

Non-discrimination in the European Union

Implementation of Directives

2000/78/EC and 2000/43/EC

Part I

Implementation process, scope and definitions

by

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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 Directives 2000/78/EC and 2000/43/EC on the principle of equal treatment in the European Union consists of two chapters, one on the implementation process (by Wiebke Düvel) and a second on scope and definitions (by Isabelle Schömann). Two other reports on these same European Union directives cover age and disability, on the one hand, and awareness-raising, enforcement and litigation, on the other.

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 (September).

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

This report is divided into two parts.

The first part addresses the following issues: implementation of the Directives at national level; proper enforcement of the Directives; involvement of the social partners in the preparation and elaboration of the new regulations; the promotion of social dialogue with a view to fostering equal treatment; and dialogue with competent NGOs to augment the fight against discrimination.

The second part looks at the scope and definitions of the directives, in terms of four closely-linked points: the concept of discrimination; the definition of direct and indirect discrimination; the question of harassment; and the scope of non-discrimination protection in employment, as well as exceptions to the principle of equal treatment.

Under each of these subjects the text of the Directive(s) and the legal situation in the various Member States are presented. 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.

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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 <p>Single legislative text adopted December 2003, in force since January 2004</p> | 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 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 | <p>New legislation:</p> <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) <p>Amendments to:</p> <ul style="list-style-type: none"> • 1994 Equal Treatment Act • Implementation law Equal Treatment Act | <p>Amendments to:</p> <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 | <p>Draft legislation on women, ethnic minorities and disabled persons</p> <p>Amendments to Labour Code</p> <p>Amendments to the Law on State Service</p> <p>A single draft law due to be adopted before end May 2004</p> | A single draft law due to be adopted before end May 2004 |
| UK | <p><i>Disability</i></p> <p>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></p> <p>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></p> <p>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> | 2003/1626, Race Relations Act 1976 (Amendment) Regulations 2003 |

| | | |
|--|---|--|
| | <p><i>Age</i></p> <p>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> | |
|--|---|--|

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

Chapter I
Implementation process

by
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I. Comparative overview of the implementation provisions

Implementation of the Directives at national level

It is important to note that implementation of the two anti-discrimination Directives was not a high priority for many countries. Directive 2000/78/EC was to be transposed by 19 July 2003 and Directive 2000/43/EC by 2 December 2003. Nevertheless, there are countries which still have not transposed the Directives at the time of writing (autumn 2004), such as Germany.

The following countries are still only at the draft legislation stage: Greece, Slovakia, Germany, Norway (regarding Dir. 2000/78/EC), France (partially), Luxembourg, Ireland and Malta (regarding Dir. 2000/43/EC).

The European Commission has announced that it will take legal action against six Member States for failing to transpose the two anti-discrimination Directives.

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 having failed to transpose fully the Framework Directive on Employment. In more detail:

| | |
|-------------------|--|
| <i>Germany</i> | The government has not yet presented to the 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 the Parliament in November 2003 but has not yet entered into force. |
| <i>Greece</i> | Draft legislation was presented to the Parliament in January 2004 but had not completed its passage prior to the elections in March 2004. |
| <i>Belgium</i> | Legislation to transpose the Directives has entered into force at the federal level and in all the communities and regions except the German speaking community. |
| <i>Finland</i> | Legislation transposing the Directives in mainland Finland was published in January 2004 but does not cover the Aland Islands. |

The first step the Commission will take 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 a Member State to the European Court of Justice.

Most countries have transposed the two Directives into one, more general law instead of making several specific laws (Austria, Belgium, Czech Republic, Finland, France, Hungary, Luxembourg, Portugal, Romania, Spain, Sweden, Slovenia).

Correct enforcement of the Directives

ETUC affiliated trade unions, in their answers to the questionnaires, evaluated implementation of the Directives into national law as follows:

Table 1: Correct enforcement of the Directives

| Correct enforcement | No correct enforcement | More or less correctly enforced |
|---------------------|------------------------|---------------------------------|
| Belgium | Estonia (2000/78/EC | Finland |
| Bulgaria | and 2000/43/EC | Ireland |
| Denmark | only partially) | Latvia |
| France | Italy | Portugal |
| Netherlands | UK | |
| Romania | | |

The following points were criticised in the responses. More detailed information on specific deficiencies or incorrect implementation can be found in the detailed answers on each country and in the three other reports under this topic.

In *Austria* the so-called ‘minimalist’ approach was criticised.

In *Belgium* the trade unions stressed that no use had been made of Article 6 of Directive 2000/78/EC, and that a framework was lacking for the new instruments of proof and for criteria governing whether third parties could appear in court.

In *Estonia* the Confederation of Estonian Trade Unions (EAKL) identifies the problem at the institutional level, as special administrative bodies are needed. They also demand that a right to equal treatment for trade union activists should be enshrined in law.

The *Finnish* trade unions pointed out that the legislation does not contain the right for trade unions to bring cases before a court.

Force Ouvrière (FO) underlined possible further improvements to the *French* legislation:

- burden of proof for harassment;
- reform of criminal legislation on discrimination;
- minimum level of compensation;
- need for a completely independent body to combat discrimination;
- arrangements for disabled persons;
- better dissemination of information.

In *Ireland* the view is that the legislation does not go far enough, for example regarding the upper sanctions ceiling.

The *Italian* trade union gave a long list of points which are not in compliance with the EU Directives or missing from the Italian legislation. Transposition of Directive 2000/78/EC was characterised as bureaucratic, with little interest in the efficacy of the provisions. No provision had been incorporated dealing with compliance of national legislation with the new provisions. Regulations on positive action, reversal of the burden of proof, social dialogue and the dissemination of information are missing. Directive 2000/43/EC was transposed in an incomplete and non-exhaustive manner. Again regarding transposition of Directive 2000/78/EC, trade unions and employer organisations may not represent members who have suffered discrimination from those institutions. Furthermore, the law implementing the Directive is contradicted by the law on immigration.

Transposition of Directive 2000/78/EC into *Latvian* law has been criticised in relation to the protection of disabled persons, while in the national legislation implementing Directive 2000/43/EC harassment – more specifically, non-violent harassment – was not effectively addressed.

The responses of the *UK* Trades Union Congress and National Union of Teachers presented a long list of subjects which could be improved in relation to both Directives.

Directive 2000/78/EC:

- genuine occupational requirement;
- definition of indirect discrimination;
- sexual orientation regulations;
- definition of disability;
- regulations on religion and belief.

Directive 2000/43/EC:

- genuine occupational requirement;
- definition of indirect discrimination;
- definition of harassment.

This brief overview shows that the transposition of these Directives into national law remains incomplete, with some EU provisions not being transposed at all and others in a way which does not conform with the Directives. Furthermore, national legislation sometimes does not comply with European legislation or represents a domestic interpretation of it, or is unclear and therefore leaves room for interpretation by the courts.

As a result of all this it would not be enough if the European Commission looked only at whether national law transposes the European Directives. It must also look carefully at national level implementation.

Involvement of the social partners in the preparation and elaboration of the new regulations

Involvement of the social partners in the preparation of national legislation has been good: no involvement at all has been reported only from Bulgaria, Italy and Norway.

Involvement was more or less satisfactory even in Belgium where the time available to react to the proposed legislation was extremely short (only 10 days) and only in the final phase of

decision-making. The Estonian social partners were involved in the first draft but not later on. Social partner involvement in the Netherlands was satisfactory regarding implementation of Directive 2000/78/EC but not Directive 2000/43/EC.

All other responses reported social partner involvement in the legislative process, which was mostly regarded as satisfactory.

Table 2: Involvement of social partners in preparation of national legislation

| Yes | No | (+/-) |
|------------------|------------------|-------------|
| Austria | Bulgaria | Belgium |
| Czech Republic | Italy | Estonia |
| Denmark | Norway | Netherlands |
| Finland | UK (NUT opinion) | |
| Poland | | |
| Portugal | | |
| Romania | | |
| UK (TUC opinion) | | |

Social dialogue and dialogue with NGOs

Social dialogue regarding non-discrimination has been promoted only in Finland. In Luxembourg it takes place only in relation to Directive 2000/43/EC (racial and ethnic origin), while in Denmark it takes place only regarding the workplace. In the Netherlands, Poland and Portugal these subjects may come within the scope of general social dialogue.

Table 3: Promotion of social dialogue

| No | Yes |
|----------------------------|---|
| Bulgaria | Denmark (regarding 2000/78/EC) |
| Czech Republic | Finland |
| Estonia | Luxembourg (regarding 2000/43/EC) |
| Italy | <i>Netherlands (social dialogue in general)</i> |
| UK (a few formal measures) | <i>Poland (social dialogue in general)</i> |
| | <i>Portugal (social dialogue in general)</i> |

Dialogue on non-discrimination with NGOs seems to take place in a majority of countries. It does *not* take place in relation to employment in Germany and Italy, although in the latter there is dialogue concerning discrimination on the grounds of racial and ethnic origin.

Table 4: Dialogue with competent NGOs

| 2000/78/EC | | | 2000/43/EC | |
|----------------|----------|---------------------|----------------|----------|
| Takes place | (+/-) | Does not take place | Takes place | (+/-) |
| Belgium | Bulgaria | Italy | Czech Republic | Bulgaria |
| Czech Republic | France | Germany | Denmark | France |
| Denmark | Romania | | Italy | Romania |
| Luxembourg | | | Latvia | |
| Netherlands | | | Portugal | |
| Poland | | | UK | |
| Portugal | | | | |
| UK | | | | |

It is interesting to compare the promotion of social dialogue and the ensuring of dialogue with competent NGOs as demanded by the Directives.

Non-discrimination on the grounds of race and ethnic origin is an issue for NGOs in nearly all countries, but measures to promote social dialogue on this matter have been reported only from Finland and Luxembourg. This could probably be explained by the fact that this issue is traditionally addressed by NGOs, but the results are similar regarding the Employment Directive, which is the traditional field of action of trade unions.

No promotion of social dialogue on equal treatment in employment was reported from Bulgaria, the Czech Republic, Estonia, Italy and the UK, while dialogue with NGOs in this field takes place in nearly all the relevant countries except Italy and Germany.

These results should give the trade unions food for thought, as there is an internal and an external component to this. These findings surely indicate that governments approach NGOs rather than the social partners on the subject of non-discrimination, but also that trade unions in general must become more visible and active in this field.

Collective agreements incorporating non-discrimination clauses

It is difficult to evaluate the answers provided, as several interpretations of the information given are possible. The results might indicate that few collective agreements explicitly integrate non-discrimination clauses, as collective agreements have anyway to be in line with national legislation. Furthermore, it is very probable that not all collective agreements incorporating the idea of non-discrimination have been listed. Therefore no direct conclusion is to be drawn from, except that the concept of non-discrimination is so far rarely to be found in collective agreements in the new EU Member States and the accession countries, except for the Czech Republic, Poland and Romania. However, even there they remain very general, repeating what is laid down in the law.

Table 5: Collective agreements and non-discrimination

| Country | Collective agreements |
|----------------|--|
| Belgium | Interprofessional collective agreement on recruitment and selection of workers |
| Bulgaria | None |
| Czech Republic | Only general provisions in some collective agreements |
| Denmark | In annex to the Cooperation Agreement an agreement on equal treatment deals with race and ethnic origin; social partners will consider the inclusion of a prohibition of discrimination on the grounds of age or disability |
| Estonia | None |
| Finland | Provisions in the agreements usually refer to legislation |
| France | Article L. 133–5 agreement only generally applicable if it contains a clause on equal treatment (see below): <ul style="list-style-type: none"> • National Collective Agreement – leisure centres, etc. • National Collective Agreement – water • National Collective Agreement – pharmaceutical industry |
| Germany | There are collective agreements which explicitly incorporate these principles |
| Italy | Almost no provisions on contents of Dir. 2000/78/EC but provisions regarding race and ethnic origin are included |
| Latvia | None |
| Luxembourg | In collective agreements the principle of equal remuneration between men and women must be applied |
| Netherlands | No information |
| Poland | Some collective agreements contain anti-discrimination rules, mostly, however, in terms as general as those in the Labour Code |
| Portugal | Clauses on non-discrimination widespread, although often they merely repeat the legislation |
| Romania | To be found in most collective agreements |
| Spain | Example: banking sector – non-discrimination clause on grounds of age, sex, race or religion |
| UK | Some collective agreements on these issues |

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

Implementation

Article 18 Implementation (2000/78/EC)

Member states shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by 2 December 2003 at the latest or may entrust the social partners, at their joint request, with the implementation of this Directive as regards provisions concerning collective agreements. In such cases, member states shall ensure that, no later than 2 December 2003, the social partners introduce the necessary measures by agreement, the member states concerned being required to take any necessary measures to enable them at any time to be in a position to guarantee the outcome required by this Directive. They shall inform the Commission forthwith.

Article 16 Implementation (2000/43/EC)

Member states shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by 19 July 2003 or may entrust management and labour, at their joint request, with the implementation of this Directive as regards provisions falling within the scope of collective agreements. In such cases, member states shall ensure that by 19 July 2003 management and labour introduce the necessary measures by agreement, member states being required to take any necessary measures to enable them at any time to be in a position to guarantee the outcome imposed by this Directive. They shall inform the Commission forthwith.

Austria (before July 2004)

Apart from the general principle of equal treatment in working life (Gleichbehandlungsgrundsatz) which has been developed by case law in Austria, a special obligation to apply the principle of equal treatment for men and women at work (Gleichbehandlungsgebot) is explicitly laid down in the 1979 Act on Equal Treatment for Men and Women (Gleichbehandlungsgesetz) (since amended). This prohibits any direct or indirect discrimination against an individual on the ground of sex as regards: the formation of an employment relationship; wage determination; the award of discretionary company benefits; training and further training schemes; promotion; all other employment conditions; and termination of the employment relationship. The Act classes as discrimination any form of prejudicial differentiation which is not justified on objective grounds. The penalties prescribed for infringements of this anti-discrimination law include the following: in the area of recruitment, compensation for the applicant amounting to two months' pay; in the area of promotion, compensation limited to the difference over four months between the pay that would have been received in the event of promotion and the employee's current pay; and in the area of continued payment of remuneration (for example, during sickness), payment of the difference involved. As for the burden of proof in cases based on the Act, the employee or job applicant who alleges an instance of discrimination has to establish its existence.

With regard to state employees, measures in this area were established by the 1993 Act on Equal Treatment for Men and Women in the Public Sector (Bundesgleichbehandlungsgesetz). This Act lays down a general requirement for positive action in favour of women which is

translated into detailed provisions for the preferential hiring of women (expressed in a quota rule) and preferential treatment for women concerning promotion, training and further training. In the private sector, a 1999 amendment to the Codetermination Act (*Arbeitsverfassungsgesetz*) obliges employers to consult with the works council on positive action for women at company level and on ways of reconciling childcare tasks with employment. Such company-level positive action measures and arrangements to make childcare compatible with employment may also be regulated by a works agreement (*Betriebsvereinbarung*) between works council and management.

The Austrian government has passed a law on equal treatment and an amended version of the already existing law on equal treatment of men and women in working life. Chapter II (equal treatment in working life without distinction on the grounds of race, ethnic origin, religion or belief, age or sexual orientation) of the equal treatment law is intended to implement the Directive. Chapter III deals with equal treatment without distinction on the grounds of ethnic origin in other areas. Discrimination on the ground of disability shall be regulated by a special law.

Belgium

The Directive has been implemented by the Law on combating discrimination of 25 February 2003. A recent judgment of the *Courts d'arbitrage* questioned the legality of some of the legislative provisions; this will require reformulation of the law.

Bulgaria

The elaboration of a bill on equal opportunities for men and women prepared by the Ministry of Labour and Social Policy together with representatives of civil society and the social partners was a step in the right direction.

Work on this bill suddenly stopped after 2001. In September 2002 the government approved a bill on the prevention of discrimination.

This bill provoked stormy public debates and was criticised by civil organisations. The gender equality organisation Gender Project declared that the bill was an ineptly constructed cobbling together of the two EU Directives 2000/78/EC and 2000/43/EC, and would not achieve its goals. Due to the controversy this bill was withdrawn from the National Assembly's legislative agenda for redrafting.

What follows therefore concerns the draft text.

A number of provisions on labour relations in the proposed bill have aroused concern and bewilderment. The proposed norms contradict existing labour legislation providing special protection to women and mothers, as well as the revised European Social Charter provisions ratified by Bulgaria.

The bill includes provisions which unnecessarily duplicate existing provisions in the Labour Code, including the right to equal pay for men and women.

As early as November 2002 the Confederation of Independent Trade Unions in Bulgaria (CITUB) filed a grievance with the Supreme Administrative Court against Decision of the Council of Ministers No. 613/13.09.2002. CITUB believes that there must be consistent implementation of state policy on the prevention of discrimination and as part of that an Act

for the prevention of discrimination should be adopted to provide an effective implementation and monitoring mechanism. It is indisputable that the legal provisions in the field of discrimination need improving. However, this is not the main problem at present. More important is ignorance and non-implementation of the legal norms on the prevention of discrimination.

CITUB took the view that the Council of Ministers should withdraw the bill on the prevention of discrimination from the National Assembly. Its defects are so numerous and so substantial that redrafting would be impossible. No law would be better than a bad law. The current bill would not address discrimination, and further problems would arise in relation to implementation.

The establishment of an institutional mechanism related to equal opportunities between men and women is needed in Bulgaria – like those already existing in other countries – to carry out monitoring, implement policy and disseminate information on gender equality and gender discrimination in employment and occupation.

Directive 2000/43/EC has been implemented, partly in Article 8, paragraph 3 of the Labour Code. An identical norm can be found in the Compulsory Social Security Code concerning unemployment benefit and pensions.

Czech Republic

The Directive has not yet been implemented in the Czech Republic. Government bills (amendments to the Employment Act and to Act No. 65/1965 Coll. Labour Code, as amended) are currently going through Parliament. These implementing Acts shall enter into force at the latest by the date of the Czech Republic's accession to the European Union. One amendment to the Labour Code incorporating issues of equality and prohibiting discrimination in employment and occupation, is currently under discussion in the Chamber of Deputies of the Czech Parliament. Another amendment to the Labour Code is currently being discussed in the Government; it complements the draft new Act on Employment and includes issues related to the protection of young people at work and temporary agency work.

To analyse this future legislation is premature since there will be a great deal of discussion and many changes are possible.

However, a regulation on equal treatment (non-discrimination in employment and occupation) came into effect on 1 January 2001, regulated by Act No. 1/1991 Coll. on employment, as amended, and by Act No. 65/1965 Coll. Labour Code, as amended, which is in line with the Directive in many ways. Both amendments mentioned above are intended to bring this regulation fully into line with the Directive.

Finally, an umbrella act on protection against discrimination will be drafted which will transpose anti-discrimination Directives 2000/43/EC, 2000/78/EC and 2002/73/EC.

Denmark

Directive 2000/78/EC was implemented with the Act of 30 March 2004 amending Act No. 459 of 12 June 1996 on the prohibition of discrimination in respect of employment and occupation. Delayed implementation was due to a debate on whether there was to be a

specific court of appeal with jurisdiction to try cases of alleged discrimination. The Danish Institute for Human Rights has been given jurisdiction to hear complaints.

Directive 2000/43/EC was implemented by Act No. 374 of 28 May 2003 on equal treatment of ethnic minorities.

Estonia

There are a number of relevant statutes. No information is available on implementation of the Directive in collective agreements. The Directive is to be further implemented by the draft Gender Mainstreaming Act (currently being debated), the draft Act on Equality and Equal Treatment (under preparation) and the draft Employment Contracts Act (draft being finalised by the Ministry of Social Affairs).

The Government had set 30 July 2003 as the date when an alternative draft Gender Mainstreaming Act (Ministry of Social Affairs) should be produced and 1 September 2003 for a framework Act on Equality and Equal Treatment (Ministry of Justice). Neither draft has been presented so far. Therefore the comments on the Gender Mainstreaming Act relate to the draft currently in Parliament.

Directive 2000/43/EC has not been implemented yet. However, provisions can be found in §12 of the Constitution of the Republic of Estonia, §10 of the Employment Contracts Act, §5 of the Wages Act, in the European Social Charter and in the Act on the Cultural Autonomy of National Minorities.

Finland

The government bill was presented to the Parliament but the procedure was delayed because of elections in spring 2003. The bill was expected to pass in autumn 2003.

France

Directive 2000/78/EC and 2000/43/EC were transposed by the following legal instruments:

- 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; and, above all,
- Law No 2001-1066 of 16 November 2001 on combating various types of discrimination.

These laws have resulted in changes to existing provisions (Article L.122-45 of the Labour Code, for example, covers various types of discrimination, the list of which was extended by the law of November 2001) and created new obligations. They have increased the number of types of prohibited discrimination and represent an attempt to enhance the effectiveness of the existing legal prohibitions.

Germany

Implementation has not taken place so far. The Deutsche Gewerkschaftsbund (DGB) has agreed on four main points regarding a law on non-discrimination (Eckpunkte zu einem

Antidiskriminierungsgesetz – 03 December 2002). As a law on non-discrimination is intended to lead to a society free of discrimination, regulations must be extensive:

- Discrimination must be generally prohibited. General exceptions or objective grounds for discriminatory treatment may not be allowed by law.
- For better defence against discrimination the burden of proof must be reversed. Furthermore, if discrimination is discovered in a contractual relationship a right to conclude a contract is needed alongside protection against and termination of that discrimination.
- To enforce protection against structural discrimination a right to a collective complaints procedure must be inserted in the law. This right must also be given to trade unions.
- To help persons affected by discrimination the establishment of new, as well as support for existing structures is needed.

Based on the Directive the words ‘sexual orientation’ have been inserted in §75 Abs. 1 S. 1 BetrVG (Betriebsverfassungsgesetz). This provision in the Act regarding workers’ participation in the enterprise sets out principles concerning how workers must be treated. Different treatment of workers on grounds of religion, nationality, origin, political or trade union activity, belief, gender or sexual orientation, and race and ethnic origin is prohibited.

Article 3, paragraph 3, S. 1 GG of the Constitution prohibits any disadvantage or advantage due to gender, origin, race, language, home country, faith and religious or political belief. S.2 of the provision prohibits disadvantages due to disability. These fundamental rights cannot be applied directly between the employer and the employee. However, in respect of the established jurisprudence of the Constitutional Court and the National Court of Labour Law the fundamental rights have to be respected in the field of labour law.

Furthermore, §81, paragraph 2 SGB IX (Sozialgesetzbuch – 9. Buch) lays down the prohibition of discrimination against disabled people. This is understood as a concretisation of the fundamental prohibition of discrimination in Article 3, paragraph 3, S.2 GG of the Constitution.

Greece

A bill for the transposition of Directive 2000/43/EC was prepared in February 2003. Most of its provisions repeat almost verbatim the relevant provisions of the Directive. The bill aims to fill the serious gaps of current Greek anti-discrimination legislation.

Iceland

The EEA Joint Committee has not adopted a decision on the Directives. The Ministry of Foreign Affairs has hinted that it deems the Directives to fall outside the EEA agreement. However, it is considering whether to implement them anyway.

Ireland

Consultation has been completed and proposals are being prepared for consideration by the Government. It was expected that bills would be published in summer 2003 and in July 2004 the new Equality Act 2004 was passed by the Irish Parliament. The new law was enacted to

comply with three EU equality Directives (2000/78/EC, 2000/43/EC and 2002/73/EC) and will introduce some significant new employment rights, including the extension of positive action measures.

Much of the equality legislation and institutional supports required to comply with the new EU equality Directives are already in place in Ireland. Indeed, in many areas, such as the establishment of the Equality Authority, the Irish legislation goes beyond the minimum requirements of the Directives. In other areas, however, the Irish legislation (the Employment Equality Act 1998) will have to be amended to comply with the Directives. One significant amendment relates to the new enforcement rights in the Directives pertaining to representation by independent organisations such as trade unions. In general terms, the new Directives will provide a range of new equality rights and enforcement remedies against discrimination for various social groups in Ireland, particularly disadvantaged groups such as disabled people, who have historically resided at the bottom of the 'equality hierarchy'.

The two main pieces of legislation in Ireland covering direct and indirect discrimination on the grounds of race and ethnic origin are the Employment Equality Act 1998, and the Equal Status Act 2000. The Employment Equality Act 1998 outlaws discrimination on the grounds of race, gender, marital status, family status, sexual orientation, religion, disability, age and membership of the 'travelling community'. The Equal Status Act 2000 incorporates the same grounds for prohibiting discrimination as the Employment Equality Act, but its anti-discrimination prohibitions extend beyond employment discrimination into the public arena, in relation to issues such as access to education and housing and the provision of goods and services.

Italy

Directive 2000/78/EC was transposed into the Italian legal system by Legislative Decree 216 of 9 July 2003 (Official Gazette 187, General Series, of 13 August 2003) approved by the Council of Ministers on the basis of the delegation set out in Community Law 39 of 1 March 2002, in particular Annex B).

