

Non-discrimination in the European Union
Implementation of Directive 2000/78/EC

PART II

Age and disability

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.

The present report on the implementation of Directives 2000/78/EC and 2000/43/EC on the principle of equal treatment in the European Union focuses on the aspect of age and disability and supplements two other reports on these two European Union directives concerning implementation, scope and definitions, and awareness-raising, enforcement and litigation, respectively.

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 framework 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 (September).

The present report looks at the anti-discrimination Directives under the aspect of age and disability, and in terms of four closely linked points: (i) ‘reasonable accommodation’ afforded to persons with disabilities; (ii) measures to ensure positive action towards disabled persons; (iii) difference of treatment permitted on the ground of age, if objectively and reasonably justified by a legitimate aim or under social security schemes; and (iv) the exception allowing discrimination on the grounds of disability and age for the armed forces.

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

The present report provides, under each of these subjects, the text of the Directive(s) and the legal situation in the examined member states. Data from national responses have been presented in comparative tables, analysed at the beginning of this report.

This report will hopefully not only inform the reader on the status of national transpositions of the anti-discrimination Directives but also serve as an incentive for discussions on the subject at both national and European level by providing the requisite 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	No official proposal so far	
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 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

UK	<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>	2003/1626, Race Relations Act 1976 (amendment) Regulations 2003
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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

Implementation under the aspect of age and disability

The report on the implementation of the non-discrimination Directive under the aspect of disability and age collects the exceptions made at national level to the principle of non-discrimination. Exceptions, as permitted by the Directive, take two forms: first, adapting to and favouring disabled persons through positive action and reasonable accommodation; and second, taking disability and age out of the scope of the non-discrimination Directive. The outcome is that different treatment of these groups is possible without being discriminatory.

Reasonable accommodation and positive action

Provisions on reasonable accommodation can be found in almost all the countries under consideration except *Denmark, Germany and Luxembourg*. Provisions on positive action exist in all countries, although varying in scope, except *Finland*.

Problems of transposition regarding reasonable accommodation have arisen in some countries:

In *Belgium* it is unclear whether employers have to pursue a forward-looking policy in this or whether they can wait until they have a disabled job applicant or employee.

In *Ireland* an employer must accommodate the needs of disabled persons. Special treatment or facilities can be denied only if this would give rise to more than ‘nominal costs’. These words might not be in line with the ‘disproportionate burden’ of the Directive, as the Irish report points out.

In the *UK* the legislation on reasonable accommodation is weaker than the Directive because it requires disabled persons to show that they have been placed at a ‘substantial’ disadvantage rather than at a ‘particular’ disadvantage.

Specific grounds of positive action are foreseen in *Ireland, Luxembourg* (on gender, age and disability), the *Netherlands* (regarding women, ethnic minorities and disabled persons) and the *UK* (on minority groups and disabled persons).

Many countries (*Czech Republic, France, Germany and Luxembourg*) work with quotas regarding the employment of disabled persons (5% in Germany, 6% in France). If this quota not reached the employer can be sanctioned in France and Germany. However, as many employers prefer to pay the financial penalty rather than employ disabled persons, this measure cannot be considered very effective. In *Denmark and Luxembourg* financial support is foreseen to provide an incentive to employers to employ disabled persons.

Table 2: Reasonable accommodation and positive action

Country	Reasonable accommodation	Positive action
Belgium	X	X
Bulgaria	X	X
Czech Republic	X	X
Denmark	–	X
Finland	X	–
France	X	X
Germany	–	X
Ireland	X	X
Luxembourg	–	X
Netherlands	X	X
Norway	X	X
Portugal	X	X
UK	X	X

Difference of treatment allowed on the ground of age, if objectively and reasonably justified by a legitimate aim

The first difference of treatment we shall look at is that on the ground of age, if the treatment is objectively and reasonably justified by a legitimate aim. This possible exception to the Directive is used in almost all the countries, except for *Germany, Italy, Latvia and Estonia* (which implemented only one exception, dismissal at the age of 65). *Belgium and the UK* have not used this exception so far, but it will probably be integrated in legislation in the future.

These findings reflect the significant use made in national legislation of different treatment on the ground of age. It will turn out in due course which provisions will be nullified because the difference of treatment cannot be justified objectively and reasonably by a legitimate aim.

More worryingly, the future will also show on what points the new legislation has been abused, so reducing the protection for older people foreseen in the national legislation. For example, in the Netherlands companies are using the equal treatment legislation to reorganise staff and abandon provisions that are advantageous to older employees.

