

Non-discrimination in the European Union
Implementation of Directives 2000/78/EC and 2000/43/EC

PART III

Awareness-raising, enforcement and litigation

Wiebke Düvel
Isabelle Schömann
Stefan Clauwaert

European Trade Union Institute

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Introduction

Two European Directives on the subject of anti-discrimination were adopted in 2000: (i) the Directive on equal treatment in employment and occupation (2000/78/EC) and (ii) the Directive on equal treatment in respect of racial and ethnic origin (2000/43/EC).¹

The two Directives are part of the Community action programme to combat discrimination (2001–2006), which includes initiatives to establish common principles for combating all forms of discrimination referred to in the Treaty. These Directives also, of course, form part of the *acquis communautaire* to be implemented by the EU Member States and the accession countries. Directive 2000/43/EC had to be implemented by 19 July 2003; Directive 2000/78/EC by 2 December 2003.

The objective of the two Directives is to ensure equal treatment throughout the European Union and to fight discrimination.

Directive 2000/78/EC is intended to put in place a general framework to ensure equal treatment of individuals in the EU, regardless of their religion or belief, disability, age or sexual orientation, as regards access to employment or occupation and membership of certain organisations. Directive 2000/43/EC is intended to implement the principle of equal treatment on grounds of racial and ethnic origin in the EU, including in employment.

This report on the implementation of Directive 2000/78/EC and 2000/43/EC on the principle of equal treatment in the European Union focuses on the aspect of awareness raising, enforcement and litigation and supplements two other reports on these two EU Directives on the implementation process, scope and definitions and on age and disability.

The purpose of the implementation reports is to present and analyse the national implementation provisions on non-discrimination issues. As in former reports, the ten new Member States and the accession countries have been included as far as possible. They are no longer to be found in a separate section.

The ETUI report is based on the replies to the questionnaire elaborated within the frame of NETLEX and circulated to ETUC affiliates. We received answers from the following countries: Austria, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Iceland, Italy, Latvia, Luxembourg, the Netherlands, Norway, Poland, Portugal, Romania and the UK. We thank all our colleagues for the interesting and valuable information they supplied on their national situations. Of course the information cannot be considered exhaustive. However, to ensure a high quality of analysis, this primary and detailed information has been supplemented, where necessary – and where possible – by further information. The information taken into consideration in this report dates from 2003 and 2004.

This report looks at the anti-discrimination Directives under the aspect of awareness raising, enforcement and litigation, in terms of seven closely-linked points: (i) the dissemination of information; (ii) the body for the promotion of non-discrimination on the basis of race or ethnic origin; (iii) judicial and administrative procedures available to victims; (iv) burden of proof; (v) protection of victims after lodging a complaint; (vi) foreseen sanctions; and (vii) court cases.

¹ Official Journal L 303, 02/12/2000 P. 0016 – 0022; Official Journal L 180, 19/07/2000 P. 0022 – 0026.

Under each of these subjects we provide the text of the Directive(s) and the legal situation in the relevant Member States. All national answers are also covered in the comparative tables. This analysis is to be found at the beginning of this report.

This report will hopefully not only inform the reader on the status of national transposition of the anti-discrimination Directives, but stimulate discussion at national and European level by providing the required comparative material.

Stefan Clauwaert
Isabelle Schömann
ETUI Research Officers
NETLEX Coordinators

Wiebke Düvel
ETUI Research Officer

I. Comparative overview of the implementation provisions

Table 1: Overview of national legislation implementing the non-discrimination Directives

Country	National legislation implementing Directive 2000/78/EC	National legislation implementing Directive 2000/43/EC
Austria	Law on equal treatment in force since 1 July 2004	
Belgium	Law of 25 February 2003 on the fight against discrimination	
		Law on reinforcement of the legislation against racism (January 2003)
Bulgaria	Bill on prevention of discrimination – withdrawn / Law passed September 2003	Amendment to the Labour Code
Cyprus	Bills adopted in March 2004	
Czech Republic	<ul style="list-style-type: none"> • Amendment to Act on employment • Amendment to Act No. 65/1965 Coll. Labour Code • Act on protection against discrimination in general foreseen 	
Denmark	Act of 30 March 2004 on the amendment of Act No. 459 of 12 June 1996 on prohibition of discrimination in respect of employment and occupation, etc.	Act No. 374 of 28 May 2003 on equal treatment of ethnic minorities
Estonia	<ul style="list-style-type: none"> • Amendments to the Gender Mainstreaming Act • Draft Act on Equality and Equal Treatment • Draft Act on Employment Contracts Single legislative text adopted December 2003, in force since January 2004	Not yet implemented
Finland	Single act adopted in December 2003, effective since February 2004 Equality Act implementing Dir. 2000/43/EC	
France	<ul style="list-style-type: none"> • Law No. 2001-397 of 9 May 2001 on equality between women and men at work • Law No. 2002-73 of 17 January 2002, the so-called ‘social modernisation’ law • Principally by Law No. 2001-1066 of 16 November 2001 on combating various types of discrimination • Draft bill aimed at ensuring equal treatment for disabled people (28 January 2004 – probably effective from 1 January 2005) • Draft bill to establish the ‘Haute autorité de lutte contre les discriminations et pour l’égalité’ (body to fight against discrimination and for equality) (15 July 2004) 	
Germany	<i>No official proposal so far</i>	
Greece	New implementation proposal currently before the so-called ‘Legislative committee’; will probably go before Parliament in November 2004	
Hungary	New Equal Treatment and Promotion of Equal Opportunities Act came into effect in January 2004	
Iceland	Ministry of Foreign Affairs deems the Directive to fall outside the EEA agreement	
Ireland	<ul style="list-style-type: none"> • Equality act 2004 (July 2004) • Amendments to the Employment Equality Act of 1998 needed 	Bill

Italy	Decree 216 of 9 July 2003 (Official Gazette 187, General Series, of 13 August 2003)	Decree 215 of 9 July 2003 (Official Gazette 186, General Series, of 12 August 2003)
Latvia	Amendments to existing laws (Labour Code)	
Lithuania	Amendments to Labour Code in November 2003	Amendments to existing laws on racial discrimination
Malta	Legislation was implemented in 2003; process of extension under the Employment and Industrial Relations Act	Draft
Luxembourg	Draft law on implementation of the Directives	
Netherlands	New legislation: <ul style="list-style-type: none"> • Act of 3 April 2003 on equal treatment on grounds of disability and chronic disease (Equal Treatment – Disability Act) • New equal treatment legislation on grounds of age (1 May 2004) Amendments to: <ul style="list-style-type: none"> • 1994 Equal Treatment Act • Implementation law Equal Treatment Act 	Amendments to: <ul style="list-style-type: none"> • 1994 Equal Treatment Act • Implementation law Equal Treatment Act
Norway	Proposals	No proposal yet
Poland	<ul style="list-style-type: none"> • Law of 14 November 2003 amending the Labour Code; entered into force on 1 January 2004 • Amendments to Law of 1994 on employment and counter-acting unemployment 	No specific regulation
Portugal	New Labour Code	
Romania	<ul style="list-style-type: none"> • Law 137/31.08.2000 • Law 48/16.01.2002 	
Spain	<ul style="list-style-type: none"> • Framework law on the social integration of people with disabilities • Law 51/2003 promoting equal opportunities, non-discrimination and access to employment for disabled persons • Legislation ‘Measures for the application of equal treatment’ adopted end of 2003; came into effect in January 2004 	
Sweden	<ul style="list-style-type: none"> • Amendments to four laws that ban discrimination on the grounds of ethnicity and religion and other beliefs, gender, disability and sexual orientation • A new civil law banning discrimination (1 July 2003) 	
Slovenia	New legislation adopted in April 2004	
Slovakia	Draft legislation on women, ethnic minorities and disabled persons Amendments to Labour Code Amendments to the Law on State Service A single draft law due to be adopted before end May 2004	A single draft law due to be adopted before end May 2004

<p>UK</p>	<p><i>Disability</i> Disability Discrimination Act 1995 (Amendment) Regulations 2003 (Statutory Instrument 1673) amended primary legislation and became effective on 1 October 2004 in relation to employment. Provisions relating specifically to education will be implemented by 2006</p> <p>Draft Disability Discrimination Act 1995 (Pensions) Regulations 2003 also amend primary legislation and apply to occupational pension schemes. They will become effective on 1 October 2004</p> <p><i>Sexual Orientation</i> Employment Equality (sexual orientation) Regulations 2003 (Statutory Instrument 2003 No. 1661) are secondary legislation prohibiting discrimination, harassment and victimisation on grounds of sexual orientation. They became effective on 1 December 2003</p> <p><i>Religion or Belief</i> Employment Equality (religion or belief) Regulations 2003 (Statutory Instrument 2003 No. 1660) are secondary legislation prohibiting discrimination, harassment and victimisation on grounds of religion or belief. They became effective on 2 December 2003</p> <p><i>Age</i> The UK has not yet implemented the age discrimination elements of the Directive. Secondary legislation in the form of Regulations will come into force on 1 October 2006</p>	<p>2003/1626, Race Relations Act 1976 (amendment) Regulations 2003</p>
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Source: The ETUI's own sources and additional information taken from 'Equality and Non-Discrimination – Annual Report 2004', European Commission, Employment and Social Affairs, Fundamental Rights and Anti-Discrimination, May 2004, or from the Commission website:

http://europa.eu.int/comm/employment_social/fundamental_rights/legis/expertrep_en.htm

Dissemination of information

The dissemination of information is the point of departure of the analysis in this report.

Provision of information on a subject may raise awareness and lead to greater public understanding of the problem. This is the first step in launching a public discussion, making non-discrimination an important topic in the media and daily life, changing perceptions of the subject in society, and hopefully changing people's behaviour. Only information can raise awareness: for example, it can enable employers and workers to act and react adequately, on the basis of knowledge of their obligations and rights in the area of non-discrimination. The same applies to victims of discrimination outside the workplace.

The question of dissemination is a key factor in national campaigns to fight discrimination, even more so given that the Directives demand that the Member States take care 'by all appropriate means' to bring the provisions to the attention of the persons affected. How dissemination is carried out and through what channels is left to the Member States.

However, the majority of countries have not enshrined information obligations in legislation; there are no specific regulations in the Czech Republic, Denmark, Estonia, Germany, Italy, Latvia and Norway.

Table 2: Dissemination of information

Country	Responsible entity
Bulgaria	Employer
Czech Republic	No specific regulation
Denmark	Trade unions Government responsible for public information
Estonia	No specific regulation
Finland	Ombudsman for ethnic minorities
France	Employer Free telephone line on racial discrimination <i>Département</i> must follow up reported cases
Germany	No specific regulation
Latvia	State Labour Inspectorate – but insufficient state financing
Luxembourg	Relevant ministry responsible for campaigns Trade unions Worker representatives Employer responsible for information on sexual harassment
Norway	No specific regulation
Portugal	Worker representative
Romania	Trade unions
UK	Government and Advisory, Conciliation and Arbitration Service (ACAS)

There are different forms of dissemination of information in different countries. Specific information obligations at the workplace are found in Bulgaria, France and Luxembourg. In France the employer must provide a list of discrimination provisions applicable to its workers; in Luxembourg the employer's obligation is restricted to sexual harassment.

In other countries mainly the trade unions and other worker representatives are tasked with dissemination, including Denmark and Romania (trade unions); Portugal (worker representatives) and Luxembourg (trade unions and worker representatives).

Only in a few countries is the state responsible for dissemination: in Denmark the government organises public information activities and campaigns on racial and ethnic discrimination; in Finland it is the Ombudsman for Minorities, but only in respect of ethnic discrimination; in France there is a free telephone line for racial discrimination and the *département* is obliged to follow up reported cases of discrimination; in Italy it is the Anti-Discrimination Office; in Latvia the State Labour Inspectorate; in Luxembourg the relevant Ministry organises campaigns; and in the UK the government funds the ‘capacity building’ of organisations which provide information on the subject.

It can clearly be seen that governments which become active in disseminating information mainly choose the issue of racial and ethnic discrimination. Information regarding discrimination at the workplace must be circulated by the employer, worker representatives and trade unions. Regarding all other forms of discrimination, it seems that it is left to NGOs to carry on the fight.

The body for the promotion of non-discrimination on the basis of race or ethnic origin

Linked to the question of dissemination of information is the body for the promotion of non-discrimination on the basis of race or ethnic origin, as required under Directive 2000/43/EC. These bodies provide independent assistance to victims of discrimination in pursuing their complaints, conduct independent surveys on discrimination, publish independent reports and make recommendations on issues relating to discrimination.

In nearly all the countries under consideration the governments have designated one or more bodies to promote equal treatment, except for the Czech Republic, Estonia, Germany and Poland. These countries have therefore not yet met their obligations under the Directive. In most countries the body for equal treatment is not only responsible for discrimination on the grounds of racial or ethnic origin, as foreseen in the Directive, but has much broader scope. Restriction to the two grounds in the Directive can be found only in Finland.

