

Developing Anti-Discrimination Law in Europe

The 25 EU Member States compared

July | 2007



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European Commission



Developing Anti-Discrimination Law in Europe

The 25 EU Member States compared

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

July 2007
(Based on information current to 7 January 2007)

European Commission
Directorate-General for Employment, Social Affairs and Equal Opportunities
Unit G.2

Manuscript completed in July 2007

This report was financed by and prepared for the use of the European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities. It does not necessarily represent the Commission's official position.

The text of this report was drafted by Mark Bell, Isabelle Chopin and Fiona Palmer 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), managed by:

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This publication has been commissioned by the European Commission under the framework of the European Community Action Programme to combat discrimination (2001-2006). This programme was established to support the effective implementation of new EU anti-discrimination legislation. The six-year Programme targets all stakeholders who can help shape the development of appropriate and effective anti-discrimination legislation and policies, across the EU-25, EFTA and EU candidate countries.

The Action Programme has three main objectives. These are:

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

For more information see:

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Luxembourg: Office for Official Publications of the European Communities, 2007

ISBN 978-92-79-06572-9

Printed in Belgium

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Preface

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

The reports were written by independent national experts in each Member State. The information was provided in response to questions set out in a template format which closely followed the provisions of the two Directives. The Network's scientific board, ground co-ordinators (experts on the Directives' five discrimination grounds) and content manager read and commented on various drafts of the reports. The writing process also benefited from comments made by lawyers of the European Commission. Member States were also given an opportunity to comment on the final draft of which they made minimal use. The 25 reports cover the many changes to national law, the putting in place of enforcement mechanisms and the adoption of other measures. They contain information current as of 7 January 2007. As such, they are a valuable source of information on national anti-discrimination law.

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

The 2007 country reports will be published in the course of 2007.

Piet Leunis
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Utrecht – Brussels
July 2007

Executive summary

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

¹ In Estonia a draft law is currently before the Estonian Parliament (Bill No. 67) which if adopted would provide a system of protection on the grounds covered by the Directives (plus colour) with a material scope almost identical to that of Directive 2000/43. This Bill was submitted to the Parliament on 30 May 2007. The Bill considered in this publication and the Estonian country report is however the predecessor to that draft law - Bill 1101 which was wider in scope and which prohibited discrimination on any ground in all areas of social life.

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

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



chapter 1

Introduction

The objective of this report is to compare and contrast the anti-discrimination laws in the 25 EU Member States, as comprehensively described in the updated country reports written by the European Network of Legal Experts in the Non-discrimination Field and summarised in this publication. Trends and commonalities between various countries in the implementation of the Racial Equality Directive (2000/43/EC) and Employment Equality Directive (2000/78/EC) are identified. The grounds of discrimination listed in the Directives – racial and ethnic origin, religion and belief, age, disability and sexual orientation – will be considered individually and collectively. It should be recalled throughout that the purpose of this report is to provide an overview of national laws across the EU: for detailed and nuanced information about the law in a particular country, readers are referred the comprehensive country reports. These country reports contain information current as of 7 January 2007.²

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

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

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

² http://europa.eu.int/comm/employment_social/fundamental_rights/policy/aneval/legnet_en.htm#count
The 2007 country reports will be published in the course of 2007.

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

Anti-discrimination Acts which more or less reproduce the Directives	Cyprus (2 Acts), Greece (1 Act for both), Italy (2 decrees) and Luxembourg (2 Acts)
Anti-discrimination Acts covering more grounds than the Directives	Austria, Belgium, ³ Finland, Germany, Ireland, Hungary, Netherlands, Slovakia ⁴
Combination of multi-ground anti-discrimination Acts and single-ground Acts	Denmark, Netherlands, Sweden
Several pieces of single-ground anti-discrimination legislation	United Kingdom
Combination of specific legislation and employment act	Slovenia, ⁵ Latvia, Malta ⁶
Combination of specific legislation, labour and penal codes, some administrative law	France, Lithuania, ⁷ Portugal
Directives transposed in much wider general Act	Spain
So far only transposed in employment law	Estonia, ⁸ Czech Republic, Poland

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

³ Three Bills addressing certain deficiencies in the Belgian Federal Law were adopted by the Federal Parliament on 26 April 2007. They entered into force on 31 May 2007. These bills have been considered in the form they were in on 8 January 2007 (the date of the Belgian Country Report). Any changes between 8 January and the adoption of the laws have not be considered.

⁴ During 2007 preparation work for a significant amendment of the Anti-discrimination Act will start. The guarantor of this process is the Office of the Deputy Prime Minister for Knowledge Society, European Affairs, Human Rights and Minorities.

⁵ Legislation amending the Implementation of the Principle of Equal Treatment Act 2004 (IPETA) was published in the Slovenian Official Journal on 10 July 2007 and entered into force on 25 July 2007. This has not been considered in this report.

⁶ Legislation transposing Directive 2000/43 in the areas outside of employment entered into force on 3 April 2007.

⁷ A draft law on equal treatment, the purpose of which is to amend the existing Law on Equal Treatment and thereby fully transpose the Directives was registered with the Lithuanian Parliament on 29 June 2007.

⁸ Draft bill pending which would alter this situation. See footnote 2 above.

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

A contrasting response consisted of engaging in a more elaborate legislative debate within the Member State as to how the age discrimination requirements of the Directive might be fully and immediately integrated with the existing law and practice of the Member State. The resulting legislative debate tended to be a difficult and complex one, which is why Belgium, Germany, the Netherlands, Sweden and the UK took up the option of extra time to implement the age discrimination requirements in particular.

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

Ensuring the Directives are transposed across all of a Member State's territory and by all tiers of government with relevant competences was a reason for delays in several Member States. The UK was delayed in its transposition in Gibraltar. Finland was found by the European Court of Justice to have failed to fulfil its Community obligations by omitting the Åland islands from its transposition of Directive 2000/43.⁹ The Commission also initiated action against Finland, Germany, Austria and Luxembourg for failure to transpose Directive 2000/78.¹⁰ In this respect, Luxembourg and Germany were found to be in breach of their EC Treaty obligations for their failure to transpose Directive 2000/78.¹¹ In Belgium, although almost all regions and communities have now adopted anti-discrimination legislation, significant gaps remain notably due to continuing discussion among the Regions and Communities concerning their competence to adopt procedural rules, such as on sanctions, *locus standi* for associations and the burden of proof.¹²

⁹ Case C-327/04 *Commission v Finland*, 24 February 2005. Luxembourg was also found to have infringed Community law on the same day for failing to transpose Directive 2000/43, Case C-320/04 *Commission v Luxembourg*. The Court of Justice has since found Germany (Case C-329/04) and Austria (Case C-335/04) to have infringed Community law for failing to transpose Directive 2000/43.

¹⁰ Case C-133/05 *Commission v Austria*, application of 21 March 2005 and Case C-99/05 *Commission v Finland*, application of 24 February 2005.

¹¹ Case C-70/05 *Commission v Luxembourg*, judgment of 20 October 2005 and Case C-43/05 *Commission v Germany*, judgment of 23 February 2006.

¹² This remains the case even after the new Federal laws have been adopted which close some of the gaps at Federal level.

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



chapter 2

The grounds of discrimination

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

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

A. Which grounds are included?

Most Member States have included all the grounds of discrimination found within the Directives in their national anti-discrimination legislation. Sweden has yet to adopt legislation on age discrimination, whilst the legislation in Luxembourg does not expressly mention the ground of belief. It should be noted that a considerable number of Member States chose not to restrict new anti-discrimination laws to the grounds found within the two Directives. States which have opted for a broader list of prohibited grounds include countries such as Hungary, Slovenia and Poland.

B. Racial or ethnic origin

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

Recital 6 of the Racial Equality Directive declares:

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

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

One of the areas of ambiguity in the Racial Equality Directive is the extent to which characteristics such as colour, national origin, membership of a national minority, language or social origin fall within the scope of 'racial or ethnic origin'. Many national laws include, as a minimum, colour and national origin within legislation implementing the Racial Equality Directive. Some states have specific and detailed laws on the protection of national minorities, such as Poland or Slovenia. It is often unclear whether the concepts of ethnic/national minority found within these laws will be relied upon when national courts interpret anti-discrimination legislation.

Another difficult boundary concerns ethnic origin and religion. Within the Directives, it is evident that this is an important distinction because the material scope of the Racial Equality Directive is much more extensive than that in the Employment Equality Directive. Nevertheless, the concepts of ethnicity and religion are closely linked. The European Court of Human Rights recently held that: 'ethnicity has its origin in the idea of societal groups marked by common nationality, tribal affiliation, religious faith, shared language, or cultural and traditional origins and backgrounds.'¹³

In the Netherlands, case-law has recognised the possibility for discrimination against Jews¹⁴ and, in certain circumstances, Muslims¹⁵ to be challenged as race discrimination. In the UK, discrimination against Sikhs¹⁶ or Jews¹⁷ has been accepted as discrimination on racial grounds (specifically, ethnic origin).

A number of common problems have arisen in the process of implementing the Racial Equality Directive. First, the Directive is distinguished by its broad material scope, extending beyond employment to include areas such as education and housing. Yet, several states have not adopted adequate legislation on discrimination outside employment. Notably, this includes the Czech Republic, Estonia, Latvia, and Poland. Secondly, the Racial Equality Directive requires Member States to establish a body or bodies for the promotion of equal treatment. There remain several states where such a body has yet to be created or become operational: the Czech Republic, Luxembourg, Poland and Spain.

In terms of implementation in practice, Roma segregation in education remains a serious challenge for several states,¹⁸ including the Czech Republic, Cyprus, Denmark, Finland, Greece, Hungary, Poland and Slovakia. Another common issue that arises is the lack of data in many states on the socio-economic situation of persons vulnerable to racial discrimination. This makes it difficult to identify the extent of disadvantage and whether any progress is being made in reducing inequalities.

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

¹⁴ Opinion 1998/48, Equal Treatment Commission.

¹⁵ Opinion 1998/57, Equal Treatment Commission.

¹⁶ *Mandla v Dowell Lee* [1983] 2 AC 548.

¹⁷ *Seide v Gillette Industries Ltd.* [1980] IRLR 427.

¹⁸ A Thematic Report written in 2007 by Lilla Farkas, Roma Expert for the European Network of Legal Experts in the Non-discrimination Field entitled "Segregation of Roma Children in Education, Addressing structural discrimination through the Race Equality Directive" provides a more detailed analysis of this issue.

C. Religion or belief

No Member State has attempted to provide a comprehensive definition of 'religion or belief' within anti-discrimination legislation (e.g. an exhaustive inventory of protected religions). Several states provide further guidance on the meaning of 'religion or belief' in explanatory documentation accompanying the legislation. In Austria, the explanatory notes to the federal Equal Treatment Act state 'for a religion there are minimum requirements concerning a statement of belief, some rules for the way of life and a cult. Religion is any religious, confessional belief, the membership of a church or religious community'.¹⁹ The term 'belief' has also been the subject of debate surrounding its meaning. In the Netherlands, the term *levensovertuiging* [philosophy of life] has been adopted because this had already been interpreted through case-law. It includes broad philosophies, such as humanism, but it does not extend to any view regarding society.

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

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

D. Disability

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

'the concept of "disability" must be understood as referring to a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life ...

In order for the limitation to fall within the concept of "disability", it must therefore be probable that it will last for a long time'²⁰

¹⁹ No. 307 der Beilagen XXII. GP - Regierungsvorlage – Materialien.

²⁰ Paras 43-45, Case C-13/05 *Chacón Navas v Eurest Colectividades SA*, judgment of 11 July 2006. See commentary by Lisa Waddington (2007) 44 *Common Market Law Review* 487.

National legislation contains many examples of definitions of disability, however, these are often in the context of social security legislation rather than anti-discrimination law. There seem to be few Member States where the existing definition of disability, if one exists, is more restrictive than that provided by the Court. One exception is Lithuania where the definition does not include reference to psychological impairments.²¹ The Court's requirement for it to be probable that the impairment will last for a 'long time' echoes various definitions of disability in national law. For example, in both Austria²² and Germany,²³ an impairment should last for more than six months. In the UK,²⁴ the impairment should last for more than one year. In contrast, other states require the impairment to be indefinite in duration (Cyprus,²⁵ Sweden²⁶).

It is not yet clear whether the Court regards the formula provided in *Navas* as an exhaustive definition of disability. In particular, this definition leaves no space for the protection of those assumed to be disabled or who are likely to have a future disability. These scenarios are anticipated in some national legislation. Irish legislation covers discrimination on grounds that exist in the present moment, grounds that previously existed, as well as grounds that may exist in the future.²⁷ Dutch law covers 'an actual or assumed disability or chronic disease',²⁸ thereby protecting (for example) a person who previously had cancer but no longer experiences any symptoms. Some of these issues will be tested in a case currently pending before the Court of Justice.²⁹

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

²¹ Law on the Social Integration of Disabled Persons, 1991, No. 36-969.

²² Section 3, Disability Equality Act 2005.

²³ Section 2, Social Code IX and Section 3 Disabled Equality Law.

²⁴ Section 1(1), Disability Discrimination Act 1995.

²⁵ Law 127(I)/2000.

²⁶ Section 2, Disability Discrimination Act 1999.

²⁷ Section 6(1)(a), Employment Equality Act 1998-2004.

²⁸ Art. 1(b), Act of 3 April 2003 concerning the establishment of the Act on Equal Treatment on the grounds of disability or chronic disease, *Staatsblad* 2003, 206.

²⁹ Case C-303/06 *Coleman v Attridge Law, Steve Law* [2006] OJ C237/6.

E. Sexual Orientation

Very few states have defined sexual orientation within anti-discrimination legislation. British legislation refers to 'a sexual orientation towards (a) persons of the same sex, (b) persons of the opposite sex, or (c) persons of the same sex and of the opposite sex'.³⁰ The 2006 German General Law on Equal Treatment adopts the term 'sexual identity'. This is understood to reach beyond sexual orientation and also encompasses protection from discrimination for transsexual people.

Many of the difficulties encountered in implementing the sexual orientation provisions of the Directive relate to the breadth of any exceptions applying to employers with a religious ethos (see the section above on religion or belief). These exceptions are sensitive because some employers may be hostile to homosexuality because of religious beliefs. Another key issue relates to partners' benefits and the extent to which national law permits employers to limit work-related benefits to those employees who are married (e.g. a pension entitlement for a surviving spouse). It should also be noted that, in the majority of states, there are few or no examples of cases of sexual orientation discrimination being brought before the courts. Issues around confidentiality may deter some individuals. Moreover, in some states the wider political climate remains openly hostile to equality for lesbians, gays and bisexuals (e.g. Poland).

F. Age

Age is generally assumed to be an objective characteristic with a natural meaning and hence it is not defined. Most Member States have not restricted the scope of the legislation, but the Irish Employment Equality Act limits its application to 'persons above the maximum age at which a person is statutorily obliged to attend school'.³¹ Similarly, in Denmark, legislation was adopted in 2006 which removes protection from persons under 18 if differential treatment is provided for in a collective agreement.³²

The implementation of the age provisions of the Employment Equality Directive remains a work in progress. Article 6 of the Directive permits justification of both direct and indirect age discrimination. Most Member States have decided to exercise this option. As a consequence, there remains very substantial uncertainty across the Member States as to which forms of age discrimination will be treated as justified by national courts. In *Mangold v Helm*,³³ the Court of Justice provided an early indication that directly discriminatory practices need to be carefully scrutinised by national courts. A key issue is the justification for compulsory retirement ages. National practice varies greatly in this area, ranging from no national compulsory retirement age (e.g. Czech Republic) to states which permit compulsory retirement by public and private employers at a specific age (e.g. Italy). These issues are examined further in section 6(g) of this report.

³⁰ Regulation 2(1), Employment Equality (Sexual Orientation) Regulations 2003, S.I. 1661.

³¹ Section 6(f)(3).

³² Act No. 31/2006.

³³ Case C-144/04 [2005] ECR I-9981.

G. Assumed and associated discrimination

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

Ireland provides a rare example where legislation explicitly forbids discrimination where a ground is 'imputed' to exist and discrimination due to association.³⁴ As mentioned earlier, in several states, the legislation refers to 'real or presumed' race (e.g. France), or to a disability that existed in the past or which may exist in the future (Netherlands). The Disability Equality Act adopted in Austria in 2005 extends protection to relatives caring for disabled persons.

³⁴ Section 6(1)(b), Employment Equality Act 1998-2004.



chapter 3

The definition of discrimination

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

At the outset, it should be noted that although Member States may be described as following the definitions found in the Directives, there are often slight differences between the actual text of national legislation and that within the Directives. Given the frequent absence of case-law interpreting the legislation, it is difficult to assess whether small differences in language are matters that will be resolved through purposive judicial interpretation or whether there are substantive gaps in national implementation.

A. Direct discrimination

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

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

These elements can be generally found in legislation in: Austria, Cyprus, Denmark, Estonia, Finland, Germany, Greece, Italy, Ireland, Latvia, Lithuania, Luxembourg, Malta, Portugal, Slovakia, Slovenia, Sweden and the UK. It should be noted that this legislation does not necessarily apply to the full material scope required by the Directives and it may co-exist with other legislation containing different definitions of direct discrimination. Moreover, most states have taken advantage of the opportunity foreseen in Article 6 of the Employment Equality Directive to permit justification of direct discrimination on the ground of age.

In the Czech Republic, anti-discrimination provisions can be found scattered across a wide range of legislation. In some cases, the definition of direct discrimination is close to that in the Directives. In France and the Netherlands, direct discrimination is forbidden but it is not further defined in legislation.

B. Indirect discrimination

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

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

The Directives anticipate a comparison between the effect of the measure on persons of a particular ethnic origin, etc. and its impact on other persons. National law varies in the approach taken to the comparison required for establishing indirect discrimination. For example, Polish law requires the measure to cause detriment for all or a significant number of employees belonging to the particular group of persons.³⁵ In the UK, the most common definition of indirect discrimination requires evidence that the measure placed at a disadvantage the individual complainant, as well as the group to which he or she belongs.³⁶

C. Harassment

Harassment is defined in the Directives as unwanted conduct related to (racial or ethnic origin, religion or belief, disability, age, or sexual orientation) with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.³⁷ The majority of Member States have adopted definitions of harassment that appear similar to that contained in the Directives. This includes: Belgium, Cyprus, Estonia (draft), Finland, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovenia, Spain and the UK.

The Directives do not provide specific rules on how to determine whether the conduct is such as to violate a person's dignity or to create an intimidating, etc. environment. Several states have sought to clarify this in their national legislation. For instance, in Slovakia, reference is made to treatment 'which that person can justifiably perceive' as harassment.³⁸ This is understood to place the emphasis on the perception of the victim, although courts may also take into account a reasonableness standard.

³⁵ Art. 18, Labour Code.

³⁶ For example, section 1(1A) Race Relations Act 1976.

³⁷ Art. 2 (3).

³⁸ Section 2(5), Anti-discrimination Act, no. 365/2004.

Another area left open by the Directives is the responsibility of the employer for acts of harassment caused by other workers or by third parties, such as customers. In many states, employers can be held liable for the actions of their workers to a varying degree. Some Member States have chosen to place employers under a specific duty to take action to prevent and redress harassment in the workplace. For example, in the 2006 German General Law on Equal Treatment, employers are placed under a legal duty to prevent discrimination occurring in the workplace. This includes a duty to protect employees from discrimination by third parties.³⁹

D. Instructions to discriminate

The Directives contain a provision stating that ‘an instruction to discriminate ... shall be deemed to be discrimination’.⁴⁰ A similar provision has been included in the national legislation of the great majority of Member States, with a small number of exceptions. In France, for example, there is no specific provision making instructions to discriminate unlawful. However, general legal principles on complicity and liability may produce similar effects. In a recent case, unlawful discrimination was found where an estate agent refused to rent accommodation to people with surnames of ‘foreign origin’ following instructions from the owner.⁴¹

³⁹ § 12.4 AGG.

