/1997).

<http://www.legilux.public.lu/leg/a/archives/1997/0540708/1997A16801.html>

<sup>10</sup> “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others”

The draft bill does now include all the grounds of the two anti-discrimination Directives, namely religion and belief, disability, age, sexual orientation, racial and ethnic origin<sup>11</sup>. Thus this bill will ameliorate the legal protection in the anti-discrimination area, when adopted.

### 2.1.1 Definition of the grounds of unlawful discrimination within the Directives

*a) How does national law on discrimination define the following terms: racial or ethnic origin, religion or belief, disability, age, sexual orientation?*

All these notions are not defined, as such, in legal terms in Luxembourg legislation. Courts have, on their part, not defined these concepts as so far.

The words '*racial or ethnic origin*' are concepts that are used in the penal code, in articles 454 and 457-2, without precise definition. The same is true for the law of 27 July 1993 on the integration of foreigners in the Grand Duchy of Luxembourg and on social action for foreigners (cf. under 2-3). The draft bill has taken the precaution to use the word "race" by preceding it with the words "true or assumed belonging to a", in order not to give any doubt about the rejection in the French language of any interpretation that could be understood as supporting racist theories that are based on the existence of different human races like the Nazis did.

As far as the notion of '*religion*' is concerned, the Constitution uses an older concept of *worship* and the penal code does not add any definition.

*Belief* is a notion that is missing in the current legislation, as well as *age*.

The draft bill uses all of these grounds, without defining them either. It also uses the notions of disability, age and sexual orientation, without defining them.

The draft anti-discrimination legislation does not define the notion of "*disabled person*", a notion, which is present in the penal code. Consequently, the term may be given the general interpretation of a person with a reduced capacity in one respect or another. It relates to physical or mental capacity, etc.

According to the law on Disabled Persons of 12 September 2003<sup>12</sup>, the definition of disability lies in reduced working capacity, whether the cause is natural or accidental, due to a work accident or war events.

<sup>11</sup> Article 1, draft bill n°5518

<sup>12</sup> Loi du 12 septembre 2003 relative aux personnes handicapées et portant modification 1. de la loi modifiée du 26 mai 1954 réglant les pensions des fonctionnaires de l'Etat, 2. de la loi du 22 avril 1966 portant réglementation uniforme du congé annuel payé des salariés du secteur privé, 3. de la loi modifiée du 12 mars 1973 portant réforme du salaire social minimum, 4. de la loi modifiée du 30 juin 1976 portant 1. création d'un fonds pour l'emploi; 2. réglementation de l'octroi des indemnités de chômage complet, 5. de la loi modifiée du 19 juin 1985 concernant les allocations familiales et portant création de la caisse nationale des prestations familiales, 6. de la loi modifiée du 27 juillet 1987 concernant l'assurance pension en cas de vieillesse, d'invalidité et de survie, 7. de la loi modifiée du 3 août 1998 instituant des régimes spéciaux pour les fonctionnaires de l'Etat et des communes ainsi que pour les agents de la SNCFL, 8. de la loi modifiée du 28 juillet 2000 ayant pour objet la coordination des régimes légaux de pension et 9. le CAS.

[Law of 12 September 2003 relating to the disabled persons and amending 1. the amended law of 26 May 1954 regulating the pensions of the civil servants of the State, 2. the law of 22 April 1966 uniformly regulating the annual paid leave of the employees of the private sector 3. of the modified law of 12 Mars 1973 reforming the minimum social income, 4. of the modified law of 30 June 1976 which 1. creates a fund for employment; 2. regulating the granting of full unemployment benefits, 5. of the amended law of 19 June 1985 concerning family allowances and creating the national agency of family allowances, 6. of the amended law of 27 July 1987 concerning the insurance pension in case of oldness, *invalidity* and of survival, 7. of the amended law of 3 August 1998 instating special regimes for state and municipal civil servant as well as for



The law gives the status of “disabled worker” to disabled persons who suffer from a physical, mental, sensory or psychological deficiency and/or from psychosocial difficulties aggravating this deficiency). Such a definition is valid for reductions in working capacity exceeding 30%, for persons who are still able to work somehow, even in a protected environment.

The grand-ducal regulation of 7 October 2004<sup>13</sup>, uses the following criteria in article 6-1: the status of disabled person implies the existence of a reduction of the individual’s work potential, in relation to the previously held job. It all also considers the criteria of ‘residual work capacity’, meaning that the likelihood of an effective reinstatement of the worker’ in a job within a short period or the likelihood of an effective physical rehabilitation of the worker so as to be able to work again are under review. The worker’s disability should not be confused with “inability to work” a concept that derives from a quota of days’ absence during a given period, or “invalidity”, which is granted to workers in certain conditions.

The draft bill on discrimination does not really define the notion of disability but its article 14 uses the following formula: *the employer will take appropriate measures, depending on the needs in a particular case in order for the disabled worker to be able to find a job, work and progress or for training to be given to him, unless these measures put a disproportionate burden on the employer.*<sup>14</sup>

The notion of *sexual orientation* has been introduced by the law of 19 July 1997 (which amended the penal code), but does not specify its definition. While the notion was absent in the draft bill, an amendment of the Legal Commission of the Parliament has introduced the concept. During the debates in Parliament, an MP<sup>15</sup> defined the concept as being relevant not only to homosexuality, but to sexual behaviour in general.

*b) Where national law on discrimination does not define these grounds, how far have equivalent terms been used and interpreted elsewhere in national law (e.g. the interpretation of what is a ‘religion’)?*

The ground of *belief* is not used in the Luxembourg legislation. The concept of belief may though fall into the general area of religion. The Constitution uses rather the word *worship*. However, there is no constitutional, legal or court definition of religion, of worship or of belief.

Even in the important judgement of 20 November 1998, the Constitutional Court did not define “religion” as such. It decided that a pupil, member of the 7<sup>th</sup> Day Advent Church, who asked for the permission not to attend school on Saturdays, due to religious grounds, may not be granted a general exemption<sup>16</sup>.

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the agents of the national railway company, 8. of the amended law of 28 July 2000 with the aim of coordinating the legal regimes of pension and 9. the Code of Social Insurance], Mémorial du 29/09/2003 (144/2003), <http://www.legilux.public.lu/leg/a/archives/2003/1442909/2003A29381.html>

<sup>13</sup> Règlement grand-ducal du 7 octobre 2004 portant exécution de la loi du 12 septembre 2003 relative aux personnes handicapées [grand-ducal regulation of 7 October 2004 applying the law of 12 September 2003 relating to disabled persons], Mémorial du 13/10/2004 (167/2004).

<http://www.legilux.public.lu/leg/a/archives/2004/1671310/2004A25261.html>

<sup>14</sup> The text goes on : This burden is not disproportionate when sufficiently compensated by the measures provided by article 26 of the grand-ducal regulation of 7 October 2004, executing the law of 12 September 2003 relating to disabled persons.

<sup>15</sup> Laurent Mosar

<sup>16</sup> Constitutional Court, Judgment 3/1998 of 20.11.98, Mémorial (Official Gazette) A of 18.01.1999, n°002/1999, <http://www.legilux.public.lu/leg/a/archives/1999/0021801/0021801.pdf#page=2>

The Constitutional Court decided that article 1 of the law of 10 August 1912 on the organisation of primary schools is not contrary to article 19 of the Constitution, which guarantees freedom of worship. In the eyes of the court, the right of a child to be educated cannot be suppressed or severely damaged, even on a religious ground. Freedom of worship was not defined in general terms.

It is interesting to note that the Court used the notion of religious or philosophical belief<sup>17</sup>.

The draft bill does not envisage to add any legal definition.

*c) Are there any restrictions related to the scope of ‘age’ as a protected ground (e.g. a minimum age below which the anti-discrimination law does not apply)?*

As mentioned already, the ground of age is missing in the current legislation but is included in the draft bill.

The scope of the Directive 2000/78/EC relating on *age* has been correctly taken over by the draft bill, which envisages the introduction of admissible limitations as foreseen in Article 6 of the Directive.

Thus there are no restrictions related to the scope of ‘age’ as a protected ground, like a minimum age below which the anti-discrimination law does not apply.

### **2.1.2 Assumed and associated discrimination**

*a) Does national law prohibit discrimination based on assumed characteristics? e.g. where a woman is discriminated against because another person assumes that she is a Muslim, even though that turns out to be an incorrect assumption.*

Yes, in the penal code, article 454 prohibits any discrimination based on the belonging – real or supposed – to an ethnic group, nationality, race or a specific religion. Therefore a discrimination based on the false assumption of the religion of a person for example is indeed forbidden and sanctioned.

There is no such prohibition for other grounds as sexual orientation or disability, as the abovementioned article uses the words “their belonging or non-belonging-true or assumed” only for the grounds of ethnic group, nationality, race or specific religion.

In the comments of the draft bill on the prohibition of discriminations transposing the two Directives 2000/43/EC and 2000/78/EC, one can read that, as far as the notions of direct and indirect discrimination are concerned, the principle of equality of treatment (for race and ethnic origin) is applicable whether the racial or ethnic origin is real or assumed.

The draft bill will therefore strengthen the prohibition of assumed discrimination, but only for the criteria of racial and ethnic origin.

*b) Does national law prohibit discrimination based on association with persons with particular characteristics (e.g. association with persons of a particular ethnic group)? If so, how?*

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<sup>17</sup> the Court considers that religious or philosophical beliefs cannot impinge on the fundamental right to education of a child.

The penal code does not provide for such an association, nor does any other law. However article 454 §2 of the penal code equally states that any difference of treatment applied to legal entities, groups or communities of persons, or to some or all members of these legal entities, groups or communities on grounds of their racial or ethnic origin, skin colour, sex, sexual orientation, family situation, state of health, disability, customs, political or philosophical opinions, trade union activities, their membership, actual or supposed, of an ethnic group, nationality, race or specific religion, shall constitute discrimination.