Table 3: Body for the promotion of equal treatment

Country	Body	Grounds
Austria	Commission for equal treatment	<ul style="list-style-type: none"> men and women in working life
Belgium	Centre for equal opportunities and the fight against racism and xenophobia	Race and ethnic origin in all areas + other grounds
Bulgaria	Fight against discrimination (draft)	
Czech Republic	No body created yet	
Denmark	Danish Institute for Human Rights Board for Ethnic Equality Advisory & Documentation Centre on Racial Discrimination	<ul style="list-style-type: none"> Human rights Alleged discrimination
Estonia	No body created yet	
Finland	Ombudsman for ethnic minorities	

France	FASILD (Action and Support Fund to Promote Integration and Combat Discrimination) 'Haute autorité de lutte contre les discriminations' (High authority to combat discrimination)	Promote integration and combat discrimination
Germany	No body created yet	
Italy	Anti-Discrimination Office	
Ireland	Equality Authority	Promoting equality and tackling discrimination on nine grounds
Latvia	State Human Rights Office	
Luxembourg	Special Commission against Racial Discrimination	
Netherlands	Equal Treatment Committee	Age
Portugal	CIDR/ACIME Commission for Equality and against Racial Discrimination	
Poland	No body created yet	
Romania	National Council to Fight Discrimination	
Spain	No body created yet	Council for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin
Sweden	<ul style="list-style-type: none"> • Ombudsman against ethnic discrimination • Board against discrimination 	
UK	<ul style="list-style-type: none"> • Commission for racial equality • Disability Rights Commission 	

Judicial and administrative procedures available to victims

Once the public has been informed of its rights, the next step is to enable victims of discrimination to exercise their rights. Under the Directive the '*member states shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations [under this Directive] 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.*' Furthermore, associations and organisations or other legal entities which have a legitimate interest in the matter may engage, either on behalf or in support of the complainant, in any judicial and/or administrative procedure.

In most of the countries concerned the legislation provides judicial and administrative procedures to victims of discrimination.

Table 4: Judicial and administrative procedures available to victims

Country	Judicial procedure	Administrative procedure	Protection of victims
Austria	–	Advocates for issues related to equal treatment regarding men and women	–
Belgium	–	Centre for equal opportunities and the fight against racism and xenophobia	<ul style="list-style-type: none"> • Centre • Trade unions • Associations fighting racism and inequality
Bulgaria	Possible	Possible	Trade unions
Czech Rep.	Court	Labour Office	Trade unions supervise observance of the Labour Code
Denmark	General courts Labour courts (if in connection with collective agreements)	Danish Institute for Human Rights hears complaints on discrimination on the grounds of race + ethnic origin	Trade unions
Estonia	Civil courts	–	Trade unions
Finland	Labour/general courts	–	Trade unions, authorisation to represent in court
France	Civil/penal Mediation (bullying)	Labour inspectorate	Trade unions NGOs
Germany	Labour courts	–	Trade unions
Italy	Conciliation before the courts; conciliation under collective agreements	–	Most representative trade union
Latvia	Court	Labour inspectorate	Trade union
Luxembourg	Penal/labour/administrative	–	Representative on equality between men and women
Netherlands	Civil / admin.	Equal Treatment Commission	Family relatives may represent in court Trade union organisation
Norway	–	Trade union – not generally recognised by non-discrimination legislation	–
Poland	Public Prosecutor's Office Claim	Labour inspectorate	Trade unions
Portugal	Possible	Tripartite/multipartite bodies	Trade unions
Romania	–	National Council to Fight Discrimination	NGOs
UK	Employment tribunals Civil courts	–	Trade unions may support + represent

Judicial procedures may involve civil, penal or labour courts. Penal courts can be used by victims of discrimination in France and Luxembourg; labour courts in Denmark (if collective agreements are in question), Finland, Germany, Luxembourg and the UK; and civil courts in most countries: Czech Republic, Denmark, Finland, Estonia, France, Bulgaria, Latvia, Luxembourg, the Netherlands and the UK.

Administrative procedures are mostly in the hands of special institutions. All countries provide victims with recourse to administrative procedures except Estonia, Finland, Germany, Italy, Luxembourg and the UK.

Victims can be represented by trade unions in all countries; associations may also do so in Belgium, France, Luxembourg and Romania.

Burden of proof

To allow the victims of discrimination a real opportunity to defend their rights before a court or other competent authority the Directive foresees a reversal of the burden of proof. It is sufficient that the plaintiff establish the facts from which it may be assumed that there has been direct or indirect discrimination. It is then up to the respondent to prove that there has been no breach of the principle of equal treatment.

Regarding provision of the burden of proof most countries have taken over the wording of the Directive (Belgium, Finland, Ireland, Latvia, Luxembourg, the Netherlands, Norway, Portugal and the UK); other countries have gone further (Czech Republic, Estonia and France); some, on the other hand, fall short of or are not in line with EU legislation (Italy, Luxembourg).

In the Czech Republic and Estonia (draft of the Gender Equality Mainstreaming Act, draft Labour Code) national law goes further than the Directive insofar as the burden of proof is automatically on the employer.

In France the claimant has only to provide ‘*facts from which it can be inferred that...*’ instead of ‘*facts from which it may be presumed that...*’. The burden of proof under French legislation therefore favours the plaintiff.

Current Italian legislation requires evidence – which must be precise and concordant – which is more favourable to the complainant than formerly, but it is still not in line with the Directive, under which the complainant does not have to present evidence but merely facts allowing the presumption of guilt. Furthermore, Italian law does not put any burden of proof on the respondent, which is surely in breach of the Directive.

Luxemburgian legislation is not in line with the EU Directive either, as the entire burden of proof is on the complainant.

Protection of victims after a complaint has been lodged

Once a complaint has been lodged the complainant shall be protected against discrimination which they might incur as a result. This must be laid down in legislation to permit the victims of discrimination to take action before the courts without fear of adverse treatment on the part of the employer. If such a provision is missing, it is likely that many victims would not dare to exercise their rights.

National legislation contains the following forms of victim protection: protection against dismissal; protection against discrimination; and general protection provisions.

Only three countries – Bulgaria, Estonia and Poland (except for equal treatment of men and women) – have not implemented this form of protection at all.

Table 5: Protection of victims after a complaint has been lodged

Protection against dismissal	Protection against discrimination	Protection in general	No protection
Austria Belgium Bulgaria France Germany Italy Netherlands Norway Portugal	Austria Germany Italy Romania UK	Czech Republic Denmark (ethnic and racial) Estonia (draft) Finland Latvia Norway	Bulgaria Estonia Poland (except on equal treatment of men and women)

Interestingly, in many countries there is protection against dismissal, as foreseen in Article 11 of Directive 2000/78/EC, but not protection against ‘other adverse treatment’. In the countries in which this is the case (Belgium, France, the Netherlands and Portugal) protection is therefore far too restricted on this point and must still be brought into line with EU legislation.

On the other hand, some countries have only implemented protection against discrimination, but not against dismissal, for example, Romania and the UK.

Sanctions

Once the courts are convinced of the facts establishing a discriminatory act, they need adequate tools to sanction such behaviour. These sanctions – for example, payment of compensation to the victim – must be effective, proportionate and dissuasive.

The various national provisions provide a variety of sanctions in all three areas of law: penal, civil and administrative. In penal law the traditional forms of imprisonment and fines are used; under civil law most countries opt for compensation and reintegration of the victim; administrative fines may be found in some countries. Other countries have adopted new forms of sanction, such as making the facts or legal proceedings public. In the majority of countries there is a mixture of different sanctions in different areas of law.

While generally welcoming the contents of the new Irish legislation, a number of equality lobby groups have suggested that the new provisions do not go far enough, particularly in relation to the upper limits on sanctions. According to the Equality Authority, the new law fails to ensure that the redress provided is genuinely dissuasive, and tougher sanctions are needed to serve as an adequate deterrent.

Table 6: Sanctions

Country	Compensation	Civil sanctions	Penal sanctions
Austria	360 € (job ad) other sanctions for specific cases	–	–
Belgium	50 to 1 000 €	<ul style="list-style-type: none"> • Reintegration • Nullity • Publication + dissemination of the judgement 	1 month to 1 year
Bulgaria	No special sanctions		
Czech Republic	6 000 € (first case) 30 000 € (second case)	–	–
Denmark	(+) no amount	–	–
Estonia	At least 5 months' min. wage (draft)	–	–
Finland	Max. 15 000 € Max. 24 months of salary (unjustified dismissal)	–	Up to 6 months (e.g. discrimination at work)
France	–	–	2 years + fine 30 000 € (discrimination) 45 000 € (see details below) 1 year + 15 000 € (sexual harassment + bullying)
Germany	(+) disability / gender max. 3 monthly wages	–	–
Italy	(+) amount fixed by the court	–	–
Latvia	Max. 460 €	–	Up to 2 years or fine up to 40 min. wages (on ground of religious belief)
Luxembourg	–	–	8 days to 2 years +/or 250 to 25 000 €
Netherlands	(+)	Nullity	–
Norway	(+)	–	–
Poland	Not less than the min. wage – max. 6 months (200 – 1 200 €)	Nullity Termination of contract	–
Portugal	–	–	15 000 – 50 000 €
Romania	(+) 200 – 1 500 €	Warning	(+)
UK	(+) no upper limit	–	–

Court cases

It is worth looking at the current enforcement of rights by the courts. The amount of case law varies considerably between the different countries, as do the areas of discrimination addressed, although the survey responses provided little information on this point. The following table shows that there are fewer cases of racial and ethnic discrimination than cases falling under Directive 2000/78/EC. Similar cases regarding the so-called ‘Islamic headscarf’ have been brought before the courts in Denmark, France and Germany.

Table 7: Court cases

Countries	Court cases 2000/78/EC	Court cases 2000/43/EC
Belgium	15 cases on harassment before the labour court: 9 in the public and 6 in the private sector No employer has been convicted 267 cases before the Centre for Equal Opportunities and the Fight against Racism and Xenophobia	779 cases before the Centre for Equal Opportunities and the Fight against Racism and Xenophobia
Bulgaria	1 case – job ad	(–)
Denmark	3 cases – religion	1 case – ethnic
Czech Republic	(–)	(–)
Estonia	(–)	(–)
Finland	Sexual orientation/age	(–)
France	Religion/racial/trade union	(–)
Italy	(–)	Working conditions – immigrants
Ireland	Disability / 106 cases on gender discrimination (2003) / 361 cases on unlawful discrimination at work (2003)	(–) / 85 cases on race (2003)
Latvia	Age / gender / Nothing on sexual orientation	(–)
Poland	9 cases (since 1999) gender, job ad, age, equal treatment general, trade union activity	(–)
Romania	1 case – gender	1 case – race
Sweden	(–)	Ethnic

With regard to the ten new Member States very little litigation has been reported. There is no case law on non-discrimination in the Czech Republic and Estonia, and none on race and ethnic origin in Latvia and Bulgaria.

Very few cases of this kind – mainly on gender, job advertisements, age, trade union activities and race – have been brought before the courts.

Needless to say, the lack of cases does not indicate that discrimination is not a problem in the ten new Member States. There are a number of possible explanations: the inadequate administrative and judicial structure; the lack of labour courts; the necessary legislation does not exist or is incomplete; lack of trust in institutions and legislative provisions; problems regarding access to justice; fears that court proceedings will not bring the desired results; lack of legal aid for disadvantaged people (as reported from Poland); and lack of training for lawyers, judges, and so on.

Historical reasons are also a factor: for example the equal treatment of men and women in employment was not an issue under communism.

Non-discrimination has not been a priority in the ten new Member States, partly due to the fact that they have had to transpose the entire *acquis communautaire*. However, there is also a lack of awareness, with little public debate on discrimination. Perceptions of the problem need to be changed, as reported by the Romanian trade union confederation BNS.

Looking more closely at Romania, only two cases have been reported, one a court case and the other a case brought before the prosecutor; however, 243 petitions were brought before the National Council for Combating Discrimination in the first half of 2003. Bearing in mind that this Council was only established in November 2002 this is impressive. Thirty six cases were related to age, 28 to ethnic affiliation and 15 to sexual orientation.

The Romanian example shows the importance of specialised bodies and legislation. It is still a moot point, however, whether the existence of such institutions will contribute to changing awareness in society.

Remaining problems after implementation

Some national reports highlight the problems which still need to be solved after implementation at national level. In some countries, however, the Directives have not yet been transposed at all. Regarding the latter the Commission has announced that it will take legal action against six Member States for failing to transpose the two anti-discrimination Directives. Both Directives should have been implemented in 2003.

In the case of the Racial Equality Directive (2000/43/EC) Austria, Germany, Finland, Greece and Luxembourg have failed to pass all the necessary measures to introduce, amend or update their equality legislation. In some cases, no legislation has been passed or communicated to the Commission; in others, gaps in the legislation have left the transposition incomplete.

Infringement proceedings have also been launched against the same five Member States and Belgium for failing to transpose fully the Employment Framework Directive.

The following country details have been made available by the European Commission:

Germany The government has not yet presented to Parliament the draft legislation transposing the Directives.

<i>Austria</i>	Legislation transposing the Directives has not been communicated to the Commission and the necessary legislation has not been adopted at <i>Land</i> level.
<i>Luxembourg</i>	Draft legislation transposing the two Directives was presented to Parliament in November 2003 but has not yet entered into force.
<i>Greece</i>	The draft legislation was presented to Parliament in January 2004 but failed to complete its passage prior to the elections in March 2004.
<i>Belgium</i>	The legislation to transpose the Directives has entered into force at the federal level and in all communities and regions except the German speaking community
<i>Finland</i>	The legislation transposing the Directives in mainland Finland was published in January 2004 but does not cover the Åland Islands

The Commission's first step is to send a letter of formal notice. If the Member State does not reply within two months, or the Commission is dissatisfied with the reply, it can issue a 'reasoned opinion'. The deadline for reply is also two months, at which point the Commission can refer Member States to the European Court of Justice.

For those Member States which have already adopted legislation transposing the Directives, the Commission is now in the process of examining the national laws in question to ensure they are in conformity with EU law.

In this report we list the following examples of incorrect transposition as reported by our colleagues at national level:

In *Latvia* the **dissemination of information** is within the competence of the State Labour Inspectorate, but state financing for this institution is not sufficient to obtain reasonable results.

In relation to the **body for the promotion of equal treatment** the *French* report raised a number of questions and outstanding problems. How will referral to this body take place? How accessible will it be to those accused of discriminatory practices? What powers will it have to impose sanctions? How autonomous and independent will it be?

No such body has yet been established in the *Czech Republic, Estonia, Germany and Poland*.