Directive 2000/43/EC was transposed by Legislative Decree 215 of 9 July 2003 (Official Gazette 186, General Series, of 12 August 2003), approved by the Council of Ministers on the basis of the delegation set out in Community Law 39 of 1 March 2002, in particular Annex B). Under the Decree, the *different impact* that discrimination on grounds of racial or ethnic origin may have on *women and men* and the existence of forms of *racism of a cultural or religious nature* are to be taken into account. Protection against discrimination is already partly contained in the provisions setting out rules on immigration and regulating alien status, approved by Legislative Decree 286 of 25 July 1988 and subsequent amendments.

Latvia

The principles of the Directives have been transposed into Latvian law, particularly the Labour Code.

Article 91 of the Satversme (Constitution of Latvia) provides that all persons in Latvia are equal before the law. Human rights are applied without discrimination.

The principles of equal treatment and prohibition of discrimination on the grounds of racial or ethnic origin are particularly emphasised in Articles 7, 29, 33, 34, 48 and 95 of the Labour Code.

Luxembourg

The draft law transposing Directive 2000/78/EC was passed to the ministerial council on 19 September 2003. The transposition of Directive 2000/43/EC into national law was under preparation at the time of writing to bring national legislation into line with the Directive, mainly in respect of the burden of proof.

Netherlands

The Directive will be implemented by new legislation on equal treatment on grounds of handicap and age and by way of adapting and complementing existing legislation.

New legislation:

- a. Act of 3 April 2003 on equal treatment on the grounds of disability and chronic disease² (hereafter: Equal Treatment – Disability Act). This Act came into force on 1 December 2003.
- b. Bill on equal treatment on the grounds of age in employment, occupation and vocational training³ (hereafter: Equal Treatment – Age Bill). This Bill passed the Upper House in December 2003 and is awaiting publication in the Official Journal.

Amendments to existing legislation:

- c. Bill to amend the 1994 Equal Treatment Act⁴ and other legislation: EC implementation law Equal Treatment Act (hereafter, EC implementation law). This Bill is still under discussion in the Second Chamber of Parliament.

Norway

Neither Directive has been made part of the EEA Agreement.

Norway wished to implement both Directives and has started the necessary preparatory work. However, as yet the Directives have not been implemented. Therefore the answers to the questionnaire relate to the proposals and preparatory work and cannot be taken as final. The proposal adds a new chapter to the existing Workers' Protection Act: Chapter X – Equal treatment in working life.

There is no proposal dealing directly with the implementation of Directive 2000/43/EC.

In July 2002, Norway's centre-right coalition issued a 'plan of action against racism and ethnic discrimination' which aims to combat racism and ethnic discrimination in all areas,

² 'Wet van 3 april 2003 tot vaststelling van de Wet gelijke behandeling op grond van handicap of chronische ziekte', Staatsblad 2003/206.

³ 'Wetsvoorstel met betrekking tot gelijke behandeling op grond van leeftijd bij arbeid, beroep en beroepsopleiding', Tweede Kamer der Staten Generaal, kamerstuknummer 28 170.

⁴ EG-implementatiewet Algemene wet gelijke behandeling (AWGB), kamerstuknummer 28 770.

including working life. One of the more controversial measures proposed is to make adherence to the principle of non-discrimination a precondition for all subcontractors and suppliers of goods and services to state institutions.

The legal aspects of discrimination are to be dealt with through the introduction of an Act on ethnic discrimination. Minority and immigrant interest representation groups have long called for the creation of such an Act, very much based on the same principles as the existing Equal Status Act. The government's proposal is in line with the recommendation of a public committee that considered strengthening the legal protection against ethnic discrimination, whose report was made public on 14 June 2002. The committee considered both criminal and civil sanctions against discrimination, although with an emphasis on the latter. It proposes the creation of a new Act on ethnic discrimination which would include: a general ban on ethnic discrimination; a duty on public authorities and employers to act to promote ethnic equality and prevent discrimination; and the principle of shared burden of proof in cases of discrimination.

The committee's report is now to be considered by the relevant parties and on the basis of this consultation the government will put forward a proposal for a new Act.

Poland

Three Directives – framework, racial/ethnic and on equal treatment of men and women (2002) – have been implemented by the law of 14 November 2003 amending the Labour Code, entering into force on 1 January 2004.

This law introduced into the Labour Code a special Chapter IIa 'Equal Treatment in Employment', establishing a ban on discrimination in employment on grounds of: sex, age, disability, racial or ethnic origin, religion or belief, nationality, political convictions, sexual orientation, union membership, fixed-term employment and part-time employment. Before 1 January 2004 (and since 2001) Chapter IIa of the Labour Code concerned only equal treatment of men and women and was a first attempt to adjust Polish labour law to EC standards on equal treatment of men and women as they existed before Directive 2002/73/EC was adopted.

Chapter IIa in its present form establishes common legal measures for all types of discrimination, common definitions of discrimination – direct and indirect – and harassment, including a special definition of sexual harassment, as well as a common burden of proof rule, a professional requirements clause, and compensation for damages.

A ban on discrimination on all the cited grounds was introduced in 2003 in the Law on Employment and Counteracting Unemployment of 1994.

Since the provisions of the Labour Code relating to the discrimination ban are mandatory, the issue cannot be regulated in a different way by collective agreements. Therefore it is likely that collective agreements (which in Poland mostly concern wages) will not cover this matter.

On the subject of non-discrimination based on race or ethnic origin there is no specific regulation. All remarks made above also apply to this form of discrimination *mutatis mutandis*.

Portugal

The Directive has not yet been transposed into national law, but with the new Labour Code of 1 December 2003 the General Union of Workers (UGT) believes it will be at least partially transposed, namely in what concerns the shifting of the burden of proof and the concepts of direct and indirect discrimination. UGT considers that more specific legislation is still necessary to ensure proper protection: for instance, for handicapped persons.

Romania

The Directive has been implemented through a new law (137/31 August 2000 and Law 48/16 of 1 January 2002) and collective agreements at all levels. Law 519/2002 deals with disabled people, while Law 202/19 April 2002 addresses equality between men and woman. The Constitution also deals with these issues.

Spain

In 2002 and early 2003, the Spanish government launched a number of initiatives to improve the position of people with disabilities or in a situation of 'dependence'. Some of these relate to integration in employment.

A new Framework Law on the Social Integration of People with Disabilities (Ley Marco de Integración Social de las Personas con Discapacidad) will update the existing Law on the Social Integration of the Disabled (Ley de Integración Social del Minusválido, LISMI). Using a non-discriminatory approach, it will ensure basic rights and provide instruments of cooperation between the different public administrations and NGOs. A draft bill has also been drawn up to provide special protection for the assets of people with disabilities.

Law 51 of 2 December 2003 promotes equal opportunities, non-discrimination and access to employment for disabled people.

In February 2003, the Ministry of Labour and Social Affairs, the Carrefour Solidarity Foundation and the Spanish Federation of Institutions for Down Syndrome (Federación Española de Instituciones para el Síndrome de Down, FEISD) agreed on a framework collaboration agreement. Its aim is to organise joint programmes for integrating people with Down Syndrome in employment.

The Parliament has endorsed a bill which will mean that all future legislation will have to be accompanied by a report (of the Institute of Women) outlining the likely impact on women.

Both Directives have been transposed in Chapter II 'Measures for the application of equal treatment' of Title II of Law 62/2003, which came into force on 1 January 2004. Transposition was effected in a law in which over 50 existing laws were amended.

Sweden

On 1 May 1999, three Acts banning discrimination in working life came into force. The Acts apply to discrimination on grounds of ethnic origin, disability and sexual orientation. There is also a fourth Act banning discrimination on grounds of gender. As a result of the EU Directives various amendments to some existing laws and a new civil law came into effect on 1 July 2003.

Slovak Republic

The cabinet has approved draft legislation giving women, members of ethnic minorities and the disabled greater protection against discrimination at work, in line with EU directives. However, the measure, due to go to parliament in spring 2004, does not address discrimination based on sexual orientation.

UK

Disability

The 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.

The 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.

The Disability Rights Commission has drawn up two draft Codes of Practice to support the amended legislation. The DDA Employment and Occupation Code is aimed at employers, the DDA Trade Organisations and Qualifications Bodies Code is aimed at Qualifications Bodies and Trade Organisations.

Sexual orientation

The 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.

Religion or belief

The 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.

Age

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.

On discrimination by pension trustees and occupational pension managers, the Government is consulting on separate regulations for disability, sexual orientation and religion and belief.

Directive 2000/43/EC has been implemented by 2003/1626, the Race Relations 1976 (Amendment) Regulations 2003 which came into force on 19 July 2003.

Proper enforcement of the Directives?

Austria

The Österreichischer Gewerkschaftsbund (ÖGB) regrets that the non-discrimination Directives will be implemented in Austria only on a minimal basis. They feel it is incomprehensible that implementation of the three Directives (2000/78/EC; 2000/43/EC and the changes to the 2002/72/EC) will take place via a single law when they are based on different legal issues. The ÖGB is demanding a separate law at least on gender discrimination, if a different law on each issue is not possible.

Belgium

Directive 2000/78/EC has been correctly transposed into Belgian law, according to the Belgian trade unions, with the exception of the following points:

- The legislator did not take up the possibilities made available by Article 6 of Directive 2000/78/EC.
- Lack of a framework for the new instruments of proof.
- The criteria governing third parties appearing in court.

Bulgaria

Implementation of Directive 2000/78/EC into national law is currently under way. The problems that the Bulgarian legislation must address concern the definition of discrimination, the burden of proof, the speed of administrative and judicial trials and funds for the establishment of the new commission to fight discrimination.

CITUB considers Directive 2000/43/EC to be correctly transposed in the bill. However, at one point the bill had to be redrafted.

Denmark

The Confederation of Trade Unions (LO) thinks that the directives have been correctly implemented.

Estonia

EAKL feels that Directive 2000/78/EC has not been correctly enforced. Laws specifically aimed at promoting equal treatment should be elaborated and enforced. On the institutional level, special administrative bodies must be established to deal with complaints. The trade unions have prioritised the fight against harassment of trade union members. Currently there is no equal treatment policy, apart from gender equality.

Directive 2000/43/EC has been implemented only partially.

Finland

In Finland the problem is that the government bill contains no provisions allowing the unions an independent right to bring cases to court. Secondly, progress was delayed because of parliamentary elections and it is possible that there will still be some changes in the text.

France

Generally speaking, according to FO (Force Ouvrière), the Directive was correctly transposed into national law, particularly in terms of the types of work covered and types of discrimination prohibited.

There is still room for improvement, however, notably in respect of the *burden of proof for harassment*. A return to the legislation adopted under the so-called ‘social modernisation’ law of 2002 should be envisaged.

Reform of the criminal law on discrimination is also vital, since current legislation does not deal with indirect discrimination and covers only recruitment and dismissals. Domestic criminal law offers no protection to employees during their actual employment. This must be changed (to include training, internal promotion, etc.).

Another effective idea might be to set a *minimum level of compensation* for victims of discrimination and harassment.

A *completely independent body* must be set up in order to combat discrimination effectively. There are plans to do so.

Further obligations should be added on *practical arrangements* for disabled workers.

Better *information* should be given to workers, particularly at the workplace.

As with the gender equality provisions contained in Articles L.132-27 and L.132-27-1 of the Labour Code, the *mandatory annual negotiations* at the company should be used to clearly set out the principle of non-discrimination, so that any bargaining is subject to this rule. However, it is not permissible to establish ‘quotas’ to combat discrimination. One of the founding principles of the French Republic is that of *equality between citizens*, and there is no differentiation between people according to the colour of their skin or their religious beliefs. In this light, a quota system would be damaging and counterproductive, and would risk ghettoising the people involved rather than protecting them.

Finally, a provision requiring employers to *take real, practical action* against discrimination should be included in domestic legislation.

Ireland

Although Ireland already has one of the most extensive frameworks of equality law in the EU, the new Equality Bill will no doubt extend workers’ equality rights – for instance, in relation to positive action and indirect discrimination.

While generally welcoming the new legislation, equality lobby groups – the Equality Authority in particular – are unhappy that the law did not go further in some areas: particularly in relation to the ceiling on the sanctions available to penalise transgressions. This ceiling needs to be raised in order to dissuade potential breaches.

Italy

According to the trade union Directive 2000/78 was transposed incorrectly.

First, the transposing provisions, as already mentioned, make no provision for positive action, reversal of the burden of proof, social dialogue or dissemination of information on prohibited forms of discrimination to those persons for whom the protection is intended. It is significant that the final article of Legislative Decree 216 states that ‘implementation of this Decree *shall not entail additional costs* [emphasis added] for the State budget’ (Article 7). The cost of implementing the Decree is therefore considered to be zero, and no resources have been allocated to achieving the above objectives.

Second, although it has very wide scope and takes up the fundamental concepts of direct and indirect discrimination, and of harassment, it goes on to rob the scope of application of much of its meaning by making it without prejudice to all the provisions in force on the entry conditions, residence and access to employment, welfare and social security of nationals of third countries and stateless persons; social security and social protection; public security and maintenance of law and order, prevention of crimes and protection of health; civil status and the advantages deriving therefrom; the armed forces and the like; thereby excluding large and indeterminate areas from application of the principle of equal treatment.

Third, although the government has criticised this approach on other occasions, the entire burden of the (unsuccessful) application of the regulation and its resulting (lack of) effectiveness falls on the judicial protection of rights. In such a delicate area this should have been dealt with differently, with the involvement of the institutional and social actors. Twenty-five years of protection against gender discrimination shows that the formal perfection of such regulations is almost always matched by their ineffectiveness. In conclusion: this was a bureaucratic transposition which took little, if any, interest in the efficacy of the provisions against discrimination, contradicting the Directive’s fundamental objectives (see Article 1 of the Directive: ‘*with a view to putting into effect* in the Member States the principle of equal treatment’ [emphasis added]).

Finally, it should be stressed that the domestic provisions transposing the Directive *do not contain a provision on compliance*, as set out in Article 16 of the Directive in respect of the abolition of contrary domestic provisions or, in the case of unilateral or collective provisions, their declaration as null and void.

Directive 2000/43/EC has been transposed in an incomplete and non-exhaustive way. It neglects some parts of the Directive such as the promotion of social dialogue. It takes a bureaucratic and selective approach to those working in the collective interest and entitled to be consulted by the Anti-Discrimination Office and in particular those authorised to legally represent wronged persons, or to act on their behalf or undertake collective action. It fails to give such authorisation to trade unions and employers’ organisations. Finally, it does not provide for the reversal of the burden of proof. In comparison with the transposition of Directive 2000/78, more attention seems to have been paid to effectiveness (positive action, establishment of the Anti-Discrimination Office), although there is no enhancement of the role of the trade unions and employers’ associations in preventing and combating discrimination, or of the role of local bodies and regional institutions on which the burden of measures to promote integration (local, school, society, services) has largely fallen so far.

The approach appears to have been centralist and bureaucratic, paying little attention to the involvement of local structures. It should be stressed that the domestic provisions transposing the Directive do not contain a provision on compliance – as set out in Article 14 of the Directive – in respect of the abolition of contrary domestic provisions or, in the case of unilateral or collective provisions, their declaration as null and void. More generally, an assessment of the correct transposition of the Directive must take account of the recent measures adopted by the Italian Parliament, namely the *new law on immigration* (the Bossi–Finì Law 189/2002) which, although not dealing with the issue of discrimination, takes a completely antithetical and even ‘schizophrenic’ approach compared to the Directive, in the sense that Legislative Decree 215 strengthens protection against discrimination, whereas the Bossi–Finì Law sets out very restrictive provisions on the entry and residence of immigrant workers: there must be a contract of employment and available housing; the period of residence of foreigners who lose their jobs is halved (from one year to six months); family reconstitution is made more problematic, with provisions which might be considered discriminatory (for instance, the presumption of a fake marriage as a ground for revoking a residence permit – which is required for a work permit – which is a kind of indirect gender discrimination). Consequently, it is not possible to give anything more than a cautious assessment of the anti-discrimination provisions contained in the transposition of the Directive, particularly on the assumption that the people who are at risk in these respects are rarely in a position to make a complaint.

Latvia

As already mentioned, the trade union regards the implementation of Directive 2000/78/EC as flawed, particularly as regards the protection of disabled persons against discrimination. However, the main principles have been included in the Labour Code and other legislation. There is discrimination on the basis of gender, and persons of Roma ethnic origin are often discriminated against, largely due to lack of education and vocational training.

Directive 2000/43/EC has been implemented satisfactorily. One potential flaw concerns harassment: national legislation does not adequately address all forms of harassment, particularly those of a non-violent nature.

Netherlands

The Confederation of Dutch Trade Unions (FNV) feels that the Directives were correctly implemented.

Poland

Labour legislation dealing with discrimination has developed essentially since 1990. The EU Directives have had a significant influence on reforms. Of course, practice – as always – diverges significantly from the law.

Portugal

The UGT considers that the Directives have been at least partly transposed, namely in what concerns the shifting of the burden of proof and the concepts of direct and indirect discrimination. Nonetheless, they consider that more specific legislation is still necessary to ensure proper protection in some cases: for instance, the handicapped.

Romania

Implementation of the Directives is considered correct, but much remains to be done to change workers' perceptions of discrimination.

UK

The following issues were identified as problematic in respect of the implementation of Directive 2000/78/EC:

- The genuine occupational requirement does not require objective justification.
- The definition of indirect discrimination does not follow the Directive on anticipatory discrimination, that is, discrimination which '*would put* [emphasis added] persons ... at a particular disadvantage' whether or not they have in fact been disadvantaged. The definition in the regulations stipulates that the person has been put at a disadvantage ('which puts B/that other at a disadvantage').
- As regards the sexual orientation regulations, Regulation 7(3) would appear to conflict with the Directive. It allows an employer to discriminate if employment is within the framework of an organised religion and the employer applies a requirement related to sexual orientation so as to comply with the doctrines of that religion, or because of the nature of the employment and the context in which it takes place, so as to avoid conflicting with the strongly held religious convictions of a significant number of adherents.
- Regulation 25 of the sexual orientation regulations provides that the provisions will not apply to restrictions of access to a benefit by virtue of marital status. The Government justifies this exception on the basis of Recital 22, but that only excludes benefits dependent on national laws on marital status. While this would apply to social security schemes, it would not apply to occupational pension schemes which are governed by their own rules and not by national laws on marital status. In addition, the government asserts that distinctions between married and unmarried people are outside the scope of Community competence because marriage is a family law concept regulated by the laws of the Member States. This would not appear to be the case.
- There is currently no statutory body with responsibility to assist victims of discrimination on the grounds of sexual orientation or religion. The government has announced that it will establish a Single Equality Body which will have this function.
- The definition of disability does not include discrimination on the grounds of perceived disability or by association with a disabled person.
- There is no provision in the new regulations on indirect discrimination on the ground of disability. The reasonable adjustment provisions which come into operation only in relation to a particular individual in a particular situation, do not meet all the circumstances in which a person with a disability might face indirect discrimination.
- The regulations on religion and belief provide – in Regulation 39 – that the regulations are without prejudice to Sections 59 and 60 of the School Standards and Framework Act 1998 which make provision for appointment and dismissal of teachers of schools with a religious character. They appear to conflict with the Directive and therefore should have been repealed under Article 16.

The draft 2003 Sexual Orientation Regulations were put before Parliament on 8 May 2003 and contained a new Regulation 7(3) which had not previously been the subject of general consultation. The National Union of Teachers (NUT) wrote to the Government with concerns that the Regulations no longer met the requirements of EU Directive 2000/78/EC, were in conflict with Section 60 of the School Standards and Framework Act 1998, and might be incompatible with the fundamental rights of individual union members as protected under the European Convention.

The NUT requested that the Government withdraw the draft regulations so that they could be amended to meet the requirements of Directive 2000/78/EC. However, the draft Regulations were then approved by Parliament under the affirmative resolution procedure, and were passed on 26 June 2003.

The terms of Regulation 7(3) of the Sexual Orientation Regulations were intended to provide the limited Genuine Occupational Requirement exception to the general principle of non-discrimination on grounds of sexual orientation as set out in Article 4(1) of the Directive.

The provisions of Article 4(2) of the Directive which allow Member States, if so advised, to maintain national legislation already in force as at the date of adoption of the Directive (27 November 2000) – or to provide for subsequent national legislation which does no more than incorporate or instantiate national practices existing as at 27 November 2000 – allowing religious employers to discriminate in employment and recruitment on grounds of religion or belief, is provided for by Regulation 7 of the Employment Equality (Religion or Belief) Regulations 2003. Article 4(2) of the Directive expressly states that this provision ‘should not justify discrimination on any other ground’. However, the Explanatory Note to the Sexual Orientation Regulations now states:

Regulation 7 provides an exception where being of a particular sexual orientation is a genuine and determining occupational requirement for the post, if it is proportionate to apply the requirement for the particular case. Regulation 7 also provides an exception for employment for purposes of an organised religion where a requirement related to sexual orientation is applied so as to comply with the doctrine of that religion or to avoid conflicting with the religious convictions of its followers.

The NUT believes from the terms of this note that Regulation 7(3) is intended to do precisely what Article 4(2) prohibits: namely to allow religious employers to discriminate, not only on grounds of religion or belief, but also on grounds of sexual orientation, and that the UK government has no power to make any such provision.

As a matter of domestic law, Regulations made under Section 2(2) of the European Communities Act have to reflect the Directive in terms of their scope of application; they cannot widen or narrow the main thrust of the Directive they seek to implement. Since Regulation 7(3) of the 2003 Sexual Orientation Regulations – which have been made under and in terms of Section 2(2) of the European Communities Act 1972 – runs counter to, or is wider than, or has greater implications than the limited derogation from the principle of non-discrimination allowed for in Article 4 of its parent European Directive 2000/78, the NUT believes that this provision has been made without proper basis in European or national law. Furthermore, since Regulation 7(3) has no corresponding Community obligation which it purports to implement then it is, as a matter of domestic law, *ultra vires* because made without any proper legislative basis.

The NUT is about to issue Judicial Review proceedings against the Government for an order quashing Regulation 7(3) and, if the matter is not heard prior to 1 December 2003, an injunction to prevent it being applied.

Directive 2000/43/EC has by and large been correctly enforced in the UK. The following issues were identified as problematic in respect of implementation:

- The genuine occupational requirement does not require objective justification.
- The definition of indirect discrimination does not follow the Directive which covers anticipatory discrimination, that is, discrimination which ‘would put persons ... at a particular disadvantage’ whether or not they have been put at a disadvantage. The definition in the regulations stipulates that the person has been put at a disadvantage (‘which puts that other at a disadvantage’).
- The government has said that the definition of harassment allows tribunals to take into account the motives of the perpetrator. If it is interpreted in this way it would be contrary to the Directive which provides that harassment occurs when unwanted conduct has ‘the purpose or effect of violating a person’s dignity’ without any qualification permitting motive to be brought into account. It would also be regressive: because harassment is unlawful race discrimination it constitutes a detriment and the motive of the perpetrator is not a determining factor.
- The genuine occupational requirement allows the employer to establish an exception on the basis of a reasonable perception of the person’s ability to meet the requirement. This is not consistent with Article 4 of the Directive and is regressive as such a defence was not provided for in the exceptions in the Race Relations Act 1976 prior to the Regulations.

Involvement of the social partners in the preparation and elaboration of the new regulations

Austria

The draft has been discussed with the social partners.

Belgium

The responsible Ministry asked the social partners – in a letter of 31 May 2002 to the National Labour Council – to give their point of view on the provisions concerning employers and workers. The council was obliged to answer within a very short time and did so by a letter of 10 June 2002.

The Council reminds the Minister of their former advice – No. 1312 – on proposals concerning EU Directives, in which it expressed the wish to be kept informed of any developments concerning such proposals and also asked to be closely involved in any transposition initiatives. The Council in that sense is complaining that it had only ten days to react to the proposals which were already in their final phase. This short notice meant, amongst other things, that there was no time for an exhaustive investigation to allow the Council to give comprehensive advice.

Nevertheless, the Council makes the following general and specific remarks:

- The Council remarks on the dynamic role of the social partners and practical implementation of the principle of equal treatment (they refer among other things to the national and generally binding collective agreement No. 38 of December 1983 concerning non-discrimination in relation to recruitment based on grounds of age, sex, marital status, medical history, nationality, political or other convictions or membership of a trade union or any other organisation). The Council expresses its willingness to continue along these lines as it considers social dialogue the best way of guaranteeing the principle of equal treatment
- The Council also regrets that the draft does not sufficiently stress the preventive approach in the combating of discrimination; in that sense it agrees with the provision of criminal sanctions for infringement but considers it unnecessary to make systematic use of it as it is well known that criminal sanctions are often not applied. Rather solutions to prevent conflicts, and thereby the role of the social partners, should be looked at.
- The Council also criticises the lack of a coherent approach: apart from this proposal whose objective is to provide a general framework to combat all forms of discrimination, there exist a number of other laws, all of which show a lack of coherence, particularly regarding the definition of discrimination. The Council therefore proposes that these instruments be harmonised.