⁴⁰ Art. 2(4), Directives 2000/43 and 2000/78.

⁴¹ Court of Cassation, Criminal Chamber, 7 June 2005, no. 04-87354.

chapter 4

The reasonable accommodation duty



The Employment Equality Directive places employers under a duty to 'take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer.'⁴² The following states have legal provisions that approximate to the reasonable accommodation duty found within the Directive: Austria, Belgium, Cyprus, Denmark, Estonia (draft law), Finland, France, Greece, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Slovakia, Spain, Sweden and the UK. These vary considerably between those which provide a basic duty, with little elaboration on how this should be implemented (e.g. Lithuania), to states with more extensive guidance on its practical application (e.g. the UK). In general, there is very little case-law in this area, so it is difficult to anticipate how the key concepts will be applied in practice.

The reasonable accommodation duty has not been included in national legislation in Italy and Poland. In Hungary, the legal duties are stronger in respect of persons already employed than those in respect of persons seeking employment. In France, the duty to provide reasonable accommodation is limited to those who are already officially recognised as disabled.

Whilst the definition of the duty varies, it is commonly subject to the limitation that it should not create a 'disproportionate burden' for the employer: Austria, Belgium, Cyprus, France, Germany, Ireland, Latvia, Lithuania, the Netherlands, Portugal, Slovakia and Spain. The preamble of the Directive provides an indication of the criteria to be taken into account in determining the reasonableness of a particular accommodation. Recital 21 identifies three issues to consider and these are often included in national legislation or case-law:

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

Whether failure to provide reasonable accommodation is to be treated as a form of unlawful discrimination is often an area of ambiguity within national legislation (e.g. Cyprus, Hungary, Latvia). In France and Denmark, a failure to meet the duty constitutes unlawful discrimination; it is not specified whether this is classified as either direct or indirect discrimination. In Sweden, failure to provide a reasonable accommodation is linked to the concept of direct discrimination. In contrast, failure to provide reasonable accommodation is treated as indirect discrimination in Austria and Slovakia. Alternatively, in the UK, failure to provide reasonable accommodation is defined as a specific form of discrimination.

⁴² Art. 5, Directive 2000/78.



chapter 5

The personal and material scope of national provisions

A. Personal scope

The Racial Equality Directive and Employment Equality Directive are applicable to all persons. This implies that national anti-discrimination laws should apply to all persons on a Member State's territory irrespective of whether they are EU or third country nationals. On the whole, protection against discrimination on any of the Directives' grounds in the Member States is not conditional on nationality, citizenship or residence status.⁴³

Recital 16 of the Racial Equality Directive states that it is important to protect all natural persons against discrimination and that Member States should also provide, where appropriate and in accordance with their national traditions and practice, protection for legal persons where they suffer discrimination on grounds of the racial or ethnic origin of their members. The Employment Equality Directive does not have an equivalent recital, however there is no reason why both natural and legal persons should not be understood under the term 'persons' in that Directive as well. In most countries both natural and legal persons are protected against discrimination. Where the law does not expressly distinguish between the two, this is assumed, as for instance in Latvia and Greece. Legal persons remain categorically unprotected in Lithuanian and Swedish law,⁴⁴ and in Austria the wording of the legislation implies that protection against discrimination is provided for natural persons only, while in Estonia local legal tradition implies that only natural persons can be victims of discrimination.

Neither Directive indicates whether the Directives should be understood as making both natural and legal persons liable for discriminatory acts. Nor do they provide who exactly should be held liable for discriminatory behaviour. This issue is discussed above in relation to harassment. The question of liability is particularly relevant in cases of discrimination in employment, as often the employer carries responsibility for the actions of his or her employees, for example for discrimination against a client or for harassment by one employee against another. In Ireland,⁴⁵ the Netherlands⁴⁶ and Sweden, the anti-discrimination legislation is directed at employers and usually the person who actually acted in a discriminatory way cannot be held personally liable. In contrast, in Lithuania and Spain liability for discrimination is personal and only the person who has acted in a discriminatory way is liable under the law, not the employer or service provider.

⁴³ In France the principle of equality is applicable to non-nationals unless the legislator can justify a difference in treatment on the basis of conditions of public interest, cf Constitutional Council, January, 22, 1990, 296 DC, R.F.D.C. no. 2 1990, obs Favoreu.

⁴⁴ In Sweden the Discrimination Inquiry Commission has proposed protection for legal persons in a number (but not all) areas covered by non-discrimination legislation. (SOU 2006:22, page 332 et al) This issue is currently being considered by a public Discrimination Investigations Committee.

⁴⁵ Most provisions of the Irish Employment Equality Act 1998-2004 are aimed at the employer and no clear provision is made to enable actions against the perpetrator(s) of discrimination. Exceptions are section 14 of the Act, which refers to liability being imposed on the person responsible for procuring or attempting to procure discrimination, and section 10 which refers to liability being imposed on a person who displays discriminatory advertising.

⁴⁶ Dutch legislation in the field of employment is directed towards employers, employers' organisations, organisations of workers, employment offices, public job agencies, professionals, training institutions, schools, universities etc.

It is less common to make employers liable for the actions of third parties such as tenants, clients or customers who discriminate against their employees. In Portugal, for instance, employers and providers of services can only be held liable for actions of third parties where a special duty of care is imposed by law or where a special relationship can be established, for example sub-contractors.⁴⁷ Similarly, in the Netherlands, records of Parliamentary debates are thought to make clear that the Dutch legislator did not intend the anti-discrimination legislation to be enforceable against a colleague or a third party on the basis that there is no contract or relationship of authority between the parties.⁴⁸

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

B. Material scope

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

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

⁴⁷ Article 617(2) of Labour Code.

⁴⁸ Explanatory Memorandum to the Act on Equal Treatment on the ground of Age in Employment, Occupation and Vocational Training (Act on Equal Treatment on the ground of Age in Employment), Second Chamber of Parliament, 2001-2002, 28 170, nr., 3, p.19.

The country experts in the European Network of Legal Experts in the non-discrimination field are generally satisfied that the scope of the Directives is met in Austria, Cyprus, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, the Netherlands, Portugal, Slovakia, Slovenia, Spain and the UK. The scope of Belgian law remains incomplete because of gaps in the regions' and communities' legislation (with regard to vocational training and protection in employment for the personnel of the Regions and Communities and housing).

To fulfil the Directives' requirements, national anti-discrimination law must apply to the public and private sectors, including public bodies. Not all Member States currently meet this requirement. In Estonia the Directives have been implemented in the employment legislation for the private sector only and therefore equal treatment in the civil service is only covered by the Constitution, so that even if the equal treatment principle applies, the norms for enforcement such as the burden of proof are lacking. In Portugal the equality and non-discrimination provisions of the Labour Code currently apply to both private employment and public sector employees and will continue to do so until different specific regulations are adopted for the latter (Article 1(2) of Law 35/2004).

In contrast, in Hungary not all private actors are covered by the Equal Treatment Act of 2003. The Hungarian legislator took a unique approach among the EU Member States, in that it does not enumerate the fields falling under its scope, but instead lists the public and private entities which must respect the requirement of equal treatment in all their actions. These are mostly public bodies and include state, local and minority self-governments, public authorities (Article 4). Four groups of private actors are listed (Article 5): (i) those who offer a public contract or make a public offer; (ii) those who provide public services or sell goods; (iii) entrepreneurs, companies and other private legal entities using state support; and (iv) employers and contractors.

Equality must be guaranteed in all sectors of public and private employment and occupation, including contract work, self-employment, military service and statutory office. A number of countries fall short of this protection. Military service is not included in the scope of Latvia's or Greece's legislation transposing the Directives, while in the Netherlands, the Age Discrimination Act does not yet apply to military service (it must do by 1 January 2008 at the latest). In the Czech Republic, Estonia,⁴⁹ Greece, Latvia, Lithuania, Malta, Portugal, Sweden and the United Kingdom, self-employment and/or occupation are not fully covered. Maltese law does not apply to military personnel or to persons who work or perform services in a professional capacity or as a contractor for another person where the work or service is not regulated by a specific contract of service. With respect to persons who hold statutory office, the Act will only apply if the person concerned has a contract of employment.

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

⁴⁹ Self-employment would probably fall under the draft law's terminology - all areas of 'social life'.

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

As already noted, the Czech Republic, Estonia, Latvia, Lithuania and Poland have yet to adequately transpose the Racial Equality Directive beyond the employment sphere. In Latvia however, the Law on Social Security from 1 December 2005 prohibits differential treatment on the grounds of race (as well as the other grounds under the Directives, including possibly sexual orientation under 'other circumstances') in the field of social protection within the public sphere. Services provided by the private sphere are not covered. The law similarly prohibits discrimination on grounds of race as far as social security and social services provided by the state are concerned. Unclear is whether access to housing is covered and also the extent to which such services provided by private actors are covered. Other laws ensure racial discrimination is outlawed to some extent in education, but not in goods and services. In Estonia a new draft law if enacted in the form introduced in January 2006 would largely correct this situation.⁵⁰ Lithuanian law does not cover social protection or social advantages and in Poland the provisions which exist outside the employment field do not include important elements of the Directives such as definitions of direct and indirect discrimination and the scope of the provisions on goods and services and social advantages are uncertain. In addition, in Ireland it is questionable whether social protection, social advantages and housing are covered by the scope of the Equal Status Act 2000-2004.

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

⁵⁰ See footnote 1.

The term “social advantages” is mostly left undefined in national legislation. In the Netherlands it is observed by the government in the Explanatory Memorandum to the General Equal Treatment Act that this notion must be interpreted in the light of ECJ case law rendered in the context of Regulation 1612/68 on free movement of workers.⁵¹ In the Dutch government’s view, the notion of social advantages refers to advantages of an economic and cultural kind which may be granted by both private and public entities. These may include student grants, public transport reductions and reductions for cultural or other events. Advantages offered by private entities are, for example, reductions for entry to the cinema and theatre.

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

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

There are only a few instances where segregated classes have been challenged under the national legal systems, for instance in Denmark, Finland and Greece. In Finland there has been one case where *de facto* segregation in a school was successfully challenged. In Greece intervention of the Ombudsman was necessary to ensure public authorities in the Peloponnese provided temporary classrooms for Roma children who had been excluded from a school on the basis that the building facilities were insufficient.

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

⁵¹ E.g. ECJ Case C-261/83 *Castelli* of 12 July 1984 and Case C-249/83 *Hoecx* of 27 March 1985, as referred to in the Dutch explanatory memorandum to the EC Implementation Act, Second Chamber of Parliament 2002-2003, 28 770, nr. 3, p.15.

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

There have been several attempts by governments to address the segregation of Roma pupils.⁵² In Hungary the experience has been that measures aimed at the integration of socially disadvantaged pupils and students strongly promote the integration of Roma students without raising the difficulties stemming from problems of definition and identification and without intensifying potential ethnic tensions.

The Racial Equality Directive prohibits discrimination concerning access to and supply of goods and services, including housing, that are available to the public. The boundaries of this prohibition generated debate in many countries, and most Member States do indeed restrict protection to publicly available goods and services. Exceptions are Cyprus, France, Italy, Slovenia and Spain, where the law does not distinguish between goods and services available to the public and available privately and it is thus presumed to apply to both. A few legislatures provided definitions to delineate the circumstances in which discrimination is prohibited. Swedish law prohibits discrimination in goods and services, including housing, which are professionally provided, and thus the law does not apply to private transactions. There is some concern over the exception from the material scope of the provision of goods and services under German law for all transactions concerning a special relation of trust and proximity between the parties or their family, including the letting of flats.

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

⁵² For a discussion of some of these measures, see the section on positive action measures.

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

- Whereas in Austrian federal legislation the distinction between the two Directives' scope is maintained, in some provincial legislation it is levelled up.
- Denmark extends the prohibition of discrimination outside employment to religion or belief and sexual orientation.
- The Finnish Non-discrimination Act prohibits discrimination in access to training/education on a wide variety of grounds, including age, ethnic or national origin, nationality, language, religion, belief, opinion, health, disability and sexual orientation and "other personal characteristics".⁵³
- In France the general principle of equality in public service guarantees equal treatment in social protection for all grounds. Also, all grounds are protected in goods and services, including housing.
- Hungarian law has practically unlimited material scope, treating all grounds of discrimination equally.
- Irish law has equal material scope for 9 grounds of discrimination.
- The scope of the Italian Immigration Act 1998 is open ended and thus in relation to the racial, ethnic, religious and nationality discrimination covers the full scope of the Racial Equality Directive and more.
- In Latvia differential treatment on the grounds of race, colour, gender, age, disability, health condition, religious, political or other conviction, national or social origin, property or family status or other circumstances (sexual orientation as a prohibited ground is not expressly listed) is covered in the field of social protection within the public sphere and social security and social services provided by the state.
- Lithuanian law prohibits discrimination on all grounds in education and goods and services.
- In Slovakian law, the right to health care is guaranteed equally to every person irrespective of religion or belief, marital or family status, colour, language, political or other opinion, trade union activities, national or social status, disability, age, property or other status, including sex, and racial or ethnic origin. The Anti-discrimination Act prohibits discrimination in housing on the grounds of gender, racial, national or ethnic origin. Discrimination in the field of public procurement is also unlawful.
- In Slovenia, all of the Directives' grounds and other grounds enjoy protection against discrimination in the field of social protection, social advantages, education and goods and services.
- Spanish law prohibits discrimination in social advantages also on the grounds of religion or belief, disability and sexual orientation.

⁵³ The Act has a limiting clause however: section 3 provides that the Act does not apply to the aims or content of education or the education system. According to the *travaux préparatoires*, this takes into account Article 149(1) of the EC Treaty, which states, *inter alia*, that the Community shall fully respect the responsibility of the Member States for the content of teaching and the organisation of education systems.

- In Sweden, discrimination is prohibited in social assistance and social security, including unemployment benefits and health and sickness benefits in kind on the grounds of ethnic origin, religion or belief and sexual orientation. Discrimination in goods and services is prohibited on all these grounds plus disability.
- In the UK, discrimination on the grounds of race, national or ethnic origin, nationality and colour is prohibited in all forms and levels of education. Disability discrimination is outlawed in schools. Discrimination on the grounds of religion or belief and sexual orientation is prohibited in the areas of access to and provision of education (subject to exceptions), the provision of goods and services, and in the performance of public functions by public authorities (believed to cover social protection, including healthcare and social security). Discrimination on grounds of disability in goods, facilities and services is prohibited (Northern Ireland, but not Great Britain also have a prohibition in this field on grounds of political opinion).



chapter 6

Exceptions to the principle of equal treatment and positive action

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

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

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

A. Genuine and determining occupational requirements

Article 4 of the Racial Equality Directive and Article 4(1) of the Employment Equality Directive allow Member States to 'provide that a difference of treatment which is based on a characteristic related to [racial or ethnic origin, etc.] shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.' The majority of Member States - Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia (draft law), Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Slovakia, Spain, Sweden and the UK - have chosen to include such an exception within their national legislation and this applies to many or all discrimination grounds. In some cases, the precise wording of national legislation varies from that found within the Directives (e.g. Italy, Slovakia). This creates a risk that the exception is wider than that permitted, but this will depend on subsequent interpretation by national courts.

Not all states have chosen to include genuine occupational requirement exceptions in their national law (e.g. France). The Netherlands limits the genuine occupational requirement exception to circumstances where a person's racial appearance is relevant (e.g. modelling or acting).⁵⁴

⁵⁴ Article 2(4)b) General Equal Treatment Act, as inserted by the 2004 EC Implementation Act.

B. Employers with an ethos based on religion or belief

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

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

When implementing the Directive, not all Member States chose to include the Article 4(2) exception: the Czech Republic, France, Lithuania, Slovenia and Sweden. In contrast, the following states have adopted provisions in national law which seek to rely on Article 4(2): Austria, Cyprus, Denmark, Germany, Greece, Hungary, Italy, Ireland, Latvia, Luxembourg, Malta, the Netherlands, Poland, Slovakia and the United Kingdom.

There are concerns in several states that the exceptions based on Article 4(2) are too wide (e.g. Greece and Italy). An example is provided in Slovakia where the exception for organisations with a religious ethos is believed to be too wide because it allows differences of treatment based on age, sex, religion or belief and sexual orientation. It is also a general exception which religious organisations can apply to any employee, regardless of the nature of the work.

C. Armed forces and other specific occupations

Article 3(4) of the Employment Equality Directive permits Member States to exclude the armed forces from the scope of anti-discrimination legislation in respect of the grounds of disability and age. A few Member States have included an express exemption for the armed forces in relation to both age and disability: France, Greece, Ireland and the UK. Others have simply maintained age and capability requirements in their regulations on the armed forces without expressly declaring an exemption from the equal treatment principle, e.g. Portugal, Slovenia and Spain. This exception has not been adopted in Finland, Hungary, Lithuania, Luxembourg, the Netherlands, Portugal or Sweden. In several states, the exceptions seem to be wider than that foreseen in Article 3(4). For example, Irish law provides exemptions on the basis of age in respect of the police, prison service or any emergency service.⁵⁵

⁵⁵ Section 37, Employment Equality Act 1998-2004.

D. Nationality discrimination

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

E. Family benefits

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

It is necessary to distinguish a number of different situations that can arise here. First, there are situations where employment-related benefits are limited to those who are married. In the Netherlands, Belgium and Spain, same-sex couples can get married, so here limiting benefits to married couples does not result in sexual orientation discrimination. In other states, such as the UK, national legislation on the recognition of same-sex partnerships has had the impact of requiring marital benefits to be extended to registered partners. This is not, though, an automatic consequence of same-sex partnership legislation. In 2006, the German Constitutional Court held that it was lawful to restrict supplementary payments to married civil servants and to exclude those in (same-sex) registered partnerships.⁵⁶ The compatibility of such practices with the Directive will be tested in a preliminary reference case pending before the European Court of Justice in C-267/06 *Maruko* [2006] OJ C224/20.

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

⁵⁶ BVerwG, 2 C 43.04, 26 January 2006.

F. Health and safety

With regard to disabled persons, Article 7(2) of Directive 2000/78 allows Member States to maintain or adopt provisions on the protection of health and safety at work. Some national legislators have interpreted this provision as permitting health and safety exceptions to non-discrimination on the ground of disability: e.g. Cyprus, Greece, Ireland, Luxembourg, the Netherlands and Portugal. In Ireland, for instance, if a person has a disability that under the given circumstances could cause harm to that person or to others, treating that person differently to the extent reasonably necessary to prevent such harm does not constitute discrimination.⁵⁷

G. Exceptions related to discrimination on the ground of age⁵⁸

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

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

Article 6(1)(b) of the Employment Equality Directive expressly allows laws which seek to promote the vocational integration or protection of young people, older workers and persons with caring responsibilities; such laws are very common in the EU Member States. Almost every Member State has some legislation which aims to protect young employees. Minimum and maximum age requirements, in particular in access to employment, seem to be widely permitted. These can be described as direct age requirements, whereas a required number of years of experience constitutes an indirect age requirement. The Czech Republic has examples of both direct age requirements (minimum age requirements for employment and self-employed activity and maximum age limits set for certain professions) and indirect age requirements (conditions of pay dependent on years of experience, requirement of a certain education and minimum period of training for entrance to professions).

⁵⁷ Section 4(4) Equal Status Act 2000-2004.