This article allows an individual a right of action. However while this article allows a complaint in respect of discrimination against a whole group based on disability for example, it does not seem to cover discrimination based on association with a particular group.

## **2.2 Direct discrimination (Article 2(2)(a))**

### *a) How is direct discrimination defined in national law?*

The law of 1997, having amended the penal code, uses the words ‘*any kind of distinction based on ...the various grounds of discrimination*’. This is quite a vague definition. The Constitution uses the notion of equality, without defining it either.

The draft bill 5518 transposing Directives 2000/43/EC and 2000/78/EC uses the very definition of the directives and, if adopted, will introduce the concept of equality of treatment as required by the two directives, including the definition of direct discrimination.

The definition used is thus: ‘*direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of...*’.

Article 13 of the draft bill aims at modifying article 454 of the penal code by integrating the words “direct or indirect” and thus forbid ‘*any kind of direct or indirect distinction based on...*’. It is clear that the anti-discrimination bill will have to be used in conjunction with the penal code in order to use the correct definition of direct definition, which will be complicated, a situation that the Council of State had already criticized in its opinion on the two former draft bills.

### *b) Does the law permit justification of direct discrimination generally, or in relation to particular grounds? If so, what test must be satisfied to justify direct discrimination? (See also 4.7.1 below).*

Indeed, the penal code does foresee the prohibition of (direct) discrimination. Nevertheless, following exceptions are allowed:

- discrimination on grounds of state of health, where this consists of operations intended to prevent or ensure against the risk of death, the risk of bodily harm, or the risk of incapacity for work or invalidity;
- discrimination on grounds of state of health or disability, where this consists of a refusal of employment, or of dismissal on grounds of medical unfitness of the party concerned (i.e. the candidate for a job);

- discrimination in relation to recruitment for employment, on grounds of nationality, where being of a specific nationality constitutes, in accordance with statutory provisions regarding public service, with regulations applicable to the exercise of certain professions and with provisions on the right to work, a determining condition for employment or the exercise of a professional occupation;
- discrimination in relation to entry to, residence in and the right to vote in the country, where being of a specific nationality constitutes, in accordance with legal provisions and regulations regarding entry to, residence in and the right to vote in the country, the determining factor in entry to, residence in and the exercise of the right to vote in the country;
- differences of treatment provided for by, or arising from, any other legal provision.

The two latter paragraphs are to be amended by the draft bill Nr. 5518<sup>18</sup>. Paragraph 4 should be replaced by a new text, which still aims at allowing discrimination based on nationality, using the exception allowed in Article 3-2 of the employment Directive<sup>19</sup>, while the last paragraph, allowing for other cases of discrimination foreseen by law has been dropped, after that the Council of State had criticized this exception.

*c) In relation to age discrimination, if the definition is based on 'less favourable treatment' does the law specify how a comparison is to be made?*

As far as age is concerned, the ground is missing in the current legislation. The draft bill transposing the two Directives provides for an exception to the principle of equality for age if the measures are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary, using the very definition of the employment Directive.

Article 6 of the draft bill allows for:

- the setting of special conditions on access to employment and vocational training, employment and occupation, including remuneration conditions (but not dismissal),
- the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;

### ➔ 2.2.1 Situation Testing

*a) Does national law permit the use of 'situational testing'? If so, how is this defined and what are the procedural conditions for admissibility of such evidence in court.*

The law does not provide for the possibility of using situation tests and the draft bill is also silent on this issue. It is therefore highly unlikely that any court could accept to use such tests without proper legislation to support the legality of such procedures in a civil procedure.

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<sup>18</sup> Article 13 (4)

<sup>19</sup> 'to differences of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons in the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned'.

Indeed, the system of the civil procedure is governed by the principle of the legality of evidence, meaning that usually only the kind of evidence that is brought according to the civil procedure code are admissible (witnesses, writings etc.).

One could argue that a situation test may be accepted by the judges even if not provided for in any code, if it fairly brought in court. However the author of this report is pessimistic about the reaction of judges, as it would be more likely to be seen as one element of appreciation of the case by a court, but not as a kind of evidence as such.

In a criminal case, all kinds of evidence are more likely to be accepted by the judges as long as the evidence has been fairly brought by the instructing judge.

*b) Outline important case-law within the national legal system on this issue.*

The is no case-law in this matter.

*c) Outline how situation-testing is used in practice and by whom (e.g. NGOs)*

Not applicable.

### **2.3 Indirect discrimination (Article 2(2)(b))**

*a) How is indirect discrimination defined in national law?*

The definition of indirect discrimination does not exist in the current penal law. The notion of indirect discrimination used in the draft bill is the same as those of the two Directives. Thus indirect discrimination is defined as follows:

*“indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation, or due to their real or supposed belonging to a race or a given ethnic group at a particular disadvantage compared with other persons unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, (transposition of Race Directive and Employment Directive)*

*b) What test must be satisfied to justify indirect discrimination?*

It is not possible to answer this question yet as long as the final text has not been adopted. No test mechanism is foreseen in the draft bills.

*c) Is this compatible with the Directives?*

If the draft bill would be adopted with the current definitions, it would correctly transpose the Directives on this issue and it would be up to the courts to verify on case-to-case basis, if a particular behaviour may be deemed as indirect discrimination.

*d) In relation to age discrimination, does the law specify how a comparison is to be made?*

The draft bill transposing both Directives 2000/43/EC and 2000/78/EC has taken over the definitions of article 6 of Directive 2000/78/EC, and this, nearly word for word.

Thus, its article 6 provides that *“differences of treatment on grounds of age shall not constitute discrimination, if they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.*

*Such differences of treatment may include, among others:*

- 1. the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions,*
- 2. the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;*

### ➔ 2.3.1 Statistical Evidence

*a) Does national law permit the use of statistical evidence to establish indirect discrimination? If so, what are the conditions for it to be admissible in court.*

No, the draft bill does not provide for such a possibility. The current penal law is also silent and does not foresee the use of statistical evidence.

In a criminal case, the instructing judge may use all legal evidence to prove the reality of the discrimination deed as long as it is fair. One can argue that such a method could be accepted as being legal by a criminal court.

However the civil procedure being governed by the principle of legality of evidence, it is unlikely that a civil court would accept this kind of evidence, unless the law is being amended to encompass such an evidence method.

*b) Is the use of such evidence commonly used?*

Due to the answer given under a), it is clear that statistical evidence is not used at all.

*c) Please illustrate the most important case law in this area.*

There is none.

*d) Are there national rules which permit data collection? Please answer in respect of all 5 grounds.*

The law on data protection of 02 August 2002<sup>20</sup>, allows treatment of data with severe limitations in article 6<sup>21</sup>.

Therefore the treatment of data relating to racial or ethnic origin, to political opinions, to religious or philosophical belief or to the belonging to a trade-union as well as treatments of data about health and sexual life, including genetic items is forbidden.

There are exceptions, in case of an agreement by the concerned person in certain conditions, when such use of data is crucial for the well-being of a person, for the purpose of a private association or foundation when used strictly for internal purposes, when the information is publicly known, for judicial reasons or for a public interest purpose like a historical, statistical or scientific ground

<sup>20</sup> Mémorial du 13/08/2002 (091/2002), <http://www.legilux.public.lu/leg/a/archives/2002/0911308/2002A18361.html>

<sup>21</sup> Article 6

The prohibition does not count in criminal investigation or court cases<sup>22</sup>. Moreover, this article also limits the use of genetic data in order to verify the existence of a genetic link while using evidence during a court case, for purposes of identifying a person, for preventing or repressing a specific criminal deed.

## 2.4 Harassment (Article 2(3))

*a) How is harassment defined in national law? Include reference to criminal offences of harassment insofar as these could be used to tackle discrimination falling within the scope of the Directives.*

Harassment is not a criminal offence according to the existing legislation. The draft bill uses the very definitions of both Directives concerning harassment.

Thus harassment is deemed to take place “*when an unwanted conduct related to one of the motives which are aimed at (i.e. racial or ethnic origin, religion or belief, disability, age or sexual orientation) takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment*”<sup>23</sup>.

The draft bill uses the words “notwithstanding the specific provisions relating to sexual harassment and moral harassment”. However up to now the law on moral harassment has not been adopted<sup>24</sup>, which is noted in the opinion of the *Chambre du Travail* of 17 February 2004.

*b) Is harassment prohibited as a form of discrimination?*

Not yet. However it is considered as unlawful discrimination in the draft bill: see full answer under a).

*c) Are there any additional sources on the concept of harassment (e.g. an official Code of Practice)?*

There is one additional source, relating to sexual harassment, stemming from the law of 26 May 2000<sup>25</sup>. This law is applicable both to the private and the public sectors, including also trainees and students working during school holidays.

According to article 2 of this law, harassment is deemed to exist for any behaviour with a sexual connotation or any other behaviour based on gender in a working environment of which the author knows or must know that it affect the dignity of a person at work, when one of the three following conditions is met :

1. the conduct is inappropriate, abusive or hurtful to the person who is its object;
2. the fact that a person rejects or accepts such conduct on the part of an employer, worker, client, customer or supplier is used explicitly or implicitly as grounds for a decision affecting the rights of that person regarding vocational training, employment, retention of employment, promotion, pay, or for any other decision concerning work;

<sup>22</sup> These exceptions are based on the Directive 95/46/EC

<sup>23</sup> Article 1 (3)

<sup>24</sup> the draft bill is dated 4 July 2002

<sup>25</sup> *loi du 26 mai 2000 concernant la protection contre le harcèlement sexuel à l'occasion des relations de travail*[law of 26 May 2000 concerning the protection against sexual harassment at the occasion of the working relations], Mémorial du 30/06/2000 (050/2000).

<http://www.legilux.public.lu/leg/a/archives/2000/0503006/2000A11101.html>

3. such conduct creates a climate of intimidation, hostility or humiliation in respect of the person who is its object. The conduct specified may be physical, verbal or non-verbal. An element of intent in the conduct is presumed.