The Council makes the following concrete proposals:

- Integration of the text of Article 6 of Directive 2000/78/EC to allow, in certain circumstances, different treatment on the ground of age. The main reason for this is that some provisions of Belgian social law make the application of certain rights dependent on age requirements, for instance, accompanying measures within the framework of early retirement or the right to a reduction of certain social security contributions for older

workers. Integration of Article 6 would ensure that the legality of these provisions was not undermined by the non-discrimination prohibition.

- Within the framework of proving discrimination the proposal allows so-called practical tests or statistics. The criteria on which these tests were to be based were intended to be set by royal decree; the Council, on the other hand, demands that an objective and clear framework of criteria be laid down in the law itself and asks to be fully involved in the elaboration of such a framework.
- Regarding the possibility of third parties filing complaints before a court or at least assisting victims in such court cases the Council requests a provision in the law that such rights should, in cases regarding relationships between employers and employees, be allocated only to the National Centre for Equal Opportunities and the Fight against Racism and to employers' and workers' organisations

Finally, the Council underlines that the proposal also includes, compared to the Directive, other non-discrimination grounds such as wealth, current or future health situation and physical characteristics. The Council therefore asks that specific attention be paid to the implications of adding these grounds in relation to the law on individual and collective agreements and requests that a study be conducted, in close cooperation with the social partners, to investigate the precise impact of these grounds on Belgian labour law.

Bulgaria

CITUB has not been involved in preparation of the bill on the prevention of discrimination. In due course, however, the social partners by their own initiative presented their comments on the bill, though with no guarantee that these would be considered.

It is very worrying that a normative act which directly concerns labour relations was not presented for advanced discussion, coordination and consultation with the social partners (nationally representative trade union and employers' organisations) at the National Council for Tripartite Cooperation. In this way the government violated Article 3, paragraph 2 of the Labour Code.

Czech Republic

The Czech social partners were involved in the preparation and elaboration of the new regulations. This involvement was satisfactory. Various versions of individual provisions were discussed and the social partners were offered the opportunity to submit their own proposals. The Ministry mostly adopted proposals which had the support of the two social partners and were in line with the Directives.

Denmark

The Danish social partners were involved in preparations. These took place in the usual satisfactory way and delayed implementation has thus had no effect on this cooperation.

The government was granted a stay of execution regarding implementation of the prohibition of discrimination on the basis of age or disability.

On the basis of a request made by the employers' associations, implementation by agreement will be attempted. The social partners are currently examining how this initiative will be implemented.

Estonia

A first attempt to elaborate an Act on Gender Equality was carried out by a special working group with social partner involvement. The social partners were only consulted on later versions.

Finland

Implementation was tripartite: the social partners were represented on all preparatory working groups.

France

The social partners were not directly involved in the transposition process, since this was a purely legislative matter. Certain trade union organisations, however – with the Confédération Force Ouvrière in the forefront – have for several years been lobbying the public authorities on these issues in particular, stressing the need to consider discrimination at the workplace as a whole, rather than limiting the protection offered to a certain type of discrimination.

Before launching the legislative process, the government then in power consulted the social partners through the GELD (Groupe d'Etude et de Lutte contre les Discriminations – Group for the Study and Combating of Discrimination – a public interest group whose tasks are described in more detail below). In this way, Force Ouvrière was directly involved in the drafting of Article L.122-45 of the Labour Code, the key anti-discrimination article.

Before the adoption of these Directives, the government had already consulted the social partners on the need to create better anti-discrimination legislation – for example at the time of the Grenelle Declaration of May 1999. This dialogue had a clear influence on the transposition of Directives 2000/43/EC and 2000/78/EC. It is therefore even more regrettable that the current government refuses to take part in a real dialogue on this issue.

Germany

The involvement of the German social partners in the preparation of this law did not differ from previous occasions. Special participation on the part of the social partners cannot be reported: for example, there has been no discussion or joint elaboration of content.

The DGB has produced its own outline provisions for an anti-discrimination act. The ideas of the ministries as they are currently known lag far behind the trade union demands.

Italy

The Italian social partners were not involved in preparation of the regulation.

Latvia

Current legislation provides opportunities for the social partners to participate in the preparation and drafting of new legislative acts. The level of participation depends on the enthusiasm of the partners themselves.

Luxembourg

The social partners in Luxembourg will be indirectly involved in transposition of the Directive via the professional chambers (which represent the social partners and other interest groups in the legislative process), which will give their opinion on the draft law.

Netherlands

The social partners were involved in the regulations on equal treatment on the ground of disability through their membership of the Social and Economic Council (SER). In 1997 the SER advised the Dutch government on the topic of equal treatment on grounds of disability,⁵ followed by advice on the subject of reasonable accommodation for disabled persons.⁶

The social partners have not been involved in the transposition of Directive 2000/43/EC.

Norway

The main Act dealing with working life is the Workers' Protection Act of 1977 (hereafter, WPA). In August 2001 a committee was set up to analyse existing labour law and to propose a new act dealing with working life. In December 2001 the committee's mandate was extended to include the discussion of anti-discrimination legislation. The social partners are members of this committee and as such have been involved in the preparation of the relevant legislation. However, the social partners have not been involved in the preparatory work on amending the existing WPA, implementing Directive 2000/78/EC (hereafter, the proposal). On this basis, one could conclude that the involvement of the social partners in the preparation of the implementing legislation has not been satisfactory.

Poland

The legislation provides for the participation of the social partners in terms of obligatory consultation. Thus the social partners were involved in the process of preparation and deliberation on amendments of the basic labour legislation.

Portugal

The new Labour Code was discussed intensively with the social partners, since social dialogue is mandatory on these subjects.

⁵ SER-Advies Gelijke behandeling gehandicapten 97/14.

⁶ SER-Briefadvies 18 mei 2001.

Romania

Social partner involvement in the preparation process has been satisfactory.

UK

The involvement of the social partners was largely adequate from the TUC's standpoint, except that the exemption for organised religions in Regulation 7(3) of the sexual orientation regulations was inserted in the draft regulations at a very late stage with no consultation. In its response to the Government's consultation document on the new equality law, the TUC also argued that there should be overarching advisory arrangements with social partner representation. The Government does have an age advisory group in place, but the current group of 13 includes only one TUC representative and four from groups campaigning on age-related issues, two of which are largely employer focused.

The social partners have been consulted by the Department of Trade and Industry (responsible for implementing employment legislation). The NUT as an interested party has taken every opportunity to respond fully to all consultations. The process does not allow for feedback to respondents. However, the NUT was not consulted when the first draft Employment Equality (Sexual Orientation) Regulations 2003 were amended significantly to include a genuine occupational requirement for religious organisations. It appears that the Government consulted only church organisations.

The NUT does not consider that its involvement was satisfactory, primarily because it was excluded from an important part of the process.

Promotion of social dialogue between the social partners with a view to fostering equal treatment

Article 13 Social dialogue (2000/78/EC) / Article 11 Social dialogue (2000/43/EC)

1. Member States shall, in accordance with their national traditions and practice, take adequate measures to promote dialogue between the social partners with a view to fostering equal treatment, including through the monitoring of workplace practices, collective agreements, [and] codes of conduct and through research or exchange of experiences and good practices.

2. Where consistent with their national traditions and practice, Member States shall encourage the social partners [the two sides of industry – 2000/43/EC], without prejudice to their autonomy, to conclude at the appropriate level agreements laying down anti-discrimination rules in the fields referred to in Article 3⁷ which fall within the scope of collective bargaining. These agreements shall respect the minimum requirements laid down by this Directive and by the relevant national implementing measures.

Belgium

The social partners have long been concerned with equal treatment in the workplace and access to work. This objective can be found in the interprofessional collective agreement (legal effect: erga omnes) No. 38 of 6 December 1983 on recruitment and choice of workers. Another example is the Belgian metalworking agreement which recommends that a non-discrimination clause be inserted into all work rules.

⁷ Article 3, Scope

‘1. Within the limits of the areas of competence conferred on the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

- (a) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
- (b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
- (c) employment and working conditions, including dismissals and pay;
- (d) membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

2. This Directive does not cover differences of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third country nationals and stateless persons in the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.

3. This Directive does not apply to payments of any kind made by state schemes or similar, including state social security or social protection schemes.

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.’

Bulgaria

No such measures have been taken in the Bulgarian National Council for Tripartite Cooperation. It was not even convened to discuss the bill on the prevention of discrimination, although that is obligatory under Article 3, section 2 of the Labour Code. CITUB has no knowledge of collective agreements with anti-discrimination rules. It will probably be possible to include such regulations after the adoption of the new act.

Czech Republic

No specific measures have been taken to promote social dialogue with a view to promoting equal treatment. As far as collective agreements providing anti-discrimination rules are concerned, there are mostly only general provisions in some collective agreements.

Denmark

Together with the Danish Institute for Human Rights, LO and DA are conducting several campaigns against discrimination at the workplace. The social partners will consider including provisions on prohibition of discrimination on the basis of age or disability in collective agreements. In extension of the Cooperation Agreement, the central organisations – LO and DA – have included an agreement on equal treatment that also comprises race and ethnic origins.

Estonia

No specific measures have been taken as far as trade unions are concerned except the usual procedure of coordinating drafts of legal acts. No such collective agreements exist so far.

Finland

There are several tripartite or bipartite working groups dealing with different aspects of discrimination. Collective agreements are based on existing legislation where all kinds of discrimination are already widely forbidden. Rules found in agreements usually refer to legislation.

France

Collective agreements must contain certain clauses if they are to be generally applicable. The law of 16 November 2001 amended paragraph 10 of Article L.133-5 of the Labour Code, which contains this obligation. The paragraph now states that an agreement may not be considered generally applicable unless it contains a clause on '*equal treatment between employees irrespective of their ethnic group, nation or race, particularly in relation to access to employment, training, promotion and working conditions*'. The old paragraph 10 referred only to equality between French and foreign employees, in particular in the area of employment.

Moreover, Article L.136-2 of the Labour Code sets out the tasks of the National Commission for Collective Bargaining. Since the law of 16 November 2001, this Commission must:

carry out an annual investigation into how collective agreements have applied the principles of equal pay for equal work, equality between men and women at work and equal treatment between employees irrespective of their membership of an ethnic group, nation or race. It must also note any remaining cases of inequality and analyse the reasons for them. The National Commission has the power to make proposals to the Minister responsible for labour with a view to promoting these principles of equality in real terms and in legislation.

In some companies, equality plans have been concluded between the social partners with a view to taking positive action in favour of women.

Before adoption of the Directives, some collective agreements already contained clauses to combat discrimination. The National Collective Agreement (NCA) for leisure centres, amusement parks and cultural institutions, for example – signed on 5 January 1994 by, among others, FO – stipulates that *‘no employee may be penalised or dismissed on the grounds of his or her origin, gender, family situation, membership of an ethnic group, nation or race, political opinions, trade union activities or involvement with a mutual society, the normal exercise of his or her right to strike or his or her religious convictions.’*

The water NCA signed by FO on 12 April 2000 contains provisions on equality between women and men at work, access of people with disabilities to employment and equal treatment between French and foreign employees (*‘particularly in the area of employment, and, more generally, in terms of working conditions and pay’*).

The NCA for the pharmaceutical industry, updated on 11 March 1997, largely thanks to FO, contains a broad provision (Article 11) on non-discrimination (Article 12 deals with equality at work). The same is true of the NCA for the banking sector of 10 January 2000 (Article 23 deals with *‘non-discrimination and equality at work’*).

These texts represent just a few examples of trade union activity in this area.

Germany

A number of workplace agreements have been signed on this subject. For example at Ford Werke an overarching equality policy covering race, religion, nationality, origin, gender and sexual orientation was agreed in 2002. There is also a joint body which advises the management.

Italy

The transposition of Directive 2000/78 makes no provision for specific measures to promote social dialogue with a view to fostering equal treatment.

Collective agreements rarely contain anti-discrimination rules relating specifically to the grounds of discrimination prohibited by Directive 2000/78/EC (except for disability, for which there are positive action measures, or religion, for which some enterprise agreements recognise prayer breaks, or a canteen service which takes account of the food requirements of Muslims, or the ability to take specific periods of leave in connection with religious festivals). Collective agreements often contain provisions that are directly or (in most cases) indirectly

discriminatory especially as regards age, examination of which would require much more detailed work.

The anti-discrimination rules on race and ethnic origin laid down by law are reiterated in collective agreements. Collective bargaining is increasingly including specific provisions to prevent discrimination and measures to promote the integration of immigrant workers (language courses, training in workers' rights and health and safety at workplaces, cultural mediators) and also promoting opportunities for access to housing and services: these topics are often covered by local social agreements involving the participation of public institutions.

Latvia

The social partners recognise the importance of this issue, especially in relation to new legislation. However, no collective agreements contain such regulations. In practice employers tend to avoid discriminatory provisions in collective agreements.

Luxembourg

The Law of 12 June 1965 on collective agreements foresees some provisions which must be integrated into collective agreements.

Article 4: 'In a collective agreement the principle of equal remuneration between men and women must be applied. ... collective agreements must mention the results of collective negotiations, which must address the ... implementation of the principle of equal treatment of men and women in enterprises where the collective agreement applies; in this context, the negotiations must include the establishment of an equality plan and the enterprise and retraining must be accessible to people who desire to reintegrate themselves in the labour market after a career interruption.'

The legislator established a committee on women and work at the Ministry for Female Promotion by the 'règlement grand-ducal' of 27 November 1984. This is an advisory body tasked with investigating – either on its own initiative or on behalf of government – all questions related to the activity and professional training of women. Another body is the committee on equality between men and women, established by the 'règlement grand-ducal' of 31 March 1996, which is consulted on all draft laws which could have an impact on equality between men and women.

A women's initiative has been launched called 'equal salary', involving employers' organisations, trade unions and professional chambers. One consequence of this project was the integration of a clause on non-discrimination between men and women in respect of remuneration in the collective agreement of public sector cleaners.

A National Council for Foreigners has been established under the Government Commission for Foreigners to promote social dialogue and to encourage equal treatment between persons without distinction as to race or ethnic origin. It is an advisory body composed of representatives of the public authorities, associations, employers' organisations and trade unions. This body has the task of conducting research either on its own initiative or at the request of the government on problems relating to foreigners and their integration. It gives its opinion on all draft laws in this area, as well as on all projects presented by the government.

Netherlands

The Dutch government remains in contact with the social partners at national level (for example, the Labour Foundation). Special activities are organised to promote equal treatment, such as conferences on special topics, information meetings, expert meetings and project support.

Poland

The Tripartite Commission for Social and Economic Affairs was created to ensure social dialogue. It consists of employee and employer representatives under the supervision of the government. Each member of the Committee has the right to request a discussion of problems with significant social or economic impact.

There are a number of provincial social dialogue commissions with the same aims.

Some collective agreements at the enterprise level contain anti-discrimination regulations. However, most of them are as general as those in the Labour Code.

Portugal

The development of social dialogue has been largely achieved through tripartite structures. Clauses on discrimination are widespread in collective bargaining, although often the relevant clauses merely reproduce the content of existing legislation with little innovation.

Romania

There are provisions on non-discrimination in most collective agreements.

Spain

In the banking sector a new collective agreement was concluded in February 2004. The agreement contains a non-discrimination clause on the grounds of age, sex, race or religion and procedures to be followed in cases of sexual harassment.

UK

Few formal measures have been taken to promote social dialogue between the social partners. Trade unions often seek to engage employers in negotiations on the content of equal opportunity policies and procedures to ensure that the victims of discrimination may have their complaint dealt with fairly. It is now common for employers to adopt equal opportunity policies and some have entered into collective agreements on these issues.

Dialogue with competent NGOs to augment the fight against discrimination

Article 14 (2000/78/EC) / Article 12 (2000/43/EC) Dialogue with non-governmental organisations

Member States shall encourage dialogue with appropriate nongovernmental organisations which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on any of the grounds referred to in Article 1 [on grounds of racial and ethnic origin – 2000/43/EC] with a view to promoting the principle of equal treatment.

Belgium

Belgian NGOs are involved in implementation of the provisions on non-discrimination (Article 31). NGOs which defend human rights and fight against discrimination can bring cases to court.

Bulgaria

The Bulgarian government does not fully implement its obligations to ensure dialogue with NGOs – it is selective. There is no overall policy on NGOs and anti-discrimination activities. It is not known why the trade unions have not been invited to all government meetings on this issue.

Czech Republic

The Czech government ensures dialogue with competent NGOs to augment the fight against discrimination by means of a number of permanent advisory, initiating and coordinating bodies: Government Council for Human Rights, Government Council on NGOs and Government Council on Equal Opportunities for Women and Men.

The Government Council on Human Rights observes and evaluates the state of human rights (including equal treatment and non-discrimination) in the Czech Republic and compliance with covenants, laws and regulations related to human rights, and also monitors, analyses and publishes information and reports on the state of human rights in the Czech Republic.

The members of the Government Council on NGOs are NGO representatives (at least half the Council members), representatives of the central state administration, whose competence includes the implementation of state policies in relation to NGOs, and representatives of cooperating regions.

The Council gathers, discusses and submits to the government information related to NGOs, and background materials and proposals related to the creation of a suitable environment for NGOs. The Council initiates and evaluates conceptual and background material for government decisions related to support for NGOs and legislative and policy measures related to the conditions underlying NGO activities; ensures, initiates and coordinates cooperation between the central state administration and cooperating regions in relation to NGO support, including public subsidies; and monitors, analyses and publishes information on the status of NGOs in the European Union, the EU integration process in relation to NGOs, and related financial resources.

The Government Council on Equal Opportunities for Women and Men is a permanent government advisory body. Its secretariat is part of the Ministry of Labour and Social Affairs. This Council draws up proposals for the promotion and achievement of equal opportunities for women and men; discusses and recommends to the government basic policies for implementing equal opportunities and evaluates the effectiveness of such implementation; coordinates the main directions of ministerial policies in this area; sets a range of priorities for ministerial projects supporting the implementation of equal opportunities for women and men; and identifies current problems related to this issue. The Council does not have the power to investigate citizens' complaints regarding violation of the principle of the equal opportunities for women and men.

Denmark

The government is engaged in continuous and close cooperation with the Danish Institute for Human Rights and the social partners in the fight against discrimination at the workplace. There are continuous initiatives against discrimination on the grounds of racial and ethnic origin.

Finland

NGOs were consulted in working groups during the preparatory work on this legislation.

France

Dialogue between the government and NGOs could have taken place within the CODACs or Departmental Commissions for Access to Citizenship. Under a Circular from the Minister of the Interior dated 18 January 1999, a CODAC was set up in each *département*. Their initial purpose was to help young people *from immigrant communities to integrate more easily into the labour market and society*. A Circular of 2 May 2000 extended their role by charging them to *consider all forms of discrimination in the département and to implement measures to combat discrimination*. The CODACs were also given the job of reporting any cases of racial discrimination notified through the '114' telephone line, set up on 16 May 2000 (see Question 19).

The CODACs are based in each *département* and are chaired by the *Préfet*, with the public prosecutor and the chief education officer as deputies. These persons represent the state, and work in the Commission with representatives of the institutions, public services, associations, trade unions and employers' organisations, elected representatives, etc.

However, these Commissions are only partially operational: their situation from *département to département* varies greatly. In most, trade unions have not even been informed of their existence, and their lack of independence from the departmental state representative deters most victims of discrimination.

Dialogue between NGOs and government was certainly more effective at the time of the roundtables (such as the one which led to the Grenelle Agreements of May 1999). Unfortunately, since the new government came to power, dialogue has become very rare, if not non-existent. The government's will to combat discrimination is thus being called into question, while ever more internal security (anti-terrorist) measures are being taken.

Currently, the best dialogue takes place within GELD (Group for the Study and Combating of Discrimination), which was originally set up to improve knowledge of practices relating to racial discrimination. It was later given the task of collecting individual reports of discrimination through the '114' telephone line. GELD is made up of representatives from the administration, the social partners and the voluntary sector.

GELD was set up to analyse the types of discrimination suffered by particular communities on the grounds of their real or supposed origin, using existing studies and information. Its conclusions are brought to the attention of the administration, the social partners and the general public so that they may be fully discussed.

Its work takes the form of reports and notes. Since it was set up, GELD has turned its attention to jobs closed to foreigners, legal recourse in the combating of discrimination, access to social housing, harassment and bullying, training of the security forces and the difficulties faced by certain groups in getting access to employment. Notes have been drafted on some of these subjects. GELD's 'mission' is to find out more about discrimination in order to fight it more effectively.

GELD's main drawback is its status as a public interest group, which is thus dependent on the state. It therefore does not meet the Community conditions relating to the establishment of an independent body responsible for combating discrimination. The plan is to replace CODACs and GELD from January 2005 by a body to combat discrimination.

A dialogue could also be organised through the Conseil National de la Vie Associative (National Council of Civil Society – CNVA), which comprises 66 full members and 66 deputies representing the voluntary sector, and six experts appointed by the Prime Minister. The job of the CNVA is to give an opinion on draft legislation or regulations submitted to it; to carry out and follow up any studies which it feels could be helpful to the development of the voluntary sector; and to propose any measures which could have a beneficial impact on it. It also draws up a three-yearly report on the voluntary sector, in order to increase knowledge of the sector and trends within it.

A number of the associations represented by the CNVA work in the area of non-discrimination. This allows for some dialogue between these NGOs and the government.

Germany

This dialogue has not been institutionalised in Germany.

Italy

The current Italian government does not seem particularly keen on entering into dialogue with NGOs to step up the fight against discrimination, except perhaps with some religious organisations with a view to combating terrorism.

Regarding equal treatment in relation to racial and ethnic origin it is the task of the soon-to-be-established Anti-Discrimination Office to promote studies, research, training courses and exchanges of experience, in conjunction with the associations and organisations addressing and working to combat discrimination, with other NGOs in the sector and specialist statistical survey institutes, with a view to drawing up guidelines to combat discrimination (Article 7(2)(g)).

Latvia

Regarding the scope of Directive 2000/43/EC the Latvian government organises discussions and seminars on the subject of discrimination; trade union representatives are usually invited to these events. Such cooperation is mostly carried out within international cooperation projects with foreign financing.

Luxembourg

The government includes NGOs in all campaigns to fight discrimination. Special bodies ensure dialogue, for example, the Superior Council on the Disabled, composed of representatives from different ministries and associations promoting the interests of disabled people. This body has the task of carrying out research on the general problems of disabled people and presenting to the Government, on its own initiative, suggestions and information it believes useful for the integration of disabled people.

The National Council of Women, created in 1975, is composed of women from different organisations and has the aim of promoting women's interests and fighting all forms of discrimination, for example, sexual harassment.

Netherlands

Not only the social partners but also NGOs will be involved in special activities organised to promote equal treatment. As far as age discrimination is concerned the government has a close working relationship with the Expertise Centre Age and Society (LBL).

Poland

The Polish government ensures dialogue with competent NGOs to enhance the fight against discrimination and encourages them to submit proposals and opinions on legislation in this area.

Portugal

The NGOs in Portugal have a seat alongside the government and the social partners in some of the representative bodies and in many cases they are consulted about new projects, positive action measures and plans, and have the right to participate in public consultation about new legislation.

Romania

The National Council for Fighting Discrimination is responsible for ensuring dialogue with NGOs, trade unions and employers. Sometimes the dialogue is superficial. It is therefore up to active trade unions to ensure results.

UK

There are contacts with the UK government both directly and through the equality agencies, the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission.

Chapter II
Scope and definitions

by

Isabelle Schömann

I. Comparative overview of the implementation of the Directive on equal treatment in employment and occupation (2000/78/EC) and the Directive on equal treatment of racial and ethnic origin (2000/43/EC)⁸

General remarks

The present report examines the situation in the 25 EU Member States, the EEA countries, and Bulgaria and Romania with regard to implementation of the 2000/78/EC Directive on equal treatment in employment and occupation on the grounds of religion or belief, disability, age and sexual orientation, and the 2000/43/EC Directive on equal treatment irrespective of racial and ethnic origin. National implementation was required by 2 December 2003 (though optional extensions were available on disability and age) and 19 July 2003, respectively. For the 10 new Member States, the deadline for implementation was 30 April 2004.

This report is based on the replies to the questionnaires sent to NETLEX members, updated when necessary as of October 2004. It provides a comparative overview of the principal findings; more detailed national reports are to be found in the Annex.

Most EU Member States have had to take significant steps to bring national laws into line with the requirements of the 2000 Directives on non-discrimination. With the exception of Finland and Ireland, which already had laws in place dealing specifically with the grounds enumerated in both directives, most of the other Member States have had to complement their domestic law on at least two new grounds of discrimination. For example, at the time the Directives were adopted, domestic legislation in the European Union barely covered discrimination on the grounds of disability and sexual orientation; even less covered was non-discrimination on the ground of age. Austria, Greece and Portugal had little or no legislation dealing specifically with any of the grounds mentioned in Directive 2000/78/EC.