Another problem under *French* legislation is the provisions regarding **burden of proof**. In cases of sexual harassment or bullying the establishment of proof was brought strictly into line with the definition of the Directive. However, in the process the level of protection was reduced in violation with Article 8 of Directive 2000/78/EC. This is a problem of deregulation: the national legislator may not lower the level of protection at national level while transposing European legislation. The European Directives provide minimum standards and national provisions can only increase the level of protection, not lower it. This is a fundamental principle which must be respected.

The burden of proof has not been correctly transposed in *Italy* either. Proof has become easier for complainants than formerly, but no shift in the burden of proof has been incorporated into Italian law. This must certainly be in breach of the EU provision.

In *Luxembourg* the burden of proof is on the complainant.

On the issue of **protection of workers who have filed a complaint**, three countries reported remaining problems: *France, Italy and Latvia*.

In France Art. L.123-5 of the Labour Code only protects employees against dismissal, but does not cover ‘other adverse treatment’, in contrast to the Directive. This is also the case in *Belgium, the Netherlands and Portugal*.

No protection against dismissal is foreseen in *Romania and the UK*.

The *Italian* provision does not seem to satisfy the conditions set out in Article 11 of the Directive on victimisation as it merely increases the extent of compensatory protection.

In *Latvia* the problems lie in implementation. Protection against discrimination after having filed a complaint can be obtained only with legal assistance. Therefore workers often do not make a complaint. There are no provisions on the protection of workers who have filed a complaint in *Bulgaria, Estonia and Poland* (except for equal treatment of men and women).

In *Austria* **sanctions** were highlighted as problematic in the ÖGB’s opinion on the draft bill.

In *Ireland* the low upper limit on sanctions was criticised.

Of course, this is only a first overview of the problems encountered in national legislation. As in any normal transposition process detailed problems will turn up only when the national provisions are in force and in use. It will then be up to the national courts and the European Court of Justice to interpret national law in light of the Directive. National legislators will then be obliged to change or amend national legislation.

II. Information on national legislation implementing the non-discrimination Directives

Dissemination of information on rights enshrined in national regulations

Article 12 Dissemination of information (2000/78/EC)

Member States shall take care that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force in this field, are brought to the attention of the persons concerned by all appropriate means, for example at the workplace, throughout their territory.

Article 10 Dissemination of information (2000/43/EC)

Member States shall take care that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought to the attention of the persons concerned by all appropriate means throughout their territory.

There are no specific regulations on this issue in the following countries: *the Czech Republic, Estonia, Germany, Italy and Norway.*

Belgium

The Belgian Centre for Equal Opportunities and Opposition to Racism has launched a number of initiatives of a preventive, counteractive and educational nature:

- reception of victims of racism at 18 different centres in Flanders, Wallonia and Brussels, which provide information, mediation services and legal assistance;
- wide-ranging public awareness campaigns, for example about discrimination in recruitment;
- organisation of training and awareness raising programmes for the police, teachers, the social services and the business community;
- participation in major cultural or sporting activities to promote diversity;
- management of the Impulse Fund for Immigrant Policy.

Bulgaria

In Bulgaria the employer is obliged to make known workers' rights regarding discrimination, to organise training and seminars, and also to maintain the dignity of the employee in the employment relationship. The trade unions will have the right to request information in this regard.

This issue has not been incorporated into *Danish* law; however, dissemination of information is carried out extensively by the trade unions. The government organises public information activities and campaigns on racial and ethnic discrimination.

Finland

In Finland the ombudsman for minorities promotes good ethnic relations, monitoring and improving the status and rights of ethnic minorities, reporting, initiating and informing. In addition, the ombudsman for minorities, together with other officials, has the task of ensuring

equal treatment regardless of ethnic background. An advisory board for minority issues assists the ombudsman for minorities (Act 600/2001).

Other tasks of the ombudsman for minorities include improving the position of ethnic minorities at a general level and providing information for clients. Matters such as the availability of social services emerge frequently. In the new Act there is an obligation on all authorities to design an action plan to promote equality. An information campaign to be launched after the bill has passed through Parliament was also discussed in the tripartite preparatory working group.

France

In France, in the workplace the rules of procedure (a requirement for companies with more than 20 employees) must (since Law No 92-1179 of 2 November 1992) list existing provisions on the abuse of authority for sexual favours and, since the Law of 17 January 2002, give information on '*provisions concerning the ban on any act of bullying*' (Article L.122-34 of the Labour Code). The rules of procedure are set out in a written document which must be brought to the attention of all employees. Article L.122-35 of the Labour Code stipulates that these rules may not contain discriminatory clauses.

All provisions on equality between men and women at work must be displayed in working areas and in the premises or on the door of the premises used for recruitment (Article L.123-7 of the Labour Code). The same is true for the implementing decrees relating to these provisions.

In more general terms, a free telephone line – 114 – has been set up to help prevent and combat racial discrimination. The purpose of this service is to take calls from people who feel that they have suffered discrimination or have witnessed a case of discrimination. The telephone line provides information and advice, records reported cases of discrimination and copies down details of those reported to have been guilty of discrimination. Details of the telephone service must be displayed in all private or public enterprises.

Each *département* must have, in liaison with the judicial authorities and the bodies or departments responsible for combating discrimination, a permanent system for dealing with and following up reported cases, and for providing support to the victims, in a way which guarantees the confidentiality of the information received. People working in this area are bound by rules on professional secrecy.

Italy

In Italy the dissemination of the 'maximum possible knowledge of the protection instruments in force, where appropriate through measures to raise awareness among the public of the principle of equal treatment, as well as information and communication campaigns' is one of the tasks of the Anti-Discrimination Office to be set up at the Presidency of the Council of Ministers, Department for Equal Opportunities. No provision has been made for a specific form of dissemination of information in workplaces, although local trade unions often have information and service counters for immigrant workers.

Latvia

There is no specific legislation on this issue in Latvia. It is within the competence of the State Labour Inspectorate to ensure the dissemination of information on workers' rights. Information

is disseminated, although not on a regular basis. There is insufficient state funding for this purpose.

Luxembourg

In Luxembourg workers are informed concerning their rights in relation to discrimination by means of special campaigns by the competent ministry (Ministry of Justice, Ministry of Female Promotion), the trade unions, worker representatives, and professional chambers. In respect of sexual harassment the employer is obliged to take all necessary measures to ensure the protection of employees' dignity. These measures must include the provision of information.

Poland

One of the basic duties of the employer enshrined in the Polish Labour Code is to make employees familiar with their basic rights, together with their duties and work procedures.

Portugal

In Portugal workers' representatives play a major role in disseminating information in the workplace. Organisations active in combating discrimination are mainly responsible for informing the general public.

Romania

Access to official journals and other sources of law is free in Romania. In practice, however, the trade unions disseminate brochures and leaflets and organise seminars.

UK

There are no provisions for the dissemination of information in the UK, although information concerning the regulations is widely available on websites and in various publications. However, there is also the Commission for Racial Equality, established by statute, whose responsibility is to oversee and enforce the terms of the Race Relations Act, as amended by the 2003 Regulations, and the Disability Rights Commission, also established by statute, tasked with overseeing and enforcing the terms of the Disability Discrimination Act. No equivalent bodies have been proposed in relation to sexual orientation or religion, although it is likely that a Single Equality Commission will be established at some point. The position in relation to age is not yet known. In the meantime, the government has taken some limited steps to disseminate information about the new Regulations. The relevant government department will produce guidance for employers and the Advisory, Conciliation and Arbitration Service (ACAS) will produce guidance for employers and workers. The government is making funding available to 'support capacity building' in organisations which provide information, advice and guidance on the new legislation.

The role and competences of the body for the promotion of non-discrimination on the basis of race or ethnic origin which must be established under Directive 2000/43/EC

Chapter III: Bodies for the promotion of equal treatment

Article 13

1. Member States shall designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights.

2. Member States shall ensure that the competences of these bodies include:

- *without prejudice to the right of victims and of associations, organisations or other legal entities referred to in Article 7 §2,² providing independent assistance to victims of discrimination in pursuing their complaints about discrimination,*
 - *conducting independent surveys concerning discrimination,*
 - *publishing independent reports and making recommendations on any issue relating to such discrimination.*
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Austria

In Austria, according to the draft bill, a Commission for equal treatment must be established at the Ministry of Health and Women. This Commission has three 'senates': the first is responsible for equal treatment of men and women in working life; the second is responsible for equal treatment without distinction as to race, ethnic origin, religion or belief, age or sexual orientation in working life; and the third is responsible for equal treatment without distinction as to race and ethnic origin in other areas.

In the final law there is a Commission of this kind only in the area of equal treatment of men and women and in the chapter on equal treatment in working life in the agricultural sector.

Belgium

In Belgium the Centre for Equal Opportunities and the Fight against Racism and Xenophobia (hereafter, Centre for Equal Opportunities) is a public autonomous service set up in 1993. Its mission is to promote equal opportunities and to fight all forms of discrimination, exclusion, restriction or preference on the grounds of race, colour, ancestry, national or ethnic origin, sexual orientation, marital status, age, religious or philosophical belief, actual state of health or future one, disability or other physical characteristic. The Centre runs public campaigns to raise awareness, gives opinions and recommendations to the state and helps the victims of discrimination (mediation, court cases, and so on).

² Article 7 Defence of rights:

"2. 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 this Directive 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 this Directive."

Discrimination at the workplace is increasing in Belgium. In 2003 the Centre for Equal Opportunities received 779 complaints about racial discrimination and 267 on other forms of discrimination. A continuous trend can be seen in the growth of racial discrimination at the workplace in the form of job advertisements, bullying, harassment, and so on. Other important places of discrimination are the media and, in particular, the Internet.

The 267 cases of other forms of discrimination reported since March 2003 (following the anti-discrimination law) include: handicap (31% of cases), health (19%), sexual orientation (13), age (8) and religion or belief (6). Other reported problems include discrimination in relation to taking out insurance, adapting workplaces to the needs of the handicapped and selection criteria for blood donation which exclude gay people. Eighteen per cent of all complaints concern the workplace, followed by the media (14), the private services sector (11), public services/law and order (10), education (8) and housing (7).

Bulgaria

The planned commission to fight against discrimination in Bulgaria shall be a new state structure with the right to receive and investigate complaints, take decisions, set sanctions and give instructions to employers.

Czech Republic

In the Czech Republic the Government Council for Human Rights monitors and evaluates the state of human rights (including equal treatment and non-discrimination) and compliance. It also monitors, analyses and publishes information and reports on the state of human rights.

Denmark

The Danish Institute for Human Rights has organised a long series of activities relating to human rights. The Institute has also been given the task of assisting victims of alleged discrimination in accordance with Article 13 of the Directive 2000/43/EC. Furthermore, the Institute can hear complaints regarding alleged discrimination which cannot be brought before other authorities and can issue a statement. If the case is subsequently brought before the courts, the Institute can request legal aid, provided that the conditions of the Administration of Justice Act are met. The administration of complaints lodged with the Institute is carried out by an independent Committee under the Board and is thus separate from the provision of aid to victims of alleged discrimination.

Estonia

Estonia is well behind schedule: no body has been established so far.

Finland

In Finland the responsible body is the ombudsman for minorities. In addition to the information given under the previous heading the following website should also be consulted: <http://www.mol.fi/vahemmistovaltuutettu/ombudsmaneng.html>

France

The Action and Support Fund to Promote Integration and Combat Discrimination (FASILD – Le Fonds d'action et de soutien pour l'intégration et la lutte contre les discriminations)

The Law of November 2001 amended Article L.767-2 of the Social Security Code to read as follows:

The Action and Support Fund to Promote Integration and Combat Discrimination shall implement measures aimed at integrating immigrants or those from immigrant communities resident in France and combating any discrimination which may affect them.

FASILD is a public body whose aim is to promote the anti-discrimination activities of voluntary organisations, particularly through financial support. FASILD also draws up charters to condemn discriminatory practices. It is managed by the state, however, which reduces its independence. Its main purposes are prevention, promotion of equal opportunities and integration. However, its aims have been expanded since its establishment.

CODACs

CODACs could have been effective tools to combat discrimination. However, they have been disappointing.

GELD (Groupe d'étude et de lutte contre les discriminations)

The Group for the Study and Combating of Discrimination has the makings of a good tool to combat discrimination. However, it would perform much better if it was more independent.

CODACs and GELD will disappear and give way to the Haute autorité de lutte contre les discriminations ('High authority to combat discrimination'), which is planned for January 2005 (see below.)

The Independent Administrative Authority responsible for combating discrimination (L'autorité administrative indépendante chargée de lutter contre les discriminations)

In order to comply fully with the Directive, an independent administrative anti-discrimination authority is to be set up in 2004.

The French Ombudsman has been given the task of drawing up draft legislation to set up this body, in consultation – in particular – with the social partners, NGOs and political parties. This consultation will take the form of hearing representations from each party.

The types of discrimination to be targeted are racism, religious intolerance, sexism, homophobia and discrimination against people with disabilities.

According to the Prime Minister, this authority shall have 'sufficient status and powers to be in a position, by the measures it takes, to change existing practices and influence behaviour'. It shall therefore:

- have the power to 'transmit to the judicial authorities, where these have been brought into a case, useful information giving them a better understanding of situations where there is evidence of discrimination';
- to play a role 'in obtaining and disseminating knowledge, drawing up opinions, giving advice and, subject to conditions yet to be defined, the recognition of good practice'.

To allow this administrative authority to start work immediately, it may 'utilise, in particular, the resources of the public interest group Groupe d'étude et de lutte contre les discriminations (GELD), which was originally set up to improve knowledge of practices resulting from racial discrimination, but which was later given responsibility also for collecting individual reports of discrimination through the 114 telephone line, and for arranging that these reports be investigated by the CODAC network'.

The setting up of a body specially designed to combat discrimination is expressly in line with Article 13 of Directive 2000/43/EC.