It should be noted here that these three conditions are alternative and non-cumulative and that the scope is much more wide-reaching than that of the concept of harassment as defined in the Directive, insofar as the two can be compared.

Furthermore, it is interesting to note that Article 3 of this law states specifically that harassment as defined in Article 2 *“is considered to be contrary to the principle of equal treatment in terms of the provisions of the Law of 8 December 1981 concerning equal treatment between men and women in access to employment, vocational training and promotion and working conditions”*.

Moreover, although prohibition of this conduct has been extended by this very law to work relationships in the public service between state employees (Article 13) and local authority officials (Article 14), this remains, however, limited to work relationships and is not subject to criminalisation and penal sanctions, but allows *“the worker who is victim of an act of sexual harassment to refuse to continue to fulfil the contract of employment and to terminate that contract of employment on serious grounds and without advance notice, with damages payable by the employer whose offence (...) caused the immediate termination”*.

It is also interesting to note that the aforementioned law provides in Article 4 that *“The employer and the employee are required to desist from all acts of sexual harassment within work relationships, as are any clients or customers or suppliers of an enterprise. (...) »*.

The law encompasses sexual harassment against homosexuals / lesbians, according to the preparatory comments of the legislator<sup>26</sup>.

## 2.5 Instructions to discriminate (Article 2(4))

*Does national law prohibit instructions to discriminate?*

The draft bill has taken over the wording of the Directives, by prohibiting indirect discrimination. Article 1-4 of the draft bill explains that *“an instruction to discriminate against persons on any of the grounds referred to in paragraph 1 shall be deemed to be discrimination”*.

Article 457-1 of the penal code prohibits any incitement to discrimination.

According to the opinion of the Council of State of 7 December 2004, which was given on the two former draft bills, the concept of instruction to discriminate of the Directives should be covered by this definition for penal purposes, while the new law transposing the Directives would actually inaugurate the concept for civil and labour law cases.

Also an instruction to discriminate may be defined as a deed carried out by an accomplice according to articles 66 and 67 of the penal code.

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<sup>26</sup> The comments underline that certain specific groups are particularly vulnerable to sexual harassment like divorced or separated women, the newly arrived women on the work market, those who are in a precarious material situation, women who are employed in non-traditional jobs, disabled women, lesbians and women who are members of a racial minority groups. Homosexuals and young men also are somehow vulnerable to harassment, *commentary, under article 13*.



## ➔ 2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)

a) *How does national law implement the duty to provide reasonable accommodation for disabled people? In particular, specify when the duty applies, the criteria for assessing the extent of the duty and any definition of 'reasonable'. e.g. ➔ does national law define what would be a "disproportionate burden" for employers or is the availability of financial assistance from the State taken into account in assessing whether there is a disproportionate burden?*

Article 14 of the draft bill, which has newly been inserted, intends to modify the existing law on disabled persons of 12 September 2003, by providing that:

*Employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer.*

*This burden shall not be disproportionate when it is sufficiently remedied by the measures contained in article 26 of the Grand-Ducal Regulation of 7 October 2004 which executes the law of 12 September 2003 relating to disabled persons.*

According to the Law on Disabled Persons of 12 September 2003, the definition of disability lies in reduced working capacity, whether the cause is natural or accidental, to a work accident or war events.

A medical commission will recognise the status of disabled worker or gravely disabled worker or will decide on the diminishing of the work capacity, taking into account the state of health of the person (article 3). The benefit of the status of disabled person is some financial assistance from the State, paid by the National Fund of Solidarity<sup>27</sup>.

Once a person is recognised as a disabled worker, the file is transferred to another commission<sup>28</sup>. According to article 8 of the law, the commission may propose to the director of the administration of employment, depending on the age of the candidate, the degree or the nature of the disability, his former and residual capacity to work, orientation, training, re-education, integration or professional reinstatement measures, measures of initiation or training sessions of adaptation or re-adaptation.

Measures are thus proposed to facilitate the entry of the disabled person into the mainstream labour market, measures which must be accepted by the person concerned. Some of these measures are listed in the bill, including some financial contribution from the state to the worker's salary, some financial contribution to training costs, an encouragement subsidy or a subsidy of re-education, the taking-over by the state of the costs of accommodation of work places and its access, a financial contribution to the transportation costs or the furnishing of adapted professional equipment.

As minimum proportion of 5% of disabled workers must be employed in the public sector. For the private sector, the number is one disabled worker for 25 employees, 2% for 50 employees, 4% for 300 employees. If an employer of the private sector refuses to employ the required number of disabled persons, the employer has to pay a fine to the state. In reality, the

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<sup>27</sup> Fonds National de Solidarité

<sup>28</sup> Commission d'orientation et de reclassement professionnel

vast majority of employers chose to pay the amount due rather than to employ disabled persons.

For the independent professions, the disabled person who continues his profession may be granted a total exemption from social security charges.

Finally, one has to mention article 14 (2) of the draft bill, which provides that the following should be added to article 13 of the law of 12 September 2003 relating to disabled persons :

*„The determination of the salary will take place independently and without consideration of the amount of accident pensions.... These pensions must be fully paid to the beneficiaries and may not be deducted from the salary of the disabled workers, nor be diminished in any other way to the detriment of the beneficiaries.“*

The comments of the draft bill insist that this provision is really intended to avoid financial discrimination against disabled persons.

*b) Does failure to meet the duty count as discrimination? Is there a justification defence? How does this relate to the prohibition of direct and indirect discrimination?*

There is no provision in the draft bill as to whether the failure to meet the duty is discrimination. One can argue that if the law is not respected, this would be discrimination.

The comments of article 14 insist on the fact that the current law does not envisage the obligation on employers to take the necessary measures in favour of disabled people, so that the current draft bill should change this state of affairs for the better.

The courts will have to decide on such a matter, as penal sanctions are imposed for any breach of the law.

*c) Has national law implemented the duty to provide reasonable accommodation in respect of any of the other grounds?*

No.

*d) Does national law require buildings and infrastructure to be designed and built in a disability-accessible way? If so, could and has a failure to comply with such legislation be relied upon in a discrimination case based on the legislation transposing Directive 2000/43?*

No, this is not the case.

## ➔ 2.7 Sheltered or semi-sheltered accommodation/employment

*a) To what extent does national law make provision for sheltered or semi-sheltered accommodation/employment for disabled workers?*

Indeed, another possibility provided by the law of 12 September 2003 on disabled persons is the guidance of the disabled persons toward protected workshops<sup>29</sup>. In such a situation the contract must include several additional clauses.

*b) Would such activities be considered to constitute employment under national law?*

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<sup>29</sup> chapter 3 of the law

Indeed, it is considered as a kind of employment.

### 3. PERSONAL AND MATERIAL SCOPE

#### 3.1 Personal scope

##### 3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2) Directive 2000/43 and Recital 12 and Article 3(2) Directive 2000/78)

*Are there residence or citizenship/nationality requirements for protection under the relevant national laws transposing the Directives?*

Article 2 (2) of the draft bill excludes any discrimination based on nationality, including in cases relating to the entry, stay and employment of third country nationals and stateless persons on the national territory, and of all treatment linked to the legal status of those third country nationals and stateless persons.

This means that, should the draft bill be adopted without amendment on this article, the prohibition of discrimination in the employment field would not be applicable to third-country nationals and stateless persons, so that any discrimination forbidden by the directive would be allowed on the work place toward these foreigners and forbidden towards EU-nationals.

The author of this report believes that such a difference would be a kind of discrimination itself. Indeed this article goes against recital 12 of the Employment Directive.

Such restrictions based on nationality already exist in article 457 of the penal code, which exclude protection from discrimination. The penal law does not apply to:

- §4: *discrimination in relation to recruitment for employment, on grounds of nationality, where being of a specific nationality constitutes, in accordance with statutory provisions regarding public service, with regulations applicable to the exercise of certain professions and with provisions on the right to work, a determining condition for employment or the exercise of a professional occupation;*
- §5 *discrimination in relation to entry to, residence in and the right to vote in the country, where being of a specific nationality constitutes, in accordance with legal provisions and regulations regarding entry to, residence in and the right to vote in the country, the determining factor in entry to, residence in and the exercise of the right to vote in the country.*

The word “discrimination” should be replaced by “difference of treatment” and the two paragraphs should be, according to article 13 (4) of the draft bill, replaced by one single paragraph with following sentence:

*“(Any) differentiation of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into, residence and voting rights of third-country nationals and stateless persons in the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned, when their nationality is determinative of the entry into, residence or the exercise of the voting rights in the country.”*

### 3.1.2 Natural persons and legal persons (Recital 16 Directive 2000/43)

*Does national law distinguish between natural persons and legal persons, either for purposes of protection against discrimination or liability for discrimination?*

Article 454 of the penal code prohibits discrimination against physical as well as legal persons. The draft bill, by using the very definitions of the Directives intends to protect physical persons of any forbidden discrimination.

Article 2 (1) of the draft bill transposing the Directives does specify that the law will apply to natural and legal persons, including public institutions.

The draft bill also foresees sanctions for discriminations and amends slightly article 454 of the penal code (adding the word “indirect” discrimination), thereby underlining that both natural and legal persons are likely to incur sanctions.

### 3.1.3 Scope of liability

*What is the scope of liability for discrimination (including harassment and instruction to discriminate)? Specifically, can employers or (in the case of racial or ethnic origin) service-providers (e.g. landlords, schools, hospitals) be held liable for the actions of employees? Can they be held liable for actions of third parties (e.g. tenants, clients or customers)? Can the individual harasser or discriminator (e.g. co-worker or client) be held liable? Can trade unions or other trade/professional associations be held liable for actions of their members?*

Criminal law only knows personal responsibility and personal punishment. Thus any infringement of the current legislation may only apply to the person who was directly the author of the discriminatory action.

In civil law, according to the general principles, an employer may be held responsible for deeds of his employees<sup>30</sup>.