Sixteen European Union Member States out of 25 and the two candidates countries have completed implementation: Austria, Belgium, Bulgaria, Cyprus, Denmark, Finland, Hungary, Ireland, Italy, Latvia, Lithuania, the Netherlands, Portugal, Romania, Spain, Sweden, Slovenia and the UK. According to our information, some 10 (14) months after the implementation deadlines, 11 Member States are still issuing draft proposals to implement both directives, either in a single act or through different acts, according to the various issues. Three countries opted to take up the deadline extensions to 2006 for provisions on age and disability contained in Directive 2000/78/EC (Sweden and the UK as regards age and Denmark as regards age and disability). Other Member States missed the stipulated transposition deadlines.

In the case of Iceland, the Directives are considered by the Ministry of Foreign Affairs as falling outside the EEA agreement, so that Iceland is not bound by them. Interestingly, the Norwegian government has taken action to implement both directives, although the EEA had not yet imposed a direct commitment on Norway to do so.

Although Article 18 of Directive 2000/78/EC provides for collective agreements as a possible route for national level implementation, all Member States have had recourse to legislation in the form of amendments to existing legal acts, taking up some elements of the EU Directives to complement domestic law or choosing a 'unified approach' in a single act. Most of them

⁸ When not specified, the data deal with the implementation provisions of both directives.

considered each directive as a separate entity; others took both directives as a single whole (Austria, Czech Republic, Finland, Latvia, Portugal). Yet other countries (Denmark, the Netherlands) have chosen to deal with the different forms of discrimination separately. In contrast to the traditional approach to implementing EU Directives via collective agreements, specific laws were needed in Denmark in relation to age and disability, since negotiated implementation tools were not deemed appropriate in the case of discrimination.

In most cases, it seems that the trade unions have been satisfactorily consulted and involved in the legal implementation process. Germany and Italy and to some extent Norway are exceptions. However, little detailed information is available on their active role in drawing up the new regulatory framework. There was also dialogue with NGOs in most cases (except in Germany, Italy and Luxembourg). NGOs were involved in preparatory sessions in Belgium, Finland and the Netherlands.

According to Article 13 EC, Member States should promote social dialogue with a view to fostering equal treatment and encourage them to conclude, at the appropriate level, agreements laying down anti-discrimination rules. So far, collective agreements related to the EU Directives are rare. This may reflect differences in tradition and institutional framework for collective bargaining, but in most cases it must be directly linked to the recent introduction of new domestic laws.

Implementation measures as regards definitions

EU action on non-discrimination in employment and occupation, as well as on the grounds of racial or ethnic origin is taking place in a context in which most Member State national legislation already covers some grounds of non-discrimination, such as gender, age, disability, religion, belief and sexual orientation in employment, as addressed in both Directives. For this reason implementation at national level has been undertaken in the form of amendments to existing laws or Labour Codes, or ad hoc new provisions have been issued in order to adapt domestic provisions to EU requirements.

Concept of discrimination

Most EU Member States already have or have transposed the notion of (direct) *discrimination*, as referred to in both directives (Austria, Italy, Ireland, Netherlands, Norway, Poland, Portugal, Romania). In most cases, the wording of the EU Directives' definition of (direct) discrimination has been taken over in domestic implementation provisions. Some domestic provisions have attempted a definition of discrimination, as in the Czech Republic; others do not refer to discrimination but prohibit *detrimental treatment* in employment on particular grounds, as is the case in the Estonian provisions, or refer to *differentiation*, as is the case in the Netherlands, with a view to subsuming the principle of equal treatment embodied in the EU Directives. In the Greek provisions, there is no definition and no distinction between direct and indirect discrimination. Recourse to the conditional formulation in both Articles 2-2a of the 2000 Directives (where one person is treated less favourably than another) invites Member States to use the reference to a hypothetical comparable, as in British case law. However, some Member States – such as Belgium, Denmark, and France – have opted for a different wording that may lead to a different interpretation by national judges.

Indirect discrimination

The concept of indirect discrimination, however, has generated uncertainty in implementation provisions, as the EU definition, elaborated from ECJ case law *Bilka* (C-170/84) and *O'Flynn* (C237/94), does not appear to have been clear enough to national legislators. In some EU Member States, the difference between direct and indirect discrimination does not appear in (draft) domestic provisions: Bulgaria, Czech Republic, Estonia (indirect on the basis of gender), France, Germany, Latvia, and Luxemburg. In the British case, implementation provisions on indirect discrimination differ substantially from the wording of the Directives and may result in a weaker standard of justification being permitted by national courts than that required by the Directive. Furthermore, UK domestic legislation appears to be weaker than EU Directives as it requires the disabled person to show that they have been placed at a 'substantial' disadvantage rather than at a 'particular' disadvantage.

Table 1: Concept of direct and indirect discrimination

| | |
|-------------|---|
| Austria | + |
| Belgium | + |
| Cyprus | – |
| Czech Rep. | No precise definition, but foreseen in amendments to the Labour Code |
| Denmark | + Need to add provision on age (collective agreement and legislation) |
| Estonia | – Except in the Gender Mainstreaming Act relating to gender discrimination in employment |
| Finland | + |
| France | + But no definition |
| Germany | + But no explicit definition of indirect discrimination; should be included in new legislation |
| Greece | No definition, no distinction between direct and indirect discrimination |
| Ireland | No data |
| Italy | + Wider definition of indirect discrimination as a neutral act, agreement or conduct putting someone in a particularly disadvantaged situation compared to other persons |
| Latvia | + |
| Luxemburg | + |
| Netherlands | + Differentiation instead of discrimination (that is, it covers more than cases of intentional (in)direct discrimination. However, the EU definition adds the notions of being less favourably treated and of comparable situation. The notion of ‘objective justification’ was added by the EC implementation act |
| Norway | + |
| Poland | + |
| Portugal | + |
| Spain | No data |
| Sweden | No data |

| | |
|----------|---|
| UK | <p>+</p> <p>As far as indirect discrimination is concerned the EU definition and standards of justification are weakened by the transposition of ‘objectively justified by a legitimate aim and the related appropriate and necessary means’ into ‘appropriate means of achieving a legitimate aim’, thereby eliminating the notion of objective justification.</p> <p>No definition of indirect discrimination on the grounds of disability</p> <p>Disabled persons have to show that they have been placed at a substantial (instead of a particular) disadvantage.</p> |
| Bulgaria | Draft amendment to Labour Code based on EU directives and ILO Convention 111 |
| Romania | + |

Instruction to discriminate

In most EU Member States, an instruction to discriminate is considered as an act of discrimination as under Article 4 of both Directives. In Denmark, but also in the Netherlands, implementation provisions have introduced the notion of instruction to discriminate into domestic law. However, in some EU Member States this notion has not been introduced (Latvia). In the UK, the definition of discrimination does not specifically include instruction to discriminate. In Finland, instruction to discriminate is prosecuted under penal provisions on harassment of national or ethnic groups.

Grounds of discrimination

As the following table shows, the prohibited grounds for discrimination as listed in the EU Directives have been largely transposed into domestic law.

In most EU Member States, implementation provisions have taken over the wording of both directives, as well as the grounds listed: sexual orientation, gender, age, disability, religion and belief, race, ethnic origin and nationality. In the Estonian legislation, however, there are no discrimination provisions regarding race and ethnic origin, or disability.

Table 2: Grounds of discrimination

| Country/ | Directive 2000/78/EC Employment and occupational grounds | | | | | Directive 2000/43/EC |
|-------------|---|---------|---------|------------|--------------------|----------------------------------|
| | Sexual orientation | Gender | Age | Disability | Religion or belief | Race, ethnic origin, nationality |
| Austria | + | + | + | – | + | + |
| Belgium | + | + | + | + | + | + |
| Cyprus | No data | No data | No data | No data | No data | No data |
| Czech Rep. | + | + | + | – | + | + |
| Denmark | + | + | + | + | + | + |
| Estonia | + | + | + | – | + | – |
| Finland | + | + | + | + | + | + |
| France | + | + | + | + | + | + |
| Germany | + | + | + | + | + | + |
| Ireland | | | | | | |
| Italy | + | + | + | + | + | + |
| Latvia | – | No data | + | + | + | No data |
| Luxemburg | + | + | + | + | + | + |
| Netherlands | + | + | + | + | + | + |
| Norway | + | + | + | + | + | + |
| Poland | + | + | + | + | + | + |
| Portugal | + | + | + | + | + | + |
| Spain | | | | | | |
| Sweden | | | | | | |
| UK | + | + | | + | + | + |
| Bulgaria | | + | + | + | + | + |
| Romania | + | | + | | + | + |

One interesting aspect of the implementation of EU legislation is the dynamic it creates at national level: in some cases, national legislators take the opportunity to develop and augment domestic provisions beyond EU requirements. As the following table shows, some national legislators have introduced additional grounds for prohibition of discrimination such as (native) language, health, political and/or trade union opinions, membership and activities, membership of ethnic group, representing interests of employees, marital and family status and responsibilities, social origin and status, morality, genetic characteristics, physical appearance, family name, previous activities, property.

Table 3: Others grounds of prohibited discrimination in domestic legislation

| | |
|-----------------|--|
| Austria | No data |
| Belgium | Extension of protection to provisions of goods and services; health or wealth |
| Cyprus | No data |
| Czech Rep. | Language, political and/or trade union opinion, membership and activities Property, health, marital and family status and responsibilities |
| Denmark | Political views |
| Estonia | Colour, native language, social origin and status, previous activities, political and other opinions and attitudes on the duty of serving in the armed forces, representing the interests of employees |
| Finland | Language, opinion and health, beliefs, personal characteristics, family ties, trade union and/or political activities |
| France | Morality, family orientation, genetic characteristics, membership of ethnic group, political opinions, physical appearance (including height, weight and attractiveness), surname, health |
| Germany | The same as the directives |
| Ireland | No data |
| Italy | Same as existing legislation |
| Latvia | No data |
| Luxemburg | Family status, health, morals |
| The Netherlands | Marital status |
| Norway | Lifestyle, political beliefs, trade union membership |
| Poland | Political belief, trade union membership Extension of protection against all grounds of discrimination |
| Portugal | Extension of protection against all grounds of discrimination |
| Spain | No data |
| Sweden | No data |
| UK | No regulation on age discrimination |
| Bulgaria | Political belief and trade union membership family, social and material status |
| Romania | Language, social class. Belief |

Harassment

Again, EU legislation has influenced domestic law in the European Union in very concrete terms. Implementation provisions have substantially modified domestic provisions on all forms of harassment at the workplace, for example in Belgium or in France, where the restrictive definition of harassment, closely linked to abuses of authority, had to be extended (also as far as sexual harassment was concerned). In the Netherlands, implementation provisions have introduced harassment as ground of discrimination under the Equal

Treatment Act and the Equal Treatment – Disability Act. In the British provision racial harassment is wider than the scope of Directive 2000/43/EC and also protects individuals who witness the harassment of others. In the Polish Labour Code, implementation measures have amended the existing Labour Code by introducing an extensive definition of harassment (as transgressions against the dignity, or the insulting or humiliation of an employee, including bullying) and sexual harassment at the workplace.

However, in some EU Member States sexual harassment is still restricted to the particular situation of employment and occupation. It is dealt with in a more general context (Gender Mainstreaming Act in Estonia, Equality Act in Finland, criminal law in Romania). In Luxembourg, draft non-discrimination provisions cover only sexual harassment. In Spain, domestic law does not cover harassment. According to a European Commission survey of November 2003 on the progress of anti-discrimination legislation in the new Member States, prohibition of harassment at the workplace is not properly regulated: in Bulgaria, Cyprus, the Czech Republic, Hungary and Lithuania, neither domestic law nor the draft implementation measures of the 2000 Directives outlaw or even define the concept of harassment. In Estonia, harassment can be prosecuted under the Criminal Code. The concept of harassment has been introduced taking over the wording of the Directives. In Malta, Romania and Slovenia, harassment is only defined in relation to gender discrimination, so that sexual harassment is the only ground of harassment which is prohibited. In Slovakia, harassment is not specifically mentioned and defined. However, ‘insulting or ridiculing’ a person is a criminal misdemeanour and could be used as a means of addressing other forms of harassment. In Latvian law, harassment is even not perceived as discriminatory behaviour. A distinction is made between non-violent harassment and violent harassment for which criminal prosecution is foreseen. In most cases, no reference to harassment at the workplace is made.

Table 4: Harassment

| Country | Harassment ⁹ | |
|------------|---|--|
| | Of a sexual nature | On other grounds ¹⁰ |
| Austria | + | + |
| Belgium | + | Introduced by EC directives |
| Bulgaria | Draft bill | Draft bill |
| Cyprus | – | – |
| Czech Rep. | + | – |
| Denmark | + | + |
| Estonia | Draft Gender Mainstreaming Act under indecent treatment | Draft Gender Mainstreaming Act under gender harassment |
| Finland | + | + |

⁹ Art. 2 §3 of both EC directives: ‘Harassment shall be deemed to be a form of discrimination ... when unwanted conduct related to any of the grounds referred to ... takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.’

¹⁰ Usually defined as bullying and violence: abusive or offensive behaviour of a physical, verbal or non-verbal kind on the grounds of gender, race, ethnics origins, religion, belief, age or disability.

| | | |
|-----------------|--|--|
| France | + But narrower than the Directive's definition | + |
| Germany | + | No data |
| Greece | - | - |
| Ireland | + | + |
| Italy | + | + |
| Latvia | - | Violent harassment (but not as ground of discrimination) |
| Luxemburg | + | - |
| The Netherlands | + | Introduced by EC directives |
| Norway | Amendments | Amendments |
| Poland | - | - |
| Portugal | + | + |
| Spain | - | - |
| Sweden | No data | No data |
| UK | + | + |
| Romania | + | - |

Principle of equal treatment on grounds of racial and ethnic origin

Implementation measures specifically concerning the principle of equal treatment on grounds of racial and ethnic origin have supplemented already extensive domestic legislation in some EU Member States, such as Denmark, Spain, Finland, or Italy. Interestingly, a definition of race is provided neither by most domestic legislation in the European Union nor by Directive 2000/43/EC. This latter point has led to a variety of definitions in the domestic implementation acts and will certainly demand clarity in case law.

In this respect, UK legislation and case law occupy a leading position in Europe in fighting racial discrimination and could serve as a reference for other Member States. The British definition of race is broad and protects individuals irrespective of skin colour, race, ethnic belonging, origin and nationality. Different concepts are to be found in this definition: if skin colour and nationality are clear references, the definition of ethnic belonging is derived from a case in which a British citizen from Uganda complained of having to produce a passport in order to obtain a marriage certificate on the ground that he had not been born in Great Britain. The notion of ethnic origin is even broader, referring to a group of people sharing the same culture, tradition and beliefs (religious groups are not considered as ethnic groups, of course).

In other EU Member States, the implementation provisions have introduced or extended the concept and scope of anti-discrimination on the grounds of race or ethnic origin, usually tackled in criminal law (Luxembourg, Greece). In Germany, for example, the sole text on race and ethnic origin is (until the draft implementation law is voted on) Article 3 of the Basic Law (Constitution), rarely cited in court. Article 75 of the Betriebsverfassungsgesetz (works constitution act) does not mention race or ethnic origin as grounds of prohibited discrimination. In most (draft) implementation provisions, a broader and comprehensive

prohibition on this particular ground is foreseen (as in Germany, Belgium and Sweden). In France, transposition of Directive 2000/43/EC appears to be incomplete. Article 2 (3) of the Directive on the prohibition of harassment as a specific form of discrimination – that is, harassment based on ethnic and racial grounds – has not been implemented. Furthermore, the broad and ambitious scope of the Directive is not reflected in the French transposition provisions. In Greece, no implementation measures have supplemented criminal law on this issue. UK domestic law had to be brought into conformity with the EU Directive as regards reversal of the burden of proof and the notion of harassment in relation to breach of dignity or the creation of a hostile, degrading or humiliating environment for individuals. Swedish implementation provisions have modified an already criticised domestic legislation as the burden of proof was on the victims of racial and ethnic discrimination.

Scope of the non-discrimination Directives

Coverage of all public and private employment

In most EU Member States, the EU Directives' requirements have been correctly transposed as regards non-discrimination protection in employment in the private sector. No distinction as to public or private sector is to be found in Belgium, Bulgaria, Finland, Italy, Latvia, Poland, Portugal and Romania. There are some exceptions concerning work in religious organisations or family enterprises or tenancies, such as in Estonia, Germany, Ireland, where an additional exception is made concerning medical institutions, and in the Netherlands. In Norway, non-discrimination protection does not apply to homosexuals applying for positions associated with religious communities when the job advertisement expressly discriminates against them.

Coverage of all aspects of employment

In most EU Member States, the implementation provisions concerning employment relationships as cited in both Directives (up to Art. 3 d in Directive 2000/43/EC) appear satisfactory. In some EU Member States, domestic law covers additional employment situations such as telework, economically dependent/posted workers as in Austria or restructuring/transfer in France. However, in some EU Member States implementation provisions partially cover the Directives' requirements: for example, self-employment is absent from Irish and British provisions, while in Italy no reference is made to any particular branch of activity. In the UK an exception is made for the self-employed, unpaid volunteers and politicians.

Table 5: Scope of the non-discrimination Directives

| Country | Art. 3 a) ¹¹ | Art.3 b) ¹² | Art.3 c) ¹³ | Art.3 d) ¹⁴ | Coverage differing (+/-) from what the EU Directives require |
|-------------|-------------------------|------------------------|------------------------|------------------------|---|
| Austria | + | + | No data | + | Telework, economically dependent/posted workers |
| Bulgaria | + | + | + | + | No addition |
| Belgium | + | - | + | - | No addition |
| Cyprus | No data | No data | No data | No data | No data |
| Czech Rep. | + | + | + | No data | No addition |
| Denmark | + | + | + | + | No addition |
| Estonia | + | - | + | - | Self-employment not covered |
| Finland | + | + | + | + | No addition |
| France | + | + | + | + | Transfers; new work arrangements not included |
| Germany | + | + | + | + | No addition in the draft act |
| Ireland | + | + | + | + | Self-employment not covered |
| Italy | + /- | + | + | + | In a) No reference to any branch of activity or any level of professional hierarchy |
| Latvia | + | + | + | + | No addition |
| Luxembourg | + | + | + | - | No addition |
| Netherlands | + | + | + | + | No addition |
| Norway | + | + | + | + | No addition |
| Poland | + | + | + | + | No addition |
| Portugal | + | + | + | + | No addition |
| Romania | + | + | + | + | No addition |
| Spain | No data | | | | No addition |
| Sweden | + | + | + | + | No addition |
| UK | + | + | + | + | Self-employment not covered |

¹¹ Art.3 a): Access to employment.

¹² Art.3 b): Access to vocational training.

¹³ Art.3 c): Employment and working conditions.

¹⁴ Art.3 d): Membership or involvement in professional organisations.

Coverage of third-country nationals

In most EU Member States, third-country nationals enjoy the same protection in relation to non-discrimination as nationals, assuming that they are living and working there officially. The most important exceptions are found in France where some ‘reserved jobs’ in the public sector are accessible exclusively to French nationals. Furthermore, in the private sector some 50 occupations are subject to restrictions, either explicitly in legal provisions or implicitly, as for example when a French diploma is required for a job or when quotas are fixed. In general, the public sector in EU Member States tends to be subject to exceptions to the principle of equal treatment on the basis of nationality. Nationality is explicitly referred to, under Article 2 of both EU Directives, as an exception to non-discrimination protection.

Table 6: Coverage of third-country nationals

| | |
|-----------------|--|
| Austria | No data |
| Cyprus | No data |
| Belgium | + |
| Czech Rep. | + |
| Denmark | + |
| Estonia | Except in some public and security services |
| Finland | Exception based on specific acts (Aliens Act) |
| France | Except in public service ‘reserved jobs’ and in 50 private sector jobs |
| Germany | + |
| Ireland | + |
| Italy | + |
| Latvia | Except for access to civil service and armed forces |
| Luxemburg | + |
| The Netherlands | + |
| Norway | + |
| Poland | + |
| Portugal | + |
| Spain | + |
| Sweden | No data |
| UK | + |
| Bulgaria | + |
| Romania | + |

Exceptions to the principal of non-discrimination

Exclusion of payment of social security and social protection schemes

Concerning Article 3 §3 of Directive 2000/78/EC, a large number of EU Member States make no use of this exception on non-discrimination. In Belgium differences in granting social benefits are based on objective and reasonable grounds. In France, such exceptions occur mostly in relation to gender issues.

Table 7: Exclusion of payment of social security and social protection schemes

| Country | Exclusion |
|-----------------|-------------------------------------|
| Austria | No data |
| Belgium | On objective and reasonable grounds |
| Cyprus | No data |
| Czech Rep. | No |
| Denmark | No |
| Estonia | No |
| Finland | No data |
| France | For certain categories of person |
| Germany | No |
| Ireland | No data |
| Italy | No |
| Latvia | No |
| Luxemburg | No |
| The Netherlands | No |
| Norway | No |
| Poland | + |
| Portugal | No |
| Spain | No data |
| Sweden | No data |
| UK | + |
| Bulgaria | + |
| Romania | No data |

Difference of treatment based on the nature of the occupation or the context in which the occupation is pursued, provided that the objective is legitimate and the requirement is proportionate (Article 4)

Exceptions to the principle of non-discrimination in employment and occupation can be found in most domestic implementation measures. Differences appear in relation to the strictness of legal transposition provisions, as well as proportionateness. In Belgium, differences of treatment must have a lawful purpose. In French provisions, gender is the determining characteristic in allowing differential treatment, whereas in Germany particular provisions concern disabled persons. In the Italian provisions, occupational characteristics leading to differentiation of treatment must be proportionate and rational; in Portugal they must be justifiable and determining,

In Sweden, the characteristics of employment may refer to a broader range of grounds such as ethnic background, sexual orientation and specific disability.

In most EU Member States, the exception related to employment in churches and public or private religious organisations and based on belief is to be found in domestic law, either pre-existing implementation provisions or resulting from the EU Directive. In this respect, the religious nature of the occupation is determinant and in some EU Member States sufficient in itself to allow discrimination (British provisions).

In the Czech Republic, domestic law provides no exception based on religious principle and belief.

Concerning exceptions to non-discrimination protection on the ground of racial or ethnic origin under Directive 2000/43/EC, domestic provisions among EU Member States provide a mixed picture. In some EU Member States no exception on this ground is regulated, although the Directive may provide the possibility of changing existing legislation on this issue, as in Denmark, Bulgaria, and the Czech Republic, or, as in France, it is considered unacceptable. Some other EU Member States have taken over the wording of the Directive (Austria or Portugal). In the UK, the implementation provision reflecting the wording of the Directive broadens existing domestic legislation, conflicting with the Race Relations Act 1976.

Table 8: Legitimate and appropriate grounds for discrimination

| Country | 'Legitimate objective and proportionate' requirement (Art.4-1) | 'Genuine, legitimate, justified' requirement (Art. 4-2) | Exceptions to ground of racial or ethnic origin |
|-----------------|---|---|---|
| Austria | Legal provision | + | Legal provision |
| Belgium | On objective grounds by reason of the nature of the professional activity | + | - |
| Cyprus | No data | | |
| Czech Rep. | No provisions | No provisions | - |
| Denmark | +/- | No data | - |
| Estonia | + | + | Not regulated |
| Finland | + | + | - |
| France | Occupation in which gender plays a decisive role | + | - |
| Germany | Disabled peopled | + | |
| Ireland | + | | |
| Italy | + Proportionate and rational or genuine and determining requirement | Appropriate and necessary + | + |
| Latvia | + | + | - |
| Luxembourg | Health, disability, nationality | No data | - |
| The Netherlands | + | - | + |
| Norway | No data | No data | |
| Poland | + | No data | |
| Portugal | Justifiable and determining reason | + | Justifiable and determining reason |
| Spain | No data | - | - |
| Sweden | No data | - | - |
| UK | Sexual orientation | + | + |
| Bulgaria | + | | - |
| Romania | - | - | - |

Conclusion

It seems that the primary concern of the Member States, with the exception of Iceland, has been compliance with rather than the active promotion of the non-discrimination Directives. Most countries have experienced delays in transposition; some have extended the deadline to 2006 for the provision on age and disability of Directive 2000/78/EC.

The impact of the framework Directives on domestic law remains difficult to judge for a number of reasons. In some countries, anti-discrimination legislation was already well elaborated at the time of adoption, so that the 2000 EU Directives did not introduce major changes (Finland and Ireland and to some extent the UK as far as racial and ethnic discrimination are concerned). At the other extreme, governments have taken the opportunity to improve domestic law beyond the EU Directives' requirements (France, Belgium) or at least to clarify and adjust national provisions.

Substantive issues at stake in both EU Directives, and likely to have a major impact at national level, are the extension of protection to new target groups, especially on the grounds of age and sexual orientation – but also on the grounds of racial and ethnic origin (minorities) – and the wide scope of the directives, covering all aspects of working life, from recruitment and selection to pay, training and promotion, dismissal and harassment. Furthermore, in general the new anti-discrimination legislation is intended to simplify access to justice, especially with the reversal of the burden of proof and the opportunity for associations and individual employees to bring actions to court. Furthermore, EU Directives on non-discrimination at the workplace are intended to have a significant impact on companies' behaviour so that employers will have to change discriminatory practices and develop their procedures for monitoring equality at plant level.