Table 3: Difference of treatment allowed on the ground of age, if objectively and reasonably justified by a legitimate aim

Country	Used	Not used
Austria	X	
Belgium		X (future?)
Bulgaria	X	
Estonia		X (1 exception)
Finland	X	
France	X	
Germany		X
Italy		X
Latvia		X
Luxembourg	X	
Netherlands	X	
Norway	X	
Poland	X	
Portugal	X	
Romania	X	
UK		X (but draft)

Difference of treatment allowed on the ground of age for occupational social security schemes

Another difference of treatment on the ground of age is made possible by the Directive on occupational social security schemes.

This possibility is much less used than the more general one analysed above. Only *Austria, France, Luxembourg, the Netherlands and Poland* have so far made use of it, but *Germany and the UK* might follow suit.

Table 4: Difference of treatment allowed on the ground of age for occupational social security schemes

Country	Used	Not used
Austria	X	
Belgium		X
Bulgaria		X
Czech Republic		X
Estonia		X
Finland		
France	X	
Germany		X (future?)
Italy		X
Latvia		X
Luxembourg	X	
Netherlands	X	
Norway		X
Poland	X	
Portugal		X
Romania		
UK		X (future?)

Possible discrimination on the grounds of disability and age for the armed forces

This exception excludes discrimination on the grounds of both age and disability in relation to the armed forces: it is permissible to reject people for employment in the armed forces on these grounds.

This exception is not used in national legislation in *Belgium, Estonia, Luxembourg, Poland, Portugal, Romania and the UK*, although in the latter it might be resorted to in future. In France the exception is not to be found in legislation but used in practice.

Both grounds are used only in *Bulgaria and Italy*. In Italy, the legislation goes even further, including also religion and personal belief, which is questionable in the light of the Directive. Furthermore, the exception is applied not only to the armed forces, but also to prison staff, police and emergency services.

Exceptions on the ground of disability alone are used in the *Czech Republic, the Netherlands, Romania and the UK*, and on the ground of age alone in *Finland and Latvia*.

Table 5: Possible discrimination on the grounds of disability and age for the armed forces

Country	Used on the ground of disability	Used on the ground of age	Not used
Austria			
Belgium			X
Bulgaria	X	X	
Czech Republic	X		
Estonia			X
Finland		X	
France			X (but in practice, yes)
Germany			
Italy	X	X and others	
Ireland			
Latvia		X	
Luxembourg			X
Netherlands	X		
Norway			X
Poland			X
Portugal			X
Romania	X		
UK	X		X (future?)

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

Reasonable accommodation provided to persons with disabilities and measures to ensure positive action towards disabled persons

Article 5 – Reasonable accommodation for disabled persons

In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned.

Article 7 – Positive action

- 1. With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to any of the grounds referred to in Article 1.²*
 - 2. With regard to disabled persons, the principle of equal treatment shall be without prejudice to the right of Member States to maintain or adopt provisions on the protection of health and safety at work or to measures aimed at creating or maintaining provisions or facilities for safeguarding or promoting their integration into the working environment.*
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Belgium

Measures regarding access to work for people with reduced mobility or unequal treatment in working life have been laid down in specific texts. The Belgian law of 25 February 2003 gives judges significant powers regarding reasonable adaptation in respect of people with reduced mobility.

Bulgaria

There are measures of this kind, although inadequate, in current legislation. Measures on disabled people are found in the Act for the social integration and rehabilitation of the disabled and its implementation rules. This Act is regarded as a notable achievement by CITUB (Confederation of Independent Trade Unions in Bulgaria).

Czech Republic

As far as prohibition of discrimination based on state of health is concerned it is important to establish whether the work is suitable for the employee concerned. In some cases the Labour Code provides for special (preferential) treatment concerning persons with disabilities, for example in its provisions related to dismissal.

² The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.

For example, in accordance with Section 50 of the Labour Code an employer may give notice to a disabled employee only with the prior consent of the competent state authority. Such consent is not required when notice is given to an employee over 65 years of age. Other legitimate reasons are stated in Section 46 §1 (a), (b) or (f):

- if the enterprise (or undertaking), or part of it, shuts down or relocates;
- if there are grounds on which the employer might immediately terminate the employment relationship;
- serious breaches of work discipline (for persistent but less serious breaches of work discipline, the employee may be given notice if, during the previous six months, in connection with such breaches, he was warned in writing of the possibility of being given notice).

Appropriate temporary measures designed to redress existing inequalities are generally not classified as being discriminatory in nature (positive discrimination). Measures designed to support certain groups of workers are referred to in the Employment Act. For example, in accordance with Section 24 of the Employment Act, an obligation is imposed on certain employers to offer jobs to workers with reduced working capacity (quotas expressed as a percentage of the total number of employees).