⁵⁸ See further: C O'Cinneide, 'Age Discrimination and European Law', available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/05agedis_en.pdf
Some of the findings of this study are reproduced in this section.

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

At the outset, it is important to distinguish between the age at which a person becomes entitled to receive a pension (pensionable age) and the age at which they are required to cease employment (retirement age). Sometimes these are linked in national law. In Lithuania and Malta, protection against unfair dismissal is lost at pensionable age and in Hungary such protection is reduced. In France, protection from unfair dismissal is lost when full pension rights accrue (Article L122-14-13, Labour Code). In Latvia, the Constitutional Court has held that it was not disproportionate to require civil servants to retire at pensionable age.⁵⁹

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

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

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

In transposing the Directives there seems to have been little discussion in some Member States as to the legality of certain existing provisions and practices. An exception is the Netherlands, where an inventory of all legislation referring to age criteria was compiled in order to review the legitimacy of such distinctions. The compatibility of retirement ages with Directive 2000/78 should be clarified once the Court of Justice has issued its decision in pending Cases C-87/06 *Pascual García* [2006] OJ C121/2 and C-411/05 *Palacios de la Villa* [2006] OJ C36/20. Advocate-General Mazák delivered his opinion on the latter case on 15 February 2007, arguing that compulsory retirement ages fall outside the scope of the Directive due to Recital 14.

⁵⁹ Case 2003-12-01, decision of 18 December 2003.

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

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

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

I. Any other exceptions

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

J. Positive action

Article 5 of Directive 2000/43 and Article 7(1) of Directive 2000/78 permit Member States to maintain or adopt specific measures to prevent or compensate for disadvantages linked to any of the grounds covered, with a view to ensuring full equality in practice. In most Member States it is legal to introduce positive action measures: Austria, Belgium, Cyprus, the Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovenia, Spain, Sweden and the United Kingdom.

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

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

Disability is the ground for which there are probably most positive action measures already in place. These can be found in the great majority of Member States. There is a quota system for the employment of disabled persons in Austria, Belgium (mostly public sector only), Cyprus, the Czech Republic, France, Germany, Greece, Italy, Lithuania, Luxembourg, Malta, Poland, Portugal, Slovenia and Spain. However, alternatives to employing disabled persons such as paying a fee or tax are almost always offered.

There are also many examples of positive action for ethnic minorities, in particular Roma. The Czech Republic, Hungary, Slovakia, Romania and Bulgaria are amongst a group of nine states involved in the Roma Decade of Social Inclusion, which requires their governments to draw up and implement action plans over a ten-year period.⁶⁰

⁶⁰ <http://www.romadecade.org>

chapter 7

Remedies and enforcement



A. Judicial and administrative procedures

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

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

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

The Latvian National Human Rights Office⁶¹ examines and reviews complaints concerning human rights violations and attempts to resolve conflicts through conciliation, which if unsuccessful is followed by non-binding recommendations. In Cyprus the Commissioner for Administration (Ombudsman) can issue binding decisions and impose small fines for non-compliance with its decisions. However in practice the decisions issued are recommendations which although non-binding tend to be complied with, at least by individuals. In Spain victims of discrimination may appeal to the general Ombudsmen (at both national and regional level) when the issue concerns acts of the public administration.

The Estonian Legal Chancellor provides an impartial conciliation procedure upon application by the victim. If the Estonian draft law is enacted the procedure will end with a legally-binding decision and there will also be the possibility of a conciliation procedure before a new Equality Commissioner who will be able to issue non-binding decisions/recommendations.

⁶¹ In the process of re-organisation into an Ombudsman with greater competences.

The Portuguese High Commissioner for Immigration and Ethnic Minorities (HCIEM) can act as a mediator to try to avoid formal legal procedures. He can also initiate an administrative procedure and decide whether a fine should be imposed. The respondent has the right to appeal to the courts against the fines imposed. Neither the victim nor associations have the right to appeal or to intervene in the appeal procedure.

In Hungary, the Equal Treatment Authority can take action against any discriminatory act and can impose severe sanctions on persons and entities violating the prohibition of discrimination. The Ombudsman for Civil Rights and the Ombudsman for the Rights of National and Ethnic Minorities can also investigate cases of discrimination by any public body.

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

In Malta, the National Commission for Persons with a Disability can investigate complaints alleging failure to comply with the Equal Opportunities (Persons with a Disability) Act 2000 and, where appropriate, provide conciliation in relation to such complaints. As of April 2007 The National Commission for the Promotion of Equality for Men and Women, will be known as The Equality Commission, and able conduct investigations into alleged race discrimination either on its own initiative or pursuant to a complaint.

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

There are special court procedures in a number of countries. Spain has an urgent procedure in the Social Courts for actions for the defence of fundamental rights and civil liberties. The United Kingdom's employment/industrial tribunals hear the full range of employment disputes, including those on discrimination. In Italy the 1998 Immigration Act established a special procedure for discrimination cases and this is now applicable to all grounds of discrimination. Representation by a lawyer is not required and the victim can apply directly to the judge in his or her place of residence in order to obtain an injunction against the discriminatory activity and damages. The hearing takes place 'avoiding all unnecessary formality,' with free choice by the judge of the most suitable method to gather evidence. In cases of particular urgency, the judge can issue an interim order, the violation of which (as that of the order issued in the final decision) constitutes a criminal offence. The Decrees transposing the Directives add to this procedure

the possibility of pre-trial mediation and the possibility for the judge to order - together with the judgment - the drawing up of a plan for the elimination of discrimination, as well as the publication of the judgment in a major newspaper.

In Ireland, a specialised Equality Tribunal has an investigative role in the hearing of complaints. The procedure is informal. Complainants may represent themselves and costs may not be awarded against either party. Hearings are held in private. The option of mediation is provided for in section 78 of the Employment Equality Act 1998-2004. A mediated settlement agreed by the parties becomes legally binding and its terms can be enforced at the Circuit Court.⁶² The Equality Authority may provide assistance in the enforcement procedures. In Poland a so-called 'compensation complaint' has been operating under the Labour Code since 1 January 2004 (Art. 18^{3d}): victims of discrimination are entitled to initiate judicial proceedings and seek compensation. The labour court determines the compensation to be awarded, taking into consideration the type and gravity of the discrimination. This specific remedy was intended to obviate the need to use more general legal remedies, like Art. 415 Civil Code (general compensation clause), however, their use is not excluded.

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

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

⁶² Section 91(2), Employment Equality Act 1998-2004.

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

Basic adjustments to proceedings and court buildings to accommodate the needs of disabled complainants are often lacking and can deter disabled complainants. In the Netherlands there are no specific rules requiring courts or the equality body to be accessible. Physical access to courts and other public buildings is not guaranteed in Slovakia or Slovenia. Access to public buildings is not always guaranteed in practice in Hungary or Portugal despite legal requirements for this. While required to be made available in Lithuania and Portugal, the provision of information in Braille or sign language is not mandatory in the Czech Republic, Malta, Slovakia or Slovenia. In Ireland, sign language interpretation in the court system is required in the context of criminal actions, but there is no corresponding provision in respect of civil actions. In Estonia and Hungary sign language is available in the courts but Braille is rare. A further barrier in Estonia is that in practice courts usually reject complaints in Russian, in spite of the claimants' right to interpretation in court. In Cyprus legal documents are not made available in Braille in the courts. No countries mention specific procedural rules for individuals with learning disabilities. The French Law on Disability creates a structure which centralises all administrative procedures to enforce the rights of disabled people, for instance a claim referee will transmit the disabled person's claim to the competent authority or jurisdiction.

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

B. Legal standing and associations

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

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

The Greek anti-discrimination law permits legal entities with a legitimate interest in ensuring the principle of equal treatment is applied to represent persons before any court or administrative authority, as long as they have that person's written consent (Article 13 para. 3, Law 3304/2005). The organisation must act before the court through an authorised lawyer. In Ireland, an individual or body may be authorised by an individual complainant to represent them before the Equality Tribunal or Labour Court (Article 77(11) Employment Equality Act 1998-2004). In Estonia in conciliation proceedings at the Office of Legal Chancellor, a person who has a legitimate interest in ensuring compliance with the equal treatment guarantee may also act as a representative (Article 23 (2) of the Law on the Legal Chancellor). Representation of victims by legal entities (such as NGOs) is also provided for in the Slovakian Anti-discrimination Act. The legal entity has to be given the authority to do so under a separate law (e.g. as the National Centre for Human Rights has), or has to deal with discrimination. In Germany under their General Law on Equal Treatment anti-discrimination associations are entitled to support claimants in court proceedings, provided that they fulfill certain criteria (such as having at least 75 members) if there is no mandatory representation through advocates. In Luxembourg, under their general discrimination law from November 2006, for associations to assist a victim of discrimination before the courts they must be recognised by the Ministry of Justice as being nationally representative in the field of anti-discrimination and have legally existed for 5 years.

Few States allow associations to engage in proceedings 'on behalf of' victims of discrimination. The Spanish Law 62/2003 transposing the Directives (Article 31) provides that in cases outside employment, "legal entities legally authorised to defend legitimate collective rights and interests may engage on behalf of the complainant, with his or her approval, in any judicial procedure in order to make effective the principle of equal treatment based on racial or ethnic origin". There is no corresponding provision for employment-related cases, in which only trade unions and employers' organisations can engage. With consent, trade unions can appear in court in the name and interest of their members. Further, the Constitution entitles any physical or legal person invoking a legitimate interest to be party to proceedings relating to the violation of fundamental rights and freedoms, and entitles legal entities with a legitimate interest to engage in administrative procedures. In Latvia amendments to the Law on Organisations and Foundations from 2006 extended the power to bring a case on behalf of a victim (with their consent) before state institutions and courts to organisations and foundations whose aims are the protection of human rights and individual rights. Prior to this only the National Human Rights Office (soon the Ombudsman), trade unions (on behalf of their members) and voluntary organisations within the sphere of the aims and tasks of that organisation, had this right.

In Poland general rules under the Code of Civil Procedure allow non-profit social organisations to bring a claim on behalf of individuals or join such proceedings in labour law and administrative proceedings. They can also act as *amicus curiae* and present their opinion to the court.⁶³ The Irish Equality Authority was granted the right to intervene in a case before the High Court as '*amicus curiae*' in order to give evidence in relation to the Racial Equality Directive. Following a legal challenge, this right was recently upheld by the Irish Supreme Court. The Hungarian Equal Treatment Act allows 'social and interest representation organisations' as well as the Equal Treatment Authority to engage on behalf of the victim in proceedings initiated due to the alleged infringement of the principle of equal treatment and to engage in administrative procedures. Furthermore, social and interest representation organisations, the Equal Treatment Authority and the Public Prosecutor can bring *actio popularis* claims, provided that the violation of the principle of equal treatment was based on a characteristic that is an essential feature of the individual, and the violation affects a larger group of persons that cannot be determined accurately. Beyond this possibility, class actions by associations engaging in legal proceedings on behalf a group of persons are not permitted in most Member States with the exception of Slovakia and Austria in respect of the Austrian National Council of Disabled Persons (an NGO) which has a limited ability to file a class action on behalf of an unidentifiable group of affected persons.

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

⁶³ Article 63 Code of Civil Procedure.

The Hungarian 'social and interest representation organisations' referred to above include any social organisation or foundation whose objectives, set out in its articles of association or statutes, include the promotion of equal social opportunities of disadvantaged groups or the protection of human rights. In respect of a particular national and ethnic minority, the minority self-government is included, and in respect of matters related to employees' material, social and cultural situation and living and working conditions, trade unions (Article 3(f) Equal Treatment Act). In Belgium, the Centre for Equal Opportunities and Opposition to Racism, entities of public utility, associations which have had legal personality for at least five years⁶⁴) and state as their objective the defence of human rights or the fight against discrimination and workers' and employers' organisations may engage in discrimination proceedings. Where there is an identifiable victim, that victim's consent is required.

In Italy in cases of discrimination on the grounds of race and ethnicity, associations and bodies active in the fight against discrimination that are included in a list approved by a joint-decree of the Ministries of Labour/Welfare and Equal Opportunities can engage in proceedings in support or on behalf of complainants.⁶⁵ Such organisations are listed on the basis of criteria set out in the joint-decree which include the necessity of being established for one year and promotion of equal treatment and combating discrimination being their only or primary aim. In contrast, for the grounds religion or belief, age, disability and sexual orientation, only trade unions can engage in proceedings. Similarly, Portuguese associations cannot intervene in administrative and judicial proceedings in employment discrimination cases, though in civil and criminal cases involving racial or ethnic origin discrimination, Law 18/2004 provides that "associations whose objective is the defence of non-discrimination based on racial or ethnic origin have the right to engage in judicial procedures on behalf or in support of the interested persons, with their approval" (Article 5).

A different model is found in Austria. Whereas anyone can represent alleged victims of discrimination in the informal proceedings before the Equal Treatment Commission, for court proceedings only one statutory organisation, the Litigation Association of NGOs against Discrimination, has been given third party intervention rights in the courts on behalf of the complainant, with his or her consent (§62 Equal Treatment Act). All specialised NGOs can join this Association, but those not in it are not granted any special procedural rights. If they want to intervene therefore they will have to prove their legal interest in the case. The rights are relatively weak, as they do not allow the Association to bear the costs and risks of a case; these must remain with the complainant. For disability, the NGO the Austrian National Council of Disabled Persons has been given a similar right of intervention in court cases and a limited ability to file a class action on behalf of an unidentifiable group of affected persons.

⁶⁴ This has been reduced to three under the new legislative package. See footnote 3.

⁶⁵ Joint-Decree of the Ministries of Labour, Social Affairs and of Equal Opportunities of 16 December 2005, no.215 (Institution of the list of associations having standing to litigate in support or on behalf of victims of discrimination based on racial or ethnic grounds). Published in Gazzetta Ufficiale serie generale n. 9, on 12 January 2006.

C. Burden of Proof

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

Several Member States have failed to transpose the burden of proof provision in line with the Directives. The provision on the burden of proof in Austrian federal legislation, while lowering the burden, is not considered to satisfactorily comply with the Directives, despite a recent amendment which has rendered the provision more compliant. In Latvia, Poland and Estonia the burden of proof only shifts in employment cases. Lithuania has no specific provisions for shifting the burden of proof in cases of discrimination prohibited by the Directives. In Estonia there is concern that the wording of the burden of proof provision is weaker than the Directives, as it sets down that once the burden of proof has shifted, employers must merely explain the reasons for their conduct or decision. The draft law on Equal Treatment foresees provisions concerning the sharing of the burden of proof.

National case law is starting to reveal a varied approach to what may be taken to constitute 'facts from which it may be presumed that there has been direct or indirect discrimination'. The meaning of this phrase is one of several questions on the burden of proof pending before the European Court of Justice in the Case of C-54/07 *Centrum voor gelijkheid van kansen en voor racismebestrijding v NV Firma Feryn* OJ C82/21.

D. Victimisation

Member States must ensure individuals are protected from any adverse treatment or adverse consequences as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment (Article 9 Racial Equality Directive; Article 11 Employment Equality Directive). Besides the failure to transpose the provision as in Estonia and Lithuania, there are two common inconsistencies with this principle in the Member States. Firstly, in a number of states, protection is restricted to employment situations and thereby fails to protect against victimisation in the areas outside employment protected by the Racial Equality Directives (Belgium⁶⁶,

⁶⁶ This will be rectified by the enactment of the legislative package. See footnote 3.

France, Czech Republic, Malta, Latvia, Poland, Portugal and Spain, Luxembourg). Secondly, some states have restricted the protection to the person who made the complaint or initiated proceedings and omitted to protect others who could be adversely treated, e.g. witnesses. This fails to take into account the wording of the Racial Equality Directive, which refers to protection of individuals, and that of the Employment Equality Directive which refers to protection of employees i.e. not just the person who has made the complaint. Belgian, Polish and Portuguese law only protects those 'employees' who have filed a complaint of discrimination or brought legal action. This is also currently the situation in the Czech Republic. The Danish law is unclear but it would seem only to extend to the complainant and be limited to a right to receive compensation from the courts. The extent of the protection of the Italian provision is similarly unclear and appears only as an element to be taken into consideration in an assessment of the amount of damages. Both provisions belie the preventative nature of the victimisation provision in the Directives.

In the UK, it is pointed out that the perpetrator of the victimisation does not need to have been involved in the initial complaint, for example an employer who refuses to employ a person because he or she had complained of discrimination or assisted a victim of discrimination in a previous job would still be liable for victimisation. Difficulties with the UK victimisation provision are however that the definition of victimisation requires the complainant to show less favourable treatment than a real or hypothetical comparator, but the Directives do not require this. Case law has demonstrated how difficult it is to find an appropriate comparator.⁶⁷ Furthermore, protection against victimisation in the UK is retrospective only: the law does not require preventative measures as are implicitly required by the EC Directives. In contrast, Slovenian protection against victimisation is proactive: upon finding discrimination in the original case, the Advocate of the principle of equality shall order in writing the corporate body or other body in law which is alleged to have discriminated to apply appropriate measures to protect the discriminated person from victimisation or adverse consequences as a result of the complaint. In the event an alleged offender does not act in accordance with the order of the Advocate, the inspector has the duty to prescribe appropriate measures that protect the person from victimisation.

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

⁶⁷ See, for example, *Aziz –v- Trinity Taxis* [1989] QB 463 and *Chief Constable of the West Yorkshire Police –v- Khan* [2001] IRLR 830.

E. Sanctions and remedies⁶⁸

Infringements of anti-discrimination laws must be met with effective, proportionate and dissuasive sanctions, which may include compensation being paid to the victim (Article 15 Racial Equality Directive, Article 17 Employment Equality Directive). The concept of effective, proportionate and dissuasive remedies was first developed in the European Court of Justice's case law concerning sex discrimination. Due to the parallels of EC sex discrimination law with the Racial Equality and Employment Equality Directives, this case law is relevant for the latter two Directives. In any case, the meaning of that concept must be determined in each concrete case in the light of the individual circumstances. Only few experts (only Italy and Finland) assess the sanctions in their country be effective, proportionate and dissuasive (in the case of Finland this is due to the range of sanctions available). In Luxembourg the penal sanctions which currently exist are not available over the entire scope of the Directives.

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

As a whole, no single enforcement system appears to be truly encompassing. Essentially, they are all based on an individualistic and remedial – rather than a preventive – approach. Irish law provides for a broad range of remedies, including compensation awards, re-instatement and re-engagement, as well as for orders requiring employers to take specific courses of action. There is case law concerning the following of orders in particular: the creation of an equal opportunities policy; reviewing recruitment procedures; reviewing sexual harassment procedures; formal training of interview boards; review of customer service practices;

⁶⁸ A Thematic Report on this theme written by the European Network of Legal Experts in the Non-discrimination Field provides a more detailed analysis, cf. Thematic study by Christa Tobler: "Remedies and Sanctions in EC Non-discrimination Law, Effective, Proportionate and Dissuasive Sanctions and Remedies, with particular reference to Upper Limits on Compensation to Victims of Discrimination". Some of the findings of this study are reproduced in this section.

and equality training for staff. In Spain a bill is going through parliament which will introduce sanctions for discrimination on the grounds of disability in the employment sector. The bill also makes non-compliance with positive action measures required by law an administrative offence punishable by fines ranging from 301 euros to 1 million euros, depending on level of seriousness. Interestingly, criteria taken into account in deciding the level of the fine includes company turnover. In the three discrimination cases decided in Latvia in 2005, in awarding damages the courts specifically expressed the need for the sanction to fulfil the preventative function.