However, monitoring of implementation remains difficult, mostly because of the variety of domestic acts used to implement the Directives and, in most cases, the adjustment of diverse domestic laws to comply with the Directives' requirements. Furthermore, a number of countries are still in the process of meeting the Directives' requirement of setting up an independent body or different authorities to deal with the issue of discrimination. Questions arise as to how such an authority would interact with existing bodies (UK); the composition of such an authority (Austria); the scope of an independent authority regulating employment-related discrimination and of other areas of discrimination (France).

Furthermore, some domestic implementation measures remain contentious, as in Italy, which has put the burden of proof on both parties, and also in respect of the lack of court access of associations and NGOs, and the lack of domestic measures concerning the abolition of any act contrary to the principle of equal treatment. Furthermore, the Italian implementation decree applies to all grounds of discrimination a wider definition of permissible justification for differences in treatment, although the Directive applies it only in relation to age. In Belgium the complexity of the implementation law make it difficult to monitor the correctness of the domestic transposition act. Some EU Member States have come under pressure from target groups such as the churches in Germany, which would lose some special exemptions under the planned anti-discrimination law. This will make implementation of the EU framework Directives more difficult.

The *involvement of the trade unions* in the preparation of national legislation is rather positive: only in Bulgaria, Italy and Norway was no involvement at all reported.

Both Directives are intended to harmonise legal provisions on non-discrimination in the European Union, Norway and the new accession countries, especially as regards employment and occupation. As far as the definition and scope of non-discrimination are concerned (the main issues dealt with in this sub-report), the impact of both Directives on domestic law cannot be denied. In most Member States, implementation measures have adapted and supplemented existing domestic provisions in accordance with EU requirements. In this respect, all EU Member States have endorsed legal acts to prohibit discrimination on the grounds of religion, belief, disability, age and sexual orientation in employment and occupation, and on racial and ethnic origin with broader scope. One of the major effects of both Directives is to have introduced into national laws specific non-discrimination provisions with regard to the labour and social field. In most Member States, the issues were mostly dealt with under criminal law.

Another interesting aspect of implementation is the dynamic it creates at national level: in some cases, national legislators took the opportunity provided by the implementation process to develop and augment domestic requirements beyond EU requirements and introduce additional grounds for prohibition of discrimination, generally taken from domestic case law or widening the scope of the employment situations covered.

However, national debates during the elaboration of implementation measures, not to mentioned experience, have revealed difficulties in finding a common understanding and transposition of EU concepts: examples include indirect discrimination, harassment and instructions to discriminate. Although most of the concepts used in the Directives have been elaborated by ECJ case law, as well as by some national (labour) courts, obstacles remain to their wider introduction. In this respect, recourse to a different wording from the Directives, or the non-transposition of such notions as indirect discrimination or harassment, will probably lead to different interpretations by national courts. In general, most exceptions to the non-discrimination principle are to be found in the public sector: for example, 'reserved jobs' (France) are a clear breach of the principle of equal treatment in employment and occupation.

The implementation of *Directive 2000/43/EC* on the principle of equal treatment of persons irrespective of racial and ethnic origin has led in most Member States to a public debate. However, the application of this anti-discrimination policy in the labour market and directly at plant level is expected to have a major impact at national level, as existing domestic provisions rarely covered this issue. According to annual surveys conducted at national and European level, ethnic origin or race is one of the most frequent grounds for discrimination in firms but also in society as far as access to education, social security and supply of goods and services are concerned. Interestingly, racial discrimination of this kind occurs most frequently in Ireland, the Netherlands, Finland, Sweden and France. The 10 new Member States are also confronted by this issue, as most of them host national and ethnic minorities (Turkish and Roma communities in Bulgaria; Roma, Germans and Slovaks in Hungary; Belorussians, Ukrainians and Poles in Latvia; Poles, Russians and Roma in Lithuania; Hungarians and Roma in Romania; Hungarians and Roma in Slovakia; Italians, Hungarians and Roma in Slovenia; and Roma in Italy and Greece; while in Poland there are 13 national and ethnic minorities). The Roma appear to be the largest ethnic group suffering discrimination (segregation from other communities, a high level of poverty).

As the following table suggests, gaps remain in the implementation measures at national level, either due to a lack of transposition (indirect discrimination, harassment, instruction to discriminate) or as a result of a different interpretation or recourse to a wording different from that of the EU Directives.

Table 8: Transposition into national legislation

| Country | Transposition | |
|-------------|--------------------------------|--|
| | Satisfactory | Gaps |
| Austria | No data | Minimal basis Need for specific acts |
| Belgium | +/- complex + unclear act | Art. 6 of the Dir. age exemption for difference of treatment not used No framework for new tools of proof Criteria for third party to appear in court |
| Cyprus | No information yet | |
| Czech Rep. | No transposition yet | |
| Denmark | + | No data |
| Estonia | - | Need for specific acts and special administrative bodies to deal with complaints No equal treatment policy except on gender |
| Finland | - | No independent rights for trade unions to lodge complaints Changes still being made to draft proposal |
| France | + | Burden of proof in cases of harassment, min. level of compensation, no independent body, practical arrangements for disabled, better dissemination of information |
| Germany | No official draft proposal yet | |
| Ireland | +/- | Legislation does not go far enough, e.g. the upper sanctions ceiling |
| Italy | - | No proposal for positive action, reversal of burden of proof, dissemination and social dialogue No resources allocated for better transposition, no other recourse than judicial ones, no provision on compliance (Art. 16) |
| Latvia | +/- | Gaps in protection of the disabled, gender, ethnic origin (Roma); no special act on harassment issue |
| Luxemburg | + | No data |
| Netherlands | + | + |
| Norway | + | No data |
| Poland | + | Practice still different from the law |
| Portugal | +/- | Partial transposition on reversal of burden of proof, concept of discrimination, need for specific acts |
| Spain | + | No data |
| Sweden | + | No data |
| UK | - | No objective justification for genuine occupational requirement, no coverage of anticipatory indirect discrimination, possibility for a religious employer to discriminate on the ground of sexual orientation (judicial review foreseen), no statutory body to assist victims of discrimination due to sexual orientation, loose definition of disability, no provision for indirect disability discrimination, conflict with national regulations on employment in schools of a religious character. |
| Bulgaria | - | Definition of discrimination, reversed burden of proof, efficiency of judicial and administrative recourse, funds for new commission |
| Romania | + | + |

II. Compendium of national legislation implementing the non-discrimination Directives 2000/43/EC and 2000/78/EC

Framework for combating discrimination

Article 1 Purpose

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.

Austria

In the draft amendment to the law in Austria discrimination is combated on the grounds of gender, race, origin, religion or belief, age and sexual orientation.

Belgium

The grounds mentioned in the Directive have been widely taken over into Belgian law and other grounds have been added. The general principles have therefore been respected. All forms of direct and indirect discrimination are prohibited. However, the Belgian legislation does not go further than the European Directive.

Bulgaria

In respect of labour rights and obligations direct or indirect discrimination are not permitted in Bulgaria regarding advantages or restrictions on the grounds of nationality, origin, sex, race, colour of skin, age, political and religious belief, membership of trade unions or other organisations and movements, family, social and material status or disability (Article 8, section 3 of the Labour Code, in force since 1 April 2001). An identical norm also exists in the Social Security Code in relation to pensions.

Czech Republic

The current Czech regulations combat discrimination on the same grounds as the Directive. There is also a new draft regulation. The discrimination criteria in the Labour Code are based on the criteria in Article 3 of the (Czech) Charter of Fundamental Rights and Freedoms.

In accordance with Section 1, para 4 of the Labour Code discrimination in employment is prohibited on the basis of race, colour, sex, sexual orientation, language, creed and religion, political or other opinions, membership of and activity in political parties and movements, membership of trade union organisations and other associations, nationality, ethnic or social origin, property, family extraction, state of health, age, marital or family status, and family responsibilities. There is a similar regulation in Act No. 1/1991 Coll. on employment, as amended, in Section 1, para 1 concerning the right to freely choose one's occupation. The prohibition of discrimination against employees based on the above criteria provided by the Labour Code is due to the application of the principle of equal treatment.

Denmark

Act No. 459 of 12 June 1996 on the prohibition of discrimination in respect of employment and occupation, etc., implements the principle of equal treatment between persons irrespective of racial origin, skin colour, religion, political views, sexual orientation or national, social or ethnic origin. Implementation of the Directive has thus led to the necessary extension of the scope of the Act to include religious beliefs. Subsequently, age and disabilities were covered.

Estonia

All the grounds except disability are covered in the Estonian Employment Contracts Act §10. The draft LCA includes all the grounds mentioned in the Directive. Additional grounds are: nationality, colour, race, native language, social origin, social status, previous activities, political or other opinions, employees' or employers' attitude towards the duty to serve in the armed forces, marital status, representing the interests of employees, membership of non-profit organisations and political opinions. In the current LCA, additional grounds in relation to which detrimental treatment is prohibited while preferential treatment is not are: marital status, family obligations, membership of citizens' associations and representing the interests of employees or employers.

Finland

The grounds mentioned in the Directive are covered in the new Finnish Act, together with a number of additional grounds already mentioned in previous legislation on these issues (ethnic or national origin, language, opinion, health). For example:

Constitution

Chapter 2, Section 6 – Equality

'No one shall, without good reason, be treated differently from other persons on the grounds of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person.'

Employment Contracts Act

Section 2 – Prohibition of discrimination, and equal treatment

'The employer shall not exercise any unjustified discrimination against employees on the basis of age, health, national or ethnic origin, sexual preference, language, religion, opinion, family ties, trade union activity, political activity or any other comparable circumstance.'

Act on Equality between Women and Men

Includes provisions on the prohibition of gender-based discrimination.

Penal Code

Chapter 11 – War crimes and crimes against humanity, Section 9 – Discrimination and

Chapter 47, Section 3 – Discrimination at work

'Race, national or ethnic origin, colour of skin, language, sex, age, family ties, sexual preference, health, religion, opinion, trade union activity, political activity or any other comparable circumstance'.

France

French legislation covers more areas than Directive 2000/78/EC. The Community text covers 'religion or belief, disability, age or sexual orientation'. Article L.122-45 of the French Labour Code, together with Article 225-1 of the Criminal Code, cover origin, gender, morality, sexual orientation, age, family situation, genetic characteristics, real or supposed membership or non-membership of a certain ethnic group, nation or race, political opinions, trade union activity or involvement in a mutual society, religious beliefs, physical appearance, family name, state of health or disability. Exercising the right to strike is also covered.

Germany

So far no draft exists in Germany which might indicate the intentions of the legislator. In a first draft presented by the Ministry of Justice last year, an extensive approach was chosen, meaning that the provisions took all forms of discrimination into consideration. Recent statements by the Ministry would seem to indicate that implementation will not go beyond the Directive. A horizontal approach will not be chosen. §75 BetrVG does not contain a prohibition of discrimination due to belief or disability. However, these matters are dealt with in Art. 3 Abs. 3 GG (Constitution). Furthermore, discrimination due to disability is prohibited by §81 SGB IX.

Italy

The forms of discrimination prohibited by Italian Legislative Decree 216 are the same as in the Directive. It is significant that the Italian decree takes over the *different impact* that these forms of discrimination may have on women and men (Article 1) from Directive 2000/43. Coverage of the gender impact of the various prohibited forms of discrimination seems to pave the way for stronger protection in cases of *double, multiple or cross discrimination*, where gender forms one of the grounds of discrimination (gender and religion, gender and disability, gender and age). Coverage of the gender impact of the various forms of discrimination is not reflected, however, by any measures to monitor the problem.

Latvia

The Latvian legislation tackles different kinds of discrimination (including religious beliefs, limited working ability, and age). As far as sexual orientation is concerned, the legislation does not specifically mention equality of opportunity regardless of sexual orientation.

Luxembourg

In Luxembourg the legislation addresses both the nature and the place of discrimination.

As regards the nature of discrimination, given in Article 1 of the Directive, Luxemburgian legislation covers religion and belief, disability, age and sexual orientation.

Although the Directive has not yet been transposed, legislation in Luxembourg may be divided into texts listing the various forms of discrimination without regard to where the discrimination occurs and other texts listing discrimination in relation to employment.

There are three legislative texts on discrimination at the workplace:

1. the 'Règlement grand ducal' of 10 July 1974 on equal remuneration for men and women;
2. the Law of 8 December 1981 on equal treatment of men and women with regard to access to employment, training, promotion and working conditions;
3. the Law of 26 May 2000 on protection against sexual harassment in employment.

A number of other laws have been amended.

The other texts are not limited to employment and refer to the elimination of different kinds of discrimination:

- the Law of 1 December 1977 ratifying the International Convention on the elimination of all forms of racial discrimination (New York; 7 March 1966);
- the Law of 9 August 1980 implementing the above-mentioned Convention and adding new Articles 454 and 455 to the Penal Code;
- the Law of 15 December 1988 approving the Convention on the elimination of all forms of discrimination against women (New York, 18 December 1979);
- the Law of 19 July 1997 complementing the Penal Code by extending the prohibition of racism to civil matters;
- the Law of 28 June 2001 on the burden of proof in gender discrimination cases (transposition of Directive 97/80/CE; burden of proof divided).

By combining these two categories of texts one can say that the scope of application *ratione materiae* is covered by the Luxemburgian legislation.

Netherlands

Article 1 of the Dutch Equal Treatment Act of 1994 stipulates that it is forbidden to discriminate against someone on the grounds of religion, belief, political orientation, race, sex, nationality, sexual preference, marital status, working hours or temporary contract. The grounds of disability and age are added in separate legislation. Amendments to the 1994 Equal Treatment Act are not limited to the grounds mentioned in the Directive. The common provisions in the Act will be amended in relation to all the grounds mentioned in the Equal Treatment Act, therefore including the grounds of gender, political opinion, nationality and marital status. This can be regarded as complementary national policy.

In the near future the Dutch government will examine the possibility of incorporating the grounds of disability and age into the 1994 Equal Treatment Act. Furthermore, a future bill will include discrimination on the grounds of 'pregnancy, childbirth and motherhood'.

Norway

The Norwegian proposal combats discrimination on all the grounds in the Directive and adds the following grounds: gender, lifestyle, political belief, colour, national or ethnic origin and trade union membership.

Poland

The basic rules on non-discrimination in the Polish legislation are based on the same principles as the Directive. The Labour Code underlines equality of women and men in employment and prohibits discrimination, particularly with regard to sex, age, disability, race, nationality, belief – in particular political views or religious belief – and trade union membership. The phrase ‘in particular’ used by the legislator implies an open catalogue so that cases of discrimination can be added to the current list. The phrase ‘sexual orientation’ is not used in Polish labour legislation but should be considered as forbidden given the ‘open catalogue’ form of the regulation. Additional grounds are fixed-term and part-time employment, as well as trade union membership.

Portugal

The new Portuguese legislation – as well as the more specific regulation – covers all the grounds given in the Directive, and adds a clause extending protection to all grounds of discrimination.

Romania

In Romania discrimination is prohibited on the following grounds: age, race, nationality, origin, language, religion, social class, conviction, sex, sexual orientation, belonging to a disadvantaged group, all other reasons.

Sweden

The new Swedish law on discrimination prohibits discrimination related to ethnic origin, religion and other beliefs, sexual orientation and disability with regard to labour market programmes, starting or running a business, occupational activity, membership of, participation in and benefits – goods, services and housing – from workers’ or employers’ organisations or professional organisations.

UK

The UK regulations combat discrimination on the same grounds as mentioned in the Directive. As stated above there are still no regulations on age discrimination. No other grounds are added.

Concepts of direct and indirect discrimination and the mere instruction to discriminate considered as an act of discrimination in domestic implementation provisions

Article 2 Concept of discrimination

1. For the purposes of this Directive, the 'principle of equal treatment' shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.

2. 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.

4. An instruction to discriminate against persons on any of the grounds referred to in Article 1 shall be deemed to be discrimination within the meaning of paragraph 1.

Austria

In Austria direct and indirect discrimination are defined with regard to equal treatment of men and women, and also race, origin, religion, belief, age and sexual orientation in working life and race and ethnic origin in other areas. The definitions have taken over the wording of the Directive. Mere instruction to discriminate is considered an act of discrimination (§§4, 13 and 26).

Belgium

The Belgian law distinguishes between direct and indirect discrimination. Both definitions correspond to the definition given by the Directive. It will be up to the judges to apply the two notions. The instruction to discriminate is also found in the law.

Bulgaria

In parliament a proposal to amend the Labour Code has been filed to introduce a detailed definition of discrimination containing elements of the two EU Directives and ILO Convention No. 111. CITUB considers this proposal to be a good step towards drawing up a framework for discrimination legislation, which is important not only for workers and employers but also future legal practice in Bulgaria.

Czech Republic

The Czech regulations cover both direct and indirect discrimination (but no precise definitions exist so far – they will be integrated in the new amendments) and also include a mere instruction to discriminate as an act of discrimination. Discrimination is understood to mean any distinction, exclusion or preference based on the discrimination criteria referred to above. In accordance with Section 1, para 4 of the Labour Code also prohibited is any action taken by an employer the consequence of which is indirect discrimination against certain groups of employees. On the other hand, discrimination cannot take place if the action concerned is based on the provisions contained in the Labour Code or in other labour regulations, or where there is a material, well-founded ground inherent in the nature of the job.

Direct discrimination is understood to mean a situation in which a discriminatory action leads directly to preference or exclusion of persons and results in denying or impairing their equal opportunities and treatment in labour relations. Indirect discrimination means that a specific measure, practice or applied criterion, while essentially neutral (the action taken by the employer is, as such, in conformity with the law), may cause total or partial exclusion or preference of certain groups of workers (women and men, young and old, mainstream population and ethnical minorities, etc.).

Denmark

According to the Danish Act on the prohibition of discrimination in respect of employment and occupation, etc., both direct and indirect discrimination are illegal. The previous Act did not include the instruction to discriminate as an act of discrimination or harassment: both are now covered by the Act of 30 March 2004.

Estonia

The Estonian legislation does not cover these definitions yet. The law does not touch upon the concept of discrimination, but prohibits differential or detrimental treatment in employment on the grounds laid down by both Directives.

The draft Employment Contract Act prohibits both direct and indirect discrimination, but does not define discrimination as such.

The draft Gender Mainstreaming Act (currently in Parliament) covers both direct and indirect discrimination, following the Directive's definition. To the definition of direct discrimination it adds that, amongst other situations, 'different treatment with regard to pregnancy and giving birth, being a parent, fulfilling family duties or other gender related matters, and gender discrimination and sexual harassment are considered direct discrimination'. The definition of indirect discrimination does not give criteria, but only mentions gender as a basis.

Finland

In Finland both direct and indirect discrimination are covered by a similar wording to the Directive. Mere instruction to discriminate is covered; it also comes under Chapter 11, section 8 of the Penal Code (harassment of national or ethnic groups).

France

The French law of 16 November 2001 established the concept of indirect discrimination in order to condemn it (Article L.122-45 of the Labour Code). The concept appears again in Article L.123-1, paragraph 3 of the Labour Code, which sets out the system of proof in relation to equality between women and men at work. However, there is as yet no definition of this concept, and only the Labour Code prohibits this sort of discrimination. Criminal law does not contain the concept of indirect discrimination.

Germany

Current German provisions refer only to direct discrimination, although these can be interpreted as including indirect discrimination. There is still no explicit definition. Presumably new legislation will define direct and indirect discrimination.

Ireland

Section 6 of the Irish Employment Act defines direct discrimination. Indirect discrimination is covered under a number of sections (Section 19 (4); Section 22 (1); Section 29 (4); Section 31 (1)). The mere instruction to discriminate is also covered.

Italy

The Italian legislation covers both direct and indirect discrimination. The concept of direct discrimination is taken up verbatim from the Directive, whereas the concept of indirect discrimination is wider than in the Directive, as it *also* includes an apparently neutral '*act, agreement or conduct*' that would put persons having a particular religion or belief, a particular disability, a particular age or a particular sexual orientation in a particularly disadvantageous *situation* compared with other persons.

Latvia

The Latvian Labour Code prohibits both direct and indirect discrimination (Article 7). The legislation includes a definition of indirect discrimination (Art. 29), although there is no clear-cut definition of direct discrimination. There is no provision clearly covering the instruction to discriminate.

Luxembourg

The law of 8 December 1981 does not define direct or indirect discrimination. Article 2 states the following: 'the principle of equal treatment implies the absence of any discrimination on the grounds of gender, either directly or indirectly, notably with regard to marital status or family status'.

The Law of 28 June 2001 on the burden of proof in case of discrimination on the ground of gender refers in Article 1 to direct and indirect discrimination and defines indirect discrimination as follows: '*Indirect discrimination exists when an apparently neutral measure, criterion or practice affects a clearly higher proportion of people of the same gender. This is*

not the case if this measure, criterion or practice is appropriate and needed and if it can be justified by objective reasons.'

The definition of law mentioned above is – regarding wording and sense – almost identical with that of the Directives.

Netherlands

The Dutch government wants to retain its equal treatment terminology in the coming legislation. The Equal Treatment Act uses the term 'differentiation', and not the Directive's term 'discrimination'. This reinforces the fact that unequal treatment covers more than cases of intentional (direct or indirect) discrimination. The principle of equal treatment embodied in the EU Directives is generally incorporated in Dutch legislation in the form of a prohibition on differentiation with specific exceptions. The 1994 Equal Treatment Act has a so-called 'closed system'. This means that the law contains an exhaustive account of both the forbidden grounds of discrimination and the areas in which the law applies. The exceptions to the rule of non-discrimination are limited to the statutory ones. The 1994 Equal Treatment Act, Articles 1 and 2, §1, forbids both direct and indirect discrimination. The definition in the 1994 Equal Treatment Act is not the same as in the Directive.

Direct discrimination is defined as 'discrimination between persons on the grounds of religion, belief, political opinion, nationality, race, sex, heterosexual or homosexual orientation or civil status' (Article 1 b). The definition lacks the Directive's 'treated less favourably' and 'comparable situation'. The latter is regulated under the Act: discrimination on grounds mentioned in the Act is forbidden except discrimination (differentiation) which is justified by law. Direct sex discrimination will in future include discrimination on the grounds of 'pregnancy, childbirth and motherhood'.

Indirect discrimination is defined as 'discrimination on the grounds of other characteristics or behaviour than those cited under (b), resulting in direct discrimination' (Article 1 c). In practice the concept of indirect discrimination is in conformity with the definition of the Directive. The closed system is also implemented in the Equal Treatment – Disability Act. Direct and indirect discrimination (in relation to disability in Articles 1 and 2) are defined in the same way as in the 1994 Equal Treatment Act. The Equal Treatment – Age Bill contains a half-open system. Besides some specific exceptions there is a general exception clause: 'The prohibition on discrimination shall not apply to discrimination (differentiation) which is objectively justified by a legitimate aim, insofar as the means of achieving that aim are appropriate and necessary', in Articles 1 and 2. In the 1994 Equal Treatment Act the term 'objectively justified' is not defined. The EC implementation Law adds the definition as stated above ('legitimate aim', etc.). The coming legislation also incorporates the instruction to discriminate (see Article 1, 1994 Equal Treatment Act, Article 1, Equal Treatment – Disability Act and Article 1, §2 Equal Treatment – Age Bill).

Norway

The Norwegian proposal covers both direct and indirect discrimination (§ 54 C No. 1 and 2). The definition is similar to the one contained in the Directive (almost verbatim). The definition also counts a mere instruction to discriminate as an act of discrimination (§ 54 C No. 4).

Poland

Article 11(3) of the Polish Labour Code contains a general anti-discrimination regulation: 'Any discrimination, either direct or indirect, in employment, particularly in respect of sex, age, disability, race, nationality, beliefs, particularly political views or religious beliefs, and trade union membership, shall be prohibited.' The Labour Code also contains a chapter on equal treatment for men and women in which there is a definition of indirect and direct discrimination.

Indirect discrimination is defined as a neutral measure which disproportionately disadvantages all employees of a given sex – or a considerable number of them – if it cannot be objectively justified.

A subsequent article describes direct discrimination based on sex. It takes the following forms: refusal to establish or continue an employment relationship; disadvantageous wage terms or other conditions of employment; being passed over in promotion or other work-related benefits; missing out on training aimed at improving occupational qualifications. The employer must prove that they were guided by other considerations.

Compensation shall be paid to persons who have suffered from a breach of the principle of equal treatment of men and women in an amount not less than one minimum wage and not higher than six minimum wages.

Portugal

In Portugal the definitions are the same as in the Directive. Discrimination is defined as any order or instruction given with the objective of harming any persons on any of the grounds of discrimination cited in the law.

Romania

The Romanian legislation covers direct and indirect discrimination. The wording is that of the Directive.

Spain

The Spanish legislation defines direct and indirect discrimination as follows:

Direct discrimination is 'any act which, directly or indirectly, entails a distinction, exclusion, restriction or preferences in relation to a foreigner on the grounds of race, colour, descent or national or ethnic origin, or religious beliefs and practices, and whose purpose or effect is to negate or limit the recognition or exercise, under equal conditions, of human rights and fundamental freedoms in the political, economic, social or cultural spheres.'