In accordance with Section 38 of Act No. 312/2002 Coll. on officers of so-called 'territorial autonomous units', which covers employees of regional and communal authorities, employers are required to adopt measures to equalise the employment of men and women – of all ranks – and to maintain a balanced personnel.

Denmark

As the article on discrimination on the grounds of age and disability has not yet been implemented in Denmark it is unclear how the issue of reasonable accommodation will be dealt with.

Under the Act on compensation for disabled people in relation to employment a disabled person has the right to a personal interview before a vacancy is filled. Public authorities are obliged to give disabled persons priority in all jobs which they are able to perform, unless the disabled person is clearly less qualified for the job than the best qualified of the other applicants.

In connection with the granting of licenses for market stalls, newspaper stands and so on all public authorities are obliged to discuss with the public employment service (AF) whether they can be given to a disabled person.

The AF may grant financial support for the recruitment of a personal assistant for employees and self-employed persons in connection with the performance of their job. Support may also be granted for the recruitment of a personal job assistant for up to 20 hours per week, on average.

The AF employs a number of disability consultants whose tasks is to provide jobs for disabled persons on the ordinary labour market, and to administer the preferential rules covering persons with disabilities.

The above-mentioned Act also contains a special scheme whereby employers can for a certain period receive a wage subsidy when engaging a disabled person on ordinary terms of employment.

If a disabled person requires workplace adaptation and specific technical aids to perform a job the legislation also provides the possibility of granting the necessary economic support for this purpose.³

Estonia

UN Resolution 48/96⁴ was approved by the Estonian government on 16 May 1995 by means of the standard regulations on the creation of equal opportunities for disabled persons, including a two-stage action plan.

Finland

The new Act obliges all authorities to design an action plan to promote equality. On reasonable accommodation the Finnish text is similar to the Directive with reference to the possibility of financial help from public funds.

France

The French Labour Code contains a number of provisions on suitable arrangements for those with a disability. Articles L.323-1 to L.323-8-8 deal with obligations to employ disabled workers, disabled ex-servicemen and women and those in a similar category. These provisions were brought in by Law No 87-517 of 10 July 1987.

Articles L.323-9 to L.323-35 set out special measures for workers with a disability, but only in the areas of training, redeployment and rehabilitation.

Article R.232-1-8 of the Labour Code establishes a material obligation for employers. It states that workers with a disability '*shall have easy access to their work station and to any sanitary facilities and catering areas which they may use within the establishment*'. The second paragraph of this article also states that '*their work stations and any relevant safety signals shall be adjusted if their disability so requires*'. This is still a very general obligation, and many companies ignore it with impunity.

Positive action is possible under Article L.123-3 of the French Labour Code (in existence since Law No 83-635 of 13 July 1983):

The provisions of Articles L.123-1 and L.123-2 shall not prevent the use of *temporary measures taken to benefit only women, with a view to establishing equal opportunities between men and women* [emphasis added], and, in particular, to put an end to any existing inequality affecting women's opportunities.

These measures shall derive either from legal provisions on recruitment, training, promotion, work organisation or working conditions, from Article L.133-5 (9), from the provisions of generally applicable collective agreements, or from Article L.123-4.

In the case of workers with a disability, Law No. 87-517 of 10 July 1987 includes a clause in Article L.323-1 (1) of the Labour Code which states: 'Any employer employing at least twenty workers *is required to employ* [emphasis added], on a full- or part-time basis, people covered by this section (disabled workers) *to a level of 6% of his or her total workforce* [emphasis added].' According to Article L.323-2, the State must meet the same obligation.

³ Presentation by the Social Ministry of Denmark at the 104th meeting of the Governmental Committee of the European Social Charter.

⁴ The Standard Rules on the Equalisation of Opportunities for Persons with Disabilities

Article L.323-8-2 of the Labour Code sets up a development fund to finance the inclusion of disabled people on the labour market. Its purpose is ‘to increase the resources available for the inclusion of people with disabilities in the ordinary work environment’. This Article states that the obligation to recruit disabled workers may be replaced by the payment of an annual contribution to the development fund for each disabled worker which the employer should have taken on.

Where Articles L.323-1 or L.323-8 of the Labour Code are not complied with, Article L.323-8-6 stipulates that employers shall pay a *financial penalty* to the Treasury, of an amount equal to the contribution established in Article L.323-8-3, plus 25 per cent.

Articles L.323-8-7 and L.323-14 of the Labour Code grant NGOs the right to bring civil actions:

Associations whose principal purpose is to defend the interests of people covered by this section may bring civil actions relating to non-compliance with the provisions of this section, where this non-compliance clearly damages the interests of the group they represent.