In some Member States the specialised body is empowered to issue sanctions in cases in which they have found discrimination. The Cyprus Commissioner for Administration for example, can impose limited fines including fines for non-compliance with its recommendations within the specified time (subject to appeal to the Supreme Court of Cyprus). Furthermore, it can issue orders, published in the Official Gazette for the elimination within a specified time limit and in a specified way of the situation which directly produced the discrimination. The Commissioner's Reports can be used for the purposes of obtaining damages in a regional court or an employment tribunal. In Great Britain the Commission for Racial Equality and its counterpart in Northern Ireland are able to use their powers of formal investigation to investigate organisations they believe are discriminating and, where they are satisfied that unlawful acts have been committed, they can serve a binding non-discrimination notice requiring the organisation to stop discriminating and to take action by specified dates to prevent discrimination from recurring. They can apply to the county/ sheriff court for an injunction (Race Relations Act s.62, Race Relations Order (Amendment) Regulations (NI) 2003 Article 59) either based on persistent discrimination after a finding of unlawful discrimination or breach of non-discrimination notice.⁶⁹ However, it is thought that no such injunctions have ever been issued.

Interesting administrative remedies are found in Portugal. Besides administrative fines, available in all cases of discrimination are: publication of the decision; censure of the perpetrators of discriminatory practices; confiscation of property; prohibition of the exercise of a profession or activity which involves a public capacity or depends on authorisation or official approval by the public authorities; removal of the right to participate in trade fairs; removal of the right to participate in public markets; prohibition of access to their establishments; suspension of licences and other authorisations; removal of the right to the benefits granted by public bodies or services.

For certain cases, the European Court of Justice's case law contains specific indications regarding the Community law requirements in relation to remedies. Thus, in the case of discriminatory dismissal, the remedy (or remedies) granted must in any case include either reinstatement or compensation. Further, where compensation is chosen as a remedy it must fully make good the damage. Upper limits are not acceptable, except for situations where the damage was not only caused through discrimination. Upper limits for pecuniary damages seem to apply under the laws of Estonia (six months salary in the case of discriminatory termination of an

⁶⁹ The new Commission for Equality and Human Rights will also have this power.

employment contract where the victim of discrimination waived reinstatement, although the draft law on Equal Treatment foresees an amendment to this), Hungary (twelve months average earnings, in addition to reinstatement in the case of discriminatory dismissal), Ireland (in dismissal cases, a maximum of two years salary and 6,348.69 euro under the Equal Status Act) and Sweden (32 months' wages in cases of dismissal after 10 years of employment; 48 months if the victim of discrimination is aged 60 years or older). In Finland, there appears to be an informal upper limit (15,000 euro; this limit can be exceeded for special reasons). Statutory upper limits on compensation for non-pecuniary damages seem to apply in Malta (200 Liri, which is equivalent to 465 euro). The Greek anti-discrimination law does not provide for compensation, only for fines which are payable to the state in some circumstances. Damages may be awardable under the Civil Code. There appear to be no limits either in relation to pecuniary or non-pecuniary damages in the national laws of the Czech Republic, Denmark, Italy, Luxembourg, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain and the UK. In Latvia there is no maximum amount for damages under the civil law, however the Law on Reparation of Damages caused by the State Administrative Institutions sets maximum amounts of non-pecuniary damages for personal harm at 5,000 Lats (around 8,000 euros), or 7000 Lats (around 10,000 euros) in cases of grave personal harm, and 20,000 Lats (around 24,000 euros) if harm has been caused to life or grave harm has been caused to health. The maximum amount of damages for moral harm is set at 3000 Lats (around 4,800 euros) or 5,000 Lats (around 8,000 euros) in cases of grave moral harm and 20,000 Lats (around 24,000 euros) if harm has been caused to life or grave harm has been caused to health. It is unclear as yet whether in cases of discrimination the courts would award damages for both personal harm and moral harm. The definitions of personal harm and moral harm permit the cases of discrimination to come under both, and the law permits applications for several kinds of damages. Finally, Austrian law provides for an upper limit of 500 euro in cases of non-recruitment or non-promotion if the employer proves that the victim would not have been recruited or promoted even in the absence of discrimination. Of the countries where limits do exist, Ireland is particularly interesting because there are no comparable statutory limits on compensation for discrimination on grounds of sex. In Poland there is a minimum level of compensation which is linked to the minimum wage.

In the UK in 2004 the average compensation award in disability discrimination cases was £28,889 (42,899 euros) and £13,720 (20,373 euros) for race discrimination cases. In France legal practice is still very conservative in calculating pecuniary loss and amounts awarded remain rather low. This is also the case for compensation awards in Ireland where the Equality Authority officers have stated that they feel constrained by the maximum level of compensation they can award. In Ireland the average award in employment cases was 12,798 euros and in goods and services cases the average award was 594 euros for the first nine months of 2005 in cases heard before the Equality Tribunal. In Sweden damages for violations of non-discrimination legislation range from between 4,450 to 11,110 euros, depending on the circumstances. In Slovakia the financial compensation awarded shows an unstable and varying approach. Dutch courts are generally reluctant to grant damages for non-pecuniary damages. In Hungary in a number of initial cases concerning discrimination in access to services, the amount of compensation was consistently around 400 euros. This is double the monthly minimum wage, so not very dissuasive. Recently however, average amounts have risen with discrimination based on racial or ethnic origin being sanctioned with non-pecuniary damages of around 2,000 euros in recent cases. Punitive damages do not exist, but a so-called 'fine to be used for public purposes' may be imposed by the court if the

amount of the damages that can be imposed is insufficient to mitigate the gravity of the actionable conduct. This fine is however payable to the state and not the victim.

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

In some Member States such as Cyprus there are specific sanctions to tackle the issue of structural discrimination, for instance the equality body can recommend school segregation plans. The body can also issue recommendations to the person or group found guilty of discriminatory behaviour as to alternative conduct, abolition or substitution of the provision, term, criterion or practice and so far all investigations have led to recommendations, as opposed to binding decisions enforceable in court. In Ireland the Equality Tribunal can order that a course of action be taken and in the Netherlands, the Equal Treatment Commission may seek a court ruling that conduct contrary to equal treatment legislation is unlawful and request that the conduct be prohibited or obtain an order that the consequences of such conduct be rectified e.g. a court order to make a de-segregation plan for a school. However it has never used this power.



chapter 8

Equal Treatment Bodies

By now most countries have designated a specialised body for the promotion of equal treatment irrespective of racial or ethnic origin, as required by Article 13 of the Racial Equality Directive. An exception is the Czech Republic. However, in Luxembourg, although the general discrimination law of 28 November 2006 called for the establishment of a Centre for the Equality of Treatment, it is not yet in operation and in Spain, the Council for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin, although established by the Law 62/2003 transposing the Directives, it is not yet operative as its make-up and functions still have to be regulated by a royal decree. In Poland the Plenipotentiary for the Equal Status of Women and Men whose mandate was extended in 2002 to counter racial and ethnic discrimination was abolished in 2005 and its competence was attributed to the Ministry of Labour and Social Affairs (the Commissioner of Citizens' Rights remains relevant.) Member States which set up completely new bodies are Denmark,⁷⁰ France,⁷¹ Germany, Greece,⁷² Hungary,⁷³ Italy⁷⁴ and Slovenia.⁷⁵ Bodies that already existed but which have been designated the Article 13 body are the Cypriot Ombudsman, the Estonian Legal Chancellor, the Latvian National Human Rights Office,⁷⁶ the Lithuanian Equal Opportunities Ombudsman, the Maltese Equality Commission and the Slovak National Centre for Human Rights. In some Member States the Article 13 functions are fulfilled by, or shared between, a few organisations (e.g. Greece).

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

⁷⁰ Complaints Committee for Ethnic equality in the Danish Centre for Human Rights. A bill is currently before the Danish Parliament which will abolish the Complaints Committee and establish a new Common Complaints Board for Equal Treatment which will deal with several grounds including all of those under the Directives.

⁷¹ High Authority against Discrimination and for Equality (HALDE).

⁷² Equal Treatment Committee and Equal Treatment Service, who will share the task of promoting the principle of equal treatment with the Ombudsperson, the Work Inspectorate and the Economic and Social Committee.

⁷³ Equal Treatment Authority.

⁷⁴ National Office against Racial Discrimination.

⁷⁵ Advocate for the Principle of Equality and Council for the Implementation of the Principle of Equal Treatment.

⁷⁶ As a result of a law entering into force on 1.1.2007, The National Human Rights Office is being re-organised into an Ombudsman which has increased competences.

discrimination on the grounds of race, religious belief or political opinion, sex, sexual orientation, married status, disability and age, and in Great Britain the existing Commission for Racial Equality, Disability Rights Commission and Equal Opportunities Commission will be replaced by a Commission for Equality and Human Rights, operational from October 2007. Those with the mandate only to deal with racial and ethnic origin discrimination are the Danish Complaints Committee (established within the Danish Institute for Human Rights),⁷⁷ the Finnish Minorities' Ombudsman, the Italian National Office against Racial Discrimination, the Portuguese High Commissioner for Immigration and Ethnic Minorities and the Spanish Council for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. The Swedish Ombudsman against Ethnic Discrimination deals with ethnic origin and religion, but there are separate Ombudsmen for gender, disability and sexual orientation respectively.

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

A number of specialised bodies – e.g. those in Austria, Cyprus, France, Hungary, Ireland, Lithuania and Sweden – can investigate complaints of discrimination and usually can force compliance with their investigations by all persons involved. In France, the High Authority may conclude an investigation by issuing a sworn statement returning a finding of discrimination which can only be over-turned with substantial evidence before the courts. The Hungarian Equal Treatment Authority can apply sanctions on the basis of an investigation. In Ireland, the Equality Authority may serve a 'non-discrimination notice' following an investigation. This notice may set out the conduct that gave rise to the notice and what steps should be taken in order to prevent further discrimination. It will be a criminal offence not to comply with a notice for a period of 5 years after its issue. The Equality Authority is also empowered to seek an injunction from the courts during this 5 year period to restrain any further contravention or failure to comply with a notice.

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

⁷⁷ Although see new plans for a multi-ground body above at footnote 64.

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

- The Belgian Centre for Equal Opportunities and Opposition to Racism has the power to take legal action in the name of the public interest. Where the alleged violation has an identifiable victim (who can be a natural or legal person),⁷⁸ the power of the Centre to act is conditional upon the consent of the victim (Art. 31, *in fine*, of the Law).
- The French High Authority has the role of 'auxiliary of Justice', whereby criminal, civil and administrative courts may seek its observations in cases under adjudication. In addition, the High Authority will have the power to seek permission to submit its observations in criminal matters.
- Employers can ask the Dutch Equal Treatment Commission for an opinion on whether their employment practice contravenes non-discrimination law.
- The Hungarian Equal Treatment Authority can take legal action in the public interest with a view to protecting the rights of persons and groups whose rights have been violated.
- The Irish Equality Authority enjoys legal standing to bring complaints to the Equality Tribunal relating to patterns of discrimination, discriminatory advertising or the contents of a collective agreement. The Equality Authority may also carry out equality reviews, i.e. an audit of the level of equality that exists in a particular business or industry. Based on the results of this audit, an equality plan will be developed. The plan will consist of a programme of actions to be undertaken in employment or business to further the promotion of equality of opportunity. Where there are more than 50 employees, the Authority may instigate the review itself and prepare an action plan. If there is a failure to implement the action plan, the Equality Authority may issue a notice detailing what steps are required for its implementation. Non-compliance with this notice may result in an order from either the High Court or Circuit Court requiring compliance.
- In the case of an investigation of a complaint which results in a finding of direct intentional discrimination which constitutes a criminal offence, the French High Authority can propose a "*transaction pénale*" - a kind of negotiated criminal sanction – to a perpetrator which he can either accept or reject. This could be a fine or publication (for instance in a press release). If the proposed negotiated criminal sanction is rejected or, having been accepted there is a subsequent failure to comply with it, the Authority can initiate a criminal prosecution, in place of the public prosecutor, before the criminal court.

Finally, some concerns in relation to particular countries may be illustrated. In Denmark it is maintained that transposition of Article 13 of the Racial Equality Directive violated the non-regression principle in Article 6(2) and Recital 25 of the Directive, because the resources of the body and the assistance available to victims of discrimination are less after transposition than before. It is feared that the Estonian Legal Chancellor will have difficulties in dealing with discrimination in the fields other than employment, since as yet there are no detailed legal provisions to tackle these issues. There is concern that some specialised bodies are placed too

⁷⁸ In some cases, there will be no victim, but the Law is nevertheless violated: this would be the case, for instance, if an employer publicly boasts that thanks to the 'selective' procedures he has introduced in the recruitment process, no homosexual will ever be hired – this should be considered an offence as defined under Article 6(1) of the Law, and the associations or organisations listed in Article 31 will be considered to have an interest in filing a claim to obtain that a prosecution is launched.

close to government, thereby risking the independence of their work. For instance, the Italian Office is located within the Ministry for Equal Opportunities, the Slovenian Advocate of the Principle of Equal Treatment in Slovenia also works in the premises of the government and under the political responsibility of the Minister for Equal Opportunities and the future Spanish Council for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin will be attached to the Ministry of Labour and Social Affairs, its make-up fundamentally of a governmental nature. Moreover, the provision listing its functions does not include the word 'independent.'



chapter 9

Implementation and Compliance

A. Dissemination of Information and Social and Civil Dialogue

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

Positive information dissemination activities include ministerial publications providing basic information on the principle of equal treatment and governmental support for training judges and lawyers on the new laws, as in Austria, and discussion of anti-discrimination rights in the mass media and access to legislation and proposals free of charge via the internet, as in Lithuania. In Hungary a National Network for Equal Opportunities has an office in each county and in Budapest and organises research, conferences, preparation and dissemination of information materials and the maintaining of contacts with and the establishing of networks of civil organisations.

Information should be disseminated in a way that is accessible to all disabled people and in languages understood by minorities in that country. In Finland for instance a leaflet on the Non-Discrimination Act has been produced by the Ministry of Labour and the SEIS-project,⁷⁹ and made available in Braille and both in print and on Internet in Finnish, Swedish, English, Sami, Russian, Arabic and Spanish. French television campaigns and websites are adapted for visually and hearing impaired. In contrast, information provision does not seem to cater for disabled persons' needs in Austria, the Czech Republic, Hungary, Latvia, Portugal, Slovakia and to a large extent in Poland. Thus far in Cyprus, information has not been produced in languages other than Greek.

Most Member States can point to the mandate of their specialised body for awareness-raising activities, for instance Denmark, Estonia, France, Ireland, Sweden and the UK. Where the body only has competences relating to race and ethnic origin, however, other arrangements must be made for the grounds religion and belief, age, disability and sexual orientation. This is a shortcoming in Italy, where the dissemination of information has started with the activities of the National Office against Racial Discrimination, but no particular measures are foreseen for the other grounds.

⁷⁹ "STOP – Finland Forward without Discrimination", funded by the Community Action Programme to Combat Discrimination.

A small number of Member States have written into their law an obligation on employers to inform employees about discrimination laws, including Malta, Poland and Portugal. Malta extends this duty to 'any person or organisation to whom these regulations apply,' who should bring the laws to the attention of the organisation's members or to any other persons who may be affected by the organisation's actions.⁸⁰ In Portugal, the failure to provide information about workers equality rights amounts to a 'light offence.' Implementation of the obligation on employers in Poland will be monitored by the National Labour Inspectorate.

Finally, European Union campaigns and project funding must be acknowledged for their role in many Member States in raising awareness. As a result of designation of 2007 as the European Year of Equal Opportunities for All, various activities have been organised on a national level in each Member State which are aimed at awareness raising, and promoting a debate on the benefits of diversity for European societies.

Some Member States consulted NGOs and the social partners in their efforts to transpose the Directives. In Hungary, the legislative concept paper and draft were sent to NGOs and put on the Ministry of Justice website with a call for comments, and in Ireland the Department of Justice, Equality and Law Reform produced a discussion document on the employment issues that arose from the Directives and invited submissions from other Government Departments, the social partners, the Equality Tribunal and the Equality Authority. In the UK well over 10,000 copies of a first consultation document were sent to a diverse range of organisations. This contrasts starkly with Spain, where transposition has been severely criticised for being hidden, lacking consultation and parliamentary debate, the absence of a government statement and by-passing of the Council of State and Economic and Social Council. A different problem emerged in Denmark and Finland: a lack of public debate was attributable to the fact that the actors who would normally generate public discussion participated in the Committees charged with considering implementation of the Directives and felt they could not discuss issues until that (lengthy) process was over.

Few Member States have put in place permanent structures specifically for dialogue with civil society and the social partners on equality issues. At local level in France the Commission for the promotion of equality (COPEC) brings together all local actors under the authority of the representative of the state in the area (département) to generate co-operation and dialogue. The Law on Disability from 2005 foresaw the creation of a Departmental Commission for the Rights and the Autonomy of the Disabled which will be competent for all decisions relating to the orientation of the disabled person. Its members are representatives of the public service, NGOs, trade unions and social partners and at least 30% are representatives of the disabled. Its organisation will be set out by decree (still to be adopted). The same law creates an obligation on the social partners to hold annual negotiations which concern measures necessary for the professional integration of the disabled. Slovenian law requires the government and competent ministries to co-operate with NGOs that are active in the field of equal treatment and with the social partners (Article 8 Act Implementing the Principle of Equal Treatment).

⁸⁰ Regulation 12 of Legal Notice 461 of 2004.

In Finland there is a good record of co-operation with NGOs and social partners through advisory bodies on youth issues, disability, rehabilitation and Roma affairs. A new consultative body on minority issues has been set up which will develop a means of co-operation between government and NGOs in matters relating to supervision and monitoring of the realisation of equal treatment. The body is made up of ministries, association of municipalities, social partners and 5 NGOs. In Lithuania the government maintains dialogue with national minorities' NGOs through regular meetings held in the Council of National Communities, part of the Government Department of National Minorities and Lithuanians Living Abroad. In the Netherlands, the Ministry of Social Affairs and Labour set up the (informal) network 'Equal Treatment' in 2003, comprising NGOs, the social partners and the relevant Ministries. The network convenes twice a year in order to exchange information on equal treatment. In addition, the Ministry of Social Affairs operates an 'Article 13 Project', which delivers training to small and medium-sized businesses, provides information in professional journals, and conducts interviews with large companies on equal treatment. In Spain a Strategic Plan for Citizenship and Integration designed to promote the integration of immigrants was adopted in February 2007. One of the key points of the Plan is equal treatment and combating all forms of discrimination. The Plan will be realised through a number of action programmes, through collaboration between various levels of government and NGOs.

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

As with information dissemination, it is often the role of the specialised equality bodies to generate dialogue with the social partners and civil society. This is the case for the Belgian Centre for Equal Opportunities and Opposition to Racism, the Estonian Legal Chancellor, the Irish Equality Authority, the Italian National Office against Racial Discrimination (however for racial and ethnic origin only).

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

B. Ensuring compliance

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

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

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

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

In Cyprus, the Law on Equal Treatment provides for the repeal of any contrary provisions, even though under the doctrine of implied repeal these would not normally prevail over later legislation in the event of a conflict. It seems a recommendation of the Commissioner for Administration (Ombudsman and Specialised Body) following an investigation and finding of a discriminatory law or practice, can trigger the repeal of discriminatory laws, although it has not as yet done so. Prior to transposition of the Directives in the UK, the Race Relations Act, Race Relations Order and Fair Employment and Treatment Order stated that the prohibition of discrimination did not apply to acts done in compliance with other legislation passed before or after these measures. The 2003 regulations have deleted that exception in these laws in line with Article 14 Racial Equality Directive and Article 16 Employment Equality Directive, but have not repealed any existing conflicting legislation. The Equality Act, adopted in 2006 retains this exception. An exception for acts done under statutory authority remains part of the Disability Discrimination Act. In Ireland, there is concern that the Equal Status Act 2000-2004 remains subordinate to other legislative enactments, because section 14(a)(i) provides that nothing in that Act will prohibit any action taken under any enactment.