Indirect discrimination 'is any treatment stemming from criteria having an adverse effect on workers on account of their being foreigners or members of a particular race, religion, ethnic group or nationality'. No reference is made to provisions or practices; furthermore, it refers only to 'workers' whereas the Directive refers to 'persons' in general.

The concept that any instruction to discriminate constitutes discrimination is included.

UK

The regulations in the UK cover both direct and indirect discrimination, although in relation to indirect disability the provisions of Article 2 are met by way of the concept of reasonable accommodation. The definition of direct discrimination is similar to that in the Directive providing that:

'A person ("A") discriminates against another person ("B") if (a) on the grounds of (religion and belief) or (age), A treats B less favourably than he treats or would treat other persons.'

Under disability legislation, direct discrimination occurs where, for a reason which relates to the disabled person's disability, someone treats them less favourably than they treat or would treat others to whom that condition does not or would not apply, and cannot show that the treatment in question is justified. This is in accordance with Article 5 of the Directive.

Indirect discrimination is different from that provided for in the Directive in that it applies not when an action or measure cannot be 'objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary', but instead when '*A cannot show [the action, etc.] to be a proportionate means of achieving a legitimate aim*'. The government's explanatory memorandum, which accompanies the Regulations, states that the words 'objectively justified' would not add anything to the requirement for the discriminator to demonstrate the existence of a legitimate aim which is proportionate. The government also argues that 'proportionate' means the same as 'appropriate and necessary' and that if the word 'necessary' were used there would be a risk that it would be interpreted as a very strict requirement. Commentators fear that the failure to properly implement the Directive in this respect will result in a weaker standard of justification being permitted by national courts in the UK than that required by the Directive.

There is no definition of indirect discrimination on the grounds of disability under domestic legislation but there is a duty on employers to make reasonable adjustments to prevent disabled people from being disadvantaged. The domestic legislation is weaker than the Directive because it requires the disabled person to show that they have been placed at a 'substantial' disadvantage rather than a 'particular' disadvantage.

The definition of discrimination does not specifically include instructions to discriminate. An employer and a worker will be responsible for discrimination, harassment or victimisation in the course of employment whether the employer instructed the worker to act or not. A worker who assists another person in an act of discrimination, harassment or victimisation will be liable unless the worker reasonably believed that the act was not unlawful.

Different forms of harassment

Article 2 Concept of discrimination

3. Harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.

Austria

Austrian legislation covers sexual harassment, harassment due to gender and harassment on the grounds of race, ethnic origin, religion, belief, age or sexual orientation (§§6, 15 and 28).

Belgium

In Belgium bullying of a discriminatory nature is dealt with in Article 2 §6 of the law of 25 February 2003. The definition takes over the wording of the Directive. Furthermore a special law exists on protection against violence, bullying and sexual harassment at the workplace. The reasons given for this law explicitly refer to the European Directives (Law of 11 February 2002, MB: 22.06.2002 and AR 11 July 2003, M.B. 18.07.2002).

Bulgaria

In Bulgaria the current regulations do not cover harassment, but coverage is envisaged in the bill.

Czech Republic

In accordance with Section 7, paragraph 2 of the Czech Labour Code it is forbidden to discriminate against or to give preference to anyone in employment or to deprive someone of their dignity. This category includes abusive or offensive behaviour, including comments and proposals of a sexual nature at work, or behaviour of this nature assent to which might be perceived by the victim as a criterion for decisions regarding future working conditions.

One basic ground upon which it might be determined whether a given action amounts to sexual harassment is whether the person concerned perceives it as unwanted and offensive. Expression of sexual interest becomes sexual harassment when the other person clearly indicates that he or she considers such behaviour as undesirable and offensive. Even a single example of such behaviour can amount to sexual harassment if its effect is serious. Sexual harassment must be distinguished from mutual informal friendliness. Sexual harassment can include physical, verbal and non-verbal manifestations.

Behaviour with sexual undertones is also unacceptable if assent to it can be perceived as a factor in decisions on the employee's future status or career. In these cases acceptance or refusal on the part of the harassed person might affect decisions on recruitment, promotion, continuation of employment, wage level or other working conditions. The person concerned must be duly protected both by law and in practice.

Denmark

In Denmark harassment is prohibited under the Act of 30 March 2004 which contains the exact wording of Article 2(3) of the Directive.

Estonia

Current Estonian law does not cover harassment. The draft Labour Contract Act does not cover harassment *per se*, but includes a general obligation of decent treatment and renders the employer responsible for indecent treatment of employees, the endangering of employees due to such indecent treatment or tolerating indecent treatment of a worker by co-workers. Harassment is to be defined in a more general way by the Gender Mainstreaming Act.

The draft Gender Mainstreaming Act (in Parliament) differentiates between sexual and gender harassment:

- a. sexual harassment: unwanted conduct of a sexual nature with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment
- b. gender harassment: unwanted gender related conduct with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment

Both kinds of harassment are considered as ‘direct discrimination’ (paragraph 3, section 1, subsection 3 of the draft Gender Mainstreaming Act).

Finland

Sexual harassment is covered in the Finnish Act on equality between women and men. Other forms of harassment are covered in the acts on occupational safety and health. In the new Act the wording is similar to that in Article 2, Section 3 of the Directive.

France

Under French law, harassment is not dealt with as a form of discrimination. It has its own section – ‘Harassment’ – in the Labour Code, Articles L.122-46 and following, after the section on ‘Discrimination’ (Articles L.122-45 to L.122-45-3). Both sexual harassment and bullying are covered.

Under the influence of Directive 2000/78/EC, the former definition (based on the law of 2 November 1992) of *sexual harassment* has been dropped. The old definition took as the main criterion the ‘abuse of authority’. The law of 9 May 2001 and, above all, the ‘social modernisation’ law of 17 January 2002 changed this definition and did away with the condition relating to the authority of the ‘harassing’ party. The acts now prohibited are ‘*acts of harassment carried out by any person with a view to obtaining sexual favours for his or her benefit or for the benefit of a third party.*’

This definition of sexual harassment is narrower than that given in the Directive. Domestic law does not approach this offence as a violation of the dignity of an individual or as gender-based discrimination. The national legislator will therefore have to make some changes during

transposition, although French judges must interpret the domestic provision in light of Community law.

Nevertheless, the 'social modernisation' law of 17 January 2002 contains a broader notion, *bullying*, as defined in Article L.122-49 of the Labour Code. This article aims to protect the employee against *'repeated acts of bullying which aim at or result in a deterioration of working conditions with the potential to violate an individual's rights or dignity, to harm his or her physical or mental health or to damage his or her job prospects.'*

This definition differs from that contained in Community law, although both see harassment as a violation of an individual's dignity. Moreover, the system of proof used for harassment is very similar to that used for discrimination (but not completely identical: for harassment, the employee *'shall establish facts from which it may be inferred that there has been harassment'*, whereas for discrimination, *'the employee shall submit factual evidence suggesting that there has been direct or indirect discrimination'*).

Germany

In Germany the new legislation will probably define harassment as a kind of discrimination. The existing provisions do not contain an explicit prohibition of harassment at the workplace. However, Germany has an entire law on sexual harassment at the workplace.

Ireland

The Irish Employment Act defines sexual harassment and harassment on other grounds in Sections 23 and 32. However, amendments are required to meet the provisions of the EU Directives, given that the national provisions on sexual harassment cover only harassment of the opposite sex. Furthermore, the Employment Act requires acts or conduct that could reasonably be regarded as violating the dignity of a person, while the EU Directives only require the conduct to have the purpose or effect of violating the dignity of a person.

Italy

Decree 216 also deems harassment to be a form of discrimination; harassment is defined as unwanted conduct related to any of the grounds prohibited by the Decree with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment (*the same definition as in the Directive*). An instruction to discriminate is also deemed to be discrimination.

Latvia

In Latvia non-violent harassment is not addressed by national legislation in the field of labour law. Violent harassment can be tackled under administrative and criminal law; however, it is not considered discrimination, even if committed on the grounds mentioned in the Directive.

Luxembourg

In Luxembourg the law of 26 May 2000 deals with protection against sexual harassment in employment. Bullying has not been legally regulated yet.

Sexual harassment is defined as any conduct of a sexual nature or other sex-related conduct which the perpetrator knows, or ought to know, will affect the dignity of a person at work – including unwelcome physical, verbal or non-verbal conduct – and which meets one of the following three conditions:

1. the behaviour is inappropriate, offensive or distressing for the recipient;
2. a person's rejection of or submission to such conduct on the part of the employer, another employee, a customer or a supplier is used expressly or implicitly as the basis for a decision affecting that person's rights in relation to vocational training, employment, continued employment, promotion or salary, or any other decision associated with employment; or
3. such conduct creates an intimidating, hostile or humiliating working environment for the recipient.

Netherlands

The 1994 Dutch Equal Treatment Act does not cover harassment. Therefore the EC implementation law introduces a new article (1a) in the 1994 Equal Treatment Act and a new article (1a) in the Equal Treatment – Disability Act with the effect that the prohibition on discrimination covers harassment. Harassment is defined as behaviour with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. The definition is similar to the Directive's definition in Article 2 §3.

In the Equal Treatment – Age Bill harassment is defined as behaviour in connection with age and with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment (Article 2).

The prohibition on harassment covers all grounds of the 1994 Equal Treatment Act and also the grounds of disability and age through the Equal Treatment – Disability Act and the upcoming Equal Treatment – Age Act. The scope is wider than that prescribed by the Directives.

Sexual harassment is not included in the definition. The prohibition on sexual harassment comes under the Dutch Working Conditions Act. The Equal Treatment Commission of the Netherlands holds that sexual harassment is part of the conditions of employment and comes within the Equal Treatment Act.

Norway

The Norwegian proposal covers harassment on the same grounds as mentioned under the response to Question 3 (see Annex) above.

Poland

Polish legislation covers harassment. Besides Chapter IIa 'Equal Treatment in Employment' of the Labour Code introduced on 1 January 2004, a new Art. 94(3) on bullying was included in the Chapter 'Duties of the employer':

Art. 94(3), para

'1. The employer shall take measures to counter bullying,

Para 2. Bullying means action or conduct related to or aimed against an employee, consisting in persistent and long-lasting annoyance and intimidation, resulting in a diminished

evaluation of his professional aptitude, or provoking or intended to humiliate an employee or hold up them to ridicule, isolating them or eliminating them from their colleagues.

Para 3. In the event the bullying leads to a breakdown of the employee's health, the employee may claim an appropriate amount of money from the employer as compensation for the harm suffered.

Para 4. An employee who, as a result of bullying, has terminated their contract of employment, may claim from the employer damages in an amount not less than one minimum monthly wage, established by separate provisions.

Para 5. Notice of termination of employment given by the employee should be made in writing, giving the reasons mentioned in para 2 as justifying the termination.'

It is not yet clear (the provision has been in force since 1 January 2004), whether 'bullying' within the meaning of Art. 94(3) of the Labour Code constitutes an additional form of discrimination in employment – although it is not mentioned in Chapter IIa of the Code – and the whole set of legal instruments established in Chapter IIa applies to bullying as well, or whether it is a separate type of infringement of employers' obligations, subject to different claim procedures, sanctions, and so on.

The employer is obliged, under the Labour Code, to respect the dignity and moral rights of an employee.

Portugal

The new Portuguese legislation covers all forms of harassment in general, with a specific disposition regarding sexual harassment.

Romania

Sexual harassment in Romania is mainly covered by the provisions of the Penal Code (Art. 203 para 1). The Act on sexual harassment gives women the possibility to file a complaint against the person who committed the harassment. Other forms of harassment are covered by constitutional provisions, the Labour Code and collective agreements.

UK

The regulations in the UK cover harassment in these terms (taken from the Sexual Orientation Regulations but in the same terms as in the other Regulations):

(1) For the purpose of these Regulations, a person ('A') subjects another person ('B') to harassment where, on the grounds of sexual orientation, A engages in unwanted conduct of –

- violating B's dignity; or
- creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

The definition of harassment in the disability discrimination legislation requires that the complainant must be disabled as defined by the Disability Discrimination Act 1995. This means that a person who is not disabled and who is harassed for a reason relating to a 'perceived' disability has no protection.

Non-discrimination protection – application to both public and private sectors

Article 3 Scope

1. Within the limits of the areas of competence conferred on the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, (...)

Belgium

The Belgian law does not foresee any exemptions.

Bulgaria

In Bulgaria no persons are excluded and the protection covers the private and public sectors equally.

Czech Republic

In the Czech Republic non-discrimination protection applies to both the public and the private sector.

The principle of equal treatment of all employees and prohibition of discrimination does not exclude different treatment of individuals or groups of employees in cases where objective grounds exist for such treatment (for example, inherent requirements of the job). In addition, such grounds may be based on social consensus, cultural, historical or moral development, or be generally regarded as appropriate and necessary. In most cases, they are defined in various provisions of the Labour Code (provisions on protection of minors and women, special protection offered to pregnant women and mothers of new-born babies, breastfeeding women). Furthermore, appropriate temporary measures designed to redress existing inequalities are generally not classified as being discriminatory in nature (positive discrimination). Measures of this kind designed to support certain groups of workers are referred to in the Employment Act. One example is the obligation imposed on certain employers to offer jobs to workers with reduced working capacity (quotas expressed as a percentage of the total number of employees).

Another set of reasons for derogations from full application of the equality principle is the inherent requirements of a job. These requirements are related to the nature of the job performed by an employee and therefore implementation of these requirements is legitimate and does not necessarily entail discrimination. Thus distinctions, exclusions or preferences based on the required knowledge and skills for a given job cannot be regarded as prohibited discrimination. However, when defining requirements for the performance of a job the employer must carefully examine whether valid grounds exist, for example, for hiring only a man or a woman worker to fill a given vacancy, or whether the job concerned can really be performed only by an individual of a certain age.

Finally, there are some restrictions on women's access to employment (Section 150 of the Labour Code). In accordance with this section women may not be employed in work performed underground to extract minerals or bore tunnels and galleries, except for women who work in positions of responsibility or management positions which do not involve manual work, or in health care and social services, gaining operational experience as part of

their studies, or who perform non-manual work which must be occasionally done underground, especially in occupations related to supervision, inspection or study.

Women may not be employed in work which is physically inappropriate or which is harmful to their bodies, especially work which endangers their maternal role. The Ministry of Health shall determine by decree the types of work and workplaces from which women who are breastfeeding, pregnant women and mothers (until the end of the ninth month after giving birth) are prohibited.

Pregnant women may not be employed in work which, according to medical opinion, might endanger their pregnancy for health reasons. The same shall apply to breastfeeding women and mothers until the end of the ninth month after they have given birth.

The sole reason for keeping that provision in the Labour Code is the health protection of women. Currently, the above-mentioned authorisation is governed by Ministry of Health Decree No. 261/1997 Coll., as amended, laying down the types of work and workplace forbidden to women in general and to women who are pregnant, or have given birth within the previous nine months and young people, as well as the conditions under which young people can, exceptionally, do such work.

Denmark

The Danish Act on prohibition of discrimination in respect of employment and occupation, etc. applies to both the private and the public sector.

The ban on discrimination on the basis of political beliefs, religion or faith does not apply to employers whose activities have the specific aim of promoting a particular political or religious point of view or that of a certain religious denomination, and whose political views, religious beliefs or denomination can be considered of importance to that employer.

Furthermore, the government may derogate from the Act's provisions on discrimination if, in connection with certain forms of occupational activity, it is of vital importance that the worker is of a certain race, political conviction, national, social or ethnic origin, skin colour or religious denomination. However, this provision has not been applied in practice.

Estonia

No category of person is excluded in the current Estonian legislation. Some persons or situations are excluded in the draft, namely in relation to religious organisations and employment as a minister of religion, family relationships and private relationships. Protection applies to both sectors.

Finland

In Finland no one is excluded and it applies to both the private and the public sector.

France

Some provisions of the French Labour Code do not apply to certain categories of worker. Since most of the jobs involved are generally carried out by particular groups (women, unskilled workers or those with few qualifications), the fact that certain labour law provisions offering protection do not apply to them might be seen as an exception to the principle of non-discrimination. The following jobs are of this type:

- carers (Article L.771-2 of the Labour Code);
- domestic employees (Article L.772-2);
- nursery school assistants (Article L.773-2).

The legislator has explained these differences as being due to the nature of the jobs in question, and the type of employer involved (private individuals).

In terms of civil service legislation, Article 6 (2) of Law No 83-634 of 13 July 1983, amended by the Law of November 2001, states that:

There must be no direct or indirect discrimination *between civil servants* [emphasis added] on the grounds of their political, trade union, philosophical or religious opinions, their origin, sexual orientation, age, real or supposed membership of a particular ethnic group or race.

Nevertheless, distinctions may be made to take account of a person's possible physical inability to carry out certain functions.

In the same way, *age-related conditions* may be set for the recruitment of civil servants, to allow them the chance of a full career. These conditions may also be attached to career progression for civil servants, where they are based on occupational requirements, justified by experience or seniority, and required for the tasks to be carried out by the person in question in his or her team, work context or job.

Germany

In Germany it is foreseen that exclusion from non-discrimination protection shall orient itself in accordance with the Directive. The Ministry of Justice has explained that different treatment shall not be considered discriminatory if this is due to a specific contractual relationship. Discussions have taken place on: specific provisions for religious communities and for tenancies where the landlord lives in the same house or the same apartment.

Ireland

One exception in the Irish legislation is religious, educational and medical institutions.

Italy

In Italy the principle of equal treatment irrespective of religion, personal belief, disability, age and sexual orientation applies to *all persons in both the public and the private sector* (Article 3(1)).

Latvia

The principle of equal rights and prohibition of discrimination applies fully to the private sector in Latvia (Art. 2 of the Labour Law).

Luxembourg

Protection against discrimination applies to all persons in Luxembourg, in both the private and the public sector. The only exceptions are some positions of power or responsibility in the public sector or conditions regarding the right to live and work in Luxembourg for non-community workers.

Netherlands

In the Netherlands the current 1994 Equal Treatment Act excludes: a) legal relations within religious communities and independent sections thereof and within other associations of a spiritual nature; b) the office of minister of religion. The regulations' protection applies to both the public and the private sector.

Norway

The Norwegian proposal exempts the following from non-discrimination protection:

Discrimination on the basis of 'homosexual cohabitation' is allowed in relation to employment in positions associated with religious communities if the job advertisement contains special demands connected with the nature of the position or the employer's activities.

The Norwegian Confederation of Trade Unions opposes such an exemption. In its opinion, such an exemption is not in conformity with public opinion in Norway. Furthermore, the exemption, again in its opinion, is also contrary to the Directive, as it leaves the possibility open to exclude all positions associated with religious communities.

Furthermore, employers are entitled to collect, prior to employment, information on the applicant's political, religious or cultural involvements or their membership of trade unions if this kind of information is relevant to the position or if it is part of the purpose of the employer's activities to promote specific political, religious or cultural views and the position is directed towards the accomplishment of relevant tasks. This shall also apply to information on the applicant's possible homosexuality or homosexual way of life. If such information is required, this has to be mentioned in the job advertisement.

Poland

In Poland no persons are excluded from non-discrimination protection. Several regulations provide different norms as far as the employment of women and young workers is concerned. The legislator considers such regulations necessary in order to protect the health of these groups of workers.

The same non-discrimination rules apply to employers in both the public and the private sector.

Portugal

In Portugal no one is excluded from protection. The non-discrimination law applies to both the public and the private sector.

Romania

In Romania all workers are protected. Protection applies to both the private and the public sector.

UK

The provisions have very broad application in the UK, and cover both the public and the private sector. They do not apply to certain groups of people, such as unpaid volunteers and politicians. The persons excluded are those who are either not employed or although self-employed not employed under a contract to do the work personally; who are not an office holder; or not employed at an establishment in Great Britain. An employee will be treated as employed by an establishment in Great Britain if he does his work wholly or partly in Great Britain or even if he does his work wholly outside Great Britain if:

- a. the employer has a place of business at an establishment in Great Britain;
- b. the work is for the purposes of the business carried on at that establishment; or
- c. the employee is ordinarily resident in Great Britain:
 - i. at the time when he applies for or is offered the employment;
 - ii. at any time during the course of his employment.

Protection applies to both the public and the private sector.

Coverage of aspects of employment mentioned in Article 3, §1 (a–d)

Article 3 Scope

1. Within the limits of the areas of competence conferred on the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

(a) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;

(b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;

(c) employment and working conditions, including dismissals and pay;

(d) membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

Austria

In Austria the following aspects of employment are covered in the draft amendment to the law on equal treatment:

- employment relationships of all kinds based on a civil law contract;
- access to all types and to all levels of vocational guidance, vocational education, vocational training and retraining and practical work experience;
- membership of, and involvement in, an organisation of workers or employers or any organisation whose members carry out a particular profession, including the benefits provided by such organisations;
- conditions of access to self-employment.

The provisions on working life also apply to the following groups:

- people working from home;
- economically dependent workers;
- posted workers.

Belgium

The aspects of employment covered in respect of work, access to the labour market and working conditions are listed in Article 2 §4 of the Law of 25 February 2003:

- the supply or distribution of goods and services to the public;
- conditions of access to employment, self-employment or occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion; employment and working conditions, including dismissal and pay, and in relation to both the public and the private sector;
- the nomination or upgrading of a public servant or the appointment of a public servant to a service unit;

- a mention in an official document (including records of law enforcement authorities, such as the police);
- the dissemination, publication or exposition in public of a text, opinion, sign or similar which is discriminatory;
- access to, participation in and all other forms of engagement in economic, social, cultural or political activities open to the public.

Czech Republic

In accordance with Section 1, para 3 of the Czech Labour Code employers are obliged to ensure equal treatment for all employees in respect of wages, including other benefits of monetary value, professional training and opportunities for advancement at work. The equal treatment principle relates to all employees and to the entire duration of their employment. Under the last sentence of Section 28 of the Labour Code, negotiations preceding the conclusion of the employment contract are also covered.

Equal treatment of all employees means, above all, that there shall be no direct or indirect discrimination against employees in the areas of working conditions, wages, professional training and the other areas referred to above. Excluded from equal treatment in matters of working conditions, training and advancement is special protection of women workers related to pregnancy and maternity, including jobs prohibited to women for health reasons. This also includes more favourable treatment for female workers to enable them to seek employment in certain categories of jobs, or prevention of and/or compensation for obstacles barring career advancement. This is why the Labour Code provided a basic framework for the definition of cases not to be regarded as sex discrimination.

Provisions on equal access to employment, including prohibition of announcements and advertisements of job vacancies contravening this principle can also be found in Act No. 1/1991 Coll. on employment, as amended.

As regards training, the employer must apply the equal opportunity and treatment principles to the participation of all employees in training courses and study during employment the objective of which is acquisition of enhanced or updated skills, required for the performance of the job. The equal treatment principle also covers maintenance and renewal of previously acquired skills to enable employees to perform their job under changed conditions. The same procedure must be followed by the employer in relation to initial training of new employees and further training. This applies also to employees who start work without the required skills and to employees who are transferred to other workplaces or to new jobs where they need to acquire new skills by retraining.

The principle of equal treatment must also be observed in respect of opportunities for promotion in employment or possible transfer to more attractive jobs. When deciding on criteria and their application in relation to placement of employees within the organisational structure of the company and for promotion to higher grades (to various management levels), the employer is required to observe the equal treatment principle.

Denmark

Both the private and the public labour market are covered by the Danish Act on the prohibition of discrimination. The amending act includes a provision that implements Article 3(1) 1, paragraph d.

Estonia

- Under the Labour Code only certain aspects of employment contracts and wages are covered.
- Employment Service Act, Section 5, paragraph 6 prohibits discrimination by employment services. That includes vocational guidance, vocational training and retraining and access to employment insofar as far as employment agencies are responsible.
- Neither the Act on Agencies for Vocational Training nor the Act on Professions have an equal treatment clause.
- Neither the laws governing professional organisations nor the Trade Union Act have any 'admission without discrimination' clause.
- The draft Labour Code and draft Gender Mainstreaming Act cover all the grounds stipulated in subsections a) and c), but they are relevant only to formal employment (labour contract or public service relation) and not to self-employment or services under a civil or commercial contract. The draft Labour Code has opted for a non-exhaustive list of aspects, prohibiting other kinds of discrimination in working life. The draft Gender Mainstreaming Act also covers transfers and distribution of tasks within the enterprise.
- Subsection d) is not covered by either the present or the draft law. Primary vocational training and acquisition of a profession also remain uncovered. Shortcomings can be overcome by means of the constitutional principle of non-discrimination, the draft Gender Mainstreaming Act and the forthcoming framework Act on Equality and Equal Treatment, although special laws should clearly be improved.

The aspects of employment are not listed in any act, although the Employment Agreement §10, para 2 gives a list of situations which do not contravene §10 para 1.