Article L.323-15 makes it possible for any worker with a disability to receive rehabilitation, vocational training or retraining. Financial assistance for these workers is also provided for, as well as bonuses paid by the state at the end of the training period.

These measures, however, are not a sufficient incentive. In France many employers prefer to pay the financial penalty rather than take on disabled workers. It is not therefore possible to speak of *positive action* in favour of workers with disabilities, since the measures in question are fairly ineffective.

In January 2004 new draft disability legislation was presented. It provides financial support for companies that integrate disabled people and transposes the provision of the Directive on reasonable accommodation that facilitate the integration of disabled people into the workforce.

Furthermore, the provisions for companies employing more than 20 people and not employing their six-per cent quota of disabled people have changed. Companies that invest in integrating disabled people will be able to deduct the related costs from their contributions to the fund. However, companies that employ no disabled people will see their contributions to the fund increase.

Germany

No special measures have been taken in respect of reasonable accommodation. On the other hand, positive action measures were taken in 2002: the employer’s obligations to employ disabled people and to arrange workplaces in accordance with disabled persons’ needs were strengthened. Furthermore, access to living space without obstacle was regulated by law.

Following §71 Sozialgesetzbuch – 9. Buch ‘on disability’ (SGB IX), five per cent of the workforce must be disabled persons. However, this does not give disabled people the right to an employment contract with a particular employer. The sanction for employers not respecting the quota is payment of compensation to institutions which help disabled people.

Furthermore, disabled people have a right to positive measures (§ 81 IV SGB IX): for example, employment taking into consideration their capacities and knowledge. Employers must reach agreement with the representatives of disabled people inside the enterprise (§83 SGB IX) concerning how the integration of disabled people in working life is to be addressed.

Italy

Decree 216 of 09/07/2003 makes no provision for positive action, not even for the disabled. One form of positive action which may be taken by the courts concerns the judicial protection of rights: in addition to a court order to stop the discriminatory practice, the court may also order and set a deadline for *a plan to remove any proven discrimination* in order to prevent any repetition of such practices (Article 4(5)). In such cases, the plan does not have a preventive or promotional nature, but is intended to remove proven discrimination; its value is therefore partly compensatory and partly intended to shape future practices.

The issue of the reasonable accommodation of disabled persons as set out in Article 5 of the Directive is not addressed. As matters stand at present, disabled workers can call only upon targeted employment services for disadvantaged workers.

Ireland

The Employment Equality Act obliges employers to do everything reasonable to accommodate the needs of disabled persons by providing special treatment or facilities, so as to render the person fully competent to undertake and be fully capable of undertaking the duties of the position. A refusal or failure to provide special treatment or facilities is not deemed reasonable unless such provision would give rise to costs construed as exceeding 'nominal costs'. Doubts have been expressed that the words 'nominal cost' might not be in line with the 'disproportionate burden' of the Directive.

Furthermore, this allows an employer to put in place positive action measures to promote equal opportunities, particularly those geared to removing existing inequalities arising from past discrimination. Positive action is allowed on the grounds of gender, age and disability.

Latvia

The Labour Code provides some guarantees for disabled persons. However, no regulation ensures reasonable accommodation for disabled persons. There is a general article which provides for appropriate working conditions for disabled employees. The state has not yet made available any incentives to employers to promote disabled employment.

No positive action has been promoted in national legislation so far. There is no positive action framework for disabled persons or any other category of person.

Luxembourg

Article 2(3) of the law on equal treatment of men and women regarding access to employment, professional training and working conditions is entitled: '*Measures aimed at promoting equal opportunities between men and women, particularly as regards remedying inequalities in practice which affect the opportunities of women under Article 1.*'

The Law of 12 November 1991 on disabled workers obliges employers in the public and private sectors to employ a given proportion of disabled workers. Employers can obtain subsidies from the employment fund for workplace facilities and the cost of training, transport or professional equipment.

Positive discrimination measures promoting the employment of young workers (positive discrimination on grounds of age) and equal opportunities for men and women (positive discrimination on grounds of gender) can be considered general provisions of the law

foreseeing a financial contribution from the employment fund to integrating or reintegrating unemployed persons looking for work.

Netherlands

The 1994 Equal Treatment – Disability Act stipulates in Article 2 that the prohibition on discrimination on the grounds of disability or chronic disease shall, where necessary, necessitate reasonable – that is, not giving rise to a ‘disproportionate burden’ – accommodation.