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

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

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

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

Under the Slovakian Anti-discrimination Act, employers and relevant trade unions had until 1 January 2005 to bring the provisions of collective agreements into compliance with the principle of equal treatment. Employers have the same obligation with regard to provisions in their internal rules. This means that after January 2005 all collective agreements and internal rules of employment contrary to the Anti-discrimination Act cannot be legally applied. Furthermore, normative acts registered by a state agency (by-laws of associations, by-laws of independent professions and workers' and employers' organisations, by-laws of profit-making organisations, etc.) must not be contrary to the principle of equality. If the by-laws submitted for registration are in breach of this principle, the registration body must reject them. Finally, in Sweden the law does not expressly provide that discriminatory internal rules of an employer may be amended or declared void.



chapter 10

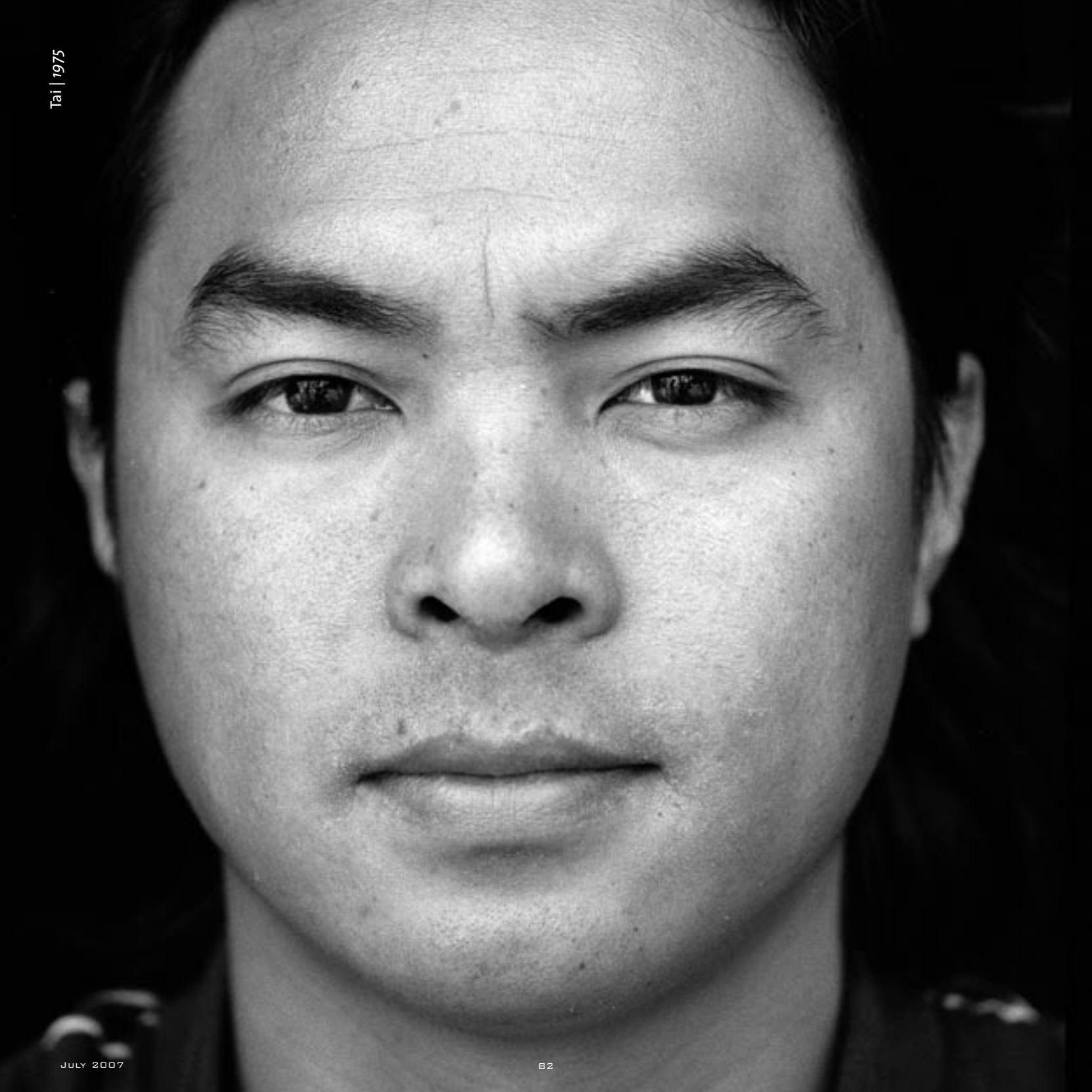
Conclusion

The transposition of the Racial Equality and Employment Equality Directives has immensely enhanced provision of legal protection against discrimination on the grounds of racial and ethnic origin, religion and belief, age, disability and sexual orientation across the European Union. It is encouraging how much additional protection national law provides compared to EC law in certain instances and to discern that levelling up of protection across grounds has continued in a few countries (UK). However, this third comparative overview has revealed that although some progress has been made in the last year and relatively recently a few loop-holes have been plugged – Belgium and Malta having recently enacted legislation for this purpose – , a significant number of apparent shortcomings in Member States' legislation still remain and it is now imperative that they be resolved. Anti-discrimination Bills are now finally pending in Estonia, Slovakia and Lithuania which present at least the possibility that the directives will be fully transposed. However, of concern is that there are some signs of regression, most notably the abolition of the specialised equality body in Poland and the situation regarding sexual orientation discrimination in that country, as well as the delays in the adoption in the Czech Republic of a general anti-discrimination legislation which would cover all fields outside the employment sector. Ultimately it is up to the courts to decide whether national law is inconsistent with European law, and case-law at national level is now slowly starting to emerge, although the number of cases in some countries remains very low (see below). There has been a large increase in the number of preliminary references lodged at the European Court of Justice on the grounds of disability and age, but it remains to be seen how these rulings will be applied at the national level. Given the ambiguities in some of the Directives' texts, and therefore also many national provisions, judicial interpretation is vital to clarify important boundaries.

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

chapter 11

Tables



Explanatory Note to Tables

The information in these tables is based on that which appears in the updated executive summaries and country reports for the network of Legal Experts in the Non-discrimination Field, dated 7 January 2007 and the Thematic Report 'Catalysts for Change? Equality Bodies according to Directive 2000/43/EC' by Professor Rikki Holtmaat (March 2006). The information is a non-exhaustive list which contains only the principle pieces of anti-discrimination legislation in each Member State and does not include references to national Constitutional provisions. Inclusion of the legislation in the tables does not imply that the national legislation is in compliance with Directives 2000/43 and 2000/78.

AUSTRIA	Constitutional provisions	Main Anti-Discrimination Legislation	Grounds covered
AUSTRIA	Art. 7 Federal Constitutional Act (B-VG), Art. 2 Basic Law, Arts. 63, 66 and 67 Treaty of St Germain, Art. 1 of Constitutional law of 3-73 implementing ICERD, ECHR is part of Austrian constitution	Federal-Equal Treatment Act, Federal Law Gazette I Nr. 65/2004	gender, ethnic affiliation, religion, belief, age, and sexual orientation
		Equal Treatment Act, Federal Law Gazette I Nr. 66/2004	gender, ethnic affiliation, religion, belief, age, and sexual orientation
		Law on Equal Treatment Commission and the Office for Equal Treatment, Federal Law Gazette I Nr. 66/2004	gender, ethnic affiliation, religion, belief, age, and sexual orientation
		Equal Status Act for People with Disabilities, Federal Law Gazette I Nr. 82/2005	disability
		(Amendment to) Act on the Employment of People with Disabilities, Federal Law Gazette I Nr. 82/2005	disability
		Federal Disability Act, BGB1 I Nr. 82/2005	disability
		Styrian Equal Treatment Act, Styrian Provincial Law Gazette Nr. 24/2004	gender, race or ethnic origin, religion or belief, disability, disability of a relative, age, sexual orientation
		Viennese Service Order, as amended by Viennese Provincial Law Gazette Nr. 36/2004	gender, race, ethnic origin, religion, belief, disability, age, sexual orientation
		Viennese Anti-Discrimination Act, Viennese Provincial Law Gazette Nr. 35/2004	race, ethnic origin, religion, belief, age, sexual orientation
		Lower Austrian Equal Treatment Act, Lower Austrian Provincial Law Gazette Nr. 69/1997 as amended by Nr. 65/2004	gender, ethnic affiliation, religion or belief, disability, age, sexual orientation
		Carinthian Anti-Discrimination Act, Carinthian Provincial Law Gazette Nr. 63/2004	gender, ethnic affiliation, religion or belief, disability, age, sexual orientation
		Voralbergian Act on Anti-Discrimination	gender, ethnic affiliation, religion, belief, disability age, and sexual orientation
		Upper Austrian Act on Anti-Discrimination	gender, ethnic affiliation, religion, belief, disability age, and sexual orientation
		Burgenland's Anti-Discrimination Act	All grounds of the two directives
		Salzburg Equal Treatment Act Nr. 31/2006	All grounds

BELGIUM ⁸¹	Constitutional provisions	Main Anti-Discrimination Legislation	Grounds covered
	Arts. 10 and 11 and 191 of the Constitution	Law of 30 July 1981 criminalising certain acts inspired by racism or xenophobia, as amended by the Laws of 12 April 1994, of 7 May 1999, and of 20 January 2003	Race, colour, descent, ethnic and national origin
		Law of 25 February 2003 on combating discrimination and amending the Act of 15 February 1993 setting up the Centre for Equal Opportunities and the Fight against Racism	All grounds in the two directives and additional grounds
		Flemish Region/Community: Decree of 8 May 2002 on proportionate participation in the employment market	All grounds of the two directives
		French-speaking Community: Decree of 19 May 2004 on the implementation of the principle of equal treatment	All grounds of the two directives
		Walloon Region: Decree of 27 May 2004 on equal treatment in employment and professional training	All grounds of the two directives
		German-speaking Community: Decree of 17 May 2004 on the guarantee of equal treatment on the labour market	All grounds of the two directives
		Region of Brussels-Capital: Ordinance of 26 June 2003 on the joint management of the labour market in the Region of Brussels-Capital	All grounds of the two directives
		Bill of 26 October 2006 on providing of the modification of Law of 30 July 1981 criminalising certain acts inspired by racism or xenophobia (enacted as Law of 10 May 2007 amending the Law of 30 July 1981 by, <i>inter-alia</i> , including civil provisions)	Race and ethnic origin and other grounds
		Bill of 26 October 2006 combating certain forms of discrimination (enacted as Law of 10 May 2007 combating certain forms of discrimination)	age, sexual orientation, civil status, birth, property (Fr. 'fortune'), religious or philosophical belief, actual or future state of health, disability, physical characteristics, political opinion, language, genetic characteristics and social origin.
		Bill of 26 October 2006 seeking to amend the Code of Civil Procedure (enacted as the Law of 10 May 2007 amending the Code of Civil Procedure)	All grounds

⁸¹ The three bills from October 2006 were adopted in a legislative package approved by a final vote of the Senate on 26 April 2007 and published in the official gazette (*Moniteur belge*) on 31 May 2007. These bills have been considered in the tables in the form they were in on 8 January 2007 (the date of the Belgian Country Report). Although an indication of the title of the laws which the bills became on their adoption has been given, these are for guidance only as any changes between 8 January and the adoption of the laws have not been considered.

CYPRUS	Art 28 of the Constitution	The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004	race, community, language, colour, religion, political or other beliefs, national or ethnic origin, special needs, age and sexual orientation (appointing the Ombudsman as the Equality Body)
		The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004	Racial and ethnic origin (transposing the Race Directive)
		The Equal Treatment in Employment and Occupation Law No. 58 (1)/2004	Racial and ethnic origin religion or belief, age, sexual orientation (transposing the employment Directive)
		Law on Persons with Disabilities (Amendment) No. 57(II)/2004	disability
CZECH REPUBLIC	Art 3.1 of the Charter of Fundamental Rights and Freedoms, (part of the Constitutional order)	Law N° 65/1965 Coll., Labour Code, Sec.1, Para.4 (as amended by Law n°46/2004 Coll)	All grounds in the two directives and additional grounds, except disability
		Law n° 361/2003 Coll. On Service by Members of the Security Services, Sec.4, Para.2	All grounds in the two directives and additional grounds, except disability
		Law n°. 435/2004 Coll., on Employment, Sec. 4., Para. 2	All grounds in the two directives and additional grounds
		Law n°. 221/1999 Coll. On Service by Members of the Armed Forces, Sec.2, Para.3, as amended by Law n° 252/2002 Coll.	All grounds in the two directives and additional grounds, except disability
		Law n°. 218/2002 Coll, on Official Service in State Administration and on Remuneration of these Officials and other Employees	All grounds in the two directives and additional grounds
		School Law No. 561/2004 Coll., Sec. 2, Para. 1, subsection a)	All grounds in the two directives and additional grounds
DENMARK	None	Act No. 960 (2004) Penal Code, section 266 b	Race, colour, national or ethnic origin, religion and sexual orientation
		Act No. 626 (1987) on the prohibition of racial discrimination	Race, colour, national or ethnic origin, religion and sexual orientation
		Act No. 31 (2005) Act on prohibition against discrimination in respect of employment and occupation	Race, colour, national, social or ethnic origin, religion, belief, age, disability, sexual orientation and political opinion
		Act No.374 (2003) Act on the prohibition against unequal treatment due to race and ethnicity	Race and ethnic origin
		Act No. 411 (2002) Act on the institute for international studies and human rights	Race and ethnic origin
		Act No. 1417 of 22 December 2004 on the prohibition of direct and indirect discrimination on the grounds of age and disability	age and disability
		Act No. 240 of 27 March 2006 (allows employers to discrimination youngster under the age of 18, if this is part of a collective agreement)	Age
		Act of 20 December 2006 amending the Labour Market discrimination Act.	Age

ESTONIA ⁸²	Constitutional provisions	Main Anti-Discrimination Legislation	Grounds covered
			All grounds in the two directives and additional grounds
FINLAND	Arts. 9 and 12 Constitution	Law on Amendments to the Law on the Legal Chancellor and Related Laws	All grounds in the two directives and additional grounds, recent amendments only in respect of age
		Law on Amendments to the Law of the Republic of Estonia on Employment Contracts and to the Decision of the Supreme Soviet of the Republic of Estonia "Implementation of the Law of the Republic of Estonia on Employment Contracts" of 22 April 2004	All grounds in the two directives and additional grounds
		Law on Employment Services and Allowances, 1 January 2006	All grounds in the two directives and additional grounds
		Penal Code	ethnic origin, race, colour, sex, language, origin, religion, political opinion, financial or social status, genetic risks
		Non-Discrimination Act, 21/2004	All grounds in the two directives and additional grounds
		Penal Code as amended by Law 578/1995 and Law 302/2004	All grounds in the two directives and additional grounds
		Employment contract Act as amended by Law 23/2004	All grounds in the two directives and additional grounds
	Section 6(1) and (2) Constitution	Civil Servant Act (750/1994)	All grounds in the two directives and additional grounds
		Province of Åland: Act on Prevention of Discrimination, Act on the Discrimination Ombudsman, Provincial Decree on the Discrimination Board	All grounds in the two directives

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In Estonia a draft law is currently before the Estonian Parliament (Bill No. 67) which if adopted would provide a system of protection on all the grounds covered by the Directives (plus colour) with a material scope almost identical to that of Directive 2000/43. This Bill was submitted to the Parliament on 30 May 2007. The Bill considered in this publication and the Estonian country report is however the predecessor to that draft law - Bill 1101 which was wider in scope and which prohibited discrimination on any ground in all areas of social life.

FRANCE	Preamble to the Constitution, Art. 1 of the Constitution	Law on separation of Church and State, 1905	religion
		Law on the press of 1881 (last amended February 2005)	All grounds in the two directives and additional grounds
		Law combating discrimination n°. 2001-1066	All grounds in the two directives and additional grounds
		Law of social modernisation n°2002-73	All grounds in the two directives and additional grounds
		Law no 2004-1486 of 30 December 2004 creating the Specialised Body (HALDE)	All grounds in the two directives and additional grounds
		Law of social cohesion 20 December 2004	race and religion
		Law no 2005-846 of 26 July 2005 habilitating the Government to adopt emergency measures for employment by way of Governmental Decree	age
		Governmental Decree 2005-901 of 2 August 2005 on Access to Employment in the Public Service	age
GERMANY	Arts. 3 and 33, 140, 136 German Basic Law	Law on disability no 2005-102 of 11 February 2005	Disability
		Law on Promoting the Equality of the Disabled	Disability
		Law on Protection against Unfair Dismissal	age and (severe) disability
		Social Code	age and (severe) disability
		Work Constitution Law 1972, amended 2004	religion, origin, sex, sexual identity, age
		Law on the Federal Employee Representation 1974 as amended in 2005	religion, origin, sex (sexual orientation in some state legislation)
		Federal Law on Civil Servants 1999, amended 2005	sex, race, religion, origin
		Framework Law on Civil Servants 1999, amended 2005	sex, race, religion, origin (sexual orientation in some state legislation)
GREECE	Art.4.1, 5.2.a, 5.5, 9A, 16.4, 21.1, 21.1.2, 25.1, 116.2 Constitution 1975/1986/2001	General Law on Equal Treatment of 18 August 2006	All grounds in the two directives and additional grounds
		The Law n. 927/1979, Anti-racist Law against discrimination on the grounds of racial or ethnic origin or religion	racial or ethnic origin and religion
		The Law no. 3304/27.01.2005 Implementation of the Principle of equal treatment regardless of racial or ethnic origin, religion or other beliefs, disability, age or sexual orientation (General Framework)	All grounds in the two directives
		The Law no. 2643/1998 on the compulsory employment of disabled persons and of people of special groups as revised by the Law n. 3144/2003 Social dialogue on the promotion of occupation and social protection	disability
HUNGARY	Art. 70/A Constitution, extended by decision 61/1992 Constitutional Court	Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities, last amended in May 2005	All grounds in the two directives and additional grounds
		Government Decree 362/2004 on the Equal Treatment Authority and the Detailed Provisions of its Proceedings	All grounds in the two directives and additional grounds

	Constitutional provisions	Main Anti-Discrimination Legislation	Grounds covered
IRELAND	Arts. 40.1, 40.3.1, 40.3.2, 44 Constitution	Equality Act 2004 amending the Employment Equality Act 1998 and the Equal Status Act 2000	All grounds in the two directives and additional grounds
		Pensions Act 1990-2004	All grounds in the two directives and additional grounds
		Intoxicating Liquor Act 2003	All grounds in the two directives and additional grounds
		Unfair Dismissals Act 1977 – 1993	Race, colour, sexual orientation, age, membership of the Traveller community
ITALY	Art. 3 Constitution	Legislative Decree No. 215 of 9 July 2003 transposing Directive 2000/43, subsequently amended by Legislative Decree No 256 of 2 August 2004	racial and ethnic origin
		Decree of 11 December 2003 on internal structures and competences of specialised body	racial and ethnic origin
		Joint Decree of the Ministries of Labour/Welfare and Equal Opportunities of 16 December 2005 establishing a register of associations and bodies with standing to litigate discrimination claims	racial and ethnic origin
		Decree No. 286 of 25 July 1998	race and ethnic origin, religion and other grounds
		Legislative Decree No. 216 of 9 July 2003 transposing Directive 2000/78, amended by Legislative Decree no. 256 of 2 August 2004	All grounds in Directive 2000/78
		Act of 25 June 1993, no.205, Attribution of the force of ordinary statute, with modifications, to the government's legislative decree of 26 April 26, no.122 "Urgent measures concerning racial, ethnic and religious discrimination"	race, ethnicity and religion
		Act of 12 March 1999 n.68 Provisions on the right to work of disabled persons	disability
		Framework Law of 5 February 1992, no. 104 on the assistance, social integration and rights of disabled persons	disability
		Act of 20 May 1970, no. 300, Provisions on the protection of the freedom and dignity of workers, freedom of association with trade unions and freedom of trade union activity at the workplace, and work placement	All grounds in the two directives