As far as reasonable accommodation for disabled people is concerned, the employer failing to abide by his obligations, would be responsible according to the draft bill.

It does not seem possible to enforce legal liability on persons for actions of third parties.

Furthermore, trade unions or other professional associations may not be deemed liable for actions of their members.

## 3.2 Material Scope

### 3.2.1 Employment, self-employment and occupation

*Does national legislation apply to all sectors of public and private employment and occupation, including contract work, self-employment, military service, holding statutory office?*

Currently, according to Article 455 of the penal code, discrimination as specified in Article 454, committed against a natural person or legal entity, group or community of persons shall

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<sup>30</sup> article 1384 of the civil code

be punishable where it consists of...*the refusal of supply or enjoyment of goods; the refusal to supply a service; to make the supply of goods or services conditional on grounds of any of the elements specified in Article 454, or to exercise any other form of discrimination at the time of supply, on grounds of any of the elements specified in Article 454; the indication in any advertisement of the intention to refuse goods or services or to practise discrimination at the time of supply of goods and services, on grounds of any of the elements specified in Article 454; the obstruction of the normal exercise of any economic activity; the refusal to employ, sanction or dismiss any person; the subjection of an offer of employment to a condition based on any of the elements specified in Article 454.*

The public sector is covered by article 456 of the penal code, according to which  
*“Discrimination as specified in Article 454, committed against a natural person or legal entity, group or community of persons by a person exercising public authority or responsible for a task in the public service, in the exercise of, or while exercising his duties or tasks shall be punishable by a term of imprisonment of from one month to three years and a fine of from 10,001 francs to 1,500,000 francs, or one of these punishments alone, where it consists of: refusal of the benefit of a right granted by law or obstruction of the normal exercise of any economic activity whatsoever”.*

Thus, the scope of the Directives, though partially covered, is not entirely covered by the law of Luxembourg. Although the law penalises a refusal of employment motivated by discrimination, it neglects to penalise those situations in the private sector, where *“conditions of access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity, and at all levels of the professional hierarchy, including promotion”*, could lead to difference of treatment between persons, motivated by an intention to discriminate.

In addition, also in the private sector, the current law has neither designated as an offence nor assigned penal sanctions to refusal *“of access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience”* which could be motivated by an intention to discriminate as defined in Article 454 of the Penal Code.

The draft bill must therefore allow to transpose all the requirements of the two anti-discrimination Directives, in order to fulfil the purpose of these Directives and we shall look the precise questions under 3.2.2 to 3.2.5 in this respect.

*In paragraphs 3.2.2 - 3.2.5, you should specify if each of the following areas is fully and expressly covered by national law for each of the grounds covered by the Directives.*

**➔ 3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))**

**Is the public sector dealt with differently to the private sector?**

Article 455 of the penal code does apply to discrimination in relation with:

...

- the obstruction of the normal exercise of any economic activity;
- the refusal to employ, sanction or dismiss any person;
- the subjection of an offer of employment to a condition

Article 2 (1) of the draft bill applies indeed to conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion, thereby using the wording of the two Directives.

As far as the public sector is concerned, the draft bill excludes completely all recruitment for the public sector. The commentary of the draft bill is not clear at all and does not explain why this exclusion should be included in this text.

### **3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c))**

Yes, the wording of the Directives has been copied word for word, meaning that the draft bill encompasses employment and working conditions, including dismissals and pay.

The current law (penal code) applies only to the refusal of hiring someone, to the sanctioning of workers and to the dismissal of workers. Therefore the current law does not cover currently the whole area covered by article 3(1) c) of the Employment Directive.

### **3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))**

Yes, the wording of the Directives has been copied word for word in the bill.

Until now the existing law, i.e. the penal code (articles 454 to 457), lacks specific protection in the fields of *vocational guidance and training* (art.3 b – directive).

### **3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))**

Yes, the wording of the Directives has been copied word for word in the bill. Currently the penal code only partially covers this area. Up to now, this area lacks specific protection. As article 455 of the penal code sanctions the refusal to provide services to someone, which could be seen as refusing the membership of an association. It could also be analysed as covering “the normal exercise of any economic activity whatsoever”.

*In relation to paragraphs 3.2.6 – 3.2.10 you should focus on how discrimination based on racial or ethnic origin is covered by national law, but you should also mention if the law extends to other grounds.*

### **3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)**

Yes, the wording of the Directives has been copied word for word in the bill.

The current penal code does not provide for such a protection mechanism.

*In relation to religion or belief, age, disability and sexual orientation, does national law seek to rely on the exception in Article 3(3), Directive 2000/78?*

Yes, article 4 of the draft bill has excluded payments of any kind made by state schemes or similar, including state social security or social protection schemes not only in relation to religion or belief, age, disability and sexual orientation but also in relation to race and ethnic origin.

### ➔ 3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43)

*This covers a broad category of benefits that may be provided by either public or private actors granted to people because of their employment or residence status, for example, e.g. reduced rate train travel for large families, child birth grants, funeral grants and discounts on access to municipal leisure facilities. It may be difficult to give an exhaustive analysis of whether this category is fully covered in national law, but you should indicate whether national law explicitly addresses the category of 'social advantages' or if discrimination in this area is likely to be unlawful.*

Yes, the wording of the Directives has been copied word for word in the bill.

Up to now, article 455 of the penal code does not specify the prohibition of discrimination in the field of social advantages. However such a prohibition could fall under the wording of article 455 relating to the refusal to supply a service.

### ➔ 3.2.8 Education (Article 3(1)(g) Directive 2000/43)

*This covers all aspects of education, including all types of schools. Please also consider cases of segregation in schools, affecting notably the Roma community. If these cases exist, please refer also to relevant legal/political discussions that may exist in your country on the issue.*

Yes, the wording of the Directives has been copied word for word.

Article 455 of the penal code does not specify currently a prohibition of discrimination in the field of *education*.

Currently access to disabled children (or young adults) to mainstream schools may be refused, if they are not capable of learning just like in the same way as the other children. This applies to mentally disabled children, who are placed in specialised institutions called *éducation différenciée*. As far as physically disabled children are concerned the same may apply if they are too severely disabled to write for example. However children who use wheelchairs would be accepted in the regular schools, which are equipped to enable those children to access the school premises.

There is no segregation of immigration school children: the official policy is to try and integrate all the immigrants' children by teaching them to use the official Luxembourg language and get all the children to mingle in school. There are no Roma population/children in Luxembourg.

### 3.2.9 Access to and supply of goods and services which are available to the public (Article 3(1)(h) Directive 2000/43)

Yes, the wording of the Directives has been copied word for word in the bill.

Until now the situation is the following. Article 455 of the penal code does apply to discrimination in relation with:

- the refusal of supply or enjoyment of goods;
- the refusal to supply a service;
- the constraint of supply of goods or services on grounds of ethnic or racial discrimination or to exercise any other form of discrimination at the time of supply;
- the indication in any advertisement of the intention to refuse goods or services or to practise discrimination at the time of supply of goods and services.

Currently the law's prohibitions are applicable to the public sphere, not for example in the framework of an association, when the prohibitions like the supply of services specifically mentioned in the penal code are not touched upon. This means that within a private association, there could be some discriminatory rules which would be in practice, but which would not be punishable, these rules restricting access to some categories of members.

The draft bill extends the scope of the prohibition and includes also activities of a private association that are discriminatory.

*Does the law distinguish between goods and services available to the public (e.g. in shops, restaurants, banks) and those only available privately (e.g. limited to members of a private association)? If so, explain the content of this distinction.*

No.

### **3.2.10 Housing (Article 3(1)(h) Directive 2000/43)**

*To which aspects of housing does the law apply? Are there any exceptions?*

The draft bill does not give details and includes globally any housing, without exceptions.

The current article 455 of the penal code should be applicable to housing as well (refusal of supply or enjoyment of goods).

## **4. EXCEPTIONS**

### **4.1 Genuine and determining occupational requirements (Article 4)**

*Does national law provide an exception for genuine and determining occupational requirements? If so, does this comply with Article 4 of Directive 2000/43 and Article 4(1) of Directive 2000/78?*

In the existing laws, no such exemptions relating to occupational requirements exist in the Luxembourg legislation in the area of discrimination based on religion and/or belief, age, disability and sexual orientation but also for racial and ethnic origin. Also, there is no definition of "legitimate and proportionate" measures.

Thus article 5 of the draft law uses the wording of the Directive i.e. *a difference of treatment which is based on a characteristic related to any of the grounds ...shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.*



## 4.2 Employers with an ethos based on religion or belief

*a) Does national law provide an exception for employers with an ethos based on religion or belief? If so, does this comply with Article 4(2) of Directive 2000/78?*

Currently neither the penal code nor any other legislation do provide for such an exception.

Following some critics of the Council of State on the former text proposal, the legislator has redrafted this exception in the draft bill 5518 and article 5 (2) indicates that

*“in accordance with the general principles of labour law and to practices existing at the date of the adoption of this law, a difference of treatment based on a person's religion or belief shall not constitute discrimination in the case of occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos”.*

There is no mention of the requirement of proportionality. As the text proposal is copied from the Directive 2000/78, one can think that the exception as such is intended to be proportionate. However the application of such a clause may be the only way to find out if the global exception is really in line with the proportionality requirement. Formally the requirement of proportionality has been respected, in accordance with the Directive.

*b) Are there any specific provisions or case-law in this area relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination?*

No.

## 4.3 Armed forces and other specific occupations

*a) Does national law provide for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78)?*

The draft bill does not cover recruitment in the public sector in general, so that armed forces are excluded as far as access to employment is concerned. The current legislation does not provide for any prohibition at all of discrimination based on age.

*b) Are there any provisions or exceptions relating to employment in the police, prison or emergency services (Recital 18, Directive 2000/78)?*

No.