Furthermore, Article 3 stipulates: ‘The prohibition of discrimination contained in this Act shall not apply if the aim of the discrimination is to place women or persons belonging to a particular ethnic or cultural minority group in a privileged position in order to eliminate or reduce de facto inequalities and the discrimination is reasonably proportionate to that aim.’ With regard to disabled persons there is a provision in the Equal Treatment – Disability Act (Article 3, §1a and b). The formulated exceptions are complementary to the general exception on positive action in Dutch legislation.

Norway

In the Norwegian implementation proposal, provision §54 contains the following:

Adaptation of work for workers with permanently reduced working capacity:

In order to ensure equal treatment, the employer shall, as far as this is possible and reasonable, adapt work to workers with a permanently reduced working capacity. The employer is obliged to take measures ensuring that workers with a permanently reduced working capacity can obtain or keep work, participate in and advance in employment and have access to training or other development of competences, unless such measures impose a disproportionate burden.

Furthermore the following provision on positive action is to be found in the proposal:

Positive action that contributes to promoting equal treatment is not contrary to the provisions of this chapter. The positive action shall end as soon as the purpose is attained.

However, the proposal does not contain provisions for positive action for disabled persons in particular.

Portugal

Legislation in Portugal foresees the possibility of specific legislation on positive action measures. Furthermore, it is aimed at the protection of persons with disabilities. An employee who has lost the ability to do their job as a result of an accident at work or occupational disease should be provided by the employer with a suitable job, making reasonable accommodation.

The working time of a disabled worker should not exceed seven hours a day and 35 hours per week. They should not work at night or do overtime and they have the right to an additional 15 minutes break at work and an additional 10 days’ holiday.

UK

The Disability Discrimination Act provides for adjustments to premises which put disabled persons at a disadvantage. The trade unions consider the domestic legislation weaker than the Directive because it requires disabled persons to show that they have been placed at a

‘substantial’ disadvantage rather than a ‘particular’ disadvantage. The Regulations extend that obligation to trade organisations and qualifications bodies. The complex provisions are set out in Sections 5 and 6 of the Disability Discrimination Act 1995 (as amended).

The provisions for positive action are very limited. In broad terms, positive action is allowed only to encourage minority group access to facilities for training or to encourage them to do particular work, where it prevents or compensates for disadvantages linked to sexual orientation or religion (for example Regulation 26 of the Sexual Orientation Regulations). The Disability Discrimination Act protects only disabled people, and therefore there would be nothing unlawful about positive action which benefited only disabled workers.

There are measures to provide for positive action in respect of sexual orientation and religion or belief, as follows:

In relation to *sexual orientation*, positive action is permitted by way of affording persons of a particular sexual orientation access to training facilities which would help to prepare them for particular work or of encouraging persons of a particular sexual orientation to take advantage of opportunities for doing particular work where such action reasonably appears to the person providing those opportunities as preventing or compensating for disadvantages linked to sexual orientation suffered by persons of that sexual orientation. There is a similar exception for trade organisations.

As far as *religion or belief* is concerned there is a similar exception in respect of access to training facilities for persons of a particular religion or belief.

Regarding *disability* there are no equivalent provisions, although the Disability Discrimination Act 1995 obliges employers to make reasonable adjustments where the current arrangements place a disabled person at a ‘substantial disadvantage’. Some charities are allowed to treat some individual disabled people more favourably than others if the individual in question is in the category of persons targeted by the charity and the more favourable treatment is in pursuance of these purposes. Generally, employers should encourage applications from disabled people.

Differences of treatment allowed on the grounds of age – situations mentioned in Article 6 §1 and others

Article 6 Justification of differences of treatment on grounds of age

1. Notwithstanding Article 2(2),⁵ Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

Such differences of treatment may include, among others:

(a) the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection;

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

(c) the fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement.

Austria

Article 20, para 3 of the Austrian legislation takes over the exact wording of Article 6 §1 of the Directive.

Belgium

The Belgian legislator did not use this possibility, although the social partners had insisted on this point, as many examples of different treatment on the grounds of age can be found in Belgian social law. The Belgian government envisages including the derogation foreseen in Article 6 of the Directive and has therefore asked the European Commission for an additional transposition period. The social partners should be consulted on this matter.

⁵ 'For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:

(i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, or

(ii) as regards persons with a particular disability, the employer or any person or organisation to whom this Directive applies, is obliged, under national legislation, to take appropriate measures in line with the principles contained in Article 5 in order to eliminate disadvantages entailed by such provision, criterion or practice.'

Bulgaria

No other situations are foreseen apart from those provided for by the Directive. There are concerns regarding age requirements in job advertisements for female staff but the prohibition of such advertisements is foreseen.