LATVIA	Art. 91 Constitution	Labour Law, adopted 2001, amended 07.05.2004 and 02.11.2006 (includes civil service and sexual orientation but still exclude self-employment) Law on Social Security 1995, amendments containing the equality guarantee in force from 03.01.2006	an inexhaustive list of grounds an inexhaustive list of grounds: sexual orientation is still not explicitly mentioned among prohibited grounds??
LITHUANIA ⁸³	Art. 29 Constitution	amendments to the Law on the National Human Rights Office entered into force on 13 January 2006	all grounds except age
		Law on Equal Treatment, January 2005	All grounds in the two directives
		Employment Code, June 2002	All grounds in the two directives
		Law amending the Code of Administrative Offences, 2005	All grounds in the two directives
		Law on National Minorities, January 1991	nationality and ethnic origin
		Law on the Social Integration of Disabled, January 1991	disability
LUXEMBOURG	None (Arts. 10bis and 111 Constitution do not contain an explicit non-discrimination clause)	Law on Religious Communities and Associations, October 1995	religion and belief
		Penal code of 19 July 1997	All grounds except age
MALTA	Article 45 of the Constitution	Law of 28 November 2006 (general discrimination law)	All grounds in the two Directives
		Law of 29 November 2006 (public sector law)	
		Employment and Industrial Relations Act 2002	All grounds in the two directives and additional grounds
		Legal Notice 461 of 2004 issued under the Employment and Industrial Relations Act	All grounds in the two directives and additional grounds
		Equal Opportunities (Persons with Disabilities) Act 2000	Disability
NETHERLANDS	Art. 1 Constitution	Equal Treatment of Persons Order, 2007 ⁸⁴	Race and ethnic origin
		General Equal Treatment Act of 1994, amended by EC Implementation Act 2004 and by Law of 15 September 2005 amending the General Treatment Act	All grounds in the two directives and additional grounds
		Act on Equal Treatment on the Ground of Age in Employment of 1 May 2004	Age
		Act on Equal Treatment on the Grounds of Disability and Chronic Disease of 3 April 2003	Disability and chronic disease
		Amendments to the Criminal Code	Disability (a person's physical, psychological or mental disability)

⁸³ A draft law on equal treatment, the purpose of which is to amend the existing Law on Equal Treatment and thereby fully transpose the Directives was registered in the Lithuanian Parliament on 29 June 2007.

⁸⁴ This Order aims to extend the protection against discrimination on grounds of race and ethnic origin to the fields outside employment under Directive 2000/43. The following tables however do not consider the more specific changes brought about by the new order as its provisions were adopted too late for inclusion in the 2007 Maltese country report.

	Constitutional provisions	Main Anti-Discrimination Legislation	Grounds covered
POLAND	Art. 32(1) and (2) Constitution (general). Arts. 19, 25, 27, 33, 35, 72, 76 Constitution (specific categories)	Labour code (last amended 14 November 2003)	All grounds in the two directives and additional grounds
		Act of 20 April 2004 on the Promotion of Employment and the Institutions of Labour Market	All grounds in the two directives and additional grounds
		Council of Ministers Ordinance of 25 June 2002 on Government's Plenipotentiary for Equal Status of Men and Women	All grounds and gender except disability
		Decree of Council of Ministers of 3 November 2005 abolishing the Plenipotentiary	All grounds and gender except disability
PORTUGAL	Arts. 1,13,15,26-1,59,70,71,72 and 74 of the Constitution	Law 18/2004 on Racial and Ethnic Origin Discrimination as amended by Decree Law 86/2005	Race, colour, nationality and ethnic origin
		Decree Law 251/2002 as amended by Decree Law 27/2005 (High Commissariat for Immigration and Ethnic Minorities)	Race and ethnic origin
		Labour Code Law 99/2003	All grounds in the two directives and additional grounds
		Law 35/2004 of 29 July 2004 which regulates Law 99/2003 (Labour Code)	All grounds in the two directives and additional grounds
		Law 38/2004 on Measures for the Rehabilitation and Participation of Persons with Disabilities	Disability
		Decree-law 163/2006 of 8 August 2006 approving the accessibility regime to buildings and public premises	
SLOVAKIA ⁸⁵	Arts. 12, 20, 30, 46 Constitution	Law 46/2006 of 28 August 2006 prohibiting and punishing discrimination based on disability and on the grounds that a person has a pre-existing aggravated risk to their health	
		Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination, amending and supplementing certain other laws	All grounds in the two Directives
		Act No. 308/1993 Coll. on establishing the Slovak National Centre for Human Rights, last amended in 2004 Coll.	All grounds in the two Directives
SLOVENIA ⁸⁶	Arts. 14, 15 and 63 Constitution	Labour Code no. 311/2001 Coll. last amended in 2004	All grounds in the two Directives
		Implementation of the Principle of Equal Treatment Act 2004 (IPETA)	All grounds in the two directives and additional grounds
		Employment Relations Act 2003	All grounds in the two directives and additional grounds
		Vocational Rehabilitation and Employment of Disabled Persons Act 2004	Disability

⁸⁵ During year 2007 preparation work for a significant amendment of the Anti-discrimination Act will start. The guarantor and the coordinator of the process will be the Office of the Deputy Prime Minister for Knowledge Society, European Affairs, Human Rights and Minorities.

⁸⁶ Legislation amending the Implementation of the Principle of Equal Treatment Act 2004 (IPETA) was published in the Slovenian Official Journal on 10 July 2007 and entered into force on 25 July 2007.

SPAIN	Arts. 1.1; 9.2, 10, 13.1, 14, 16, 49 and 53 Constitution	Law 62/2003, of 30 December, of fiscal, administrative and social measures	All grounds in the two Directives
		Legal Decree 5/2000, 4 August 2000 (Law on Infractions and Sanctions of Social Order)	All grounds in the two Directives
		Law 51/2003 of 2 December on Equal Opportunities, Non-discrimination, and Universal Access for Persons with Disability	Disability
		Decree 1865/2004 creating the National Disability Council	Disability
		Law 14/2005 of 1 July 2005	Age
SWEDEN	Chapter 2, Art. 15 Constitution	Prohibition of Discrimination Act (2003:307) amended by Act 2004:1089	All grounds except age
		Equal Treatment of Students at Universities Act (2001:1286) amended by Act 2003:311)	All grounds except age
		Prohibition of Ethnic Discrimination Act, last amended by Act 2003:308	Ethnicity, religion and belief
		Prohibition of Discrimination in Working Life of People with a Disability Act (1999:132) amended by Act 2003:309	Disability
		Act (2006:67) on a Ban against Discrimination and other degrading treatment of children and pupils of 1 April 2006	Sex, Ethnic origin, religion or other belief, sexual orientation and disability
		Act on a Ban against Discrimination in Working Life on Grounds of Sexual Orientation (1999:133) amended by Act 2003:310	Sexual Orientation

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

AUSTRIA	Direct Discrimination	Indirect Discrimination	Harassment	Instruction to discriminate
	All Federal and Provincial laws	Equal Treatment Act and similar wording in most of the provincial acts	Equal treatment Act, Criminal Code, All provincial acts	Federal and Provincial laws except the Lower Austrian Equal Treatment Act
BELGIUM	Law of 30 July 1981, Federal Law of 25 February 2003, amended by Bill of 26 October 2006 on providing of the modification of Law of 30 July 1981 (enacted as Law of 10 May 2007 amending the Law of 30 July 1981 and Bill of 26 October 2006 combating certain forms of discrimination (enacted as Law of 10 May 2007 combating certain forms of discrimination), Flemish Decree, Decrees adopted by the German-speaking Community, the French-speaking Community and the Walloon Region	Law of 30 July 1981, Federal Law of 25 February 2003, amended by Bill of 26 October 2006 on providing of the modification of Law of 30 July 1981 (enacted as Law of 10 May 2007 amending the Law of 30 July 1981 and Bill of 26 October 2006 combating certain forms of discrimination (enacted as Law of 10 May 2007 combating certain forms of discrimination), Flemish Decree, Decrees adopted by the German-speaking Community, the French-speaking Community and the Walloon Region	Law of 30 July 1981, Federal Law of 25 February 2003, amended by Bill of 26 October 2006 on providing of the modification of Law of 30 July 1981 (enacted as Law of 10 May 2007 amending the Law of 30 July 1981 and Bill of 26 October 2006 combating certain forms of discrimination (enacted as Law of 10 May 2007 combating certain forms of discrimination), Flemish Decree, Law of 11 June 2002 on the protection against violence and moral or sexual harassment at work, Penal Code	Law of 30 July 1981, Federal Law of 25 February 2003, amended by Bill of 26 October 2006 on providing of the modification of Law of 30 July 1981 (enacted as Law of 10 May 2007 amending the Law of 30 July 1981 and Bill of 26 October 2006 combating certain forms of discrimination (enacted as Law of 10 May 2007 combating certain forms of discrimination), Flemish Decree, Decrees adopted by the German-speaking Community, the French-speaking Community and the Walloon Region, Penal Code
CYPRUS	Defined in Articles 2 of both Law N. 59(I) /2004 and Law N. 58(I) /2004, article 2 of The Law (amendment) concerning Persons with Disabilities Law 57(I)/2004	Defined in Law 57(I)/2004 (disability), N.58(I)/2004 (transposing the Employment Directive) and N.59(I)/2004 (transposing the Race Directive)	Law 57(I)/2004 (disability), N.58(I)/2004 (transposing the Employment Directive) and N.59(I)/2004 (transposing the Race Directive)	Article 6(1)(d) of Law 58(I)/2004 (transposing the Employment Directive); Article 5(2)(d) of Law 59(I)/2004 (transposing the Race Directive); Article 3(a) of Law 57(I)/2004 for the ground of disability
CZECH REPUBLIC	Law No. 65/1965 Coll., Labour Code, Law No. 435/2004 Coll., on Employment	Law No. 65/1965 Coll. Labour Code, Law No. 435/2004 Coll. on Employment	Law No. 65/1965 Coll. Labour Code, Law No. 435/2004 Coll. on Employment, No definition in Labour code 2007 (Law 262/2006 Coll.)	Sec. 16 Para. 4 2 Labour Code 2007 (refers to special legislation. Therefore, prohibition does not have does not have explicit application in labour relations), Law on Service by Members of the Armed Forces and Law on Service by Members of the Security Services

	Direct Discrimination	Indirect Discrimination	Harassment	Instruction to discriminate
DENMARK	Act No. 31, 2005. According to this Act Section 1(2) for the labour market, for non employment aspects: Act on Ethnic Equality (2003) Section 3 (2), both mention "direct unequal treatment"	The Act on Ethnic Equality Section 3 (3), The Act on Discrimination in the Labour Market Section 1 (3), both mention indirect differential treatment	Labour Market Discrimination Act (as amended) section 1, subsection 4, Act no. 374 on Ethnic Equality	with regard to provision of goods and services: Sections 23 and 21 Criminal code, incitement to racial or discriminatory speech: Section 266b Criminal Code, Act on Ethnic Equality, Act No. 31 (2005) Act on prohibition against discrimination in respect of employment and occupation
ESTONIA	Law on Employment Contracts (direct unequal treatment), (NB: Draft law on Equal Treatment submitted to the government on 25 January 2007)	Law on Employment Contracts (indirect unequal treatment), (NB: Draft Law on Equal Treatment)	Law on Employment Contracts, Law on the Cultural Autonomy of National Minorities, Penal Code, (Draft law on Equal Treatment)	Art. 12 Constitution, Law on Employment contracts, Penal Code, (Article 3(5) of the Draft law on Equal Treatment)
FINLAND	Non-Discrimination Act, The Provincial Act on Prevention of Discrimination in the Province of Åland Islands	Non-Discrimination Act, The Provincial Act on Prevention of Discrimination in the Province of Åland Islands	Non-Discrimination Act, Occupational Safety and Health Act, Penal Code, The Provincial Act on Prevention of Discrimination in the Province of Åland Islands	Non-Discrimination Act, Penal Code, The Provincial Act on Prevention of Discrimination in the Province of Åland Islands
FRANCE	Art. 225.1 and 2 Penal Code and 1881 Law (freedom of press)	L. 122-45 Labour Code (as amended in 2001) and Article 19 Law HALDE. No definition. No case law. Not applicable in criminal law	Sexual and Moral harassment (Art. 222-33 Penal Code, Arts. 122-46 and 122-49 Labour Code)	Not generally covered. However, notion of complicity relevant in Arts. 121-6 and 121-7 Penal Code, Arts. 23 and 24 Law on the Press of 1881 and Art.R625-7 Penal Code and general principles of liability in civil law (incl. labour law)
GERMANY	Constitutional concept of equality, Federal Law on the Civil Service, Work Constitution Law, Federal Employee Representation Law, Social Code IX, some state legislation. Art. 3.1 of the General Law on Equal Treatment	Art. 3.2 of the General Law on Equal Treatment ((Race or ethnic origin, sex, religion or belief ,disability, age, sexual identity; Belief not in civil law)	Art. 3.3 of the General Equal Treatment Law (Race or ethnic origin, sex, religion or belief; disability, age, sexual identity; Belief not in civil law)	Section 26 and 185 Penal code, Art. 3.5 of the general Law on Equal Treatment (Race or ethnic origin, sex, religion or belief disability, age, sexual identity; Belief not in civil law)
GREECE	Article 3 (1) (a) and 7 (1) (a) of the Implementation of the Principle of equal treatment Law 3304/2005	Article 3 (b) and 7 (1) (b) of the Implementation of the Principle of equal treatment Law 3304/2005	Article 2 of the Implementation of the Principle of equal treatment Law 3304/2005	Article 2 of the Implementation of the Principle of equal treatment Law 3304/2005
HUNGARY	Equal Treatment Act	Equal Treatment Act	Equal Treatment Act, Article 10 Paragraph (21) of Hungary's anti-discrimination code	Equal Treatment Act (regarding liability civil code and Labour Code)

IRELAND	Section 6 Employment Equality Act 1998-2004, Equal Status Act 2000-2004	Employment Equality Act 1998-2004, Equal Status Act 2000-2004 as amended by the Equality Act 2004	Employment Equality Act 1998-2004, Equal Status Act 2000-2004, Prohibition on the Incitement to Hatred Act	Employment Equality Act 1998-2004, Equal Status Act 2000-2004
ITALY	Art. 2 Decree 215/2003 and Art. 2 Decree 216/2003	Art. 2 Decree 215/2003 and Art. 2 Decree 216/2003	Decree 215/2003 and Decree 216/2003	Art. 2(4) Decree 215/2003 and Decree 216/2003
LATVIA	Labour Law, Law on Social Security, in a limited way in Criminal Code	Labour Law, Law on Social Security	Art.29 (4) and (7) Labour Law, Art. 2.1 (2) Law on Social Security, Criminal Code	Art.29(4) Labour Law, Law on Social Security, Criminal Code
LITHUANIA	Law on Equal Treatment 2005	Law on Equal Treatment 2005	Law on Equal Treatment 2005	Law on Equal Treatment 2005
LUXEMBOURG	Article 1 of the general Anti discrimination Law of 28 November 2006; Article 1-3 (introducing article "1bis" of the general statute of civil servants) of the public sector law of 29 November 2006	Article 1b of the general discrimination law of 28 November 2006 (private relations) and in articles 3b of the law of 28 November 2006 (public service); BUT applies only for civil cases.	Article 18 of the general discrimination law of 28/11/2006 and article 5 of public sector law 29/11/2006	Law on private relations and Law on public service; (article 457-1 of the penal code prohibits incitement)
MALTA	Legal Notice 461 of 2004 issued under the Employment and Industrial Relations Act 2002, Equal Opportunities (Persons with Disability) Act 2000	Legal Notice 461 of 2004 issued under the Employment and Industrial Relations Act 2002, Equal Opportunities (Persons with Disability) Act 2000	Legal Notice 461 of 2004, issued under the Employment and Industrial Relations Act 2002, Public Service Commission (Disciplinary Procedure) (Amendment) Regulations 2006, Public Service Management Code	Legal Notice 461 of 2004 issued under the Employment and Industrial Relations Act 2002, Regulation 3(4) of Legal Notice 461 of 2004, civil code, penal code
NETHERLANDS	Art 1 of General Equal Treatment Act, art 1.1 of Age Discrimination Act, art 1 of Disability Discrimination Act ⁸⁷	Art 1 of General Equal Treatment Act, art 1.1 of Age Discrimination Act, art 1 of Disability Discrimination Act (all Acts use distinction and not discrimination)	Art 1.a of General Equal Treatment Act, art 1.a of Disability Discrimination Act and art 2 of Age Discrimination Act	General Equal Treatment Act, Disability Discrimination Act and Age Discrimination Act
POLAND	Labour Code	Labour Code	Art. 18 ^{3a} para 5 point 2 and art. 18 para. 6 Labour Code, Act on the Promotion of Employment and the Institutions of Labour Market	Labour Code, Civil Code, Penal Code, Act on Employment
PORTUGAL	Article 3(3)(a) of Law 18/2004 (race and ethnic origin), Art. 32(2)(a) of Law 35/2004 (employment), Art. 4 of Law 46/2006 of 28 August 2006 (disability), Art. 23-2 of Labour Code	Art. 3(3)(b) and (c) of Law 18/2004, Art. 32(2)(b) of Law 35/2004, Labour Code	Article 3(4) of Law 18/2004, Law 35/2004 ??, Civil Code, Penal Code, Labour Code	Art. 3(5) of Law 18/2004, Art. 32(3) of Law 35/2004, Art. 5 of Law 46/2006

⁸⁷ All Acts use distinction and not discrimination but a bill is in preparation to change the terminology and to integrate all existing equal treatment laws.