Meanwhile, a draft bill has been announced (February 2004) proposing the establishment of an independent body to fight discrimination and for equality, the *Haute autorité de lutte contre les discriminations et pour l'égalité*. This body will be responsible for all kinds of discrimination prohibited by law and have 11 members. It can be approached regarding all cases of discrimination on the grounds of race, religious intolerance, sex or disability. It can refer cases to court in its own name. The body can make recommendations, act as a witness before a court, propose amendments to legislation and take action to promote equality. Every year a report will be sent to the President of the Republic.

A number of outstanding issues remain, however:

- How will referral to this body operate? How accessible will it be to those accused of discriminatory practices?
- What powers will it have to impose sanctions?
- How autonomous and independent will it be?
- How effective will it be in practical terms?

The answers to these questions will determine whether or not the Directive has been correctly transposed in France.

Germany

In Germany no such body has yet been established.

Italy

The Anti-Discrimination Office in Italy will monitor and guarantee equal treatment and the efficacy of protection instruments in an independent and impartial way, and engage in activities to promote equal treatment and remove any form of discrimination, taking account, in addition, of the differing impact of such discrimination on women and men. Its tasks shall include providing assistance, in judicial or administrative action, to persons who consider themselves discriminated against; investigating manifestations of discrimination; promoting positive action measures; disseminating information on rights; drawing up recommendations and opinions on discrimination based on racial or ethnic origin and proposals for the amendment of the law; drafting an annual report to Parliament on practical application of the principle of equal treatment and on the efficacy of the protection mechanisms, and an annual report to the President of the Council of Ministers on the work that it has undertaken; and promoting research and exchanges of experience with NGOs and associations and organisations addressing and working to combat discrimination in order, *inter alia*, to draw up guidelines on the subject. The Office is chaired by a director appointed by the President of the Council and is composed of magistrates, lawyers, public prosecutors, high-level experts and external consultants. An annual sum of 2,035,357 euros has been allotted for the establishment and operation of the Office, starting from 2003.

Ireland

In Ireland a new Equality Authority was established in October 1999 under the Employment Equality Act. The Equality Authority is a public enforcement body charged with promoting

equality and tackling discrimination on the following grounds: gender; marital status; family status; age; disability; race; sexual orientation; religious belief; and membership of the 'traveller community'. Also established was the Office of the Director of Equality Investigations, whose remit is to decide claims under both the Employment Equality Act and the Equal Status Act.

Latvia

The body performing such functions in Latvia is the State Human Rights Office, an independent state institution. It is entitled to conduct surveys, publish reports and make recommendations. It has the task of reviewing complaints about human rights violations, and to act to counter such violations. In order to avert human rights violations, the Office forwards its suggestions and proposals to the respective institution or official, which must respond within one month. It can act as a mediator in disputes over human rights violations. It can also pursue legal action in the Constitutional Court in order to challenge unconstitutional legislation and other normative acts, including legislation, which violates human rights.

Netherlands

In the Netherlands the responsible administrative body is the Equal Treatment Committee, which will oversee the implementation of legislation and deal with cases brought by complainants. A pending new bill will increase the power of the committee, giving it the right to investigate individual companies if there is evidence of systematic abuse of equality legislation.

Portugal

The CIDR in Portugal gathers information on discriminatory procedures and sanctions; recommends new policies, legislation, practices and measures; promotes studies; disseminates information; and drafts an annual report on its activities. The ACIME has a more supportive role, providing the public with assistance and information, and preparing intervention plans alone or with the social partners and NGOs. It also has a consulting role as the coordinator of the CIDR's activities.

Romania

The role of the Romanian National Council for Combating Discrimination is to enforce non-discrimination. Its competences are as follows: to monitor application of the law, conduct research, run projects, implement measures benefiting the disadvantaged, detect and penalise infringements and collaborate with NGOs.

Spain

In Spain the Council for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin has the three functions mentioned by Article 13 of the Directive. The word 'independent' is missing in the Spanish legislation, however. Another question mark against the independence of this body is the fact that it appears to be a typical internal consultative body within the Spanish government.

Sweden

In Sweden the ombudsman against ethnic discrimination and the board against discrimination promote non-discrimination. There are three ombudsmen in related areas: equal opportunities, discrimination due to sexual orientation and disability.

UK

As already mentioned, the Commission for Racial Equality in the UK has statutory responsibility for ensuring proper implementation of the Race Relations Act 1976. It has the power to publish Codes of Practice. It can fund litigation to enforce the Act, either by appearing in court cases in its own right, or funding claims pursued by individuals. It also has limited rights to carry out investigations into potential breaches of the Act, though in practice it has relied more on individual cases. It has an extensive website, and has a high profile when commenting on race issues within the UK.

Judicial or administrative procedures available to the victims of discrimination – defence of victims

Article 9 (2000/78/EC) Article 7 (2000/43/EC) – defence of rights

1. *Member States shall ensure that judicial and/or administrative procedures, including, where they deem it appropriate, conciliation procedures, for the enforcement of obligations under this Directive 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.*
2. 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 this Directive 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 this Directive.
 3. *Paragraphs 1 and 2 are without prejudice to national rules relating to time limits for bringing actions as regards the principle of equality of treatment.*
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Belgium

The Belgian law gives the Centre for Equal Opportunities and Opposition to Racism the right to appear in court. The trade unions traditionally have the right to defend their members in court. The Centre and the trade unions have agreed to fight cases of discrimination at work. This right also applies to other associations which fight racism and inequality.

Bulgaria

According to the current Bulgarian legislation victims of discrimination can file complaints by judicial or administrative order. However, it is very difficult to prove a case. According to the Labour Code trade unions can ask the municipal labour inspectorate to monitor the implementation of labour legislation, including discrimination cases. The upcoming Act on the Prevention of Discrimination provides for a new state commission that will review complaints by administrative procedure; victims will be able to appeal by judicial order. This bill also introduces new obligations for trade unions and employers.

Concerning ethnic and racial discrimination the trade unions are given the possibility of cooperating with employers to identify cases of discrimination.

Czech Republic

According to Article 25c, para 7 of the Czech Labour Code, employers shall discuss with their employees, or, on request, with the employees' representatives, any complaint made by an employee concerning rights and obligations ensuing from the labour relationship, including the right to equal treatment in employment and occupation. This shall not affect the employee's right to turn to the competent Labour Office for help or to claim his rights in court. In accordance with Section 7, paragraphs 4 to 6 of the Labour Code, or with Sections 11 to 13 of the Civil Code, an employee who has been the victim of an act of discrimination may seek redress by means of a complaint to the competent Labour Office or before a court. If rights and obligations relating to the equal treatment of men and women in labour relations

are infringed, the employee concerned is entitled to demand the cessation of the infringement, the removal of its consequences and appropriate compensation (Section 7, paragraphs 4 to 6).

Observance of the principle of equal treatment is also a matter for the trade unions within the framework of their authority to supervise observance of labour legislation under Section 22 of the Labour Code ('Trade union organisations (bodies) shall ensure compliance with the provisions of the Labour Code and other provisions on labour relations, including those on wages, safety and health protection at work and on employment').

Denmark

In Denmark an alleged breach of anti-discrimination provisions can be lodged with the ordinary courts. At any time, trade unions are entitled to act as agents for members complaining of discrimination.

If collective agreements contain prohibitions of discrimination similar to those mentioned in the Danish Act on the prohibition of discrimination in respect of employment and occupation, and so on, ensuing cases are judged by the industrial courts, either in the Industrial Court or by industrial arbitration, where workers' organisations are a direct party to the case.

The Act of 30 March 2004 on the prohibition of discrimination in respect of employment and occupation, etc., gave the Danish Institute for Human Rights the right to judge complaints alleging discrimination on the grounds of race and ethnic origin. However, these cases will continue to be judged in the industrial courts if similar protection can be found in collective agreements.

Estonia

No specific procedure exists in Estonia; the only option is the civil courts. Trade unions are authorised to act in proceedings, but must obtain the authorisation of the individual worker to lodge a complaint.

Finland

In Finland in cases concerning employment relationships advice is given and supervision provided by labour inspectors and trade unions. These claims can be resolved by collective negotiations. If not, the case is taken before a labour court or a general court. Trade unions can get involved only when authorised to do so by the injured party.

The ombudsman for ethnic minorities mainly gives recommendations, instructions and advice. The ombudsman may also take initiatives concerning social problems or the status of foreigners or different ethnic minority groups. In certain cases the ombudsman or ombudsman's office may help persons who have experienced discrimination. In the government bill on ensuring equality the ombudsman for minorities and the advisory board for minority issues are given the power to confirm settlements or prevent further violations.

France

In France procedures for victims of discrimination (and harassment) include the following:

Victims of discrimination may start civil or criminal proceedings. Article L.122-45 renders any discriminatory act null and void. Any witness to a discriminatory measure receives the

same protection. This also applies to victims and witnesses of acts of sexual harassment or bullying (Articles L.122-46 and L.122-49 of the Labour Code).

Mediation procedures already existed for cases of harassment (established by the so-called ‘social modernisation’ law of 17 January 2002). The legislative authorities, however, have now repealed this possibility for cases of sexual harassment. The Fillon Law No. 2003-6 of 17 January 2003 retains it only for cases of bullying, stipulating that the choice of a mediator shall be ‘*agreed upon by the parties involved*’ (the January 2002 law stated that the mediator must be chosen from a list of persons external to the company). The new system seems doomed to failure, since it would seem very unlikely that parties involved in a bitter dispute would be able to reach agreement.

Trade unions have a recognised right to take legal action in favour of victims of discrimination. Article L.122-45-1 of the Labour Code stipulates that:

National trade unions or those representative within a *département*, an overseas *département* or a company *may bring all forms of legal proceedings resulting from Article L.122-45* [emphasis added], subject to the conditions set out in that Article, on behalf of an applicant for a job, training course or job placement or of a company employee, *without having to show proof of a mandate from the interested party, provided that he or she has been notified in writing and has not objected within a time period of fifteen days* [emphasis added] from the date when the trade union informed him or her of its intention. The interested party may still intervene vis-à-vis the body to which the trade union has brought the case.

This text is identical to that relating to equality at work (Article L.123-6 of the Labour Code).

In cases of harassment, similar powers are granted to the trade unions in Article L.122-53 of the Labour Code:

Trade unions which are representative within a company *may*, subject to the conditions set out in Article L.122-52, *bring all forms of legal proceedings resulting from Article L.122-46 and Article L.122-49 on behalf of a company employee* [emphasis added], provided that they can show written consent from the interested party. The interested party may still at any stage intervene vis-à-vis the body to which the trade union has brought the case and put an end to the proceedings.

In this case, however, explicit agreement is required, whereas in cases of discrimination the trade union may not take action when the interested party opposes it (hence tacit consent is possible). Furthermore, only trade unions active in the company may initiate proceedings. Employees working in a company where there are no trade unions cannot receive such help.

Moreover, non-governmental organisations are permitted to institute legal proceedings, but solely in cases of discrimination. Thus Article L.122-45-1 (2) states that:

Associations which have been legally constituted to combat discrimination for at least five years may bring all forms of legal proceedings resulting from Article L.122-45, subject to the conditions stated in the article, on behalf of an applicant for a job, a training course or job placement or on behalf of a company employee, provided that they can show written consent from the interested party. The interested party may still at any stage intervene vis-à-vis the body to which the association has brought the case and put an end to the proceedings.

Similar possibilities for legal action are granted to associations working to protect the rights of workers with disabilities (Articles L.323-8-7 and L.323-14 of the Labour Code see above).

In criminal law, associations have a right to take legal action resulting from Article 2-1 of the Criminal Procedure Code:

Any association legally registered for at least five years at the time when the events took place [emphasis added], and whose statutes state its intention to combat racism or to assist those who are victims of discrimination on the grounds of their national, ethnic, racial or religious origin, may exercise the rights of a civil party to a prosecution in cases relating to the types of discrimination described in Articles 225-2 and 432-7 of the Criminal Code, and involving intentional violations of a person's well-being, or the types of destruction, degradation or similar offences referred to in Articles 221-1 to 221-4, 222-1 to 222-18 and 322-1 to 322-13 of the Criminal Code, where these have been committed against a person on the grounds of his or her national origin, real or supposed membership or non-membership of a particular ethnic group, race or religion.

Article 2-6 of the same Code grants the same possibility to associations working against gender or morality-based discrimination.

Courses of action open to the labour inspectorate and to staff representatives

Article L.611-9 of the Labour Code, amended by the Law of 16 November 2001, states that 'Labour inspectors may require any document or other information, in any format, to be handed over if it may be of use to establish facts which show that Articles L.122-45, L.123-1 and L.412-2 of this Code and Article 225-2 of the Criminal Code have been ignored or not complied with'. The inspectors may talk to employees of the company they are visiting and collect testimony from them. They may take statements to show that infractions have taken place (Article L.611-10).

Staff representatives have the right to raise the alarm where there has been 'a violation of a person's rights, of his or her physical and mental health or of individual freedoms within the company'. Such a violation may in particular be the result, under Article L.422-1-1 of the Labour Code, of a discriminatory measure. In such a case, the staff representative shall inform the employer or his/her representative, who must immediately launch an enquiry and put an end to the situation. If no action is taken, the employee or the staff representative shall appeal to the trial board of the Conseil de Prud'hommes (industrial tribunal) which shall take a decision under the procedure for summary proceedings.

Germany

In Germany workers whose rights have not been respected can file a complaint. Trade unions may only defend workers before a labour court, but cannot file a complaint themselves. According to information from the Ministry of Justice future German legislation will orient itself to the wording of the Directive. The question of trade unions is not resolved yet. However, it is expected that the unions, like other lobby groups, will not obtain the right to collective complaints procedures.

A specific provision can be found in §63 SGB IX: trade unions can file a complaint for a disabled person, if this person gives their permission.

Ireland

In Ireland people who suffer discrimination because they are associated with a person who has been discriminated against can also make a claim (Section 4 (a) (1) (b)).