Czech Republic

An employee's age cannot, as such, be a valid ground for preferential treatment or exclusion, except in cases where the Labour Code provides for special treatment, for example in its provisions related to minors (young workers between 15 and 18).

There is a specific problem concerning the Act (Act No. 218/2002 Coll.) on the service of civil servants in administrative authorities and on the remuneration of such civil servants and other employees in administrative authorities, as amended. This act covers the legal relationship of employees in the civil service, organisational aspects of the civil service and remuneration of civil servants and introduces a new 'pension bonus for years of service' (Section 110(b), Sections 112–21). A pension bonus is regarded as a wage component under Article 141 (formerly Article 119) of the EU Treaty. An entitlement to this pension bonus is, however, tied to the granting of the old age pension under the Pension Insurance Act, as amended (Act No. 155/1995 Coll.). This reflects the different retirement ages for men and women under the Pension Insurance Act. It is necessary to amend the relevant provision of the Service Act so that it does not discriminate against men.

Estonia

No differences of treatment are allowed under the Estonian Constitution (§12) and the Labour Agreements Act (§10), with one exception. Persons aged 65 or over may be (given notice and severance pay) released from work or service (dismissed) due to age. None of the situations mentioned in Article 6 §1 of the Directive have been regulated so far in Estonian law.

Finland

Finnish law is similar to Article 6 §1 of the Directive, except that the social security aspect is also mentioned.

France

Article L.122-45-3 of the French Labour Code, established by the Law of 16 November 2001, tolerates differences of treatment on the ground of age (which, according to the law, do not constitute 'discrimination') 'where they are *objectively and reasonably justified by a legitimate objective*, in particular by employment policy objectives, and where the means used to meet this objective are *appropriate and necessary*' [emphasis added].

The second paragraph of this article specifies that these differences 'may entail, in particular':

- a ban on access to employment or the laying down of special working conditions in order to protect young people or older workers;
- the setting of a maximum recruitment age, based on the training requirements of the post in question or the need for a reasonable period of employment before retirement.

The list seems more restricted than that provided for in the directive. However, the use of the phrase '*in particular*' (although this is also used in the directive) allows for further exceptions of this type.

Germany

Under the current legislation in Germany different treatment on the ground of age is not permitted. There is one exception regarding fixed-term contracts: persons older than 58 years of age can work on a fixed-term contract without the restrictions imposed on younger workers.

Ireland

The Equality Act removed the upper age limit (65 years) for claims under the Employment Equality Act 1998 and the Equal Status Act 2000. It seemed odd to many people to have legislation tackling 'ageism' which itself contained age discrimination. However, some age restrictions remain. For instance, employers can still set compulsory retirement ages. Also, offering a fixed-term contract to a worker over the compulsory retirement age does not constitute discrimination.

Italy

The law is without prejudice to the provisions that set out the possibility of differences in treatment in respect of *adolescents, young people, older workers and workers with caring responsibilities*, or dictated by the *particular nature of the relationship* and by *legitimate employment policy, labour market and vocational training objectives* (Article 3(4), Decree 216). The Italian law does not include the potentially legitimate differences of treatment with regard to age specified in the Directive, thereby depriving of any meaning the justification of such differences of treatment and the promotional (for instance, in relation to the employment of young people) or protective intent underlying such measures.

Latvia

In Latvia age is still considered a condition of employment in several occupations (borderguards, police officers, civil servants). However, recent constitutional case law suggests that many of these provisions might be abolished in the future. A provision stipulating a maximum age for university tutors was suspended recently. National legislation does not contain more detailed provisions justifying age discrimination.

Luxembourg

Some provisions are foreseen in the Law of 12 February 1999 on enforcing the National Action Plan on employment. This law is the product of the recommendations of the European Council in Luxembourg, November 1997. This law foresees, within the framework of the professional insertion and re-insertion of the unemployed, the possibility of contracts which may depart from the legal provisions on employment contracts (auxiliary temporary contract).

For workers older than 49 years of age who agree to change from full-time to part-time work the employment fund will pay the employer for a period of seven years or more an allowance corresponding to the employer's social security contribution for that worker, on condition that the employer employ another worker on an open-ended or a fixed-term contract for at least 18 months. This worker must have been unemployed and seeking work for at least three months through the employment service.