	Direct Discrimination	Indirect Discrimination	Harassment	Instruction to discriminate
SLOVAKIA	Equal Treatment Act	Equal Treatment Act	Equal Treatment Act, Criminal Code, Act on Minor Offences, Civil Code	Equal Treatment Act, Criminal Code
SLOVENIA	Implementation of the Principle of Equal Treatment Act 2004, Employment Relations Act	Implementation of the Principle of Equal Treatment Act 2004, Employment Relations Act	Implementation of the Principle of Equal Treatment Act 2004, Employment Relations Act, Penal Code	Implementation of the Principle of Equal Treatment Act 2004
SPAIN	Law 62/2003, Organic Law 4/2000 (for Aliens), Law 13/1982 on Social Integration of Disabled People	Law 62/2003, Law 51/2003 (disability), Law 13/1982, on the Social Integration of Disabled People, Organic Law 4/2000 (for Aliens)	Law 62/2003, Law 51/2003 (disability)	Art. 314 of Criminal Code, Art. 23.2.b of Organic Law 4/2000 (for Aliens), Art. 28.2 of Law 62/2003
SWEDEN	Prohibition of Ethnic Discrimination Act, Prohibition of Discrimination in Working Life of People with Disability Act, the 2001 Students at Universities Act and the 2003 Prohibition of Discrimination Act, Act on Sexual Orientation, the 2006 Pupils Discrimination Act	Prohibition of Ethnic Discrimination Act, Prohibition of Discrimination in Working Life of People with Disability Act, the 2001 Students at Universities Act and the 2003 Prohibition of Discrimination Act, Act on Sexual Orientation, the 2006 Pupils Discrimination Act	Prohibition of Ethnic Discrimination Act, Prohibition of Discrimination in Working Life of People with Disability Act, the 2001 Students at Universities Act and the 2003 Prohibition of Discrimination Act, Act on Sexual Orientation, the 2006 Pupils Discrimination Act	Sec. 3 par. 5, Discrimination Prohibition Act, the 2006 Pupils Discrimination Act
UNITED KINGDOM	GB: Disability Discrimination Act, Race Relations Act, Employment Equality (Sexual Orientation) Regulations, Employment Equality (Religion or Belief) Regulations 2003, Equality Act 2006, NI: Race Relations Order, Fair Employment and Treatment Order, Employment Equality (Sexual Orientation) Regulations 2006	GB: Race Relations Act, Employment Equality (Sexual Orientation) Regulations, Employment Equality (Religion or Belief) Regulations, Equality Act 2006, NI: Race Relations Order, Fair Employment and Treatment Order, Employment Equality (Sexual Orientation) Regulations, Reg. 3 of the 2006 age regulations, Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006	GB: Race Relations Act, Employment Equality (Sexual Orientation) Regulations, Employment Equality (Religion or Belief) Regulations, Equality Act 2006, NI: Race Relations Order, Fair Employment and Treatment Order, Employment Equality (Sexual Orientation) Regulations (it is expected that the equivalent GB regulations expected in April 2007 will also have such a prohibition)	GB: Race Relations Act, Disability Discrimination Act; NI: Race Relations Order, Fair Employment and Treatment Order. Reg. 5 of the 2006 age regulations also prohibit instructions to discriminate in both GB and NI

	Employment	Social Protection	Social advantages	Education	Goods and services (including housing)
AUSTRIA	Equal Treatment Act, Act on the Equal Treatment Commission and the Equal Treatment Office, Federal-Equal Treatment Act, Act on the Employment of People with Disabilities, Disability Equality Act, Federal Disability Act, Provincial Equal Treatment Acts and/or Provincial Anti-Discrimination Acts	Equal Treatment Act (only on the ground of ethnic affiliation), Burgenland Anti-discrimination Act (all grounds), Carinthian Equal Treatment Act (all grounds), Viennese Anti-Discrimination Act (except disability and gender), Styrian and the Lower Austrian Acts do not fully comply	Equal Treatment Act, Burgenland Anti-discrimination Act, Carinthian Equal Treatment Act and Viennese Anti-discrimination Act deal with all ground and regard "social affairs"	Equal treatment Act, Burgenland, Carinthian and Viennese Acts	Equal Treatment Act (ethnic affiliation), Disability Equality Act, Viennese, Carinthian and Burgenland Acts Housing: Equal treatment Act, Disability Equality Act, Viennese Anti-discrimination Act (all grounds except Gender) and Carinthian anti-Discrimination Act (all grounds)
BELGIUM	Law of 30 July 1981, Federal Law of 25 February 2003, as amended by Bill of 26 October 2006 on providing of the modification of Law of 30 July 1981 (enacted as Law of 10 May 2007 amending the Law of 30 July 1981 and Bill of 26 October 2006 combating certain forms of discrimination (enacted as Law of 10 May 2007 combating certain forms of discrimination), Flemish Decree, Decrees adopted by the German-speaking Community, the French-speaking Community and the Walloon Region, not fully implemented in the Region of Brussels-Capital Ordinance of 26 June 2003	Social security is Federal competence: Law of 8 August 1980, healthcare and social aid are competence of the Communities . Bill of 26 October 2006 on providing of the modification of Law of 30 July 1981 (enacted as Law of 10 May 2007 amending the Law of 30 July 1981 and Bill of 26 October 2006 combating certain forms of discrimination (enacted as Law of 10 May 2007 combating certain forms of discrimination) (NB safeguard clause!)	Federal Law of 25 February 2003, Law of 30 July 1981 as amended by Bill of 26 October 2006 on providing of the modification of Law of 30 July 1981 (enacted as Law of 10 May 2007 amending the Law of 30 July 1981 and Bill of 26 October 2006 combating certain forms of discrimination (enacted as Law of 10 May 2007 combating certain forms of discrimination) (NB safeguard clause!)	Competence of the Communities in the Belgian federal system, implemented at different level in the Flemish/French-speaking and German-speaking Communities; general article in Federal Law of 25 February 2003	Law of 30 July 1981, Federal Law of 25 February 2003 as amended by Bill of 26 October 2006 on providing of the modification of Law of 30 July 1981 (enacted as Law of 10 May 2007 amending the Law of 30 July 1981 and Bill of 26 October 2006 combating certain forms of discrimination (enacted as Law of 10 May 2007 combating certain forms of discrimination) Housing: opinion delivered by the Council of State on 11 July 2006 stated that this is a regional competence. No provisions exist

CYPRUS	<p>Law 57(I)/2004 (disability), Law 58(I)/2004 (transposing the Employment Directive), Law on Unfair Dismissal (Law N.24/1967), applies equally to public and private sector</p>	<p>Law 57(I)/2004 (disability), N.58(I)/2004 (transposing the Employment Directive) and N.59(I)/2004 (transposing the Race Directive)Public Assistance Law N.8/1991</p>	<p>Section 4 (c) of the Law on Equal Treatment of Persons Irrespective of Racial or Ethnic Law 59(I)/2004; Section 6 of the Law concerning Persons with Disabilities (Law 127(I)/ 2000)</p>	<p>International agreements; Section 4 (d) and art. 13 of Law on Equal Treatment of Persons Irrespective of Racial or Ethnic 59(I)/2004</p>	<p>Section 4(e) of Law on Equal Treatment of Persons Irrespective of Racial or Ethnic 59(I)/2004; Section 2A(4) of the Law amending the Ratification law of the Convention on the Elimination of All Forms of Discrimination of 1967, No. 11 of 1992, Law 127(I)/2000 as amended by Law 57(I)/2004 Housing: Section 4(1)(e) of Law on Equal Treatment of Persons Irrespective of Racial or Ethnic Origin, 59(I)/2004</p>	<p>Section 1(1) of the 1971 Criminal Antidiscrimination Act, Act on Ethnic Equality in 2003 Act on Prohibition of Differential Treatment on Grounds of Race, Act on Ethnic Equality in 2003</p>
CZECH REPUBLIC	<p>Labour Code 2007 (but very incomplete), Law on Employment, Law on Self-employment, Law on Wages (Law No. 1/1992 of the Coll, Law on Salaries (Law No. 143/1992 of the Coll</p>	<p>No specific anti-discrimination provision in legislation</p>	<p>No specific anti-discrimination provision in legislation, only general non-Discrimination clauses Civil Code</p>	<p>No specific anti-discrimination provision in legislation, only general non-discrimination clauses Civil Code; Law no. 561/2004 on Pre-school, Primary, Secondary and Higher Vocational and other Education ("special educational arrangements")</p>	<p>Law on Consumer Protection Housing: No specific provision</p>	
DENMARK	<p>Section 2 (1) and section 3 (3) for self employment of the Labour Market Discrimination Act</p>	<p>Section 1(1) of the 1971 Criminal Antidiscrimination Act, Act on Ethnic Equality of 2003</p>	<p>Section 1(1) of the 1971 Criminal Antidiscrimination Act, Act on Ethnic Equality of 2003</p>	<p>Section 14(1) of the 1971 Criminal Antidiscrimination Act; Act on Ethnic Equality of 2003</p>	<p>Section 1(1) of the 1971 Criminal Antidiscrimination Act, Act on Ethnic Equality in 2003 Act on Prohibition of Differential Treatment on Grounds of Race, Act on Ethnic Equality in 2003</p>	

ESTONIA	Article 5 of Law on Employment contracts; no special anti-discrimination provisions regarding access to self-employment, employment in the public sector or access to occupations, Law on Wages employment, access to profession, self-employment, membership in professional unions are explicitly mentioned in the text (Article 2 (1)) of the draft law	No specific anti-discrimination provisions as regards social protection, including social security and healthcare (only Constitutional provisions) social and health protection and social insurance are explicitly mentioned (Article 2 (1)) in the draft law	No specific anti-discrimination provisions as regards social advantages (only Constitutional provisions), The draft Law on Equal Treatment is applicable in all spheres of 'social life' (Article 2 (1)).	No specific anti-discrimination provisions in regard to education (only Constitutional provisions), Draft Law on Equal Treatment	No specific anti-discrimination provisions as regards access to and supply of goods and services (only Constitutional provisions), Law on Trading and Law on Public Transport used in practice by lawyers Housing: no specific anti-discrimination provisions as regards housing (only Constitutional provisions) Draft law on equal Treatment
FINLAND	Non-Discrimination Act, Act on State Civil Servants, Seamen's Act, Act on Municipal Office Holders, Non-Discrimination Act is also applicable with respect to privately employed persons and civil servants of the state working in the Åland Islands. The Provincial Act is applicable with respect to those employed as civil servants by the Åland Islands or one of the municipalities in Åland Islands and those that are self-employed	Constitution, the Penal Code and Non-Discrimination Act, Provincial Act on Prevention of Discrimination in the Province of Åland Islands	Non-Discrimination Act, Provincial Act on Prevention of Discrimination in the Province of Åland Islands	Non-Discrimination Act, Åland Islands: Provincial Act on Prevention of Discrimination, Provincial Act on Åland's Music Institute, Provincial Act on Education on a High School Level, Provincial Act on Ålands Folk High School, Provincial Act on University in Åland	Non-Discrimination Act, Provincial Act on Prevention of Discrimination in the Province of Åland Islands Housing: Non-Discrimination Act, Provincial Act on Prevention of Discrimination in the Province of Åland Islands

	Employment	Social Protection	Social advantages	Education	Goods and services (including housing)
FRANCE	L122-45, L120-2, L422-1-1, L513-3-1 Labour Code. 6 quinquies of Law no. 83-634 of July 13, 1983 as modified by the Law of November 16, 2001 and Article 432-7 Penal Code. Art. 19 Law HALDE. Articles 225-1 and 225-2 Penal Code. Art. 19 Law on disability, Decree no. 2005-1617. Executive Order no 2005-893 of 2 August 2005	Constitution, Art. 19 Law HALDE	Constitution, Art. 19 Law HALDE	Constitution, circulars from Ministry of Education, Administrative instructions, Act 2001-1066 on the Fight Against Discrimination, Law n° 2000-614 of July 5, 2000, on the accommodation of travelling people, Law on the application of the principle of secularity in public schools of 15 March 2004, Article 11 and 19 to 22 of the Law on disability, Law of 31 December 1959, law no 2005-102 of 11 February 2005	Constitution, Arts. 225-2 and 432-7 Criminal law, Act 2002-73 on social modernisation (housing), Law HALDE Housing: Law of January 17, 2002 amending article 1 paragraph 2 of Law no. 89-462 of July 6, 1989 on relations between landlords and tenants, Criminal law
GERMANY	Sec. 2.1 of the General Law on Equal Treatment	General Law on Equal Treatment	General Law on Equal Treatment	General Law on Equal Treatment	Sec. 19.3 and .5 of the General Law on Equal Treatment (with exception as to special regulations in private sphere)
GREECE	Principle of Equal Treatment Law 3304/2005 (contract work, self employment, military service and holding statutory office are not covered)	Law n. 2646/1998 on the development of the National System of Social Care, Principle of Equal Treatment Law n. 3304/2005,	Law n. 3304/2005 includes the field of education but only in respect of race and ethnic origin	Aliens Law 2910/2001, Principle of Equal Treatment Law n. 3304/2005, Law 2817/2000 for the education of disabled children	Principle of Equal Treatment Law 3304/2005 Housing: Principle of Equal Treatment Law 3304/2005
HUNGARY	Equal Treatment Act, Public Education Act (regarding vocational training), Act on the Promotion of Employment	Health Care Act, Equal Treatment Act	Not specifically addressed in legislation	Public Education Act, Equal Treatment Act (Chapter "Education and training")	Equal Treatment Act, Consumer Protection Act Housing: Equal Treatment Act

IRELAND	Employment Equality Act 1998-2004, Pensions Act 1990-2004, Unfair Dismissals Act 1977-1993, Equal Status Act 2000-2004, Section 22 of the Social Welfare Act 2004	No express prohibition in legislation (interpretation of legislation will be the determinant factor)	No express prohibition in legislation (interpretation of legislation will be the determinant factor)	Equal Status Act 2000-2004, Education Act 1998, Ministerial Guidelines on Traveller Education in Primary Schools, Employment Equality Act 1998-2004 with Special Educational Needs Act 2004	Equal Status Act 2000-2004, Intoxicating Liquor Act 2003 Housing: Equal Status Act 2000-2004, The Housing (Traveller Accommodation) Act 1998, Housing (Miscellaneous Provisions) Act, 2002
ITALY	Decree 215/2003 and Decree 216/2003. Workers Act of 1970	Decree 215/2003. Immigration Act 1998	Decree 215/2003. Immigration Act 1998, Act 2006/67 against discrimination on disabled people	Decree 215/2003. Immigration Act 1998	Decree 215/2003. Immigration Act 1998, Act 2006/67 against discrimination on disabled people (both legislation include housing): The absence of an absolute right to be provided housing makes litigation difficult.
LATVIA	Labour Law, State Civil Service Law, Criminal Law	Law on Social Security, Medical Care Code (no express guarantee of equality)	Law on Social Services and Social Security (no express guarantee of equality), Broad guarantee in Labour Law, amendments to the Civil Code pending	Law on Education (except grounds of age, disability, sexual orientation)	No specific provisions, Criminal Law (to a very limited extent), draft amendments to the Law on Consumer protection and to the Civil Law Housing: No specific provision, Law on Social Security (for social housing), draft amendments to the Civil Law
LITHUANIA	Law on Equal Treatment (not self-employment)	Art. 29 Constitution, State Social Security Insurance Law, No direct prohibition in Law on Equal Treatment	Art. 29 Constitution, No detailed regulation in the Law on Equal Treatment	Art. 29 Constitution, Law on Equal Treatment,	Art. 29 Constitution, Law on Equal Treatment Housing: no specific anti-discrimination provisions (regulated at municipal level)
LUXEMBOURG	Partially in Article 456 of Penal code, General Anti-discrimination law; Anti-Discrimination Law on Public service	Article 3 of the general Anti-discrimination Law of 28 November 2006	Article 2.1 of the general Anti-discrimination Law (But without defining the concept) ; Article 455 of the Penal Code (in a limited way)	Article 2.1 of the general Anti-discrimination Law	Partially art 455 Penal Code, Article 2.1 of the general Anti-discrimination Law

	Employment	Social Protection	Social advantages	Education	Goods and services (including housing)
MALTA	Employment and Industrial Relations Act 2002, Public Service Management Code, Regulation 2(4) of Legal Notice 461 of 2004 entitled "Equal Treatment in Employment Regulations 2004, Employment and Training Services Act, Contracts of Service for a Fixed Term Regulations 2002, Equal Opportunities (Persons with Disability) Act 2000	No specific prohibition of racial or ethnic origin in this field	Maltese Legislation does not expressly address the category of 'social advantages'	No specific provisions	Maltese Law does not distinguish between goods and services available to the public and those available privately and there is no specific prohibition of discrimination on racial or ethnic origin in this field Housing: no specific legislation
NETHERLANDS	Both public and private sectors, General Equal Treatment Act, Age Discrimination Act, Disability Discrimination Act	Art. 7a General Equal Treatment Act	Art. 7a General Equal Treatment Act	Art. 7 General Equal Treatment Act	Art. 7(1) General Equal Treatment Act Housing: Article 7(1) subsection "c" General Equal Treatment Act
POLAND	Labour Code, Act on Freedom of Economic Activity, Act on Employment, Act on Trade Unions, Act on the Employers Organizations, Act on the System of Social Security of 13 October 1998	Act on Medical Treatment Financed from the Public Resources	Complex combination of provisions, no provision concerning age	Education Act, 2005 Act on National and Ethnic Minorities, Act on the System of Education	No specific legislation, (Code of Minor Offences could be used)
PORTUGAL	Article 2(1) of the racial anti-discrimination Law 18/2004, Art. 1(2), 30, 33 and 40 of Law 35/2004, Art. 73 to 78 of Labour Code, Law 99/2003, Law 38/2004, Basic Law on the Educational System, Art. 4(b) and 5 of Law 46/2006 prohibiting and ensure punishing discrimination based on disability and on aggravated risk to health	Art. 59 of the Constitution, Art. 2(1) of Law 18/2004, Art. 8 of Law 32/2002 of 20 December 2002 (the Basic Law on Social Security System)	Art. 59 of the Constitution, Art. 2(1) of Law 18/2004, Art. 8 of Law 32/2002 of 20 December 2002 (the Basic Law on Social Security System)	Art. 74 of the Constitution, Art. 33(1)(b) of Law 35/2004, Art. 26(1) of Law 38/2004, Art. 2 of Law 115/97 (the Basic Law on the Educational System), Art. 73 of Labour Code	Art. 3 of Law 18/2004, Decree-law 163/2006 of 8 August 2006 (accessibility to buildings), Law 46/2006 of 28 August 2006 (disability) Housing: Law 134/99, Art. 3(2)(c) of Law 18/2004

SLOVAKIA	Labour Code, Civil Service Act, Small Business Act, Equal Treatment Act, Employment Service Act, Act on Further Education	Equal Treatment Act, Social Insurance Act, Act on Social Assistance, Act on Health Care	Social Insurance Act, Equal Treatment Act	Schools Act, Equal Treatment Act, Act on Higher Education, Act on the System of Primary and Secondary Schools	Equal Treatment Act, Consumer Protection Act Housing: Equal Treatment Act in a limited way
SLOVENIA	Employment Relations Act, (equal treatment relating to state of health is covered by the Implementation of the Principle of Equal Treatment Act 2004, Civil Servants Act, Act on Vocational Rehabilitation and Employment of Disabled People and the Pension, Disability Insurance Act	Social Security Act, Parental Protection and Family Benefit Act, Pension and Invalidity Insurance Act, Implementation of the Principle of Equal Treatment Act 2004, Health Services Act	Implementation of the Principle of Equal Treatment Act 2004	Implementation of the Principle of Equal Treatment Act; Organisation and Financing of Education Act, Special Rights for Members of the Italian and Hungarian National Minorities in the Field of Education Act	Implementation of the Principle of Equal Treatment Act 2004 Housing: no specific provision in the Implementation of the Principle of Equal Treatment Act 2004 but mention of "every field of social life"
SPAIN	Art. 29, 1 and 34 of Law 62/2003, Art. 314 of Criminal Code, Law 56/2003 (employment), Art. 4 of Worker's Statute, Art. 8.12 of Law on Violations and Sanctions of the Labour Laws (modified by Law 62/2003), Art. 37 of Law of Social Integration of the Disabled (LISMI) (modified by Law 62/2003), Art. 2 of Organic Law 5/2002 on Qualifications and Vocational Training	Art. 29, 1 of Law 62/2003	Art. 29, 1 of Law 62/2003	Art. 29, 1 of Law 62/2003; Law Organic Law on Education (2/2006) of 3 May 2006; Law on the Social Integration of Disabled People	Art. 29, 1 of Law 62/2003, Royal Decree 801/2005 adopting the 2005-2008 National Plan for the promotion of public access to housing
SWEDEN	Prohibition of Ethnic Discrimination Act, Prohibition of Discrimination in Working Life of People with Disability Act, 2003 Prohibition of Discrimination Act, Act on Sexual Orientation	2003 Prohibition of Discrimination Act (ethnic origin, religion or belief) as amended in January (sexual orientation) and July 2005 (gender)	2003 Prohibition of Discrimination Act (ethnic origin, religion or belief) as amended in January (sexual orientation) and July (gender) 2005, Penal Code	Equal Treatment of Students at Universities Act; Act on a ban against discrimination and other degrading treatment of children and pupils of 8 February 2006	2003 Prohibition of Discrimination Act (ethnic origin, religion or belief) as amended in January (sexual orientation) and July 2005 (gender). Does not apply to private transactions Housing: applies only to the provision of housing services provided for professional reasons