The Constitution of the Republic of Estonia §29 establishes a person's right to freely choose area of activity, profession and place of work.

Finland

In Finland all aspects are covered, although nothing has been added.

France

Article L.122-45 of the French Labour Code covers:

- procedures for recruitment or for access to a training course or in-house placement (including employment policy contracts and apprenticeship contracts);
- discriminatory sanctions and dismissals;
- *in particular*, pay, training, redeployment, job allocation, level of qualifications, classification, promotion, transfers and renewal of contracts.

The list in Article L.122-45 is longer and more precise than the one in the Directive. Moreover, the use of the phrase '*in particular*' allows French labour legislation to cover all aspects of employment.

Criminal sanctions for discrimination, however, are more limited. Article 225-2 of the Criminal Code covers only:

- refusal to provide goods or services;
- obstructing the normal exercise of any economic activity;
- refusal to recruit, sanctioning or dismissal;
- making the provision of goods or services subject to a discriminatory condition;
- making an offer of employment, a request for a training course or job placement subject to a discriminatory condition;
- refusal to accept a person on a training activity 'covered by Article L.412-8 (2) of the Social Security Code'.

The principle whereby the criminal law is interpreted in the strictest sense tends to prevent the inclusion of new aspects of employment, although the Criminal Court of Appeal has ruled that the breaking off of a trial period for a discriminatory reason constitutes a refusal to recruit an employee (Cass. crim. 14 October 1986, No. 85-96.369, Bull. crim. No 287).

Germany

In Germany all aspects of employment are already covered by current legislation (§§75 BetrVG, 81 SGB IX). However, when implementing the Directive it is foreseen that the wording of the Directive will be adhered to.

Ireland

The Irish legislation now covers self-employment and professional partners.

Italy

The scope of Decree 216 seems to be *more limited* than the Directive as regards letter a) which does not include the phrase 'whatever the branch of activity and at all levels of the professional hierarchy'. Decree 216 moves promotion to letter b) (corresponding to letter c) of the Directive) which therefore also includes 'career advancement'.

Latvia

The legislation prohibiting discrimination covers all aspects mentioned in Article 3, paragraph 1, subpoints a) – d).

Luxembourg

The wording of Article 1 of the Law of 8 December 1981 is as follows: 'The principle of equal treatment of men and women applies to access to work, vocational guidance, professional training, continuing training and retraining, an independent profession and working conditions.'

This law covers certain aspects of the Directive, except point d) of Article 3 §1 regarding membership of, and involvement in, a workers' or employers' organisation, or a professional organisation, including the benefits provided by such organisations.

While the place of discrimination is identical in the Directive and the law (employment and occupation), the nature of discrimination is different.

As already pointed out the Law of 8 December 1981 limits itself to equal treatment between men and women, that is, to the fight against sex discrimination. The Directive also covers discrimination on the grounds of religion or belief, disability, age and sexual orientation in relation to employment and occupation.

The Law of 1 December 1977 approving the International Convention on the elimination of all forms of racial discrimination (New York; 7 March 1966) foresees in Article 5 the obligation of all signatory states to prohibit and eliminate all racial discrimination, especially in relation to the right to work, free choice of employment, just and favourable conditions of work, protection against unemployment, equal pay for equal work and just and favourable remuneration.

Netherlands

The 1994 Dutch Equal Treatment Act does not cover contract labour.¹⁵ In the Directive this comes under 'access to employment'. Contract labour has been added (Article 5) to the Equal Treatment Act by the implementation act, however. The other aspects of the Directive are covered in Articles 5, 6, 6a and 7. Article 3 §1(a–d) is implemented in the Equal Treatment – Age Bill¹⁶ and the Equal Treatment – Disability Act,¹⁷ and includes contract labour.

Norway

All aspects of employment are covered by the Norwegian legislation. The proposal mentions that the purpose of the chapter is to guarantee equal treatment in working life. The chapter applies to all aspects of the working relationship. The proposal lists examples.

Poland

All aspects of employment mentioned in this Article are covered by the Polish legislation – no form of discrimination is permitted.

Portugal

In Portugal although some topics receive more specific treatment (professional training, workers' representatives) they all fall under the relevant protection clauses.

¹⁵ Arbeidsbemiddeling.

¹⁶ Articles 3,4, 5 and 6.

¹⁷ Articles 4,5,5a and 6.

Romania

All aspects of Article 3, para 1 (a–d) are covered by the Romanian legislation.

Sweden

In Sweden the legislation covers the right to benefit from measures favouring employment, start up a commercial activity, pursue a profession or join a trade union, as well as access to goods, services or accommodation.

UK

All aspects of employment are covered in the UK but in respect of self employment only if so employed under a contract to do the work personally.

Coverage of third-country nationals – exceptions allowing different treatment

Article 3 Scope

2. *This Directive does not cover differences of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons in the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.*

Belgium

If the discriminatory act took place on Belgian territory, third-country nationals can appeal to the Law of 25 February 2003, which introduces penal provisions.

Bulgaria

There is a protective norm for prevention of discrimination also for third-country nationals in Bulgarian legislation. They have to have a special certificate (working visa) according to Bulgarian law, administered by the Labour Offices and the Employment Agency. This is valid only for employment. A foreigner who registers a firm in Bulgaria receives temporary residence for one year, which may be prolonged for successive one-year periods. This residence allows her/him to become an employer.

Czech Republic

The Czech regulation also covers third-country nationals, as specified in §12 of the Preamble to the Directive. Moreover, no exceptions permitting different treatment are allowed.

Denmark

There are no exceptions for third-country nationals in Denmark.

Estonia

All Estonian regulations cover third-country nationals. Some jobs, specified in other laws, are accessible only to citizens (public service in the strict sense of the term, security services, and so on).

Finland

In Finland third-country nationals are already covered by the Constitution. Exceptions must be based on legislation on migration and personal legal status – the Aliens Act for example.

France

National legislation aims to cover all employees, of whatever nationality, who are working in France. There are, however, exceptions for recruitment to the civil service and also for certain

jobs in the private sector. These are 'reserved posts' restricted to persons of French nationality. The GELD (Group for the Study and Combating of Discrimination) has denounced these exceptions, in particular in a note dating from March 2000.

Private sector:

According to the abovementioned note, in 2000 around fifty private sector occupations were subject to explicit restrictions linked to nationality, of which:

- 17 occupations were closed to any foreign national;
- 15 occupations were closed to foreign nationals except for EU nationals;
- 20 occupations were closed to nationals of states not belonging to the EU or the European Economic Area or states having no reciprocal agreement with France.

Most of these restrictions apply to the professions: lawyers, dental surgeons, doctors (although some foreign doctors are granted an individual ministerial authorisation), midwives, chartered accountants, architects, pharmacists, chartered surveyors, and so on.

For around 30 occupations a French diploma is required (health care, legal and technical professions, hairdressing, estate agents, travel agents, and so on).

Some professions are subject to both types of restriction (legal profession, doctors, chartered surveyors, architects and dental surgeons).

There are 'indirect' restrictions in the form of quotas or strict administrative inspection: sailors, professional sportsmen and women, journalists, those working in the defence sector, and so on.

Public sector:

Permanent civil service posts are reserved for French nationals, but are by and large open to Community nationals. People from non-EU countries may not be employed as civil servants. This provision affected, in 1996, more than 5,000,000 jobs.

'Reserved posts', open only to French nationals, are to be found in the armed forces, the police force, tax administration, the diplomatic corps and the judiciary.

A list of posts open to Community nationals is published twice a year in the Official Journal, with a projected timetable for the entry competitions.

Some public enterprises and semi-public bodies also apply certain types of 'discrimination'. The RATP (Paris public transport system) has changed its practices, under the influence of the GELD, but many public enterprises still apply restrictions in their recruitment policy (SNCF – French national rail company – for example).

Most of the remaining restrictions are unacceptable and unjustified. They should therefore be abolished.

Germany

In the German legislation §81 SGB IX and §75 BetrVG (mentioned above) also cover third-country nationals.

Italy

In Italy the provisions set out in Decree 216 are without prejudice to the provisions in force on entry conditions, residence and access to employment, welfare and social security of nationals of third countries and stateless persons on Italian territory (Article 3(2) (a)).

Latvia

As regards protection of the human rights of third-country nationals in Latvia, there are no exceptions. There are exceptions regarding access to employment in the civil service and armed forces.

Luxembourg

In Luxembourg the Law of 19 July 1997 is the main text prohibiting racism, revisionism and other forms of discrimination, and not only with regard to employment. This law prohibits discrimination not only against natural persons but also against legal persons.

Article 454 of the Penal Code states the following:

Every distinction made between natural persons on grounds of origin, colour, gender, sexual orientation, family status, health, disability, morals, political belief, belief, trade union activity, a real or assumed belonging or not belonging to an ethnic group, nationality, race or religion is considered discriminatory.

Every distinction made between bodies with legal personality, groups or communities of persons on the grounds of origin, colour, gender, sexual orientation, family status, health, disability, morals, political belief, belief, trade union activity, a real or assumed belonging or not belonging to an ethnic group, nationality, race or religion – whether with regard to all or only some members – is also considered discriminatory.

The text does not make any distinction regarding the nationality of the persons concerned. Where the law does not make a distinction, there is no distinction to make.

Article 457 of the Penal Code (introduced by the Law of 19 July 1997) lists cases which may not be regarded as discriminatory if they are based on:

- health, in relation to preventing risk of death, risk to physical integrity or risk of incapacity to work or disability;
- health and disability, regarding the refusal to employ someone or their dismissal on the grounds of medical incapacity;
- employment, regarding nationality, if belonging to a particular nationality is the precondition of a particular job, if this is in conformity with the provisions regarding public positions, certain professions and labour law;
- entrance, residence and right to vote, regarding nationality if belonging to a particular nationality is the precondition, in conformity with legal provisions, of entrance, residence and right to vote.

The same applies in relation to the Law of 8 December 1981 on equal treatment of men and women with regard to access to employment, professional training and working conditions. It foresees protective provisions for women which are not considered to infringe the principle of equal treatment.

Article 2(3): ‘The legal and administrative provisions regarding the protection of women, notably in respect of pregnancy and maternity and of measures taken to promulgate equal opportunities between men and women are not considered contrary to this law especially concerning factual inequalities affecting opportunities for women in the areas foreseen in Article 1.’

Norway

The Norwegian proposal does not deal with this issue specifically. However, the legislation covers all persons performing work in the service of others. The proposed prohibition on discrimination therefore covers also third-country nationals working in Norway.

Poland

Non-discrimination protection in Poland covers third-country nationals. However, it applies to those with official status as regards residence, work, refugee status, and so on under the Law on Foreigners of 1997. Everyone working officially enjoys the protection of national labour law.

Portugal

On all discrimination issues, Portuguese law applies to all immigrants. The exceptions – for example, activities related to religion – apply equally to both nationals and foreign citizens.

Romania

The Romanian legislation protects all workers living and working in Romania legally. To EU workers and workers from countries with a bilateral agreement with Romania the same rights apply as to Romanian workers.

Non-discrimination applied to payments of any kind made by state or similar schemes, including social security or social protection schemes

Article 3 Scope

3. *This Directive does not apply to payments of any kind made by state schemes or similar, including state social security or social protection schemes.*

Belgium

The Belgian social security system includes differences in the granting of allowances or social benefits; however, they are generally based on objective and reasonable grounds.

Bulgaria

In Bulgaria there are exceptions concerning pensionable age between men and women, such as minimum insurance floors by occupation for social security and pensions.

Neither *Denmark*, *Estonia* nor the *Czech Republic* made use of the exception.

France

In France, special treatment is given to certain categories of people in the area of social protection. However, this 'discrimination' generally observes the principle of equal treatment for women and men.

The privileges granted to women in the area of childcare tend to be rejected by the courts and the legislative authorities. Thus, since Law 2001-1246 of 21 December 2001 (Article L.122-25-4 of the Labour Code) fathers have been granted the right to paternity leave.

In the area of pensions, the extra year's entitlement per child granted only to female civil servants has now been replaced – Law 2003-775 of 21 August 2003 – by recognition of periods away from work or with a reduced level of work for both women and men. This change is the result of the well-known Griesmar ruling, issued by the Conseil d'état on 29 July 2002 (Dr. soc. 2002 No. 12, p.1131), which had already ruled against this differential treatment.

Germany

In his is not the case at present, and no decision on the matter is likely for the foreseeable future.

Italy

The Italian national provisions are without prejudice to all provisions in force on social security and social protection (Article 3(2) (b)).

The principle of non-discrimination in *Latvia* applies to all state schemes, including social security and social protection.

Luxembourg

The Luxemburgian legislation does not foresee such an exception for the simple reason that the legislation has so far been limited to the fight against discrimination on grounds of gender.

In *the Netherlands* and in *Norway* no use is made of the exception.

Poland

In Poland there are exceptions to this rule: for example, a collective agreement concluded for the workers employed in an institution financed by local government or the national budget must take into consideration – and not exceed – the financial means provided for the institution.

Portugal

In Portugal there are no exceptions regarding social security, although necessary coordination with similar foreign services should be undertaken.

UK

The UK discrimination provisions do not apply to social security benefits. They do cover pension benefits, including state pension schemes. The exception to this is the sexual orientation provisions, which purport to exempt benefits dependent on marital status. This will apply to, for example, pension benefits to non-married survivors (Regulation 25 of the Employment Equality (Sexual Orientation) Regulations). This exemption purportedly applies to both public and private sector pension schemes. Instruction has been given to challenge this provision through the UK courts as being in breach of the European Directive.

Genuine and determining occupational requirements allowing differences in treatment (Article 4 §§1 and 2)

Article 4 Occupational requirements

1. Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to any of the grounds referred to in Article 1 shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

2. Member States may maintain national legislation in force at the date of adoption of this Directive or provide for future legislation incorporating national practices existing at the date of adoption of this Directive pursuant to which, in the case of occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief, a difference of treatment based on a person's religion or belief shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitutes a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos. This difference of treatment shall be implemented taking account of Member States' constitutional provisions and principles, as well as the general principles of Community law, and should not justify discrimination on another ground.

Provided that its provisions are otherwise complied with, this Directive shall thus not prejudice the right of churches and other public or private organisations, the ethos of which is based on religion or belief, acting in conformity with national constitutions and laws, to require individuals working for them to act in good faith and with loyalty to the organisation's ethos.

Austria

No difference of treatment regarding men and women is allowed in Austria in respect of race, ethnic origin, religion or belief, age or sexual orientation. Different treatment is possible by reason of the nature of the activities, provided that the means of achieving such objectives are appropriate and necessary (§14 and 27). Furthermore, difference of treatment is allowed under certain conditions regarding churches or other public or private organisations the ethos of which is based on religion or belief, and also regarding age.

Belgium

In Belgium different treatment in employment can be justified on objective grounds, if by reason of the nature of the activity or of the context in which it is carried out, such a characteristic constitutes a genuine and determining occupational requirement (Art. 2 §5 law 25 February 2003).

Bulgaria

The Bulgarian legislation includes criteria for non-discrimination in the cases cited under Articles 2 §§1 and 2 of EU Directive 2000/78/EC.

Czech Republic

These issues are not regulated in the Czech Republic.

Denmark

This is not dealt with in detail in the Danish Act and will depend on legal practice. The exemption clause in Article 4 (1) is not fully exploited in the Danish legislation.

Finland

In Finland the grounds and objectives of different treatment must be proved. There is no reference in the Act to activities of organisations the ethos of which is based on religion or belief, but it does exist in the guidelines for interpretation.

France

Article R.123-1 of the French Labour Code, deriving from Decree No 84-395 of 25 May 1984, speaks of '*occupations and activities in which gender plays a decisive role*'.

The activities in question are:

- actors required to play a female or male part;
- models modelling clothes and accessories;
- male and female artists' models.

In the case of organisations the ethos of which is based on religion or belief, there is some flexibility in existing case law. There has, for example, been a ruling that Article L.122-45 of the Labour Code does not apply where the employee, taken on to carry out a task implying a 'common philosophy' and faith with his or her employer, has ignored the related obligations (Cass. soc. 20 November 1986, *Dr. soc.* 1987 p.375).

Germany

§75 of the German BetrVG does not allow different treatment. However, this is possible under §81 Abs. 2 Nr. 1 S.2 SGB IX regarding disabled people due to the kind of occupation and its specific demands.

Italy

The Italian national provisions allow differences in treatment which, in the context of employment or a business activity, and respecting the *principles of proportionality and rationality*, are due to *characteristics related to a person's religion, personal beliefs, disability, age and sexual orientation* where, by reason of the *nature of the occupational*

activity or the context in which it is performed, such characteristics are a *genuine and determining requirement* for its performance. These *derogations from the principle of equal treatment now seem to include direct discrimination as well*, whereas admissible derogations from the principle of parity under the prior guidelines on gender parity could include direct discrimination *only* when such derogations had been cited by the legislator (for instance in the case of particularly onerous occupations, or in the arts, fashion and entertainment sector). There is no prejudice to the provisions setting out investigations of *fitness for work* as regards the need for fitness for a particular occupation, and differences in treatment based on the practice of a particular *religion* or particular *personal beliefs* held in *religious organisations or other public and private bodies*, where, by reason of the *nature* of the occupational activities carried out by such organisations or bodies or of the *context* in which they are carried out, such religion or personal beliefs are a *genuine, legitimate and justified requirement for the performance of such activities* (Article 3(5)). The recent law reforming the labour market – Legislative Decree of 24 July 2003 – although confirming the prohibition on investigations of opinions and discriminatory treatment, *rules out* this prohibition in the case of ‘*characteristics having an impact on the methods of performance of the occupational activity* which are a genuine and determining requirement for the performance of such occupational activity’ (Article 10). The domestic provisions authorise differences of treatment which, although constituting indirect discrimination, are *objectively justified by legitimate objectives provided that the means of achieving such objectives are appropriate and necessary*. In particular, measures to *exclude* anyone convicted of *offences concerning the sexual freedom of minors and pornography in respect of minors* from occupational activities including the *care, welfare, education and upbringing of minors* are legitimate (Article 3(6)). Criticisms by gay organisations have focused on the inclusion of the latter provision in the law implementing the anti-discrimination Directive, although this issue is already covered by the Criminal Code, as a result of the automatic connection that it might be taken to endorse between sexual orientation and paedophilia.

Latvia

Latvian legislation and constitutional case law provide for similar general clauses whereby justified differential treatment does not constitute discrimination. Religion and belief can be considered as justifiable grounds for differential treatment in occupation.

Article 457 of the Penal Code (introduced by the Law of 19 July 1997) lists cases which may not be regarded as discriminatory if they are based on:

- health, in relation to preventing risk of death, risk to physical integrity or risk of incapacity to work or disability;
- health and disability, regarding the refusal to employ someone or their dismissal on the grounds of medical incapacity;
- employment, regarding nationality, if belonging to a particular nationality is the precondition of a particular job, if this is in conformity with the provisions regarding public positions, certain professions and labour law;
- entrance, residence and right to vote, regarding nationality if belonging to a particular nationality is the precondition, in conformity with legal provisions, of entrance, residence and right to vote.
- different treatment foreseen in other legal provisions.

Netherlands

When age and disability are an occupational requirement, the parties involved can refer to the general exception clause.¹⁸ For the other grounds the Equal Treatment Act has the same clause.¹⁹ Specific requirements are not regulated.

Poland

Difference in treatment may not be based on ethnic or racial differences in Poland. Different treatment is permitted only in relation to a particular level of education, skills, health condition, and so on, which is required for the post concerned.

Portugal

In Portugal discrimination is excluded only by a justifiable and determining reason concerning the nature of the professional activity.

Romania

In Romania no possibility for different treatment is foreseen at all. Religious activities are autonomous, but discrimination is not accepted in this area either.

Sweden

In Sweden the prohibition of direct discrimination does not apply to employment, promotion or training for promotion if a specific ethnic background, religion or other belief, sexual orientation or specific disability is necessary due to the nature of the work or the context in which the work is being carried out.

UK

The regulations in the UK provide for a genuine occupational requirement as follows:

Religion or belief – there is an exception where, given the nature of the employment or the context in which it is carried out, being of a particular religion or belief is a genuine and determining occupational requirement; it is proportionate to apply that requirement in the particular case; and the person to whom it is applied cannot meet it or the employer is not satisfied and in all the circumstances it is reasonable for him not to be satisfied, that the person meets it. Further, even if there is no determining occupational requirement, if the employer has an ethos based on religion or belief and, having regard to that ethos and to the nature of the employment, being of a particular religion or belief is a genuine occupational requirement and it is proportionate that the exception applies.

Sexual orientation – there is a general exception if, with regard to the nature of the employment or the context in which it is carried out, being of a particular sexual orientation is a genuine and determining occupational requirement with the same conditions as for religion

¹⁸ Article 7, §1 c Equal Treatment – Age Bill and 3, §2 Equal Treatment – Disability Act.

¹⁹ Article 5, §§2 and 3 1994 Equal Treatment Act.

and belief; it is proportionate to apply that requirement in the particular case; and either the person to whom that requirement is applied does not meet it, or the employer is not satisfied, and in all the circumstances it is reasonable for him not to be satisfied, that that person meets it. This applies whether or not the employment is for the purposes of an organised religion.

Also, if the employment is for the purposes of an organised religion, the employer applies a requirement related to sexual orientation so as to comply with the doctrines of the religion, or because of the nature of the employment and the context in which it is carried out, so as to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers; and either the person to whom that requirement is applied does not meet it, or the employer is not satisfied, and in all the circumstances it is reasonable for him not to be satisfied, that that person meets it.

In addition, Regulation 7(3) provides for a further exception which is referred to in paragraph 23(3).

There is no genuine occupational requirement exemption under disability discrimination legislation.

Implementation of Directive 2000/43/EC

Definition of direct and indirect discrimination and the mere instruction to discriminate as an act of discrimination

Article 2 Concept of discrimination

1. For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin.

2. 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 grounds of racial or ethnic origin;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

[...]

4. An instruction to discriminate against persons on grounds of racial or ethnic origin shall be deemed to be discrimination within the meaning of paragraph 1.

Austria

The Austrian legislation defining direct and indirect discrimination has taken over the wording of the Directive. The mere instruction to discriminate is seen as an act of discrimination (§13 and 26).

Bulgaria

In Bulgaria the Directive provides the wording of the definitions of direct and indirect discrimination. The bill for preventing discrimination will go through the second reading in Parliament soon.

Czech Republic

The Czech regulations cover both direct and indirect discrimination (but there are no precise definitions – they will be introduced with the new amendments mentioned above) and also accept a mere instruction to discriminate as an act of discrimination. Discrimination is understood as any distinction, exclusion or preference based on the discrimination criteria referred to above. In accordance with Section 1, para 4 of the Labour Code also prohibited is any action taken by an employer, the consequence of which is indirect discrimination against certain groups of employees. On the other hand, discrimination cannot take place if the action concerned is based on the provisions contained in the Labour Code or in other labour

regulations, or where there is a material, well-founded ground, inherent in the nature of the job which the employee concerned performs.

Direct discrimination is understood to mean a situation where a discriminatory action directly leads to preference or exclusion of persons and results in denying or impairing their equal opportunities and treatment in labour relations. Indirect discrimination concerns a situation in which a specific measure, practice or applied criterion is essentially neutral (i.e. action taken by the employer is, as such, in conformity with the law), but its application leads to total or partial exclusion or preference of certain groups of workers (mainstream population, ethnic minorities, and so on).

Denmark

The Danish Act includes both direct and indirect discrimination and the instruction to discriminate. The definitions in the Act are identical to those of the Directive.

Estonia

In Estonia direct or indirect discrimination regarding race and ethnic origin are not covered.

Finland

In Finland both direct and indirect discrimination are covered with a similar wording to the Directive. Mere instruction to discriminate is covered, also by Chapter 11, Section 8 in the Penal Code (harassment against national or ethnic group).

Greece

In Greece there is neither a definition nor a distinction between direct and indirect discrimination.

Ireland

In Ireland direct and indirect discrimination are defined.

Italy

The Italian national provisions cover both *direct and indirect* discrimination. The concept of direct discrimination is taken up verbatim from the Directive, whereas the concept of indirect discrimination is wider than in the Directive, as it *also* includes an apparently neutral '*act, agreement or conduct*' that would put persons of a particular racial or ethnic origin at a particular disadvantage compared with other persons. Decree 216 refers to Article 43(1) and (2) of the consolidated provisions on immigration, which include the concept of discrimination on grounds of race, ethnic origin, nationality or religion, defined as 'any practice which, directly or indirectly, entails a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin, religious practices and beliefs, and whose purpose or effect is to destroy or compromise the recognition, enjoyment and exercise, under equal conditions, of human rights and fundamental freedoms in political, economic or

social terms and in any other area of public life'. An instruction to discriminate is also deemed to be discrimination (Article 2(4)).

Latvia

The Latvian Labour Code prohibits direct as well as indirect discrimination (Article 7). Indirect discrimination is defined (Art. 29); however, a clear-cut definition of direct discrimination is missing. There is no provision that would clearly attribute the prohibition of discrimination to cases of an instruction to discriminate.