## 4.4 Nationality discrimination

*Both the Race Directive and the Framework Employment Directive include exceptions relating to difference of treatment based on nationality (Art 3(2) in both Directives).*

*a) How does national law treat nationality discrimination?*

Currently article 457 of the penal code foresees an exception for and thus does not prohibit - (§3) discrimination in relation to recruitment for employment, on grounds of nationality, where being of a specific nationality constitutes, in accordance with statutory provisions regarding public service, with regulations applicable to the exercise of certain professions and with provisions on the right to work, a determining condition for employment or the exercise of a professional occupation and

- (§4) discrimination in relation to entry to, residence in and the right to vote in the country, where being of a specific nationality constitutes, in accordance with legal provisions and regulations regarding entry to, residence in and the right to vote in the country, the determining factor in entry to, residence in and the exercise of the right to vote in the country;

It also allows for differences of treatment provided for by, or arising from, any other legal provision (§5) but the draft bill will abolish this last sentence.

*b) Are there exceptions in anti-discrimination law that seek to rely on Art 3(2)?*

Yes, the draft bill, in its article 2 (2), states that it:

*“ does not cover differentiation of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into, residence and to employment of third country nationals and stateless persons in the national territory and of all treatment linked to the legal status of the concerned third-country nationals and stateless persons”.*

Thus non-EU citizens would be excluded from any protection against discrimination based on nationality not only as far as their residence or working permits are concerned, but also for any preference of an employer toward a worker based exclusively on national grounds!

Also article 13 of the draft bill intends to amend article 457 by replacing the word “discrimination” by “differentiation of treatment” and by replacing §4 and §5 by one single paragraph, which states that it does not cover

*“differentiation of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into, residence and voting rights of third country nationals and stateless persons in the national territory and of all treatment linked to the legal status of the concerned third-country nationals and stateless persons when their nationality is determining of the entry, residence or the exercise of the voting rights in the country”.*

#### **➔ 4.5 Work-related family benefits**

*Some employers, both public and private, provide benefits to employees in respect of their partners. For example, an employer might provide employees with free or subsidised private health insurance, covering both the employee and their partner. Certain employers limit these benefits to the married partners or unmarried opposite-sex partners of employees. This question aims to establish how national law treats such practices. Please note this question is focused on benefits provided by the employer. We are not looking for information on state social security arrangements.*

*(a) Does national law permit an employer to provide benefits that are limited to those employees who are married?*

The law on partnerships has been adopted in 2004<sup>31</sup> and introduces partnerships between persons of opposite gender or of the same gender. A declaration must be filed at the municipality (officier de l'état civil).

Unmarried partners are in a different legal situation than married couples or partners are, and who choose to register their legal partnership.

The question whether employers, who would provide for certain benefits only to married couples and not to partnerships, would break the law cannot be answered yet.

The author considers that such a move would not hurt the law on partnership itself. However, the question remains open whether it would be considered as a discrimination forbidden by the anti-discrimination law. Such discrimination could be found to exist on the ground of sexual orientation, for same-sex partnerships. However in case of a man and a woman living in a registered partnership and not in marriage, the issue would be a possible breach of the general principle of equality (or of equality based on sex), not discrimination based on the Directive 2000/78/EC.

*(b) Does national law permit an employer to provide benefits that are limited to those employees with opposite-sex partners?*

Again we consider that such a move would not hurt the law on partnership itself. However, the question also remains open whether it would be considered as a discrimination forbidden by the anti-discrimination law. Such discrimination could be found to exist on the ground of sexual orientation, for same-sex partnerships.

#### **4.6 Health and safety**

*Are there exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78)?*

Article 7 of the draft bill has taken over the text of article 7(2) of the directive and states that specific measures for disabled persons are not to be seen as discrimination.

*The wording is: "as far as disabled workers are concerned, provisions concerning the protection of health and of security in the work place and measures deemed to create or maintain provisions or facilities in order to safeguard or encourage their integration in the labour market do not constitute direct or indirect discrimination"<sup>32</sup>.*

Currently, the Law on Disabled Persons of 12 September 2003 provides more specific measures for disabled persons (see under 2.6).

*Are there exceptions relating to health and safety law in relation to other grounds, for example, ethnic origin or religion where there may be issues of dress or personal appearance (turbans, hair, beards, jewellery etc)?*

No.

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<sup>31</sup> loi du 9 juillet 2004 relative aux effets légaux de certains partenariats, Mémorial A, n° 143, du 6 août 2004, p. 2020, [law of 9 July 2004 relative to the legal consequences of certain partnerships], <http://www.legilux.public.lu/leg/a/archives/2004/1430608/1430608.pdf>

<sup>32</sup> (as translated from French)

## 4.7 Exceptions related to discrimination on the ground of age

### ➔ 4.7.1 Direct discrimination

*a) Is it possible, generally, or in specified circumstances, to justify direct discrimination on the ground of age? If so, is the test compliant with the test in Article 6, Directive 2000/78, account being taken of the European Court of Justice in the Case C-144/04, Mangold ?*

Article 6 of the Directive has been taken over partly by the draft bill and so the test as foreseen in article 6 of the directive is likely to be declared valid in principle. Article 6 of the draft bill provides that:

*differences of treatment on grounds of age shall not constitute discrimination, if they are objectively and reasonably justified, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary<sup>33</sup>.*

*(a) the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions,*

The rest of this sentence of the Directive is missing, i.e. “*for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection*”.

The comments of the text refer to article 6 of the Directive, but only to age conditions relating to young people and not to older workers, so that the transposition of this item may be considered as insufficient.

*(b) the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment.*

Article 6(c) of this Directive is missing in the draft bill i.e. the fixing of a maximum age for recruitment, which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement.

The comments of the draft bill explain that the transposition of this sentence relies upon the Ministry of Civil service and administrative reform, thereby explaining in a very bizarre way the fact that the sentence has not been included. It further refers to the exception of article 6(2) of the Directive<sup>34</sup> i.e.

*“the fixing for occupational social security schemes of ages for admission or entitlement to retirement or invalidity benefits, including the fixing under those schemes of different ages for employees or groups or categories of employees, and the use, in the context of such schemes, of age criteria in actuarial calculations, does not constitute discrimination on the grounds of age, provided this does not result in discrimination on the grounds of sex”.*

This exception would also explain the missing paragraph, according to the comments on the draft bill. We suggest that the logic of this explanation is open to question.

<sup>33</sup> The draft bill lacks following sentence: “*Such differences of treatment may include*”:

<sup>34</sup> According to the comments, the draft bill uses the possibility for an exception to equality of treatment concerning the fixing for occupational social security schemes of ages for admission or entitlement to retirement or invalidity benefits

The legislation should be in accordance with the *Mangold* case, which indeed has found that the measures in Germany, although they may have been objectively and reasonably justified, failed to pass the test of proportionality as far as they were not appropriate and necessary.

*b) Does national law permit differences of treatment based on age for any activities within the material scope of Directive 2000/78?*

The current penal law does not prohibit age discrimination. The draft bill permits the differences in general terms, as point out under a).

#### **4.7.2 Special conditions for young people, older workers and persons with caring responsibilities**

*Are there any special conditions set by law for older or younger workers in order to promote their vocational integration, or for persons with caring responsibilities to ensure their protection? If so, please describe these.*

The law of 23 March 2001<sup>35</sup>, protects young workers (basically under 18), children and adolescents as far as working conditions are concerned.

Children may not be put to work as a principle. Some exceptions exist like the work in technical and professional schools when the purpose is education and domestic assistance given by children in a family, if it is occasional. Article 7 also forbids any work for money in the cultural, artistic, sportive, publicity or fashion fields. If exceptions are allowed, they are submitted to harsh conditions.

In general the employer must take care of the security and health of young workers. Risky work is basically forbidden as well as work with accelerated rhythm.

Article 11 allows to employ adolescents only if they are not being exploited and if their health and development are safeguarded.

The law provides for a strict framework for them, in terms of working hours, pauses and work during holidays and the night.

As far as persons with caring responsibilities are concerned, the law of 12 February 1999<sup>36</sup> gives the right to a special family leave for a parent of a child who is less than 16 years old, in case of grave illness, accident or other grave health problem. This leave cannot exceed 2 days per year.

#### **➔ 4.7.3 Minimum and maximum age requirements**

*Are there exceptions permitting minimum and/or maximum age requirements in relation to access to employment (notably in the public sector) and training?*

<sup>35</sup> Loi du 23 mars 2001 concernant la protection des jeunes travailleurs, Mémorial A, 2001, p.908 ; law of 23 March 2001 concerning the protection of young workers

<sup>36</sup> Loi du 12 février 1999 portant création d'un congé parental et d'un congé pour raisons familiales, Mémorial du 23/02/1999 (013/1999), [law of 12 February 1999 creating a parental leave and a leave for family reasons]  
<http://www.legilux.public.lu/leg/a/archives/1999/0132302/1999A02096.html>

No, the draft bill makes no such exceptions. However the public sector is not covered by the draft bill as far as recruitment is concerned, although currently the maximum age to become a civil servant is less than 45 years.<sup>37</sup>

#### ➔ 4.7.4 Retirement

*In this question it is important to distinguish between pensionable age (the age set by the state, or by employers or by collective agreements, at which individuals become entitled to a state pension, as distinct from the age at which individuals retire from work), and mandatory retirement ages (which can be state-imposed, employer-imposed, imposed by an employee's employment contract or imposed by a collective agreement).*

*a) Is there a state pension age, at which individuals must begin to collect their state pensions? Can this be deferred if an individual wishes to work for longer, or can an individual collect a pension and still work?*

In the private sector, the legal pension age is currently 65. *The worker may decide to stay in activity until he reaches the age of 68.* A person may not collect a pension and continue to work as a regular employee.

In the public sector, the normal age is also 65<sup>38</sup>.

*b) Is there a normal age when individuals can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements? Can payments from such occupational pension schemes be deferred if an individual wishes to work for longer, or can an individual collect a pension and still work?*

The law on occupational pension schemes of 8 June 1999<sup>39</sup> does not provide for a normal age in order to begin receiving such occupational pension payments. This law may not alter the other legal rules relating to pension age.