UNITED KINGDOM	Employment GB: Race Relations Act, Employment Equality (Sexual Orientation) Regulations, Employment Equality (Religion or Belief) Regulations, Disability Discrimination Act, Employment Equality (Age) Regulations 2006 NI: Race Relations Order, Employment Equality (Sexual Orientation) Regulations, Fair Employment and Treatment Order, Disability Discrimination Act	Social Protection GB: Race Relations Act, Disability Discrimination Act, NI: Race Relations Order, Fair Employment and Treatment Order, Disability Discrimination Act	Social advantages GB: Race Relations Act, Disability Discrimination Act, NI: Race Relations Order	Education GB: Race Relations Act, Equality Act, Employment Equality (Sexual Orientation) Regulations, Employment Equality (Religion or Belief) Regulations, Special Educational Needs and Disability Act 2001; NI: Fair Employment and Treatment Order, Race Relations Order, Special Educational Needs and Disability (NI)	Goods and services (including housing) GB: Race Relations Act, Disability Discrimination Act, Equality Act; NI: Race Relations Order, Fair Employment and Treatment Order, Disability Discrimination Order 2006
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	REASONABLE ACCOMODATION FOR DISABLED PEOPLE	GENUINE AND DETERMINING OCCUPATIONAL REQUIREMENT
AUSTRIA	Act on the Employment of People with disabilities	All Federal and Provincial Acts
BELGIUM	Federal Law of 25 February 2003; amended by Bill of 26 October 2006 combating certain forms of discrimination (enacted as Law of 10 May 2007 combating certain forms of discrimination), Executive Decree of 5 November 1998 on the promotion of the equality of chances of persons with disabilities on the employment market, Flemish Decree, Decrees adopted by the German-speaking Community, the French-speaking Community and the Walloon Region	Federal Law of 25 February 2003, amended by Bill of 26 October 2006 on providing of the modification of Law of 30 July 1981 (enacted as Law of 10 May 2007 amending the Law of 30 July 1981 and Bill of 26 October 2006 combating certain forms of discrimination (enacted as Law of 10 May 2007 combating certain forms of discrimination), and Regional and Communities legislation
CYPRUS	Law on Persons with Disabilities N.127(l)2000 amended by Law 57(l) of 2004	Law 57(l)2004 (disability), N.58(l)/2004 (transposing the Employment Directive), The Law on Public Service
CZECH REPUBLIC	Labour Code 2007 , Law on Employment	Sec. 16 Paragraph 53 Labour Code 2007 and Sec. 4 Paragraph 3 Law on Employment
DENMARK	Section 2a Labour Market Discrimination Act amended in 2004	Section 6(1) and 6(2) of the Labour Market Discrimination Act as amended in 2003
ESTONIA	Law on Employment Contracts; Law on Occupational Health and Safety; Law on Employment Services and Allowances, Article 11(1) and (2) of the Draft law on Equal Treatment	Law on Employment Contracts, Article 10 (1) of the Draft on Equal Treatment
FINLAND	Non-Discrimination Act; Employment Contracts Act 55/2001, applicable also in the Åland Islands as regards privately employed persons and those employed as civil servants by the state. As regards civil servants of the Åland Islands or one of the municipalities in the Ål; Provincial Act on Prevention of Discrimination	Non-Discrimination Act, Provincial Act on Prevention of Discrimination in the Province of Åland Islands
FRANCE	Law on disability 2005, article 122-45-4 Labour Code. Article L114 Code of Social Welfare. Decree no 2006-134 of February 9, 2006 relating to the recognition of the importance of disability; Decree no 2006-501 of May 3, 2006 relating to the fund for professional integration of disabled persons, Decree no 2006-555 of May 17, 2006 relating to accessibility of buildings receiving the public and residential buildings et modifying the Code of construction Law 83-6345 of July 13 1983 relating to the rights and obligations of civil servants; Law 84-16 of January 11 1984 concerning the civil service of the State; Law 84-53 of January 26, 1984 civil service for local and regional levels of government and Law 86-33 of January 9, 1986 concerning the hospital civil service	No. Other exceptions are included at Arts 225-3 Penal Code and R123-1 LC
GERMANY	Various provisions of the Social Codes Parts I, III, IX, XII, III, IX Section 5 Disabled Equality Law. Section 554a Civil Code	Sec. 8, 9, 10 of the General Law on equal treatment (Race or ethnic origin, sex, religion or belief, disability, age, sexual identity)

	REASONABLE ACCOMODATION FOR DISABLED PEOPLE	GENUINE AND DETERMINING OCCUPATIONAL REQUIREMENT
GREECE	General clause of Article 662 Civil Code (so-called duty to care - not disability specific); Law n. 1568/1985 on Health and Safety at Work; Law n. 2643/1998 on the compulsory employment of disabled persons and of people of special groups, Principle of Equal Treatment Law 3304/2005	Articles 5, 9 and 11 of the Principle of Equal Treatment Law 3304/2005
HUNGARY	No proper transposition, relevant provisions regarding the concept can be found in Disabled Persons Act, Work Safety Act, Joint Decree 8/1983 of the Ministers of Health and Finances on the Employment and Social Benefits of Disabled Workers, Bill no. T/18902 inserts in the Disabled Persons Act, the new concept of "public services" and sets out the disabled persons' right to equal access to public services	Article 22 para.1 of the Equal Treatment Act
IRELAND	Employment Equality Act 1998-2004, Equal Status Act 2000-2004, Building Regulations 1997 – 2005, Disability Act 2005	Employment Equality Act 1998-2004
ITALY	No general duty on employers. Some rules in Framework Act of 5 February 1992	Article 3(3) of both Decrees
LATVIA	1992 Law on Medical and Social Protection of Disabled Persons; Law on Social Security, Labour Law	Labour Law
LITHUANIA	Employment Code (Article 92), Law on Equal Treatment	Yes (usual and decisive professional requirement), Article 2 of Labour Code, Law on Equal Treatment
LUXEMBOURG	Article 8 of law on disabled persons of 12 September 2003 as amended by Anti- discrimination Laws	Article 18 of the general discrimination Law , introducing article L 252-1 in the labour code; article 3-3 of the public sector law of 29 November 2006
MALTA	Equal Opportunities (Persons with Disability) Act 2000	Regulation 4 of Legal Notice 461 of 2004 entitled "Equal Treatment in Employment Regulations 2004, The Employment and Industrial Relations Ac
NETHERLANDS	Article 2 of the Disability Discrimination Act	Article 2(4) of the GEITA (for race and sex only)
POLAND	Act on Vocational and Social Rehabilitation and Employment of Disabled Persons amended in 2003, Amendments of this Act under preparation	Labour Code
PORTUGAL	Art. 73 and 74 of Labour Code, Decree-law 163/2006, 8 August 2006 which approves the accessibility regime to buildings and public premises constitutes the regulation of the principles laid down in Law 38/2004	Art. 3(2)(c) of Law 18/2004, Art. 32(2) Law 35/2004, Art. 23(1) and (2) of Labour Code
SLOVAKIA	Equal Treatment Act, Labour Code, The Regulation Determining Details on General Technical Requirements on Construction No; 532/2002	Equal Treatment Act
SLOVENIA	Employment Relations Act, Implementation of the Principle of Equal Treatment Act 2004, Vocational Rehabilitation and Employment of Disabled Persons Act, Pension and Disability Insurance Act, Health and Safety at Work Act	Employment Relations Act, Implementation of the Principle of Equal Treatment Act 2004, Public Servants Act, Safety and Health at Work Act
SPAIN	Law 51/2003 (Disability, in general terms), Law 13/1982 on the Social Integration of the Disabled (employment)	Art. 34.2.2 of Law 62/2003

SWEDEN	2001 Student at Universities Act; Section 6 Disability Discrimination Act (employment (i.e. recruitment), promotion or training for promotion); 1977 Working Environment Act (employer's duty of rehabilitation measures); 1982 Employment Protection Act (duty of fairly far-reaching accommodation)	Prohibition of Ethnic Discrimination Act, Prohibition of Discrimination in Working Life of People with Disability Act, the 2001 Students at Universities Act and the 2003 Prohibition of Discrimination Act, Act on Sexual Orientation
UNITED KINGDOM	Disability Discrimination Act	GB: Race Relations Act, Employment Equality (Sexual Orientation) Regulations, Employment Equality (Religion or Belief) Regulations; NI: Race Relations Order, Employment Equality (Sexual Orientation) Regulations, Fair Employment and Treatment Order

	Article 13 designated Specialised body	Instrument of designation	Body for other grounds	Provide independent assistance to victims ⁸⁸	Independent surveys	Issue recommendations
AUSTRIA	National Equality Body (NEB) Equal Treatment Commission (ETC) (Each province will have an equality body, although not all have been set-up)	Act on the Equal Treatment Commission and the National Equality Body. GBK/GAW-Gesetz, BGBl I Nr. 66/2004	All grounds in Art 13 EC Treaty	NEB: yes ETC: yes	NEB: yes ETC: no	NEB: yes ETC: no
BELGIUM	Centre for Equal Opportunities and the Fight against Racism	No official designating act. However the Law of 25 February 2003 extended the powers of the Centre so it could function in accordance with Art. 13 of the RED and extended its mandate to other grounds than race, as amended by Bill of 26 October 2006 on providing of the modification of Law of 30 July 1981 (enacted as Law of 10 May 2007 amending the Law of 30 July 1981 and Bill of 26 October 2006 combating certain forms of discrimination (enacted as Law of 10 May 2007 combating certain forms of discrimination)	All grounds under Art. 13 EC Treaty except gender	yes	yes	yes
CYPRUS	Commissioner for Administration (also referred to as the Ombudsman) , two separate authorities are set up within the Ombudsman's office: the Equality Authority (employment issues) and the Anti-discrimination authority (race and ethnic origin)	The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004)	All grounds under Art. 13 EC Treaty plus additional grounds	yes	yes	yes

⁸⁸ The results in this column are based on a broad view of the variety of ways in which assistance can be provided to victims. It does not represent an assessment of Directive 2000/43's requirement that an equality body or bodies provide 'independent assistance'. For this reason a positive answer was produced for bodies which provide independent assistance or advice to victims and also to those bodies which investigate and hear discrimination complaints (quasi-judicial bodies). For more information on this issue see the Thematic Report of Professor Rikki Holtmaat 'Catalysts for Change? Equality Bodies according to Directive 2000/43' for the European Network of Legal Experts in the Non-discrimination Field (March 2006).

CZECH REPUBLIC	No Specialised Body has been designated as the Article 13 body. A relevant institution performing similar tasks is: the Public Defender of Rights (Ombudsperson)	-	-	-	-	-
DENMARK	Danish Institute for International Studies and Human Rights	Section 2 (2) of Act no. 411, 2002 on the Centre on International Studies and Human Rights establishing the Institute for Human Rights	No (although covers general human rights infringements)	yes	yes	yes
ESTONIA	Legal Chancellor (or Chancellor of Justice), (The Draft Law on Equal Treatment foresees creation of the position of an equal treatment and equality commissioner)	Law on Legal Chancellor, published Riigi Teataja I 1999, 29, 406. Amendments: RT I 2003, 23, 142; RT I 2003, 20, 119; RT I 2002, 57, 357; RT I 2002, 30, 176; RT I 2001, 58, 353; RT I 2001, 43, 240; RT I 2000, 92, 597, (NB. Draft Law on Equal Treatment)	All grounds under Art. 13 EC Treaty plus additional grounds	yes	no	yes
FINLAND	Ombudsman for Minorities and Discrimination Ombudsman for the Åland Islands	Act on the Ombudsman for Minorities and the Discrimination Board (660/2001), as amended. Provincial Act on the Discrimination Ombudsman (67/2005) and Provincial Act on Prevention of discrimination in the Province of Åland (66/2005)	no	yes	yes	yes
FRANCE	High Authority against Discrimination and for Equality (HALDE)	Law no 2004-1486 of 30 December 2004, Law on Equal opportunities of 30 March 2006	All grounds under Art. 13 EC Treaty plus additional grounds	yes	yes	yes
GERMANY	Federal Anti- discrimination Agency	Sec. 25-30 of General Law on Equal Treatment of 18 August 2006	All grounds under Art. 13 EC Treaty	yes	yes	yes

	Article 13 designated Specialised body	Instrument of designation	Body for other grounds	Provide independent assistance to victims ⁸⁸	Independent surveys	Issue recommendations
GREECE	Ombudsman; Equal Treatment Committee (ETC); Labour Inspectorate	Article 19 Law no. 3304/2005 (Law Gazette A'16) on the Application of the Principle of Equal Treatment regardless of Racial or Ethnic origin, Religious or other Beliefs, Disability, Age, or Sexual Orientation	Ombudsman: All grounds in Art. 13 EC Treaty and general human rights infringements. Public sector only. ETC: All grounds in Art. 13 EC Treaty except gender in social protection, social advantages, education, goods and services. Private sector only. Labour Inspectorate: All grounds in Art. 13 EC Treaty except gender in employment and occupation. Private sector only	Ombudsman: no ETC: no Labour Inspectorate: no	Ombudsman: yes ETC: yes Labour Inspectorate: yes	Ombudsman: yes ETC: yes Labour Inspectorate: yes
HUNGARY	Equal Treatment Authority	Article 65 of Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities and Article 22 of Government Decree 362/2004 on the Equal Treatment Authority and the Detailed Rules of its Proceedings, Amendments of the ETAD of December 2006	All grounds in Art. 13 EC Treaty plus additional grounds.	yes	yes	yes
IRELAND	The Equality Authority (EA) The Equality Tribunal (ET)	The Employment Equality Act 1998 as amended by the Equality Act 2004 and the Equal Status Act 2000 as amended by the Equality Act 2004	All grounds in Art. 13 EC Treaty plus additional grounds.	EA: yes ET: no	EA: yes ET: no	EA: yes ET: no
ITALY	National Office against Racial Discrimination (UNAR)	Legislative Decree 9 July 2003, no. 215. Decree of the President of the Council of Ministers, Establishment and internal organisation of the Office for the Promotion of equality of treatment and the removal of discrimination	no	yes	yes	yes

LATVIA	The National Human Rights Office ⁸⁹	Amendments to the Law on the National Human Rights Office, adopted 15.12.2005, entered into force on 12.01.2006	All grounds under Art. 13 EC Treaty and general human rights infringements	yes	yes	yes
LITHUANIA	Equal Opportunities Ombudsman	Law on Equal Treatment was adopted on 18 November 2003, Nr. IX-1826, and came into force on 1 January 2005	All grounds under Art. 13 EC Treaty	yes	no	yes
LUXEMBOURG	Centre for Equality of Treatment (not yet in operation)	General anti-discrimination Law; Public sector Law	(All grounds under Art. 13 EC Treaty)	yes	yes	yes
MALTA	Equality Commission (previously the National Commission for the Promotion of Equality for Men and Women)	Equal Treatment of Persons Order 2007	gender and race and ethnic origin discrimination	yes	uncertain	uncertain
NETHERLANDS	Equal Treatment Commission (ETC)	No official designation by law. However, Explanatory Memorandum to the Bill (page 20 Appendix) that led to the Law of 21 February 2004 (Equal Treatment Law), states that the implementation of Article 13 RED is already accomplished as the Netherlands has the ETC	All grounds under Article 13 EC Treaty plus additional grounds	yes	yes	yes
POLAND	No "specialised body" in the sense of the Art. 13.2 of Directive 2000/43 but the Commissioner of Citizen's for Civil Rights Protection (Ombudsperson) is a relevant institution	The Commissioner has not been designated officially as a body responsible for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin	Scope of activities is very broad (protecting rights and liberties of the human being and of the citizen infringed by organs of public authority.) Discrimination is not a priority issue. There is no unit dealing exclusively with discrimination cases	(yes)	(yes)	(yes)
PORTUGAL	High Commissariat for Immigration and Ethnic Minorities (ACIME) Commission for Equality and Against Racial Discrimination (CEARD)	ACIME - Law 251/2002 amended by Law 27/2005. CEARD - Law 134/99	ACIME - the same CEARD - race, colour, nationality or ethnic origin	ACIME: yes CEARD: no	ACIME: yes CEARD: yes	ACIME: yes CEARD: yes

⁸⁹ This Office is in the process of being turned into an Ombudsman with greater competences.

	Article 13 designated Specialised body	Instrument of designation	Body for other grounds	Provide independence assistance to victims ^{a8}	Independent surveys	Issue recommendations
SLOVAKIA	Slovak National Centre for Human Rights	Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination designated the Centre the Art. 13 body by amending Act No. 308/1993 Coll. on Establishing the Slovak National Centre for Human Rights	All grounds under Art. 13 EC Treaty and human rights	yes	yes	yes
SLOVENIA	Advocate of the Principle of Equality/Council of the Government for the Implementation of the Principle of Equal Treatment	Advocate and Council: Act implementing the principle of equal treatment (Official Gazette 50/2004; adopted on 22 April 2004. Came into force on 7 May 2004)	All grounds in Art. 13 EC Treaty plus additional grounds	yes	no	yes
SPAIN	Council for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin.	Art.33 of Law 62/2003	no	(yes)	(yes)	(yes)
SWEDEN	The Ombudsman against Ethnic Discrimination (DO)	Sec. 22 the (1999:130) Act against Ethnic Discrimination, Sec. 19 the (2003:307) Act against Discrimination and Sec. 16 the (2001:1286) Equal Treatment of Student at Universities Act. None of the Acts actually mentions Art.13 RED but they are the legal instruments by which the Directive is implemented and the Ombudsman is designated to 'insure that this Act is complied with'. Also Sec. 5 the (1999:131) Act concerning the Ombudsman against Ethnic Discrimination	Religion and belief	yes	yes	yes

UNITED KINGDOM	Great Britain: Commission for Racial Equality (CRE) ⁹⁰ Northern Ireland: Commission for Racial Equality for Northern Ireland (ECNI)	No formal legal instrument officially designating the CRE or the ECNI as "Article 13 bodies". The bodies were in existence prior to the Directives. In Part 7 of Equality and Diversity: Making it Happen (London: DTI, 2001), a consultation paper on how to ensure the 2000 Directives were to be enforced in Britain, the UK government stated that the CRE already constituted an independent body which was performing the functions set out in Article 13. Its consultation paper on implementing the Directives in Northern Ireland made a similar statement about the ECNI	CRE: race, ethnic origin, national origin and nationality. ECNI: All Art. 13 ECT grounds	CRE: yes ECNI: yes	CRE: yes ECNI: yes	CRE: yes ECNI: yes
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Will be replaced by a Commission for Equality and Human Rights operational from October 2007.

European Commission

Developing Anti-discrimination Law in Europe — The 25 EU Member States compared

Luxembourg: Office for Official Publications of the European Communities

2007 — 113 pp. — 22 x 22 cm

ISBN 978-92-79-06572-9

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