Netherlands

Article 7 §1(a) and (b) of the Equal Treatment – Age Act gives examples (non-exhaustive) of discrimination permitted on the ground of age. In general, age discrimination in employment and vocational training is possible if it is objectively justified according to three criteria: legitimacy, efficiency and proportionality. Article 7 §1(a) describes a situation in which discrimination is based on employment or labour-market policy promoting the labour participation of specific age categories, to the extent that this policy is foreseen by the law. Article 7 §2(b) on the other hand concerns termination of an employment relationship or dismissal on the ground of age of a civil servant entitled to an old-age pension on the basis of the General Elderly Workers Act,⁶ or having reached a higher age foreseen by another law or by agreement between the parties involved. Age discrimination is permissible to stimulate employment among young people under the age of 23 and to allow employers to unilaterally terminate the employment contract of people who have reached the pensionable age of 65.

Norway

The Norwegian proposal contains the following provision (§54 D No. 3): ‘Discrimination on the ground of age is permitted if this is justified and the measures chosen to implement it are adequate and necessary.’ The proposed provision does not contain examples of situations in which discrimination on the ground of age is permitted.

Poland

Apart from specific measures for young workers (aged 16 to 18) Article 39 of the Labour Code states that *‘the employer shall not terminate the contract of employment of an employee who will acquire no more than two years later the right to an old-age pension from the Social Insurance Fund’* (the present pensionable age in Poland is 65 for men and 60 for women).

Article 18(3b), para 2, pt. 4 of Chapter IIa states that it is not deemed to be discrimination if the terms of employment are fixed taking into consideration the period of service (seniority).

Portugal

The law takes over the restrictions referred to in the Directive, as well as others resulting from compulsory education and ILO Conventions on activities either prohibited for underage workers or possible only under certain conditions.

Romania

The legislation follows Article 6 §1 of the Directive.

UK

There are no age regulations: the government is currently consulting on this issue. The consultation document indicates that it is intended to permit differences in treatment on the ground of age only if the employer can justify it with reference to specific aims and particular circumstances that make the practice appropriate and necessary. It appears that there will be a specific exception for differential National Minimum Wage rates for younger workers. The Trade Union Confederation (TUC) has also called for a provision in the age regulations to protect against the levelling down of benefits or other rights.

⁶ Algemene Ouderdomswet.

Use of the exception in Article 6 §2

Article 6 – Justification of differences of treatment on the ground of age

2. Notwithstanding Article 2(2),⁷ Member States may provide that the fixing for occupational social security schemes of ages for admission or entitlement to retirement or invalidity benefits, including the fixing under those schemes of different ages for employees or groups or categories of employees, and the use, in the context of such schemes, of age criteria in actuarial calculations, does not constitute discrimination on the grounds of age, provided this does not result in discrimination on the ground of sex.

No use was made of this exception in *Belgium, Bulgaria, Estonia, Italy, Latvia, Norway and Portugal*.

Austria

The legislation makes use of this exception in §20, para 5. It lays down that certain age limits used as a condition of membership or for pensions or other benefits, as well as the integration of different age groups are not considered discriminatory unless it leads to discrimination on the ground of gender.

Czech Republic

There are no occupational social security schemes in the Czech Republic. There is no special pension system for public servants or other groups. However, there are different retirement ages for men and women.

France

Age is sometimes a condition of access to certain social benefits. This is obviously the case for pensions, which are paid when the worker reaches the age of 60. Social assistance, in the form of the ‘*revenu minimum d’insertion*’ (RMI – minimum inclusion income – a type of income support) cannot be paid to young people under the age of 25. In the area of unemployment benefits, the ‘back to work benefit’ (ARE) paid to people aged 50 or above receiving old-age payments or lifelong forms of replacement income (except for those under the age of 60 receiving a military pension) is reduced by 25–75% (depending on the age of the beneficiary). However, the daily amount may not fall below a certain sum.

⁷ ‘For the purposes of paragraph 1:

- (a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;
- (b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:
 - (i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, or
 - (ii) as regards persons with a particular disability, the employer or any person or organisation to whom this Directive applies, is obliged, under national legislation, to take appropriate measures in line with the principles contained in Article 5 in order to eliminate disadvantages entailed by such provision, criterion or practice.”

Germany

The DGB expects that the possibility of exceptions in Article 6 §2 will be used in Germany, although there are no exceptions at the moment.

Luxembourg

Article 16 on the principle of equal treatment of men and women of the Law of 8 June 1999 on complementary pension schemes states:

In conformity with Directive 96/97/EC of 20 December 1996 amending Directive 86/378/EC on the implementation of the principle of equal treatment for men and women in occupational social security schemes, all provisions on pension regulations are void which violate the principle of equal treatment of men and women. This includes discrimination on the ground of gender, direct or indirect, particularly with reference to marital or family status in relation to different levels of benefit. This is not the case if the measure was necessary to take into consideration elements of actuarial calculation which are different for each gender as regards contributions under this scheme.