*c) Is there a state-imposed mandatory retirement age(s)? Please state whether this is generally applicable or only in respect of certain sectors, if so please state which. Have there been recent changes in this respect or are any planned in the near future?*

The pension age is 65, so that workers may not retire before, unless they have cumulated enough months (480) of obligatory subscription. The upper age limit is 68, when a worker is indeed obliged to retire.

However there are some exceptions in the public sector. The police forces may retire between the ages of 55 and 60. The ambassadors may be prolonged in their duties. The ministers in religion do not have an age limit.

<sup>37</sup> Article 2g of the general statute of civil servants, as instated by the law of 19 May 2003

<sup>38</sup> *Texte coordonné de la loi modifiée du 26 mai 1954 réglant les pensions des fonctionnaires de l'Etat, Mémorial A, n°4, du 20 janvier 2004*, [coordinated text of the amended law of 26 May 1954 ruling the pensions of the state civil servants], <http://www.legilux.public.lu/leg/a/archives/2005/0042001/0042001.pdf>

<sup>39</sup> *Loi du 8 juin 1999 relative aux régimes complémentaires de pension et portant modification a) de la loi modifiée du 4 décembre 1967 concernant l'impôt sur le revenu, b) de la loi modifiée du 24 mai 1989 sur le contrat de travail, c) de la loi modifiée du 18 mai 1979 portant réforme des délégations du personnel et d) de la loi modifiée du 6 mai 1974 instituant des comités mixtes dans les entreprises du secteur privé et organisant la représentation des salariés dans les sociétés anonymes*, MEMORIAL A 074 du 17.06.1999, p.1644 ; law on occupational pension schemes modifying different previous laws ;

In the private sector, an early retirement is possible at the age of 57 or 60, depending on the length of social insurance.

In the public sector the civil servant may retire at the early age of 60 after 30 years of duty or even at 57 after 40 years of duty.

*d) Does national law permit employers to set retirement ages by contract, collective bargaining or unilaterally?*

National law does not permit employers to set retirement ages by contract, collective bargaining or unilaterally.

*e) Does the law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, if they remain in employment or are these rights lost on attaining pensionable age or another age (please specify)?*

The law applies to all workers irrespective of age.

*For these above questions, please indicate whether the ages are different for women and men.'*

#### **4.7.5 Redundancy**

*a) Does national law permit age or seniority to be taken into account in selecting workers for redundancy?*

No such criteria is provided by the law in Luxembourg. Therefore it is unlawful to select any worker for redundancy based on age or seniority.

*b) If national law provides compensation for redundancy, is this affected by the age of the worker?*

The age of the worker does not affect compensation for redundancy.

#### **4.8 Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)**

*Does national law include any exceptions that seek to rely on Article 2(5) of the Framework Employment Directive?*

The draft bill does not even mention such a restriction. The current penal code does not include such a restriction but article 457 allows any differentiation of treatment provided by any other law, so that this exception should fall under this article.

#### **4.9 Any other exceptions**

*Please mention any other exceptions to the prohibition of discrimination (on any ground) provided in national law.*

Currently article 457 of the penal code provides for a general exception based on *differences of treatment provided for by, or arising from, any other legal provision*. This article has never been challenged in court.

This provision is going to be abolished by article 13 (4) of the draft bill, which is about to replace it with the exception relating to differences of treatment based on nationality or relating to the entry and stay of third-country foreigners or stateless persons. The exception will therefore be much more restrictive and not allow for vague exceptions concerning the general legislation.

Such a move has been inspired by international critics against foreseeing legally valid discrimination clauses<sup>40</sup>, including by the Council of Europe's ECRI.

## ➔ 5. POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)

*a) What scope does national law provide for taking positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation? Please refer to any important case-law or relevant legal/political discussions on this topic.*

The current legislation does not foresee any positive action possibility. The draft bill creates the legal framework for the use of such positive action by allowing the administration to maintain or adopt specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin, religion or belief, disability, age or sexual orientation.

As far as *disabled* people are concerned, up to now, only the Disabled Workers Law of 12 September 2003<sup>41</sup> gives special status to some disabled persons on the labour market. According to the law, persons with a physical, mental, or sensory disability and/or due to psychosocial difficulties aggravating the deficiency have the status of disabled worker if their working capacity is reduced by at least 30% as a result of natural or accidental causes. The category in question therefore comprises disabled persons who are still relatively capable of working, but whose capacity is seriously impaired.

People who apply for this status must register with the Disabled Workers' Office of the Employment Department. When their capacity as a disabled worker is recognised, the Vocational Guidance Commission will recommend employment, training or vocational retraining measures, introductory courses or traineeships, as applicable, to the appropriate Department.

The Department concerned may grant a State contribution (40 to 60%) to wages, a contribution to training costs, a premium, adaptation of the workplace or accesses, the supply of appropriate equipment, etc.

This contribution may be payable for a limited period. It is established on the basis of the severity of the disability. It amounts to between 40 and 60% of the gross wage, before deduction of social security contributions. It is periodically reviewed on the basis of the progress of the disability and the success of the employment.

Also a number of jobs are reserved for disabled persons. The state gives financial assistance in order to support the employment of disabled persons (see under item 2.6).

The draft bill intends to amend the law on disabled workers by introducing in Article 14 the duty for an employer to take appropriate measures for disabled people in order to access to a job, exercise it or progress in it, unless it is a disproportionate burden.

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<sup>40</sup> see p.16 of document 5518, comments on the draft bill ('exposé des motifs')

<sup>41</sup> See under item 2.6



*b) Do measures of positive action exist in your country? Which are the most important? Refer to measures taken in respect of all 5 grounds, in particular refer to the measures related to disability and any quotas for access of disabled persons to the labour market and any related to Roma.*

In general no positive action measures exist for the different grounds of discrimination. However there is a National Action Plan in favour of disabled persons, which can be seen as a kind of positive action plan<sup>42</sup>.

## 6. REMEDIES AND ENFORCEMENT

### 6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

*a) What procedures exist for enforcing the principle of equal treatment (judicial/administrative/alternative dispute resolution such as mediation)?*

*b) Are these binding or non-binding?*

*c) ➔ Can a person bring a case after the employment relationship has ended?*

*In relation to each, please note whether there are different procedures for employment in the private and public sectors.*

*In relation to the procedures described, please indicate any costs or other barriers litigants will face (e.g. necessity to instruct a lawyer?) and any other factors that may act as deterrents to seeking redress (e.g. strict time limits, complex procedures, location of court or other relevant body)?*

When a person or a group is the victim of discrimination, the mechanisms available to victims of discrimination are either judicial procedures or the use of mediation.

A person may act alone and lodge a criminal complaint in court. The state prosecutor will however decide if the case is worthwhile proceeding with (art. 23-1 of the Criminal Procedure Code). It may take a long time until the case is brought to court. Also finding evidence is a crucial problem, which may hinder proper prosecution of the author of discrimination.

The victim may also apply directly to the examining judge (*juge d'instruction*) if he/she claims to have suffered discrimination; in this case, it is up to the victim to estimate the extent of the loss and claim damages in criminal proceedings. Also often the judge requires the plaintiff to pay a guarantee.

The victim may also claim damages in a civil court based on the criminal law, but as long as the sharing-of-the-burden-of-proof mechanism has not been introduced the problem will be to prove the discriminatory act. Such mechanism is foreseen in the draft bill transposing Directives 2000/43/EC and 2000/78/EC, so that it should allow lawsuits to be more efficient.

The proceedings must be filed within three years of the offence (article 638 of the Criminal Code).

The costs of a legal procedure, due to the lawyers' fees may cause the renunciation of such a lawsuit for persons without sufficient financial means. However, within the judicial aid

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<sup>42</sup> see under 2.6

system, there is a possibility to ask the Bar to get a lawyer paid by the state, due to low income.

Also, a case can be presented to the labour court in case of discrimination at work. According to the draft bill<sup>43</sup>, workers' associations (i.e. trade unions) or associations of national significance fighting discrimination and approved by the Minister of Justice<sup>44</sup> may support the victim in a court case. Such a right is *not* granted to Churches according to the law.

It must be noted that the Inspectorate of the Ministry of Labour, called *l'inspection du travail et des mines et l'administration de l'emploi* is competent to control the respect of labour law regulations. This inspectorate also should receive the competence of a watchdog of the antidiscrimination law concerning Directive 2000/78/EC. The inspectorate may give fines to parties which do not respect the legislation.

The Council of State, in its opinion of 7 December 2004, deplored however that the government has written that the use of the current means are sufficient in this respect and writes that the Belgian solutions should have been adopted, by precisely determining which legal remedies will be available (like summary jurisdiction, daily fine, bill-sticking). The new draft bill has nevertheless not added any other legal remedy.

A law of 6 May 1999<sup>45</sup> on penal mediation enables the State Prosecutor to use mediation, where it appears that such a remedy is likely to ensure that compensation or damages are paid to the victim, or indeed to bring a conclusion to the disturbance resulting from the offence, or in addition contribute to the rehabilitation of the person committing the offence. Such a procedure is however non-binding.

The complex character of the legislation ( both the existing legislation and possibly the one introduced by the draft bill in the future) will probably work as a deterrent to victims, who will find it difficult to act in full knowledge of the procedures.

As far as the public sector is concerned, the civil servants may act in the administrative courts, if they feel discriminated against by colleagues. Also article 33 of the general statute enables the civil servants to complain against a misbehaviour of another civil servant. Such a procedure is administrative, but can lead up to the administrative court, if the complaint has been rejected by the higher hierarchy. It can only lead to administrative/financial sanctions against the author, not to civil or penal sanctions.

A civil servant could however make use of the penal procedure. It must be noted again that such procedures are based on the existing laws: the public sector having been skipped from the draft law transposing directive 2000/78/EC, one has to wait until it has been possibly amended in order to comply with the directive and integrate the public sector.