Italy

In Italy the procedures for the judicial protection of the right to equal treatment are partly taken from Legislative Decree 286 of 25 July 1998 (consolidated provisions setting out rules on immigration and regulating alien status), as regards civil action against discrimination, and

partly governed by Decree 216 which repeats the procedures for gender discrimination (Law 903/77; Law 125/91; Legislative Decree 196/00). In the case of discrimination, persons intending to bring actions may make use both of the *conciliation procedures* set out in collective agreements and of conciliation before the courts. The invalidity of acts of discrimination set out in Article 15 of Law 300/70 is extended to agreements or acts having the purpose of discrimination on the grounds of politics, religion, race, language, gender, *disability, age, sexual orientation or personal belief*.

Legal action can be brought only by the *local bodies of the most representative national organisations* (including, but not limited to, trade unions) at national level at the request of the person involved *in the name and on behalf* of that person (representation) or *in their support*. They are also allowed to bring legal action in cases of *collective discrimination* when the persons wronged by the discrimination cannot be directly and immediately identified (Article 5).

Although trade unions and employers' associations are not authorised to bring legal actions against discrimination on grounds of racial or ethnic origin, actions can be brought by the associations and organisations included in a register approved by Decree of the Minister for Labour and the Minister for Equal Opportunities. These have been selected on the basis of planning objectives and continuity of action in accordance with criteria that seem very restrictive.

Latvia

The Latvian Labour Code provides that in case of discrimination a person can apply directly to a court for the protection of his/her rights. Employees can also complain to the State Labour Inspectorate, which must investigate such cases and impose administrative measures on employers who practice discrimination. Trade unions may lodge complaints on behalf of their members (with their permission), and they are allowed to legally represent their members in court.

Luxembourg

In Luxembourg some violations have to be dealt with before penal courts, such as discrimination on the grounds of origin, colour, gender, sexual orientation, family status, health, disability, morals, political belief, religious belief, trade union activity, real or assumed membership or non-membership of an ethnic group, nationality, race or religion.

Violations based on equal treatment of men and women regarding access to employment, professional training and working conditions must be brought before labour courts or administrative courts for workers in the public sector.

In cases of sexual harassment a complaint can be filed before the president of the labour court under an 'emergency' procedure, if the contract of a worker has been terminated or if they have witnessed sexual harassment.

The representative on equality between men and women has an important role in dealing with sexual harassment in employment. If such a person has not been appointed the task goes to the workers' representative. They shall assist and advise victims of sexual harassment, and accompany and assist workers during meetings with the employer in the course of the inquiry.

Trade unions do not have legal personality, except in the case of disputes arising from a collective agreement. Therefore complaints can be filed only on behalf of individual members of the trade union. Trade unions cannot defend their members before penal courts.

Netherlands

In the Netherlands anyone who feels that he or she has been discriminated against may file a complaint to the Equal Treatment Commission (CGB).³ In order to ask the opinion of the CGB, you must yourself be the victim of discrimination. If people who feel discriminated against prefer not to file a complaint themselves, they can ask someone else to be their representative. However, this does not mean that they can remain anonymous. The ‘authorised representative’ may be a relative, a union or a pressure group such as an anti-discrimination organisation. If unequal treatment occurs within an organisation, the works council or select committee may contact the CGB.

Pressure groups can also file a complaint. In this way, an association or foundation can take legal action to protect the interests of other persons, but only if these interests are in accordance with the association’s constitution or statutes. Employers or employers’ organisations may submit their regulations to the CGB, requesting an assessment of whether these comply with the Equal Treatment Law. This is referred to as a ‘request for an assessment of one’s action’. Finally, a judge handling a lawsuit concerning unequal treatment may ask the opinion of the CGB.

When the CGB receives a complaint about discrimination, it investigates whether the Equal Treatment Law has been violated. In some respects, the CGB is similar to a court. An important difference is that the CGB seeks information itself. Other differences are that filing a complaint is free of charge and people do not need a lawyer. The CGB does not necessarily need to receive a complaint in order to investigate whether the Equal Treatment Law has been broken. It also conducts so-called ‘investigations on its own account’. The bill ‘Evaluatiewet Awgb [Algemene wet gelijke behandeling]’ or ‘evaluation of general equal treatment’ gives the CGB the right to investigate individual companies if there is evidence of systematic abuse of equality legislation.

The CGB’s decision is important, but not legally enforceable. That means that the CGB cannot force the party found guilty of discrimination to comply with its decision. However, in practice the CGB’s decisions are usually complied with.

Besides the CGB it is possible for victims of discrimination to go to court (civil and administrative court) and file a claim under Dutch equal treatment legislation. In some cases a collective labour agreement appoints an official body or a commission to file the complaint.

The Parliamentary Commissioner deals with complaints about the conduct of government bodies, including conduct in relation to equal treatment.

Trade unions are recognised as able to lodge complaints personally or in support of the victims.

Norway

Victims of discrimination in Norway can bring legal action against the employer.

³ Commissie Gelijke Behandeling

Lawyers of the Confederation of Trade Unions can lodge complaints on behalf of members. However, this is not generally recognised by non-discrimination legislation. The trade unions assess whether their members need legal assistance and if they decide to bring a case to court, they use lawyers from the legal service department of the Confederation of Trade Unions to represent their members.

Poland

In Poland a victim of discrimination may notify the public prosecutor's office of an offence, submit a complaint to the Labour Inspectorate, appeal against notice of termination or termination of his/her work contract without notice to the court and claim compensation or reinstatement under former conditions. Appeal can also be made against a warning or serious reprimand. A person who failed to obtain employment as a result of discrimination may also demand the conclusion of a work contract. A person in relation to whom the employer has infringed the principle of equal treatment of men and women has the right to compensation of not less than one minimum wage and not higher than six minimum wages.

Victims of discrimination must lodge their complaint themselves, but they can also be represented before the court by a trade union official. Trade unions (as collective bodies) can only submit notice of an offence and complaint to the Labour Inspectorate but cannot lodge complaints themselves.

Portugal

Victims in Portugal have the possibility of instigating judicial action or they can present formal complaints to specific tripartite or multipartite bodies with competence in the area of discrimination (there is, for instance, a commission on equality at work, CITE; a consulting council on discrimination, CIDR; and a High Commissioner for Immigration and Ethnic Minorities, ACIME). Trade unions have judicial capacity to represent their affiliates and judicial initiative in case of violations of a generic character. They also have legal support at their disposal.

Romania

In Romania the special body for victims of discrimination is the National Council for Combating Discrimination. This body has the right of inquiry and the possibility of issuing sanctions. Victims can also file complaints before a court. NGOs have the right to represent victims before a court.

Sweden

In Sweden complaints are handled by the police. Victims can submit cases to the Ombudsman or bring lawsuits themselves. Trade unions can bring cases on behalf of their members.

UK

In the UK victims of discrimination may bring complaints to employment tribunals (and to the civil courts in relation to discrimination outside the workplace) or, in cases of discrimination by institutions of further and higher education, to the county court in England and Wales, and the sheriff's court in Scotland. Complaints must be made within three months of the last incident or act or omission. Trade unions are not recognised as bodies entitled to lodge complaints, although they may support and represent complainants at employment tribunals.

The British TUC is concerned that the proposals for a new single equality body could result in less help being available for individuals to enforce their rights. The Government is also bringing in new dispute resolution procedures and legal-cost penalties which could deter individuals with valid claims from instigating or pursuing cases. The government should provide more public funds to ensure adequate representation, whether through unions or otherwise. The TUC is still campaigning for a Single Equality Act, covering all equality grounds and tackling discrimination in the provision of goods and services, and public sector health, social care and all other activities.

The burden of proof

Article 10 (2000/78/EC) Article 8 (2000/43/EC) – Burden of proof

1. *Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination; it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.*
 2. *Paragraph 1 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.*
 3. *Paragraph 1 shall not apply to criminal procedures.*
 4. *Paragraphs 1, 2 and 3 shall also apply to any legal proceedings commenced in accordance with Article 9(2).⁴ [Article 7(2) for Directive 2000/43/EC]*
 5. *Member States need not apply paragraph 1 to proceedings in which it is for the court or competent body to investigate the facts of the case.*
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The wording of the Directive has been taken over literally in *Belgium* (Art. 19 §3 of Law 25 February 2003 and Art. 32 of Law 11 June 2002), *Finland*, *Ireland*, *Latvia*, *Luxembourg* (Article 3 – Law of 28 June 2001), *the Netherlands*, *Norway*, *Portugal*, *Sweden* and the *UK*.

This is not the case in respect of *Austria*, *Denmark* and *Germany*. In *Austria* the proposed amendment to the Law on equal treatment of men and women in working life leaves the burden of proof on the person bringing forward the complaint (§19 par. 12). The issue of burden of proof was not introduced into the implementation process of the *Danish* Act of 30 March 2004. However, on discrimination on ethnic and racial grounds a sharing of the burden of proof has been introduced in Denmark (§7) in accordance with the Directive. In *Germany* so far there is only one specific provision, §81 Abs. 2 Nr. 1 S.3 Sozialgesetzbuch – 9. Buch ‘on disability’ (SGB IX). A disabled person can report facts which make it plausible that they have been disadvantaged on the grounds of disability, putting the burden of proof on the employer to justify the difference in treatment.

Belgium

In Belgium a series of specific proofs has been established, such as the use of practical tests and statistical methods (Article 19 §3), which can also be used by the trade unions.

Bulgaria

According to the current Bulgarian legislation, in a civil trial victims must prove their case. The bill on the prevention of discrimination provides for a division of the burden of proof between the victim and the accused. Regarding discrimination on ethnic and racial grounds

⁴ Article 9 Defence of rights

“2. 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 this Directive 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 this Directive.”

the burden of proof is distributed between the victim, the respondent and the employer, but the balance is not optimal.

Czech Republic

The Czech law on judicial proceedings provides that the burden of proof is on the employer in all cases dealing with violation of equality of treatment in respect of racial or ethnic origin, sex, sexual orientation, religious belief and religion, political or other conviction, health, disability and age.

Estonia

The burden of proof is reversed in the Estonian Wages Act (equal pay for work of equal value). Forthcoming acts (Gender Equality Mainstreaming Act §6, draft Labour Code) put the burden of proof upon the employer.

France

In cases of discrimination in France, the situation regarding the burden of proof is more favourable than in Community law. According to the final paragraph of Article L.122-45 of the Labour Code, an employee claiming to be a victim of discrimination ‘*shall submit factual evidence suggesting that there has been direct or indirect discrimination*’. The Directive, however, states that the person discriminated against shall establish facts from which it may be presumed that there has been discrimination. After this stage, the procedure for establishing proof follows the same rules as those set out in Community law.

In cases of sexual harassment or bullying, the system for establishing proof was amended by Law No. 2003-6 of 3 January 2003. Article L.122-52 of the Labour Code was brought strictly into line with the definition in the Directive. This new wording, however, violates the principle set out in Article 8 of Directive No. 2000/78/EC, whereby the existing level of protection may not be reduced while implementing EU law. The previous system of proof was more favourable for the victim of harassment, since the victim had only to submit ‘*factual evidence suggesting that there has been harassment*’ (the wording was the same as for discrimination – see above). This provision, which offers less protection to the employee than the equivalent contained in the law of 17 January 2002, must be kept out of discussions by any judge dealing with disputes, since judges and magistrates must interpret national law ‘*in the light of Community law*’. In France we must hope that legislation will be harmonised upwards, that is, in favour of the victims of harassment.

Italy

In Italy, persons taking legal action against alleged discrimination may furnish the court with evidence, including evidence *based on statistical data, in serious, precise and concordant terms*, likely to convince the courts that there is a prima facie case against the discriminatory practice (Article 4(4)). The provision takes up the similar provision on proof of gender discrimination, but requires *more rigorous proof* of discrimination, according to the general provision on circumstantial evidence – that is, serious, precise and concordant evidence – whereas Article 4 of Law 125 (now Article 8 of Legislative Decree 196/2000) requires only that the evidence is precise and concordant, thereby lightening the burden of proof on the complainant. This regulation seems limited to lightening the burden of full proof on the plaintiff, but *does not set out a system shifting the burden of proof back to the respondent*, as

is specified in the procedural provisions on gender discrimination which state that the burden of proof showing that the practice in question is in no way discriminatory lies on the respondent, as required under Article 10 of the Directive.

Luxembourg

In *Luxembourg* the burden of proof for penal cases of discrimination based on ethnic and racial grounds lies with the ministry. If the victim is summoned to a hearing it is up to him/her to prove the case. In civil cases the complainant has the burden of proof.

Netherlands

The EU implementation law introduces Article 10 of the Directive into the 1994 Dutch Equal Treatment Act, enabling the Equal Treatment Committee to start an investigation after receiving a complaint or a request for advice or of its own accord. The burden of proof will be extended to collective action and to administrative law.⁵

Poland

Generally the burden of proof in Poland falls upon the complainant. See Art. 18(3b), para 1 stating that different treatment of employees by the employer on particular grounds is deemed to be discrimination unless the employer proves that he/she had objective reasons. It remains a moot point in legal circles in Poland whether this way of establishing the burden of proof rule is satisfactory. It is likely that the opinion of judicial bodies will be crucial in this matter and may result in new legal measures (for example in introducing this rule also into the Civil Procedure Code which applies in the resolution of individual labour disputes).

Sweden

Under the Swedish Act on Ethnic Discrimination, anyone who believes that he or she has been discriminated against can make an application to the office of the DO (Discrimination Ombudsman).

If a job applicant or an employee can demonstrate that three specific conditions apply, then the courts may presume that an act of discrimination has occurred. These conditions are: 1) there is an ethnic factor; 2) the applicant/employee was treated less favourably than a person with another ethnic background; and 3) he or she was in a position similar to that of the other person. It will then be up to the employer to provide 'objective reasons' for their actions. If the employer's explanations show good reason, there has been no discrimination.