Luxembourg

Alongside the definition of discrimination in international conventions ratified by Luxembourg the Penal Code defines and penalises discrimination in Articles 454 and following.

Discrimination is, for example, any distinction between natural persons on the grounds of origin, colour, gender, sexual orientation, family status, health, disability, morals, political belief, belief, trade union activity, real or assumed belonging or not belonging to an ethnic group, nationality, race or religion.

Article 454 defines discrimination against legal persons in the same manner.

The definition of direct discrimination in national legislation is more detailed than in the Directive, while indirect discrimination is close to the European definition, though not limited to gender discrimination.

The Law of 28 June 2001 on the burden of proof in case of gender discrimination makes a distinction between direct and indirect discrimination. It considers indirect discrimination an apparently neutral measure, criterion or practice which affects a clearly higher proportion of people of the same gender. This is not the case if this measure, criteria or practice is appropriate and necessary and if it can be justified by objective reasons.

Regarding the penalties applying to instructions to discriminate Luxemburgian penal legislation has created a specific offence of discrimination (Article 457-1 of the Penal Code).

Portugal

In Portugal the definitions are the same as in the Directive. Discrimination is defined as any order or instruction given with the objective of harming any person given the grounds of discrimination cited in the law.

Romania

In Romania both aspects of discrimination are covered.

Spain

In Spain, both direct and indirect discrimination are defined.

Sweden

In Sweden, both direct and indirect discrimination are defined.

UK

Both direct and indirect discrimination are covered in the UK. The definition of direct discrimination has not changed as the terms of the Directive were already covered by the Race Relations Act 1976.

The definition of direct discrimination under existing race discrimination legislation is wider than in the Directive because it includes colour and nationality. Direct racial discrimination occurs where a person discriminates against another on grounds of colour, race, nationality or ethnic or national origins by treating that other less favourably than he treats or would treat other persons.

There are now two tiers of protection against indirect racial discrimination:

Under existing legislation, indirect racial discrimination occurs where a person applies to another a requirement or condition which s/he applies equally to persons of a different colour, race, nationality or ethnic or national origins but which is such that the proportion of persons of that colour, etc. who can comply with it is considerably smaller than the proportion of persons not of that colour, and which is to the detriment of that other because s/he cannot comply with it.

In order to implement the Directive, the Government chose not to pass primary legislation but instead passed secondary legislation which amends the existing provisions. In accordance with the Directive, the new provisions state that (in addition to the existing protection) a person discriminates against another if s/he applies to that other a provision, criterion or practice which s/he applies or would apply equally to persons not of the same race or ethnic or national origins as that other, but which puts or would put persons of the same race or ethnic or national origins as that other at a particular disadvantage when compared with other persons, and which he cannot show to be a proportionate means of achieving a legitimate aim.

The new protection from indirect discrimination is not available to complainants on the grounds of colour or nationality.

- A new definition of indirect discrimination has been added for the areas covered by the Directive.
- The definition of indirect discrimination is different from the one in the Directive in that the defence does not refer to 'objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary' but instead provides 'which he cannot show to be a proportionate means of achieving a legitimate aim'. The government's explanatory memorandum which accompanies the Regulations states that the words 'objectively justified' would not add anything to the requirement for the discriminator to demonstrate the existence of a legitimate aim which is proportionate. The government also argues that 'proportionate' means the same as 'appropriate and necessary' and that if the word 'necessary' were used there would be a risk that it would be interpreted as a very strict requirement. Commentators fear that the failure to properly implement the Directive in this respect will result in a weaker standard of justification being permitted by national courts in the UK than that required by the Directive.

- The definition of direct discrimination has been held by the courts to cover an instruction to discriminate.

The definition of discrimination does not specifically include instructions to discriminate. An employer and worker will be liable for discrimination, harassment or victimisation by the worker in the course of his or her employment whether the employer instructed the worker to carry out the act or not. A worker who assists another person in an act of discrimination, harassment or victimisation will be liable unless the worker reasonably believed a statement that the act was not unlawful.

Forms of harassment

Article 2 Concept of discrimination

3. Harassment shall be deemed to be discrimination within the meaning of paragraph 1, when unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.

Austria

The Austrian legislation includes a definition of harassment which is very similar to the wording of the Directive. Here again the mere instruction to harassment is considered as discrimination (§15 and 28).

Bulgaria

In Bulgaria all forms of harassment (sexual, based on colour of skin, disability, as well as bullying, etc.) are covered by the draft regulation.

In accordance with Section 7, paragraph 2 of the *Czech Labour Code* it is forbidden to discriminate against or to give preference to anyone in employment or to deprive someone of their dignity. This category includes abusive or offensive behaviour, including comments and proposals of a sexual nature at work, or behaviour of this nature assent to which might be perceived by the victim as a criterion for decisions regarding future working conditions.

One basic ground upon which it might be determined whether a given action amounts to sexual harassment is whether the person concerned perceives it as unwanted and offensive. Expression of sexual interest becomes sexual harassment when the other person clearly indicates that he or she considers such behaviour as undesirable and offensive. Even a single example of such behaviour can amount to sexual harassment if its effect is serious. Sexual harassment must be distinguished from mutual informal friendliness. Sexual harassment can include physical, verbal and non-verbal manifestations.

Behaviour with sexual undertones is also unacceptable if assent to it can be perceived as a factor in decisions on the employee's future status or career. In these cases acceptance or refusal on the part of the harassed person might affect decisions on recruitment, promotion, continuation of employment, wage level or other working conditions. The person concerned must be duly protected both by law and in practice.

Denmark

The Danish legislation covers all forms of harassment.

Estonia

The Estonian draft Labour Contract Act does not cover harassment *per se*, but includes a general employer's obligation of decent treatment and renders the employer responsible for improper treatment of employees, endangering employees with such improper treatment, or tolerating improper treatment of a worker by co-workers.

Sexual harassment is covered in the *Finnish* Act on equality between women and men. Other forms of harassment are covered in the acts concerning occupational safety and health. In the new special Act the wording is similar to that in Article 2, Section 3 in the Directive.

In *Greece* harassment is not covered; in *Ireland* it is covered.

Italy

Italian Decree 215 deems harassment to be a form of discrimination; harassment is defined as unwanted conduct related to any of the grounds prohibited by the Decree, with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment (*the same definition as in the Directive*).

Non-violent harassment is not addressed by *Latvian* labour law. Violent harassment can be tackled by means of administrative or criminal law; however, it is not considered discrimination, even if committed on the grounds mentioned in the Directive.

Luxembourg

Luxemburgian legislation includes only sexual harassment in employment relationships.

Portugal

The new Portuguese legislation covers all forms of harassment in general with a specific disposition regarding sexual harassment.

Romania

In Romania sexual harassment is covered mainly by the Penal Code (Art. 203 para 1).

Spain

The Spanish legislation does not cover harassment, but the *Swedish* legislation does.

UK

The regulations in the UK cover harassment in the following terms:

(1) [If a] person subjects another person to harassment in any circumstances referred to in section 1B [the provisions covered by the Directive] where, on the grounds of that other's race or ethnic or national origins, he engages in unwanted conduct which has the purpose or effect of:

- violating that other's dignity; or
- creating an intimidating, hostile, degrading, humiliating or offensive environment for that other.

(2) Conduct shall be regarded as having the effect specified in paragraph (a) and (b) of subsection (1) only if, having regard to all the circumstances, including in particular the perception of that other person, it should reasonably be considered as having that effect.

The definition of harassment is very similar to the wording of Article 2(3). The definition of racial harassment is wider and protects individuals who witness the harassment of others.

Coverage of third-country nationals as specified in §13 of the Preamble and Article 3 §2 of the Directive

Preamble

To this end, any direct or indirect discrimination based on racial or ethnic origin as regards the areas covered by this Directive should be prohibited throughout the Community. This prohibition of discrimination should also apply to nationals of third countries, but does not cover differences of treatment based on nationality and is without prejudice to provisions governing the entry and residence of third-country nationals and their access to employment and to occupation.

Article 3 Scope

2. This Directive does not cover difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry and residence of third-country nationals and stateless persons on the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.

Bulgaria

The regulations in Bulgaria are in accordance with §13 of the Preamble and Article 3 §2 of the Directive.

Czech Republic

The Czech regulation also covers third-country nationals, as specified in §13 of the Preamble and Article 3 §2 of the Directive. No exceptions for different treatment are allowed.

In *Denmark* and *Estonia* all regulations cover third-country nationals.

Finland

In Finland third-country nationals are already covered by the Constitution. Exceptions have to be based on legislation concerning migration and personal legal status – the Aliens Act, for example.

France

With regard to France this question was dealt with in response to Question 6 of the Questionnaire on Directive 2000/78/EC.

Italy

The provisions of Italian Decree 215 do not relate to differences of treatment based on nationality and are without prejudice to national provisions and criteria relating to the entry, residence, and access to employment, welfare and social security of third-country nationals and stateless persons in Italian territory, or to any treatment, adopted by law, deriving from the legal status of such persons (Article 3(2)).

Latvia

Latvian regulations apply equally to all persons, including third-country nationals. No exceptions to the principle of equal treatment exist as far as a person's racial or ethnic origin is concerned.

Luxembourg

The Penal Code of Luxembourg states that discrimination on the grounds of nationality is not punishable in case of right of entry and residence and the right to vote, when nationality is the main condition of access to right of entry and residence and the right to vote.

Portugal

All discrimination provisions in Portuguese law apply to all immigrants.

UK

The UK regulations cover third-country nationals. There is, however, an exemption in the Race Relations Act 1976 which exempts seafarers recruited abroad from benefiting from the same level of pay as seafarers recruited in the UK. The purported justification for this exemption is the restriction in the Directive which means that discrimination on grounds of nationality is not covered. The UK Government's explanation for this is that the exclusion of 'nationality' from the scope of the Directive means that it is therefore lawful to discriminate against seafarers recruited abroad in this way.

To what extent are all aspects of employment as mentioned in Article 3, §1 (a–d) covered? Are some of them not covered by regulations? Have some been added?

Austria

In Austria the following aspects of employment are covered in the draft amendment to the law on equal treatment:

- employment relationships of all kinds based on a civil law contract;
- access to all forms and levels of vocational guidance, vocational education, vocational training and retraining and vocational experience;
- membership and activity in a trade union or employers' organisation or in a professional organisation, including use of the services of those organisations;
- conditions of access to independent professions.

The provisions regarding working life apply also to the following groups:

- people working from home;
- economically dependent workers;
- posted workers.

Bulgaria

All aspects of employment cited in Article 3 §1 (a–d) of the Directive are covered by Bulgarian legislation.

Czech Republic

Under Section 1, para 3 of the Czech Labour Code the employer is obliged to ensure equal treatment for all his employees in respect of wages, including other benefits of monetary value, professional training and opportunities for advancement at work. The equal treatment principle relates to all working conditions and to the entire duration of employment. The last sentence of Section 28 of the Labour Code covers also negotiations preceding conclusion of the employment contract.

Equal treatment of all employees means, above all, that there shall be no direct or indirect discrimination against employees in the areas of working conditions, wages, professional training and the other areas referred to above. Excluded from equal treatment in matters of working conditions, training and advancement is special protection of women workers related to pregnancy and maternity, including jobs prohibited to women for health reasons. This also includes more favourable treatment for women to enable them to seek employment in certain categories of jobs, or prevention of and/or compensation for obstacles barring career advancement. This is why the Labour Code provided a basic framework for the definition of cases not to be regarded as sex discrimination.

Provisions on equal access to employment, including prohibition of announcements and advertisements of job vacancies contravening this principle can also be found in Act No. 1/1991 Coll. on employment, as amended.

As regards training, the employer must apply the equal opportunity and treatment principles to the participation of all employees in training courses and study during employment the objective of which is acquisition of enhanced or updated skills, required for the performance

of the job. The equal treatment principle also covers maintenance and renewal of previously acquired skills to enable employees to perform their job under changed conditions. The same procedure must be followed by the employer in relation to initial training of new employees and further training. This applies also to employees who start work without the required skills and to employees who are transferred to other workplaces or to new jobs where they need to acquire new skills by retraining.

The principle of equal treatment must also be observed in respect of opportunities for promotion in employment or possible transfer to more attractive jobs. When deciding on criteria and their application in relation to placement of employees within the organisational structure of the company and for promotion to higher grades (to various management levels), the employer is required to observe the equal treatment principle.

Denmark

The Danish Act does not cover that part of the labour market which is regulated by the Act on prohibition of discrimination in respect of employment and occupation, etc. (please consult the questionnaire on the implementation of the Directive on non-discrimination in employment and occupation.) The categories mentioned are covered by this Act. As for membership of organisations in general, this is covered by the Act on equal treatment for ethnic minorities, cf. §1(2).

Estonia

The aspects of employment are not listed in any act in Estonia, although the Labour Agreement Act §10, paragraph 2 gives a list of situations that are not in contravention of §10 para 1.

Article 29 of the Constitution of the Republic of Estonia states the right to freely choose one's area of activity, profession and place of work.

Finland

In Finland all aspects of employment are covered, although nothing has been added.

France

Regarding France this question was dealt with in response to Question 8 of the questionnaire on Directive 2000/78/EC.

Italy

In Italy all aspects of employment are covered, although letter a) does not include the phrase 'whatever the branch of activity and at all levels of the professional hierarchy'; letter c) of the Directive is supplemented by the inclusion of career advancement (letter b) of Decree 215).

Latvia

In Latvia no racial or ethnic discrimination is allowed in any of the areas listed in Article 3 of the Directive.

Luxembourg

In Luxembourg the existing legislation covers all aspects mentioned in Article 3 §1 of the Directive.

Netherlands

The 1994 Dutch Equal Treatment Act does not cover contract labour.²⁰ This is in the Directive under 'access to employment'. Contract labour has been added (Article 5) to the Equal Treatment Act. The other aspects of the Directive are covered in Articles 5, 6, 6a and 7. Employment and working conditions are already covered by the Act.

Portugal

In Portugal although some subjects receive more specific treatment (professional training and access to public jobs) most fall under the existing protection clauses.

Romania

All aspects of Article 3, para 1 (a–h) are covered by Romanian legislation.

UK

All the aspects of employment mentioned in Article 3 are covered by the UK legislation. The discrimination provisions of the Race Relations Act 1976 have very broad application, and cover both public and private sectors and include the police, prison service and emergency services. Self-employment is only covered if the work is carried out under a contract to execute any work or labour personally. They do not apply to certain groups of people such as unpaid volunteers and politicians. There are provisions in the Race Relations Act 1976 (Section 67A) which set out certain restrictions on claims being brought which threaten national security.

²⁰ Arbeidsbemiddeling.

Characteristics related to racial or ethnic origin accepted as a genuine and determining occupational requirement allowing for differences of treatment

Article 4 Genuine and determining occupational requirements

Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to racial or ethnic origin shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

Austria

In Austria different treatment on the grounds of race and ethnic origin is not considered discriminatory if the characteristic is a condition of this occupation (§14 and 27) provided that the means of achieving such objectives are appropriate and necessary. Furthermore, different treatment is allowed regarding churches or other public or private organisations, the ethos of which is based on religion or belief, and also regarding age, under certain conditions (§14).

Bulgaria

CITUB considers that there are no situations in which discriminatory treatment is permissible.

Czech Republic

There is no regulation of such issues in the Czech Republic.

Denmark

No such provisions have been included in the Danish Act.

Estonia

This is not regulated in Estonia. It is believed that regulations intended to promote the national language might be used to cover up ethnic discrimination, as ethnic minorities are very often linguistic minorities.

Finland

In Finland race or ethnic origin can never justify difference in treatment. However, one can imagine some practical problems such as ethnic clothing causing real danger at work (fire-fighters with turbans or long garments).

France

The French legislation, according to the FO, mentions no situations where discrimination based on ethnic and racial origin is authorised (this is not the case for age-related discrimination). Any exceptions of this type would in any case be unacceptable.

Italy

In Italy different treatment is permissible in circumstances in which characteristics related to a person's racial or ethnic origin are, because of the nature of the occupational activity or the context in which it is performed, a genuine and determining requirement for the performance of such activity; such treatment must also comply with the principles of proportionality and rationality. These *derogations from the principle of equal treatment now seem to include*

direct discrimination as well, whereas admissible derogations from the principle of parity under the prior guidelines on gender parity could cover direct discrimination *only* when such derogations had been cited by the legislator (for instance, in the case of particularly onerous occupations, or in the arts, fashion and entertainment sector). The same conditions apply to business activities. The recent law reforming the labour market – Legislative Decree of 24 July 2003 – although confirming the prohibition on investigations of opinions and discriminatory treatment, *rules out* this prohibition in the case of ‘*characteristics having an impact on the performance of the occupational activity* which are a genuine and determining requirement for that performance’ (Article 10). Differences of treatment which, although constituting indirect discrimination, are objectively justified by legitimate objectives, provided that the means of achieving such objectives are appropriate and necessary, are not deemed to be discrimination (Article 3(4)).

Latvia

No such areas are specified in Latvian national legislation. No cases on this issue have arisen in Latvia.

Luxembourg

In Luxembourg the following forms of discrimination are not penalised:

- health, in relation to preventing risk of death, risk to physical integrity or risk of incapacity to work or disability;
- health and disability, regarding the refusal to employ someone or their dismissal on the grounds of medical incapacity;
- employment, regarding nationality, if belonging to a particular nationality is the precondition of a particular job, if this is in conformity with the provisions regarding public positions, certain professions and labour law.

In *the Netherlands* this is already covered.²¹

In *Portugal* discriminatory behaviour is generally exempted only by a justifiable and determining reason concerning the nature of the professional activity.

There is an exception in the *UK* for a genuine occupational requirement where, with regard to the nature of the employment or the context in which it is carried out:

1. being of a particular race or particular ethnic or national origins is a genuine and determining occupational requirement;
2. it is proportionate to apply that requirement in the particular case; and
3. either:
 - a. the person to whom that requirement is applied does not meet it, or
 - b. the employer is not satisfied and in all the circumstances it is reasonable for him not to be satisfied, that that person meets it.

In the 2003 Regulations a broad definition of requirements is given, in large part (though not entirely) reflecting the wording of the Directive. It will therefore be for the national courts to determine what does and what does not fall within the definition. The Race Relations Act

²¹ Besluit gelijke behandeling.

1976, which has a broader scope than the 2003 Regulations, does provide examples of genuine occupational requirements. That more specific exemption will therefore apply where the 2003 Regulations, whose scope is set out in the Directive, do not apply. This is one of many examples where the existence of the new Regulations alongside the old Race Relations Act 1976 is likely to cause confusion.

Specific action taken in the fields of education, social protection, including social security and health care, social advantages and access to and supply of goods and services, in order to combat racial and ethnic discrimination mentioned in §12 of the Preamble of the Directive

To ensure the development of democratic and tolerant societies which allow the participation of all persons irrespective of racial or ethnic origin, specific action in the field of discrimination based on racial or ethnic origin should go beyond access to employed and self-employed activities and cover areas such as education, social protection, including social security and health care, social advantages and access to and supply of goods and services.

Belgium

The Belgian law lays down that all direct or indirect discrimination is forbidden, especially in relation to:

- supply or distribution of goods and services to the public;
- access to, participation in and other practice of an economic, social, cultural or political activity open to the public.

Bulgaria

In Bulgaria no specific action is taken.

Czech Republic

However, while the situation of national minorities in the Czech Republic is largely satisfactory, Roma still suffer from discrimination in education, employment and housing. The government 'Concept for Roma integration' was adopted in June 2002 and called for an incentive structure for employing Roma, as well as positive actions.

Some specific actions have been taken since then. For example, the Council for Roma Affairs runs projects to support the Roma community, mainly comprising scholarships for Roma students and support for social workers. It is worth mentioning the following antiracism campaigns: 'Tolerance project', 'The Roma social street worker project', and the educational campaign in secondary schools.

The National Action Plan on Employment for 2003 contains several measures aimed at improving the situation of the most disadvantaged groups on the labour market, in particular programmes aimed at boosting their qualifications and encouraging retraining.

Denmark

In Denmark there are continuous initiatives in this area.

Estonia

There are integration programmes in Estonia for people from other nationalities, which consist in language learning, education in their own language, and so on.

An integration foundation (www.meis.ee/index.php) operating under private law was established by the Estonian government on 31 March 1998. The Foundation launches and assists various projects related to the integration of non-Estonians into Estonian society and coordinates the efficient use of various resources in this field, including the implementation of several large-scale projects funded by foreign donors.

Furthermore, there is a national programme called 'Integration in Estonian Society', approved by the government on 14 March 2000 (www.riik.ee/saks/ikomisjon/programme.htm).

Finland

In Finland the ombudsman for minorities promotes good ethnic relations, monitoring and improving the status and rights of ethnic minorities, reporting, launching initiatives and informing. In addition, the ombudsman for minorities will, together with other officials, supervise that everyone is treated equally regardless of their ethnic background. An advisory board for minority issues assists the ombudsman for minorities (Act 600/2001).

Tasks of the ombudsman for minorities also include improving the position of ethnic minorities in a general way and providing information for clients. Matters such as availability of social services are frequently raised.

In the new Act there is an obligation for all authorities to design an action plan to promote equality.

No national initiatives of this type are known in respect of France. There are only local, voluntary initiatives of limited scope (charters, for example, which have been signed with discotheques to put an end to previous discriminatory practices).

The 114 telephone line is a good idea, but is really only there to serve the victims of discrimination. It has *no preventive role to play in combating discrimination*.

Italy

In Italy Decree 215 states that the principle of equal treatment irrespective of racial or ethnic origin applies to all persons in both the public and private sectors, with specific reference to all the areas under letters a–h of Article 3 of the Directive: in practice, the regulations on immigrants from third countries exclude the latter from *occupations in the public sector*, with the exception of posts obtained by placement, graded at pay and functional levels for which the higher secondary education certificate or the compulsory education certificate are not required and provided that Italian or other European nationality is not a requirement.

Latvia

In Latvia there are no exceptions to the principle of equal opportunities based on a person's racial or ethnic origin in the areas listed in Question 6 of the questionnaire (see Annex). Exceptions do exist, however, based on other criteria, especially citizenship (nationality).

Luxembourg

In Luxembourg there are no such special measures in the legislation.

Netherlands

In the Netherlands the scope of the prohibition on discrimination on grounds of race is extended to social protection, including social security, health care and social benefits in a new Article 7a of the 1994 Equal Treatment Act. The words 'access to' will be added to Article 7 of the 1994 Equal Treatment Act. As far as education is concerned the same article of the Act forbids discrimination in providing advice or information regarding choice of educational establishment. The words 'career orientation' will be added.

Portugal

In Portugal specific action is taken: for example, there are specific training programmes and special school support.

UK

The Race Relations Act 1976 of the UK covers education and social protection. The Race Relations Amendment Act 2000 introduced far-reaching obligations for public sector employers to consider and take action in relation to any aspect of their services which have implications for the ethnic minority groups which they serve. There is a duty on employers to promote racial equality, which also applies to the authorities which provide health care, education, local government and the police. Such authorities must publish a Race Equality Scheme. The Act also requires larger public sector employers to monitor recruitment, promotion, appraisals, discipline and grievances in relation to ethnic minority staff.

There is no duty to promote equality of opportunity in respect of government immigration departments. As a result of the Directive the general duty not to discriminate has been amended to cover harassment.

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 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?
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 already covering 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)?

References

European Industrial Relations Review, March 2004, pp. 6–7, ‘France, New draft disability Legislation’.

European Industrial Relations Review, July 2004, p. 11, ‘Netherlands, Concerns about new age discrimination law’.

EIROOnline – Belgium, New anti-discrimination law under
fire:<http://www.eiro.eurofound.eu.int/print/2003/07/feature/be0307303f.html>

EIROOnline – Ireland, New equality law extends workers’ rights:
<http://www.eiro.eurofound.eu.int/print/2004/07/feature/ie0407202f.html>

IDS Employment Europe 494, February 2003, ‘Belgium, Senate passes new anti-discrimination laws’.

IDS Employment Europe 502, October 2003, p. 24, ‘Race equality directive: progress in law and at work’.

IDS Employment Europe 506, February 2004, ‘Finland, Legislative development’.

IDS Employment Europe 507, March 2004, ‘France, New workplace disability bill brings major reform’.

IDS Employment Europe 507, March 2004, ‘Netherlands, New law tackles age discrimination’.

IDS Employment Europe 508, April 2004, ‘France, Ombudsman moots Equality Commission’.

Industrial Relations Europe, 3/2004, p. 5, ‘Slovak Republic, Anti-discrimination draft omits sexual orientation’.

Website of DG Employment and Social Affairs on Anti-discrimination, Fundamental Rights and Civil Society:

http://europa.eu.int/comm/employment_social/fundamental_rights/legis/expertrep_en.htm
Expert reports on the implementation of EU anti-discrimination laws regarding race and religion:

- Paul Lappalainen and Christina Johnsson, *State of play in Sweden*
- Professor Lorenzo Cachón, *State of play in Spain*
- Dr Nikolaos Sitaropoulos, *State of play in Greece*