A candidate for a job in the administration, who would be refused on discriminatory grounds would, in our opinion, have to submit his case to the civil courts, at least as long as the general statute on civil servants does not include any specific reference on the prohibition of discrimination within the administration, inclusively for the recruitment.

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<sup>43</sup> article 9

<sup>44</sup> article 8

<sup>45</sup> *Loi du 6 mai 1999 relative à la médiation pénale et portant modification de différentes dispositions a) de la loi modifiée du 7 mars 1980 sur l'organisation judiciaire, b) du code des assurances sociales*, [law of 6 May 1999 relating to penal mediation and amending the different clauses of the a) amended law of 7 March 1980 on judicial organisation b) of the code of social insurance]

As far as disabled persons are concerned, there is currently no obligation that oblige on the public authorities to make all public buildings fully accessible to disabled people. A sad example is the *tribunal d'arrondissement*, the main lower court in Luxembourg which is a two-storey building without a lift and which is thus not accessible to wheelchairs. There are no binding rules relating to the adoption of measures such as sign interpretation or information in Braille.

Cases can be brought to the courts even after the termination of the employment contract. However, in general the deadline for submitting a case to the labour court is restricted to three months after the ending of this contract.

## ➔ 6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)

*Please list the ways in which associations may engage in judicial or other procedures*

*a) in support of a complainant*

*b) on behalf of one or more complaints (please indicate if class actions are possible)*

The Law of 19 July 1997 provides in Article VI that:

*“any association of national significance, accorded the status of legal entity and approved by the Minister of Justice, may exercise the rights of a civil claimant in relation to those acts constituting an offence in terms of Articles (...) 454, 455, 456, 457, 457-1, 457-2, 457-3 and 457-4 of the Penal Code and prejudicial, directly or indirectly, to the collective interests which they aim to protect, even where these are not justified by a social interest the protection of which is guaranteed by the state prosecution system”.*

Under “national significance”, one must understand that an association must act on the whole territory of the Grand-Duchy of Luxembourg and not only locally and have some reputation in the work done in the area of anti-discrimination.

However, in relation to any offence committed against persons considered on an individual basis, an association may not directly exercise the rights of a civil claimant, unless those persons expressly declare in writing that they do not object.

According to the draft bill (article 9) workers' associations (i.e. trade unions) or associations of national significance fighting discrimination and approved by the Minister of Justice (article 8) may support the victim in a court case, by filing complaints against discrimination *“that causes direct or indirect prejudice to the collective interest, which they are responsible for upholding”*.

Again, in relation to any offence committed against persons considered on an individual basis, an association may not directly exercise the rights of a civil claimant, unless those persons expressly declare in writing that they do not object.

Churches or other religious bodies, which would like to support a criminal action and ask damages on behalf of all the members of the religious groups would have to hope that judges would accept their request as being admissible in a criminal court. Such admissibility should be very difficult to envisage in the field of discrimination, as such discrimination is likely to be seen as individually damaging for the victim but not directly for the entire religious group.

A new possibility is foreseen in the draft bill, inasmuch as it foresees the possibility for a trade union, which has signed a collective agreement to be part of a lawsuit if the issue is of

concern not only to the worker, but also represents a collective concern for all members of the trade union and if the plaintiff has not objected in writing to such action.<sup>46</sup>

The nationally representative trade unions may also act in court in parallel circumstances than associations, when a case is relevant to their activities (i.e. labour law)<sup>47</sup>.

Class actions do not exist in the Luxembourg legal system and may never be used.

### **6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)**

*Does national law require or permit a shift of the burden of proof from the complainant to the respondent? Identify the criteria applicable in the full range of existing procedures and concerning the different types of discrimination, as defined by the Directives (including harassment).*

According to the existing legislation, there is no mechanism of sharing of the burden of proof.

In the field of sexual harassment, the bill of 26 May 2000 does not provide for such a mechanism. Anyway the question of the applicability of this law to the issue of sexual orientation is open, as the bill on sexual harassment is meant to be applicable to harassment between men and women, thus of an opposite gender.

Just like for the Law of 28 June 2001, relating to the burden of proof in cases of gender discrimination<sup>48</sup>, the draft bill should introduce such a mechanism according to which ‘*When persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment*’.<sup>49</sup>

Such mechanism will be applicable whether the court case has been started by an individual person or through an association or a trade union.

However such sharing of the burden of proof is deemed not to be applicable to criminal procedures, as it would hurt the general penal system<sup>50</sup>.

The method of testing is, in our opinion, not allowed in court. It seems never to have been requested.

### **6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)**

*What protection exists against victimisation? Does the protection against victimisation extend to persons other than the complainant? (e.g. witnesses, ➔ or person that help the victim of discrimination to present a complaint)*

Currently the penal code does not provide for any protection against victimisation.

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<sup>46</sup> article 9 (1)

<sup>47</sup> article 9 (2)

<sup>48</sup> Loi du 28/06/2001 relative à la charge de la preuve dans les cas de discrimination fondée sur le sexe [law of 28/07/2001 on the burden of proof in cases of gender discrimination] ; Mémorial A, 31.07.2001, p. p. 1776 ; <http://www.legilux.public.lu/leg/a/archives/2001/0863107/2001A17761.html>

<sup>49</sup> article 10

<sup>50</sup> article 10 (2)

The draft bill has included, in its article 11, a protection mechanism against victimisation in the employment field. However this mechanism does not cover all the material scope of Directive 2000/43, and therefore the draft bill lacks the necessary protection against victimisation in all the other areas but the employment area.

Also the protection mechanism only applies to the private sector and not the public sector, which again does not transpose correctly the Directives.

Article 11 of the draft bill states that:

*(1) Workers...shall not be victimised on the ground of protests against or refusal of an act or conduct contrary to the principle of equality of treatment defined by this Act, or as a reaction to a complaint filed with the company or legal proceedings designed to enforce the principle of equality of treatment.*

*(2) Equally, no worker may be victimised for having given evidence of or recounted the actions defined in Article 1 of this Act.*

*(3) Any provision or act, which contravenes the two preceding paragraphs, and in particular any dismissal which contravenes the said provisions, shall be automatically null and void.*

In the event of termination of his/her contract of employment, a worker may, within fifteen days after notification of the termination, make an informal application to the Chairman of the Labour Tribunal for an urgent order, the parties being heard or duly summoned, certifying that the dismissal is null and void and ordering his/her retention or, if applicable, reinstatement, pursuant to the terms of section 29.4 of the amended Contracts of Employment Act of 24 May 1989. The order of the Labour Tribunal shall be immediately enforceable, regardless of appeals; it may be appealed against by simple request filed, within forty days of the date of notification by the Registrar, before the Chairman of the Court of Appeal with jurisdiction over labour law matters. The ruling shall be given urgently, the parties being heard or duly summoned. [...]

## **6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)**

*a) What are the sanctions applicable where unlawful discrimination has occurred? Consider the different sanctions that may apply where the discrimination occurs in private or public employment, or in a field outside employment.*

The offences referred to in article 455 of the Criminal Code are punished by eight days' to two years' imprisonment, or a fine of 250 to 25,000 euros, or both.

According to article 456, if the facts are committed by a person holding public authority or responsible for public service duties in the exercise or on the occasion of exercising his/her functions or duties, the penalties are increased to imprisonment for 1 month to 3 years, and a fine of 250 to 37,500 euros, if the offence involves:

1. refusing the benefit of a right granted by law;
2. hindering the normal exercise of any business.

Also the authors may be condemned to the prohibition of exercising certain rights as foreseen in article 24 of the penal code (article 457-4), mainly serving as a civil servant, voting, wearing insignias, being an expert, be a witness in court or teaching in school.

Article 12 of the draft bill uses the wording of article 16 b) of Directive 2000/78/EC. Thereby, any provisions contrary to the principle of equal treatment which are included in contracts or

collective agreements, internal rules of undertakings or rules governing the workers' and employers' organisations are to be declared null and void.

Also 11 of the draft bill deems any dismissal on the ground of discrimination illegal so that a fired worker may ask for his reinstatement in his workplace at the labour court. For this purpose, special quick proceedings may be used (“référé”).

The draft bill has not changed the existing criminal sanctions, after the Council of State's remarks that new criminal sanctions would complicate the matter quite a lot.

*b) Is there any ceiling on the maximum amount of compensation that can be awarded?*

The victim may bring a case to a civil court based on a criminal offence or ask for damages in the penal court<sup>51</sup>, but there are no ceilings foreseen by law for such financial compensation awarded by judges according to their independent decision. The damages are of pecuniary nature.

*c) Is there any information available concerning:*

➔ - *the average amount of compensation available to victims*

- *the extent to which the available sanctions have been shown to be - or are likely to be - effective, proportionate and dissuasive, as is required by the Directives?*

There is no such information, we know that the existing penal law has hardly been used in court (a few complaints a year).

## **7. SPECIALISED BODIES**

*Body for the promotion of equal treatment (Article 13 Directive 2000/43)*

*When answering this question if there is any data regarding the activities of the body (or bodies), include reference to this (keeping in mind the need to examine whether the race equality body is functioning properly). For example, annual reports, statistics on the number of complaints received in each year or the number of complainants assisted in bringing legal proceedings.*

*a) Does a ‘specialised body’ or ‘bodies’ exist for the promotion of equal treatment irrespective of racial or ethnic origin?*

Up to now there is no equality body, as foreseen in Directive 2000/43/EC, in Luxembourg. The two former draft bills did not contain any provision relating to this issue, which was heavily criticized by both the Council of State and by civil society.

Currently, there is one similar existing body, in accordance with the UN Convention on the Elimination of all Forms of Racial Discrimination: the Special Permanent Commission against Discrimination (CSP-RAC), a body of the National Council for Aliens (CNE). It is competent to consider petitions from persons or groups of persons within the jurisdiction of Luxembourg who claim to be victims of discrimination. This body may only propose solutions but not enforce them.