In cases of alleged indirect discrimination on ethnic grounds, the plaintiff must prove that there is an ethnic factor in the alleged indirect discrimination. The plaintiff must also prove that the employer used a procedure that is in theory neutral but which in practice leads to a disadvantageous result for a significantly large percentage of persons with the same ethnic background as the applicant/employee. He or she must also prove that the person who was successful in obtaining the job or promotion was not sufficiently qualified.

If the plaintiff successfully proves these things, the employer must show that his actions fulfil a business need and that the measure is related to that need. If alternative methods can be used, the employer will not be allowed to continue with the former methods.

⁵ Article 305a Civil Code and 1:2, §3 Algemene Wet Bestuursrecht

Protection of workers who have lodged a complaint against dismissal or other adverse treatment by employers

Article 11 Victimisation (2000/78/EC)

Member States shall introduce into their national legal systems such measures as are necessary to protect employees against dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment.

Article 9 Victimisation (2000/43/EC)

Member States shall introduce into their national legal systems such measures as are necessary to protect individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment.

Austria

In the draft amendment to the Austrian law on equal treatment it is laid down that an employee cannot be dismissed, given notice or discriminated against due to the filing of a complaint (§ 27). The same goes for a witness.

Belgium

The Belgian Law of 11 June 2002 regulates the protection of workers who have filed a complaint against the employer on the ground of discriminatory treatment. The employer can only dismiss them on another ground, not in relation to the complaint. It is the employer who has to prove the grounds for the dismissal.

Bulgaria

The current Bulgarian legislation does not provide protection to employees who have filed a complaint against discrimination. Such protection against dismissal is provided by the draft bill, but unfortunately it is not clearly formulated.

Czech Republic

In accordance with Section 7, paragraph 4 of the Czech Labour Code an employer may not victimise an employee or put them at a disadvantage because they have exercised their legal rights and entitlements. This applies for the purpose of protecting employees who have filed a complaint against dismissal or other adverse treatment by the employer.

Denmark

A provision containing a prohibition against retaliatory measures has been incorporated into the Danish Act of 30 March 2004. Regarding discrimination on ethnic and racial grounds §8 stipulates that:

No one must be subject to unfavourable treatment or unfavourable consequences based on a complaint or any form of legal proceedings instigated with a view to ensuring that the principle of non-discrimination is observed. The sanction is compensation.

Estonia

Employees in Estonia are not protected. The draft Gender Mainstreaming Act specifically prohibits detrimental treatment due to a complaint.

Finland

A special section in the Finnish act prohibits less favourable treatment and sanctions. Rules concerning dismissals are set down in the Employment Contract Act where dismissals require objective and justified reasons. This kind of behaviour can also fall within the scope of the Penal Code.

France

Article L.122-45-2 of the French Labour Code protects employees who have filed a complaint against their employer. It states that:

The dismissal of an employee, once legal proceedings have been instituted by him or her or on his or her behalf on the basis of discrimination-related provisions in this Code, shall be *null and void* [emphasis added] where it is established that there is no real cause for this dismissal but that it is in fact a measure taken by the employer due to the legal action. In this case, the employee has the right to be reinstated and shall be considered as having never ceased to occupy his or her post.

If the employee refuses to continue with his or her work contract, the Conseil de Prud'hommes shall grant damages which may not amount to less than his or her last six months' earnings. Moreover, the employee shall receive compensation equal to the amount of the redundancy payment established in Article L.122-9 or in the applicable collective agreement or contract of employment. Paragraph 2 of Article L.122-14-4 shall also apply.

This protection is modelled on the protection available in the area of equality at work (Article L.123-5 of the Labour Code). The article, however, protects employees only against dismissal, and does not cover '*other adverse treatment*', as the Directive does. This is another change which needs to be made to national legislation.

Germany

In Germany this matter is currently regulated in §612 of the Bürgerliches Gesetzbuch (BGB). This provision prohibits the employer from discriminating against an employee because he/she has exercised his/her rights. This civil law provision applies in all labour law cases.

Italy

The Italian courts must take account, *for the purposes of compensating for the prejudice*, of whether the discriminatory practice is in retaliation for a previous judicial action or an unjust reaction to a preceding action by the wronged person to enforce compliance with the principle of equal treatment (Article 4 §6). The Italian provision does not seem to satisfy the conditions set out in Article 11 of the Directive on victimisation, as it merely increases the extent of compensatory protection which is not normally considered, on its own, to be an appropriate way of penalising discriminatory acts or practices. It should be borne in mind, however, that this strengthening of compensatory protection accompanies and does not replace the general protection of the nullification of discriminatory acts or agreements under Article 15 of Law 300/70 and in particular the protection against discriminatory dismissal which requires reinstatement (Article 2, Law 108/90).

Latvia

Two general provisions of the Latvian Labour Code prohibit adverse consequences for employees who have filed a complaint against their employers. However, in practice such protection can be obtained only with substantial legal assistance, and therefore employees seldom complain about their employers.

Netherlands

In Dutch legislation contravention of equal treatment legislation is sanctioned by way of specific regulations in that legislation. Termination of the labour contract in conflict with the equal treatment regulations can be made null and void, including a situation in which the victim has filed a complaint in or out of court (victimisation).⁶ It is possible to get compensation. The regulation on victimisation will be extended to other persons than those directly discriminated against. In the new legislation concerning age and disability the same rules apply.

Norway

The Norwegian proposal contains a provision dealing with victimisation, which states that:

Retaliation against a worker who has made a complaint or otherwise notified a breach of a provision of this chapter, or who has expressed an intention to make such a complaint, is prohibited. The prohibition does not apply if the worker acts with gross negligence.

Furthermore, there is a general prohibition on dismissal without due cause. Dismissal due to filing a complaint would be invalid under this provision.

Poland

Polish legislation does not provide special protection against dismissals or other adverse treatment by employers of employees who have filed a complaint except the one contained in the chapter on equal treatment of men and women. In the latter case *'The fact that an employee has exercised his/her rights resulting from an infringement of the principle of equal treatment for men and women by the employer may not constitute grounds for the employer giving notice of termination of employment to an employee or terminating employment without notice.'*

Portugal

The new Portuguese regulations on this matter include a legal presumption against the dismissal of workers with pending complaints up to a period of one year after that complaint.

Romania

In Romania all forms of harassment against a worker who has filed a complaint are considered breaches of the law. If the worker is a trade union member he/she can be represented before the court.

⁶ Article 8, 1994 Equal Treatment Act

UK

In the UK there is protection against victimisation. The regulations provide that it is unlawful discrimination to treat the complainant less favourably than other persons have been or would be treated for the following reasons:

that he has i) brought proceedings or ii) given evidence or information in connection with proceedings or iii) done anything under or by reference to the regulations (for discrimination on racial and ethnic grounds: Race Relations Act 1976) in relation to the discriminator, or iv) alleged that the discriminator has committed an act which would amount to a contravention of the regulations. This means that if they do suffer adverse treatment for having carried out any of these 'protected acts' then they too have the right to pursue a claim for unlawful discrimination.

Under the Disability Discrimination Law, victimisation protection covers employees who assist another person to make a claim, and so applies whether or not the complainant has a disability.

Sanctions

Article 17(2000/78/EC) Article 15 (2000/43/EC) – Sanctions

Member States shall lay down the rules on sanctions applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are applied. The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by 2 December 2003 [2000/43/EC: 19 July 2003] at the latest and shall notify it without delay of any subsequent amendment affecting them.

Austria

In the Austrian law on equal treatment sanctions of up to 360 euros are foreseen if the wording of a job advertisement is discriminatory (§24). If an employment relationship is not established §26 states 11 situations (including dismissal and lack of career advancement) in which the employee or another person has the right to compensation.

The Austrian trade union ÖGB in its opinion on the draft bill took the view that in Austria the Directive has not been correctly transposed regarding the provision that sanctions have to be effective, proportionate and dissuasive. Sanctions are foreseen in case of non-promotion due to discrimination and in case of sexual harassment but not in case of termination of the contract due to discrimination, which is inconsistent.

Belgium

In Belgium there are possible penal or civil sanctions. Penal sanctions include imprisonment from one month to one year and/or a fine from 50 to 1,000 euros. These sanctions can be higher under certain circumstances.

Civil sanctions include reintegration and compensation (Art. 21, Law of 25 February 2003), nullification of a contract, publication and dissemination of the judgement (for example, in a newspaper).

Bulgaria

There are no special sanctions in Bulgarian legislation. Compensation is set by the courts and amounts vary. Regarding discrimination on ethnic and racial grounds financial sanctions are provided for the accused and for the employer if he/she refuses to launch an investigation. The amounts of compensation shall be defined by the future commission to fight discrimination or by a court. The actions of this commission shall be reviewed by administrative order.

Czech Republic

As already mentioned, in accordance with Section 7, paragraphs 4 to 6 of the Czech Labour Code, if rights and obligations related to fair treatment of men and women are infringed, the employee concerned is entitled to demand the cessation of such infringement, elimination of its effects and appropriate compensation. If the employee's dignity or reputation at the workplace is substantially harmed and rectification under this subsection is not sufficient, the employee may claim monetary compensation for this non-material detriment. The amount of

this compensation shall be determined by the (competent) court, taking into account the severity of the detriment and the circumstances under which rights and obligations were infringed.

Finally, in accordance with Section 9 of the Act on Employment, breaches of labour law obligations may be subject to fines of up to 6,000 euros (first offence) or 30,000 euros (thereafter) by the competent Labour Office in administrative proceedings.

Denmark

The sanction provided for in the Danish Act on the prohibition of discrimination in respect of employment and occupation, and so on, is compensation. The Act does not mention any maximum or minimum amount of such compensation.

Furthermore, any breach of the prohibition on discrimination in job advertisements can be punished by a fine.

Estonia

No sanctions are provided in Estonia. In the draft Mainstreaming Act financial compensation for bullying and material loss is foreseen. The amount – at least five monthly minimum wages – is to be determined by a judge. The social partners agreed that the new Labour Code would include the principle that discrimination in working life merits specific penalties. For example, concerning unjustified dismissal, the rules on penalties and consequences are stricter if the case involves discrimination. The Labour Code entitles workers suffering discrimination on ethnic and racial grounds to compensation to be determined by a judge.

Finland

In Finland the maximum financial compensation in case of non-compliance is 15,000 euros; the same sanction applies in relation to sexual discrimination under the Act on equality between men and women. This compensation does not prevent separate claims and payments of compensation when discrimination has also caused financial losses.

Discrimination can also lead to sanctions laid down in the Employment Contracts Act (for example, unjustified dismissal incurs maximum compensation of 24 months' salary) and/or in the Penal Code (for example, discrimination at work incurs sanctions ranging from fines to six months' imprisonment).

The advisory board on minority issues (ethnic) can order someone to desist from discrimination on pain of a fine.

France

In France criminal sanctions involve a fixed fine. Civil sanctions are determined '*according to the harm suffered*'. Therefore there is no minimum guaranteed level of compensation. Articles L.122-46 and L.122-50 of the Labour Code also state that an employee found guilty of acts of sexual harassment or bullying is liable to disciplinary sanctions, which may extend to dismissal for a serious offence.

Where discrimination is found to have taken place, the victim may claim damages, based on common liability law. Thus Article 1382 of the Civil Code states that: '*Any action which*

damages the interests of another individual must be compensated by the person responsible for that action.'

In criminal law, discrimination as defined in Article 225-1, committed against a natural or legal person, shall be punished by two years' imprisonment and a fine of 30,000 euros.

Article 432-7 of the Criminal Code, established by Edict No 2000-916 of 19 September 2000, also states that:

Discrimination as defined in Article 225-1, committed against a natural or legal person by a person holding a post of public authority or carrying out a task for the public authorities, while carrying out these functions or tasks, shall be punished with three years' imprisonment and a fine of 45,000 euros where the discrimination entails:

1. the withholding of a statutory right;
2. the obstruction of normal economic activity of any sort.

Furthermore, Article R625-7 of the Criminal Code states that:

The *incitement in private* of discrimination, hatred or violence towards a person or group of persons on the grounds of their origin or their real or supposed membership or non-membership of a particular ethnic group, nation, race or religion shall be punished with the fine established for fifth class infractions.

Where this incitement to discrimination occurs in *public*, the perpetrator is liable to one year's imprisonment and/or a fine of 45,000 euros (Article 24 of the Press Law of 29 July 1881).

Article 222-33 of the Criminal Code also establishes penalties for *sexual harassment*:

The harassment of another person with a view to obtaining sexual favours shall be punished by one year's imprisonment and a fine of 15,000 euros.

Bullying, on the other hand, is punishable under Article 222-33-2 of the Criminal Code:

Harassing another person repeatedly with a view to bringing about or resulting in the deterioration of their working conditions with the possibility that their rights or dignity will be violated, impairing their physical or mental health or damaging their career prospects shall be punished by one year's imprisonment and a fine of 15,000 euros.

Germany

In Germany compensation for acts of discrimination is laid down for two cases. Provision §81 S.2 Sozialgesetzbuch – 9. Buch 'on disability' (SGB IX) provides an entitlement to adequate compensation in case of discrimination on the ground of disability. No claim can be made regarding the conclusion of an employment contract. Compensation is limited to three monthly incomes if a disabled person was discriminated against in the course of recruitment but would not have got the job even if discrimination had not occurred. A similar provision exists for discrimination based on gender (§611a Bürgerliches Gesetzbuch (BGB)).

Extreme discrimination on the grounds of race or ethnic origin can entail a violation of the right of personality (the right of each human being to freely develop their own personality, in the following spheres: individual, private and intimate). For such a violation a worker may ask for adequate compensation. There are no criteria for assessment of the amount of compensation. Furthermore, no jurisprudence exists on the matter so far.