Netherlands

Article 6 §2 of the Directive is implemented via the Equal Treatment – Age Act (Article 8).

Poland

Polish legislation makes use of the exception in Article 6 §2. However, it also includes regulations which provide a higher level of protection against discrimination than that given by the Directive.

UK

The consultation document states that the UK government will make use of the exception in Article 6 §2 in respect of occupational pension schemes.

The exception of Article 3 §4 allowing discrimination on the grounds of disability and age for the armed forces

Article 3 – Scope

4. Member States may provide that this Directive, in so far as it relates to discrimination on the grounds of disability and age, shall not apply to the armed forces.

This exception has not been included in *Belgian, Luxemburgian or Norwegian* law.

Bulgaria

There are exceptions concerning disabled people (Act on Social Integration and Rehabilitation, Act on Defence and the Armed Forces, Act on the Ministry of Internal Affairs).

Czech Republic

The Czech regulation makes use of the exception of Article 3 §4 and allows discrimination on the grounds of disability and age for the armed forces. Other differences of treatment are allowed in the armed forces, the police, and the prison and emergency services.

Estonia

No general regulation exists. Age limitations apply to joining the armed forces (for example, combat units). There are no regulations relating specifically to disability.

Finland

Discrimination on the ground of age is allowed in all cases (including armed forces, police, etc.) if objective and justified.

France

In the case of the armed forces there is no specific provision in French law allowing discriminatory treatment on the grounds of disability or age. In fact, since recruitment is linked to a series of tests (physical aptitude), physical fitness is crucial, particularly for the military. Nevertheless, an ‘inclusion’ programme to bring people with disabilities into the armed forces is now in its early stages in order to respect the 6% threshold set out in Article L.323-2 of the Labour Code.

The armed forces, the police and the prison service also have different recruitment conditions based on nationality.

Ireland

The Employment Equality Act (Section 37 §6) provides that in relation to discrimination on the grounds of age or disability nothing in Part IV and Part II of the Act applies to employment in the Defence Force, in the Garda Síochána [police] or in the Prison Service.

Italy

The provisions in Decree 216 of 9 July 2003 are without prejudice to all the provisions in force on the armed forces, insofar as they relate to age and disability (Article 3(2)(e)). In the following paragraph, however, the provision is much wider than the Directive as it *allows assessment of a person's characteristics related to religion, personal beliefs, disability, age and sexual orientation*, where such characteristics are *relevant* to a person's *fitness* to carry on the functions of the *armed forces* and the *police, prison or emergency services* (Article 3 §3). Any difference in treatment applied to the armed forces and similar may therefore also include *grounds of discrimination other than disability and age*, set out as grounds for exceptions from anti-discrimination provisions in Article 3 §4 of the Directive.

Latvia

Latvian legislation prescribes a maximum age of 55 years for military personnel, and 60 years for superior officers. A person is dismissed from professional military service if found unsuitable on health grounds. There are also maximum age limits for police officers, prison personnel and firemen (emergency services). Only a citizen of the Republic of Latvia can be employed in the armed forces.

Netherlands

The Age Discrimination Act includes the exception for the armed forces. These age restrictions will continue to apply until January 2008.

Poland

The armed forces, the police and the prison service are not covered by the Labour Code. According to the Law on professional military service only a person with the requisite mental and physical capabilities may become a soldier. The minimum age is 18 years. There are similar regulations in the Police Act and for the other armed forces.

Romania

Different treatment is allowed in all the above-mentioned areas (army, police, prison service, and so on).

UK

In the UK discrimination is allowed on the grounds of disability for the armed forces. The proposals on age discrimination are only at the consultation stage so the position is still not clear, but it is anticipated that they will include a similar exemption.

In respect of disability, discrimination was allowed for the British Transport Police, the Royal Parks Constabulary and the United Kingdom Atomic Energy Constabulary, prison officers and members of the fire brigade who may be required to engage in fire fighting. These exceptions have been removed in the meantime by the Regulations.

There is also a broad exemption in the Sexual Orientation and Religion Regulations in relation to acts carried out 'for the purpose of safeguarding national security, if the doing of the act was justified for that purpose' (for example, Regulation 24 of the Employment Equality (Sexual Orientation) Regulations 2003).

In all other respects the police and the prison and emergency services are covered (or will be when the amendments in the 2003 Disability Regulations are implemented in October 2004).

Annex

Questionnaire on the implementation of the 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 permitting 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?
14. Does your regulation make use of the exception in Article 6 §2?
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 regulations 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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