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<sup>51</sup> « constitution de partie civile »

However these petitions cannot be considered until all other available local remedies have been exhausted, so that it cannot be seen as equivalent to an equality or independent body as set out in the Directive.

Also, as far as employment is concerned the work inspectorate (Inspection du Travail et des Mines) has general powers of control over the correct application of labour law. Article 9 of the draft bill on employment gives such a power to this body for the compliance of employers and employees with the 2 draft bills' provisions.

The draft bill has now introduced the creation of a Centre for Equality of Treatment (Centre pour l'Egalité de Traitement).<sup>52</sup>

*b) Describe briefly the status of this body (or bodies) including how its governing body is selected, its sources of funding and to whom it is accountable.*

The proposal is that the Centre is governed by a body of 5 members including a president. They are nominated for 5 years by the Grand-Duke on the proposal of the Parliament (Chambre des Députés) according to their skills in antidiscrimination matters. Once a year, a report must be submitted to the Gouvernement and to Parliament.

Funding will come from the general state's budget.

*c) Describe the competences of this body (or bodies), including a reference to whether it deals with other grounds of discrimination and/or wider human rights issues.*

The competences of the centre are more particularly, according to article 19:

- publish reports, issue opinions and recommendations and conduct surveys on all questions linked to discriminations;
- issue and provide every information and every documentation that are useful in the course of its mission;
- provide assistance to persons who think they are victims of discrimination by putting at their disposal an office for counsel and orientation in order to inform victims on their individual rights, on legislation, case law and the means to uphold their rights ».

It will deal with issues relating to discrimination based on race, ethnic origin, gender, sexual orientation, religion or belief, handicap and age.

*d) Does it / do they have the competence to provide assistance to victims, conduct surveys and publish reports and issue recommendations on discrimination issues?*

The Centre may provide assistance to victims by advising and orienting them in order to inform them on their rights, the legislation- including the available procedures and the case-law.

It may also publish report and opinions and give recommendations, conduct surveys on issues relating to discrimination<sup>53</sup>.

*e) Does the body (or bodies) have legal standing to bring discrimination complaints or to intervene in legal cases concerning discrimination?*

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<sup>52</sup> Titre II – articles 17-25

<sup>53</sup> article 19

No, it is not foreseen that the Centre may bring complaints to court in any way.

*f) Is the work undertaken independently?*

The draft bill underlines that the centre will carry out its missions in full independence<sup>54</sup>.

## **8. IMPLEMENTATION ISSUES**

### **8.1 Dissemination of information, dialogue with NGOs and between social partners**

*Describe briefly the action taken by the Member State*

*a) to disseminate information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)*

Since the year 2001, there has been an ongoing campaign organised by the Ministry of Family focusing more specifically on discrimination at work. Posters and other information material have been printed and distributed, and lectures were organised.

Two aspects have been aimed at: to inform the public in general and to focus on the actor in the employment field.

The Ministry has thus organised in 2005 training sessions for worker's delegates at work school (école supérieure du travail).

A television and radio message has been widely distributed in the press.

Also campaign for persons working in of human resources has also been organised.

Finally, the youth has also been targeted by anti-discrimination campaigns.

There has not been any formal dialogue with the NGOs concerning the drafting procedure of the bill.

*b) to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78) and*

As far as the author knows, no specific measures have been yet taken in order to encourage dialogue with appropriate non-governmental organisations.

Some dialogue has always existed through the National Foreigners' Council (CNE), including the permanent special commission against racial discrimination.

*c) to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice, workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)*

The topic of discrimination is sometimes discussed between trade unions, employers' organisations and the Minister of labour in their meetings.

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<sup>54</sup> "en toute indépendance"



It can be noted that for the disability criteria, bill no. 5045, introduced on 5.11.2002, and which ended up in the law of 30 June 2004 on collective work relations<sup>55</sup>, provides in its article 41 that recognised trade unions may enter into agreements relating to the transposition of the European Directives which are subject to such agreements, or to measures for implementation of the principle of non-discrimination.

## 8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

*a) Are there mechanisms to ensure that contracts, collective agreements, internal rules of undertakings and the rules governing independent occupations, professions, workers' associations or employers' associations do not conflict with the principle of equal treatment?*

The Labour Inspectorate (Inspection du Travail et des Mines) has the power to control the application of labour law<sup>56</sup>.

Article 12 of the draft bill uses the wording of article 16 b) of Directive 2000/78/EC. Thereby, any provisions contrary to the principle of equal treatment which are included in contracts or collective agreements, statutes of associations, internal rules of undertakings or rules governing the workers' and employers' organisations are to be declared null and void.

*b) Are any laws, regulations or rules contrary to the principle of equality still in force?*

The general statute of civil servants still contains a maximum age limit to be recruited, which is the age of 45, which may be seen as discrimination based on the ground of age.

## 9. OVERVIEW

*This section is also an opportunity to raise any important considerations regarding the implementation and enforcement of the Directives that have not been mentioned elsewhere in the report.*

➔ *This could also be used to give an overview on the way (and if at all) national law has given rise to complaints or changes, including, eventually a reference to the number of complaints, whether instances of indirect discrimination have been found by judges, and if so, for which grounds, etc.*

The existing legislation is not adequate to combat effectively discrimination. In practice the criminal law has not been used, only a few complaints having been registered in court. This situation shows that criminal sanctions must be accompanied by civil sanctions, including in the labour law area.

<sup>55</sup> Loi du 30 juin 2004 concernant les relations collectives de travail, le règlement des conflits collectifs de travail ainsi que l'Office national de conciliation et modifiant 1. la loi modifiée du 7 juin 1937 ayant pour objet la réforme de la loi du 31 octobre 1919 portant règlement légal du louage de services des employés privés; 2. la loi modifiée du 9 décembre 1970 portant réduction et réglementation de la durée du travail des ouvriers occupés dans les secteurs public et privé de l'économie; 3. la loi modifiée du 16 avril 1979 fixant le statut général des fonctionnaires de l'Etat; 4. la loi modifiée du 24 décembre 1985 fixant le statut général des fonctionnaires communaux; 5. la loi modifiée du 23 juillet 1993 portant diverses mesures en faveur de l'emploi ; Mémorial A, 15.07.2004, p.1782 ; = Law on collective working relations, modifying certain previous laws

<sup>56</sup> loi du 4 avril 1974 portant réorganisation de l'Inspection du Travail et des Mines [law of 4 April 1974 reorganising the Labour Inspectorate], Mémorial du 18/04/1974 (027/1974), <http://www.legilux.public.lu/leg/a/archives/1974/0271804/1974A04861.html>

Therefore the full-fledged transposition of the two anti-discrimination Directives is a sheer necessity.

It is regrettable that Luxembourg has not met the deadline of transposition: the two former draft bills had to be rewritten after the opinion of the Council of State.

The new draft bill is much better than the first two pieces, but the proposal is likely to be amended in the course of the parliamentary adoption procedure, so that positive amendments may still ameliorate this draft bill.

## **10. CO-ORDINATION AT NATIONAL LEVEL**

*Which government department/ other authority is/ are responsible for dealing with or co-ordinating issues regarding anti-discrimination on the grounds covered by this report?*

The Minister of Family is generally in charge of anti-discrimination policies. However the Ministry of Labour and Employment is in charge of the correct use of labour law in this employment field, through the '*Inspection du Travail et des Mines*'.

### **Annex**

#### **1. Table of key national anti-discrimination legislation**

#### **2. Table of international instruments**

# ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Name of Country: **LUXEMBOURG**

Date 31.12.2005

Title of Legislation (including amending legislation)	In force from:	Grounds covered	Civil/Administrati ve/ Criminal Law	Material Scope	Principal content
This table concerns only key national legislation; please list not more than 10 anti-discrimination laws (which may be included as parts of laws with wider scope). Where the legislation is available electronically, provide the webpage address.	Please give month / year			e.g. public employment, private employment, access to goods or services	e.g. prohibition of direct and indirect discrimination or creation of a specialised body
<b>penal code, articles 454 to 457 (law of 19 July 1997 completing the penal code by amending the accusation of racism and introducing the accusation of revisionism and other acts based on illegal discriminations)</b> <a href="http://www.legilux.public.lu/leg/a/archives/1997/0540708/1997A16801.html">http://www.legilux.public.lu/leg/a/archives/1997/0540708/1997A16801.html</a>	<b>July 1997</b>	<b>Racial or ethnic origin, skin colour, sex, sexual orientation, family situation, state of health, disability, customs, political or philosophical opinions, trade union activities, their membership, actual or supposed, of an ethnic group, nationality, race or specific religion</b>	<b>Criminal</b>		<b>Individual and collective discrimination are forbidden</b>
<b>law of 27 July 1993 on the integration of foreigners in the Grand Duchy of</b>	<b>July 1993</b>	<b>race, colour, descent, national or ethnic origin,</b>	<b>Civil</b>	<b>General, for foreigners</b>	<b>prohibition of (direct) Individual and collective</b>

<b>Luxembourg and on social action for foreigners</b> <a href="http://www.legilux.public.lu/leg/a/archives/1993/0552807/1993A10801.html">http://www.legilux.public.lu/leg/a/archives/1993/0552807/1993A10801.html</a>		<b>religion</b>			<b>discrimination</b>
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## ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Name of country

**LUXEMBOURG**

Date 31.12.2005

Instrument	Signed (yes/no)	Ratified (yes/no)	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)	YES	YES			Yes
Protocol 12, ECHR	NO	NO			Yes
Revised European Social Charter	YES	YES		Ratified collective complaints protocol?	No
International Covenant on Civil and Political Rights	YES	YES			No
→Framework Convention for the Protection of National Minorities	YES	NO			No
International Convention on Economic, Social and Cultural Rights	YES	YES			No
Convention on the Elimination of All Forms of Racial Discrimination	YES	YES			No

Convention on the Elimination of Discrimination Against Women	YES	YES			No
ILO Convention No. 111 on Discrimination	YES	YES			Yes
➔Convention on the Rights of the Child	YES	YES			Some articles only