Ireland

While generally welcoming the contents of the new Irish legislation, a number of equality lobby groups suggest that the new provisions do not go far enough, particularly in relation to the upper limits for sanctions. According to the Equality Authority, the new law fails to ensure that the redress provided is genuinely dissuasive, and that tougher sanctions needed to be built into the legislation as a sufficient deterrent.

At present, upper limits for sanctions under Irish law vary depending on the complaint. There is a 10,000 euros upper limit in the case of complaints of discrimination at the interview/job selection stage. Currently, there is no ceiling on compensation in the case of gender discrimination cases referred to the Circuit Court.

Italy

Acts or practices of discrimination are sanctioned in Italy by *compensation for damages, which may be non-pecuniary* (moral prejudice) if requested, and an *order to stop the discriminatory practice, conduct or act*, where it still exists, and to *remove its effects* (Article 4 §5). The amount of the compensation for damages is set by the court which must also consider whether the practice is retaliatory (Article 4 §6)). The order to *publish the sentence*, at the expense of the respondent – but only on one occasion – in a *daily national newspaper* is a further sanction (Article 4 §7)).

Latvia

In Latvia there is an administrative fine for labour law violations, with a maximum amount of LVL 250 (approx. 460 euros). In addition, an employee can claim damages in court, if they prove discrimination and damages causally connected to it. Criminal liability is prescribed for differential treatment on the ground of religious belief.

Article 150 of the Criminal Code prescribes criminal liability for violation of the equality of persons on the basis of a person's religious convictions. The article provides for imprisonment for up to two years or a financial penalty of up to 40 minimum wages or community service.

The Administrative Offences Code includes a provision whereby labour law violations, including the principles set out by the Directive, are punishable administratively with a fine of up to 250 LVL, imposed on the employer or public official.

Luxembourg

In Luxembourg penal sanctions are foreseen. Discriminatory acts (on ethnic and racial grounds) are sanctioned with imprisonment of eight days to two years and/or with a fine of 250 to 25,000 euros. Compensation in a civil case depends on the circumstances.

Netherlands

In the Netherlands legislation not in compliance with the Directive will be abolished. Provisions in collective agreements and individual contracts contrary to equal treatment regulations are null and void. Contravention of equal treatment legislation is sanctioned by specific regulations. Termination of a labour contract in conflict with the equal treatment

regulations can be rendered null and void, including victimisation resulting from the victim filing a complaint, whether in or out of court.⁷ It is possible to obtain compensation.

Norway

In Norway the person that has been discriminated against can demand tort, in which case it is not necessary to establish guilt on the part of the employer. Compensation for economic loss is granted under the general rules on compensation for damages.

Poland

In Poland all provisions included in individual contracts which are not in line with non-discrimination regulations are invalid *ex lege*. A person who was not employed as a result of discrimination may also claim the conclusion of an employment contract. The victim of an employer's infringement of the principle of equal treatment of men and women has the right to financial compensation. This compensation may not be less than the minimum wage and may not exceed six monthly minimum wages (around 200 to 1,200 euros). As a result of implementation of Directive 2002/73/EC, the latter upper limit of damages has been removed.

Portugal

In Portugal cases qualified as very serious violations are sanctioned with penalties which can vary from around 15,000 to 50,000 euros depending on the gravity of the case and the size of the company. Compensation applies only in judicial procedures and its amount is stipulated by the judge on the basis of a number of general criteria (for example, material and non-material damages).

Romania

Romanian legislation foresees different kinds of sanctions, from a simple warning to civil or penal fines (200–1,500 euros) or even imprisonment. Compensation can be much higher, but only if a court so decides.

Sweden

In Sweden there are possible sanctions and compensation and discriminatory actions or contracts are null and void. The level of sanctions is very low, but combined with the threat of publicity they can have an effect. Courts can only award damages; whereas a settlement can lead to the victim getting the job he or she applied for.

UK

The sanctions available in the UK are compensation, declaration of unlawfulness and a recommendation that the employer take action to obviate or reduce the effect of the discrimination. Compensation includes compensation for past and future financial loss including loss of earnings, and may include a sum to represent injury to feelings. Interest is awarded on compensation. Compensation is also possible if the discriminatory act has caused injury to health. There is no upper limit on the amount of compensation. There is no specific provision providing that the employer re-engages the worker.

⁷ Article 8, 1994 Equal Treatment Act

There is no availability of interim relief in discrimination cases. The TUC would like to see more imaginative and tougher approaches to sanctions, including interim relief and better enforcement of tribunal recommendations, and a positive duty on employers to promote equality in the workplace.

The most relevant national court decisions or pending cases on the issue concerned (possibly inspired by the EU Directives or referring to national laws which already cover the relevant ground)

Belgium

The first ruling based on the anti-discrimination law in Belgium was a failure. A gay couple looking for a place to live was turned away from one flat as they were ‘partners of the same sex’. The judges considered them not discriminated against as the owners of the flat could not be held directly responsible: it was in fact the mother of one of the owners who took this action.

The Gay Liga is furious and calls the judgment ‘legal nit-picking’ as the law is intended to protect against any discrimination, irrespective of the context of the discriminatory deed or words. The Liga has for several years requested the fusion of the anti-racism law and the anti-discrimination law, among other reasons because the penalties in the first are greater than in the latter.

Another case, in progress since October 2000, reached a first conclusion in spring 2004. It concerned the suicide of a young postman who had been harassed by his colleagues. The court sentenced five postmen to a suspended prison sentence and fined the employer – the Belgian postal service – 283,000 euros. The postmen and the mail service are appealing to a higher court.

Cases were brought before the courts in Belgium in September 2004 by workers claiming unjustified dismissal by Ford, which had taken into consideration previous warnings, sanctions, unjustified absences, and so on, when deciding who should be made redundant. Each worker was given points in accordance with past sanctions incurred.

Bulgaria

Bulgarian National Television was ordered to withdraw an advertisement with the following text: ‘What a man needs – a fast car, a pretty woman and a good beer’.

Denmark

Several judicial decisions have been based on the Danish Act on the prohibition of discrimination in respect of employment and occupation, etc., which came into force in 1996.

On Muslim headscarves, the Danish Eastern High Court pronounced judgement on 10 August 2002. This case involved an apprentice who, as part of her training, had been sent to a shopping centre with a view to taking on unpaid work for one week. The apprentice was from Iraq and, on the first day of practical training, came to work wearing a headscarf. As this went against the dress code of the department store, she was dismissed and sent back to her school. The court ruled that the dismissal of the apprentice by the department store, which was solely due to the fact that she wore a headscarf, constituted indirect discrimination. In this connection, the court attached particular importance to the fact that enforcement of the dress code would typically affect a certain group with the same religious background as the apprentice. In addition, the department store, whose dress code allowed for some degree of latitude, had not been able to identify specific conditions that could constitute reasoned grounds for summary dismissal. The apprentice was therefore awarded compensation in the amount of DKK 10,000.

This case was followed by a similar one in the Eastern High Court (judgement was issued on 18 December 2003) involving a major retail chain that had dismissed an employee after five years' employment on the grounds that, due to her Muslim faith, she intended to wear a headscarf in future. The court did not find that the Danish Act on prohibition against discrimination in respect of employment and occupation, etc., had been violated. The Court emphasised that a considerable proportion of the employees of the retail chain had a different ethnic background from the Danish employees, and that the chain had participated in a number of projects aimed at promoting the employment of persons of different ethnic backgrounds. In addition, the dress code of the retail chain included a regulation banning headgear with the exception of employees carrying out particular functions for which some form of headgear was part of the required uniform. This dress code had been approved by employee representatives and employees alike. Furthermore, the Court referred to the fact that the dress code was clear and unambiguous and was generally enforced quite consistently. On this basis, the court ruled that the ban against headgear had been sufficiently well-reasoned and was reasonably proportionate to the desired aim, regardless of the fact that this would mainly affect Muslim women.

Another ruling of the Supreme Court of 18 October 2000 concerned a group of Muslim Somalis who had participated in a number of courses organised for refugees. They used common facilities for prayer which gave rise to negative reactions from a group of Danish participants. The management of the training centre then announced that the common facilities were not to be used for prayer, although it did offer the refugees other facilities for this purpose. At the same time, the management announced that violation of the prohibition would constitute grounds for summary dismissal. When a Somali nevertheless subsequently used the common facilities for prayer, he was dismissed. The Court ruled that this was not a violation of the Danish Act on prohibition of discrimination in respect of employment and occupation, etc., since the Somali had once again used the common facilities for prayer, against the express wishes of the management – regardless of whether or not he had understood the ban against praying in the common facilities and the consequences thereof ('ignorance of the law is no defence'). On this basis, the court ruled that the decision made by the management of the training centre did not constitute discrimination on the ground of religious faith, but had been for the maintenance of order and quiet in the training centre.

In addition, on 25 October 2000 the Western High Court passed judgement in a case regarding the dismissal of the headmaster of a music school. The headmaster claimed that the reason for his dismissal was that he was a Jehovah's Witness. The music school claimed that the dismissal was due to his poor leadership skills. Following an investigation, the court established that the dismissal had been based on religious belief, and awarded him compensation amounting to DKK 75,000.

Prior to the coming into force of the Danish Act on racial or ethnic discrimination, there were a few cases under, for example, the Penal Code. In practice, minor fines were imposed on doormen who did not allow ethnic minorities into certain bars and clubs.

There have been no decisions or pending cases in *Czech* or *Estonian* courts.

Finland

In Finland, most of the cases in the Supreme Court so far have concerned sexual discrimination in recruitment (such as KKO:2002:42 and KKO:2001:9) and some age

discrimination in dismissals (KKO:2000:64). Cases concerning sexual discrimination are available at: <http://www.tasa-arvo.fi/www-eng/court/index.html>.

France

Some interesting decisions in the area of discrimination have been taken in France.

In the so-called ‘Islamic headscarf’ case, the Parisian Conseil de Prud’hommes (industrial tribunal) sanctioned an employer who had dismissed an employee purely because she had refused to go along with his attempt ‘*to ban the wearing of a distinctive religious sign [Islamic headscarf]*’. The summary proceedings division of the Conseil de Prud’hommes declared the dismissal null and void since it had infringed Article L.122-45 of the Labour Code by *being clearly based on the religious beliefs and physical appearance* of the employee (Conseil de Prud’hommes Paris, summary proceedings division, 17 December 2002, RJS 3/03, p. 212, No. 309).

In the so-called ‘Moulin Rouge’ case, the Parisian Tribunal de Grande Instance (TGI) found the famous Parisian nightclub guilty of *racial discrimination*, since the employer took on black or coloured people only in the kitchens, never to serve or perform before the public (TGI Paris, 22 November 2002, Dr. ouv. 07/03, p.284). The nightclub was ordered to pay a fine of 10,000 euros and the person responsible for recruitment 3,000 euros.

The French Supreme Court, the Cour de Cassation, has ruled that ‘*it follows from Community legislation that an employer in France may not apply differing pay scales according to nationality*’ (Cass. soc. 10 December 2002, RJS 3/03 p. 207). Although the Court did not cite the 2000 Directives, it used Article 12 EC (formerly Article 7) and Article 39 (formerly Article 48) as the basis for rejecting an appeal from a German institute which was applying more favourable arrangements to its German employees than to its French employees. This was, a priori, the first time that the social affairs section of the Court had chosen to apply the principle of Community law prohibiting any discrimination on the grounds of nationality to the area of pay.

In the field of trade union discrimination, the Cour de Cassation ruled that a court of appeal could not dismiss an employee's claim for damages for discrimination linked to membership of a trade union on the ground that there was nothing in the dossier to prove that the person concerned had suffered this type of discrimination. *It was indeed up to the judge, in cases of alleged discrimination due to trade union membership, to verify the employee's career situation* (Cass. soc. 27 November 2002, SSL 16/12/02 No 1104 p.14).

Germany

One judgement of the German national labour court (05.10.1995 – 2 AZR 923/94), among the considerable case law on discrimination, is particularly notable. The court held that an employer may ask during a job interview whether the applicant is disabled. The applicant must not be deceitful; if it turns out that he/she was, the employer may contest the employment contract. Due to the prohibition of discrimination in the Constitution and in §81 SGB IX, however, it is expected that the court will reverse its decision.

Ireland

The annual report of the Irish Equality Tribunal for 2003 shows that the total number of individual employment complaints on the nine grounds for discrimination provided by Irish

law increased from 300 in 2002 to 361 in 2003. The tribunal's mediation service was also more widely used. The report revealed that there had been an increase of 55 per cent in gender discrimination claims (from 69 in 2002 to 107 in 2003). At the same time, there had been a 98 per cent increase in complaints on the grounds of race (from 43 to 85).

Ireland's recent legislation on disability discrimination has been further clarified by the decisions of the Equality Officer in two cases, issued in early 2002. The first shed new light on the level of training costs that employers are obliged to bear to employ people with disabilities, and the second dealt with wheelchair access to interviews.

Irish disability discrimination law is based on the Employment Equality Act 1998, which is similar in many respects to the November 2000 EU Directive (2000/78/EC) establishing a general framework for equal treatment in employment and occupation, which is set to introduce the concept of disability discrimination into many EU Member States for the first time.

Under the Irish legislation, employers may discriminate against people with disabilities only if the cost of accommodating them in the workplace exceeds a certain 'nominal cost'. What constitutes 'nominal cost' was not defined in the legislation, and these cases are the first attempts by the Office of the Director of Equality Investigations to clarify the issue.

In the first case, the claimant, who was suffering from the after-effects of neurosurgery, was employed as a clerical worker by a local authority. Management was unhappy with his performance and after five months he was offered (and accepted) a manual post in the same authority. He subsequently left this post and now works in a clerical job in the civil service.

The Equality Officer who made the decision on the case said that the claimant could have done his original job with several months' training by a personal job coach. The Officer felt that this would give rise to a cost and turned for guidance on what constituted nominal cost to the parliamentary debates during the passage of the 1998 legislation and an Irish Supreme Court opinion on the legislation. This suggested that nominal cost was relative to the size of the employer. Therefore, since this particular local authority was of significant size, the cost of a job coach was 'nominal' in this case. The claimant was awarded 15,000 euros.

In the wheelchair access case, an Equality Officer awarded 1,270 euros to a wheelchair user who could not get access to a job interview in a room on the first floor of a building, as the stair-lift was not working. The Equality Officer noted that the employer, in the health service, had not argued that the cost of having the stair-lift fixed would have given rise to other than a nominal cost. Therefore, the employer was held to have discriminated against the claimant in respect of access to the interview.

Italy

There have so far been no court decisions in Italy on Directive 2000/78. Indeed, it was published relatively recently in the Official Gazette. It seems appropriate, however, to mention court decisions in recent years on discriminatory practices by bodies and organisations run by the Catholic Church (Catholic universities, schools, hospitals) on such personal grounds as separation and divorce, maternity outside marriage, cohabitation, and so on, deemed not in keeping with Catholic morals. The application of the Concordat between the Catholic Church and the Italian state in practice prevents the national courts from hearing such disputes and from offering victims the protection provided by the fundamental rights enshrined in the Italian Constitution and the Community order.

In Italy various cases related to the working conditions of immigrants have been brought on the basis of the provisions on the legal status of immigrants and the way in which they have been applied, which gives employers very wide discretion over entry and residence (subject in particular to a contract of employment and the availability of housing, for which employers must stand surety in the same way as for repatriation costs). Many disputes have ended in conciliation, and in many cases trade union legal departments have supported the claims of immigrant workers, in some cases even suggesting legal tactics such as emergency proceedings when there was a risk of harm if interim measures were not granted (in the case, for instance, of regularisation of residence permits). In the case of an employment relationship that has existed for more than three months, regularisation is automatic providing certain conditions apply. The employer has no discretion to decide otherwise in such cases.

Latvia

The Constitutional Court of Latvia recently suspended the age limit established in law for university tutors. In a case now pending before that court a person has challenged similar age limits for public civil servants. Cases of gender discrimination have been rare, and no cases concerning discrimination on the basis of sexual orientation have arisen so far.

Norway

No response has yet been received from Norway.

Poland

The Polish High and Appeal Courts have issued a number of interesting judgments:

a) Decision of an Appeal Court in Lublin, 29 April 1999

A judgment finding against a pregnant woman concluding an employment relationship on the grounds that she had done so with the intention of committing fraud would probably set a precedent enabling employers to avoid employing pregnant women in future. This would contradict a basic labour law rule defined in Article 11 §3 which prohibits any discrimination in labour relations. The plaintiff concluded a work contract for a fixed period of five months with an employer – a tailor's workshop – while she was pregnant, in November 1997. She was often absent from work taking care of a child and then took her maternal leave in February, when her child was born. The Social Security Department (ZUS) rejected her application for child care, sick leave and maternity allowances, arguing that her work contract had been concluded solely in order to obtain social security allowances as a pregnant employee. The employee appealed the decision. The Appeal Court, having considered the circumstances, stated that the plaintiff was entitled to the allowances (the fact that an employee is absent from work may not diminish his or her rights as a worker).

b) High Court (SN) sentence, 24 March 2000

A job applicant who is rejected on the ground of sex may claim compensation within the framework of so-called negative interest (*culpa in contrahendo*) on the basis of the civil code regulations on *ex delicto* responsibility.

c) High Court sentence, 12 December 2001

The exclusion of management employees from additional compensation for termination of work contract in contravention of the rules laid down in a social agreement concluded to secure social, welfare, workers' and trade union rights between a strategic investor who has purchased an establishment and the trade unions, does not thereby infringe the rule on equal

rights for all workers and the non-discrimination in employment relations rule envisaged in the Labour Code.

d) High Court sentence, 4 October 2000

A claim to be allowed to work may not be recognised as contrary to the principles of the community or its social and economic objectives because an employee had been entitled to retire seven years earlier, since this would amount to age discrimination.

e) High Court sentence, 21 April 1999

Issue of notice of termination of a work contract to a woman reaching retirement age (60 years) and entitled to a pension is justified and does not count as age discrimination.

f) High Court sentence, 19 January 1998

Justified termination of an employment contract with notice, and not on the grounds of sex, age, disability, race, nationality, beliefs, particularly political views or religious beliefs or trade union membership is not discrimination.

g) High Court sentence, 5 November 1998

The suspension of a teacher whose qualifications are equal to those of other teachers, but whose work is regarded as of a lower standard by his superiors and by students and their parents, and whose personal situation is not worse in comparison with other employees, does not infringe a rule of equal treatment and non-discrimination.

h) High Court Sentence, 4 July 2001

The High Court stated that the employer who did not offer an employee new conditions of work or remuneration on the ground of their trade union activities, had infringed the law and that the employee's claim to be reinstated was justified if the employment relationship terminated on the basis of the provisions of the Public Administration Reform Act (Law of 13 December 1998).

This statement is a part of a Court decision based on the following facts:

The plaintiff was employed in a public institution (Sanitary-Epidemiological Station). In 1996–97 employee and employer came into conflict over wages. A labour inspection requested by the plaintiff proved that the employer's wage calculations had been improper and that her wages were too low. The plaintiff joined a trade union and became an official, entitling her to protection against dismissal. The plaintiff was reinstated.

Later, in 1999 when the establishment was reorganised (based on the reform of the Public Administration Act) the employee in question was the only one not offered new work and wage conditions and her employment contract was terminated under the regulations of the above-mentioned act. The employee submitted a complaint to the Court demanding reinstatement. The first-instance court deemed the complaint justified. The employer's action was described as harassment on the ground of trade union activities and her success in the previous case. In the course of an appeal the case reached the High Court, which judged in favour of the plaintiff and returned the case to the first-instance court for revision. The decision was based on both national regulations and ILO Convention No. 98.

In *Romania* in spring 2003 the shipping industry trade union filed a complaint before the tribunal of Braila regarding the unjustified dismissal of a female worker based on gender discrimination. The tribunal judged the dismissal unlawful and therefore void.

In another case a worker was refused the right to participate in a mission outside the enterprise. The reason given by the employer was that the worker was a Roma and so would harm the image of the enterprise. The worker made a complaint and an investigation is under way.

In December 2002 the *Swedish* Labour Court delivered its judgment in the first case of alleged ethnic discrimination since new legislation on the subject came into force in 1999. The Court ruled that there had been indirect discrimination against a Bosnian-born woman who had failed to get a job at a telemarketing company because she was said to have a foreign accent. It said that the employer had violated the law by making demands that were too high regarding the language skills required for the job.

Only one case of ethnic or racial discrimination has so far been heard in the Swedish Labour Court. A trade union, the Association of Graduate Engineers (*Sveriges Civilingenjörersförbund, CF*) and a systems engineer with a Greek background, asserted that the engineer had been turned down for a job because he was Greek. The court, however, could not find that the employer in question had done anything wrong. Although the man who did get the job did not have superior qualifications to the plaintiff he did have exactly the qualifications the employer was seeking for the job, while the plaintiff was found to be overqualified and to have demanded too high a salary (*AD nr 61 1997, CF vs Österåkers kommun*).

Regarding court cases in the *UK* the following can be reported:

Regulations 7(3) and 25 of the Sexual Orientation Regulations are regarded as not being justified by the Directive for the reasons given above and are currently being challenged by judicial review in the High Court. Court proceedings were issued on 15 September 2003, instructed by the Amicus-msf trade union.

Seven unions are taking legal action in the High Court challenging the sexual orientation regulations exemption allowing restriction of pension schemes to married partners and an exemption for employment for the purposes of an organised religion. The TUC is backing this case and has written to the European Commission urging infringement proceedings. The TUC also remains concerned that the definition of harassment in the new regulations should give more precedence to the perception of the complainant. Furthermore, the present 'justification' test for less favourable treatment on grounds of disability is too strongly biased in favour of employers and may not comply with the Directive. Similarly, the definition of disability should arguably be expanded in light of the Directive.

Annex

Questionnaire on implementation of non-discrimination Directives 2000/78/EC and 2000/43/EC

I. Directive 2000/78/EC – ‘non-discrimination in employment and occupation’

General questions

1. Has the Directive been implemented by new legislation, amendments to existing legislation, national or sectoral collective agreements or a combination of these instruments? Please quote the references of the instruments concerned.
2. Were the social partners involved in the preparation and elaboration of the new regulation(s)? Was this satisfactory?

Specific questions

3. Does your regulation combat discrimination on the same grounds as those mentioned in the Directive (namely religion or belief, disability, age and sexual orientation)? Are certain grounds not covered or, on the other hand, are certain other grounds added? Please specify.
4. Does your regulation cover both direct and indirect discrimination? To what extent are your national definitions of direct and indirect discrimination similar or different from the one in the Directive? Does this definition also cover a mere instruction to discriminate as an act of discrimination? Please specify.
5. Does your regulation also cover harassment? If so, which forms (sexual harassment, bullying, and so on)?
6. Does your regulation, as specified in §12 of the Preamble to the Directive, also cover third-country nationals? If so, are there any exceptions which allow different treatment? Please specify.
7. Are any persons excluded from the non-discrimination protection? And does the protection apply to both public and private sector?
8. To what extent are all aspects of employment as mentioned in Article 3 §1(a–d) covered? Are some not covered by your regulation; are others added?
9. Does your regulation make use of the non-discrimination exception to payments of any kind made by state schemes or similar, including social security or social protection schemes?
10. Does your regulation make use of the exception in Article 3 §4 and thus allow discrimination on the grounds of disability and age for the armed forces? Is any other difference of treatment allowed in the armed forces, the police, and the prison or emergency services?
11. What requirements does your regulation accept as legitimate and determining occupational requirements to allow a difference in treatment? (See Article 4 §1 and 2.)
12. How does your regulation ensure that reasonable accommodation is provided to persons with disabilities?

13. What differences of treatment are allowed on the ground of age? Does this cover only the situations mentioned in Article 6 §1 or are others provided, too?
15. Are any measures foreseen to ensure positive action in general and for disabled persons in particular? Please specify.
16. What kind of judicial or administrative procedures are available to the victims of discrimination? Are trade unions also entitled to file complaints, either directly or in support of the victim, before these judicial and administrative bodies?
17. How does your regulation deal with burden of proof?
18. How are employees who file a complaint protected against dismissal or other adverse treatment by the employer?
19. How does your regulation ensure the dissemination of information on the rights enshrined in your national regulation to the persons concerned, for example at the workplace?
20. What measures are taken to promote social dialogue with a view to fostering equal treatment? Do you have knowledge of collective agreements providing anti-discrimination rules?
21. How does your government ensure dialogue with competent NGOs to augment the fight against discrimination?
22. What sanctions are foreseen in the case of non-compliance? In case of financial compensation please indicate the amounts of such compensation.

Final questions

23. Do you consider that in your country the Directive was correctly implemented? If not, please identify the problem areas and specify any action that you have taken in consequence.
24. Could you mention and briefly discuss the most relevant national court decisions or pending cases in relation to the issue concerned (inspired by the EU Directives or referring to national laws which already cover the substance of the Directive)?

II. Directive 2000/43/EC – ‘non-discrimination based on race or ethnic origin’

General questions

1. Has the Directive been implemented by new legislation, amendments to existing legislation, national or sectoral collective agreements or a combination of these instruments? Please quote the references of the concerned instruments
2. Were the social partners involved in the preparation and elaboration of the new regulation(s)? Was this satisfactory?

Specific questions

3. Does your regulation cover both direct and indirect discrimination? To what extent are your national definitions of direct and indirect discrimination similar to or different from those contained in the Directive? Do these definitions also count a mere instruction to discriminate as an act of discrimination? Please specify.
4. Does your regulation also cover harassment? If so which forms (sexual harassment, bullying, and so)?
5. Does your regulation, as specified in §13 of the Preamble and Article 3 §2 of the Directive, also cover third-country nationals? If so, are there any exceptions which allow different treatment. Please specify.
6. Is any specific action taken, as mentioned in §12 of the Preamble of the Directive, in the fields of education, social protection – including social security and health care – social benefits and access to and supply of goods and services, in order to combat racial and ethnic discrimination?
7. To what extent are all aspects of employment as mentioned in Article 3 §1 (a–d) covered? Are some not covered by your regulation; are some added?
8. To what extent and in which situations are characteristics related to racial or ethnic origin accepted as genuine and determining occupational requirements which allow difference of treatment?
9. Are any measures foreseen to ensure positive action in general? Please specify.
10. What kind of judicial or administrative procedures are available to the victims of discrimination? Are trade unions also entitled to file complaints, either directly or in support of the victim, before these judicial and administrative bodies?
11. How does your regulation deal with burden of proof?
12. How are victims protected against victimisation or any adverse treatment in response to the complaint they have filed?
13. How does your regulation ensure the dissemination of information on the rights enshrined in your national regulation to the persons concerned – for example, at the workplace?
14. What measures are being taken to promote social dialogue with a view to fostering equal treatment? Do you know of collective agreements with anti-discrimination rules?
15. How does your government ensure dialogue with competent NGOs to augment the fight against discrimination?
16. Which sanctions are foreseen in case of non-compliance? In case of financial compensation, please indicate the amounts of compensation.
17. Please describe briefly the role and competences of the body for the promotion of non-discrimination based on race or ethnic origin which must be established under the Directive?

Final questions

18. Do you consider that in your country the Directive was correctly implemented? If not, please identify the problem areas and specify any action that you have taken in consequence.
19. Could you mention and briefly discuss the most relevant national court decisions or pending cases in relation to the issue concerned (inspired by the EU Directives or referring to national laws which already cover the substance of the Directive)?

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- Professor Lorenzo Cachón, *State of play in Spain*
- Dr Nicholas Sitaropoulos, *State of play in Greece*