

public sector, except where he or she would have to exercise public authority. For a migrant entrepreneur, it is the idea that counts; migrants with a financially viable business plan are eligible to be self-employed.

- Once a migrant resident in Sweden obtains a permit of at least one year, regardless of the grounds, and is placed on the national registry, legislation grants them equal access to employment and self-employment. Such access is also guaranteed in Slovenia, so long as no suitable national can be pulled from the unemployment register. Access to self-employment in the Czech Republic is based solely on the issuance of a trade license for migrants as for Czech nationals.
- Non-nationals and newcomers in Estonia benefit from the most favourable eligibility and labour market integration measures in Central and Eastern Europe. The recently concluded state programme on “Integration in Estonian Society” 2000–2007 and the upcoming strategy for 2008–2013 have prioritised the labour market as one of the key domains for improving not only the quality of life of non-nationals, but also the public awareness of non-national’s contribution to society. The programme involves a variety of measures, trainings, and incentives to promote non-national’s competitiveness, mobility, and entrepreneurship in the labour market. It coordinates the initiatives of various ministries, the *Innove* Foundation for Lifelong Learning, Development and Enterprise Estonia, and the county departments of the Labour Market Board.
- The 2005 Strategic Direction on Immigration in Canada supports a number of labour market trainings and measures to ensure that migrants can fully use their potential in Canada. In one area of chronic labour market shortage, live-in care-giving, the government initiated a programme in 2003 providing the incentive of permanent residence after two years for those migrant residents employed as live-in workers for children, the elderly or the handicapped.
- Trade unions in Finland and Estonia operate information centres in both countries with the aim of preventing a segmented labour market and unequal outcomes between migrant workers and nationals. These centres provide information on union services, the employment and tax system, and the protection of workers’ rights. Similar centres are operated across Spain by the Confederacion Sindical de Comisiones Obreras and by the German trade union IG Bau for Polish migrant workers in Berlin and Warsaw.
- Migrant newcomers in Sweden who have worked (including caring for children under 10) for two years in the country have equal access to study grants as Swedes. In addition, the current government has launched a new language instruction system and number of ambitious employment measures targeting outsiders to the labour market including migrant newcomers, such as the “new start jobs” and “home service jobs”.
- The German government initiative *Deutsch am Arbeitsplatz* (German in the Workplace) intends to encourage language learning among migrant work-

ers, without the major time and cost restraints for migrant workers and their employers that often come with courses. Migrant workers participating in on-site workplace-relevant language courses are temporarily replaced with the unemployed, whose costs are assumed by the federal state. In its recent working paper on *Making Migration Work*, the European Policy Centre welcomed the pragmatism of the initiative, which focuses on the increase of work productivity and quality and the decrease of workplace accidents.<sup>10</sup>

- The new countries of immigration in the Western Mediterranean have shown great interest in improving economic growth and performance by facilitating labour market access for non-national residents. Initiatives in Italy like the BCC (*Banche di Credito Cooperativo*) have assisted migrant entrepreneurs, while the Italian government has carried out pre-arrival profession-based language courses abroad for instance in Sri Lanka.
- In 11 EU Member States, a migrant worker who resigns from or loses his or her job is still entitled to live and seek work in the country temporarily, for instance if he or she has resided there for at least three years of work or contributed to social security. Under the Italian legislation, such migrant residents can, until the expiration date of their residence permit, register on public job placement lists that assist the unemployed in filling temporary vacancies and finding new jobs.
- Ireland recently reformed its work visa system with the 2006 Employment Permits Act, allowing non-EU migrant residents to renew regular work permit holders, which for highly-skilled “Green Card” holders can be renewed indefinitely. It also reinforced the authorities’ discretion to grant migrant residents the possibility to stay temporarily in the country after the termination of a work contract, especially in cases where it is no fault of their own.

A recent series of OECD working papers of labour market integration have acknowledged that the legal framework and labour market integration measures play an important role in migrant’s labour market access and outcomes. The working paper on Sweden<sup>11</sup> suggested some of the “next-step” challenges for the country’s generally favourable labour market integration measures, which could, in its assessment, have an even greater positive impact on outcomes. Establishing procedures to recognise foreign qualifications and skills does convey the benefits of capitalising on migrant’s skills, although trust-building among employers may be essential for effective and streamlined procedures. Early contact with the country of residence’s labour market may be more valued by migrants and by employers than years of language instruction or vocational training. Profession-based language training should maximise efficiency and correspond to labour market shortages. Finally, the OECD’s expert assessment pointed to

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<sup>10</sup> Collett and Sitek. Making migration work: the role of employers in migrant integration. EPC Working Paper No. 30 (EPC; Brussels, May 2008), 25.

<sup>11</sup> Lemaître, Georges. The Integration of Immigrants into the Labour Market: the Case of Sweden. OECD Social, Employment and Migration Working Papers (OECD; Paris, 2007), DELSA/ELSA/WD/SEM(2007)3.

some of the critical factors at play behind the gap between policies and outcomes, such as downturns in the labour market and migrants' category of entry. One set of critical factors that appeared across the reports was the levels, experiences, and reporting of discrimination in the labour market.

### 2.3. Receiving protection against discrimination

#### Anti-discrimination rankings

1	SE	Sweden	94
2	PT	Portugal	87
3-	HU	Hungary	85
	CA	Canada	85
5-	UK	United Kingdom	81
	NL	Netherlands	81
	FR	France	81
	SI	Slovenia	79
9-	FI	Finland	75
	BE	Belgium	75
11	IT	Italy	69
	EU-15		66
12	CY	Cyprus	60
	All 28		59
	EU-25		58
13-	IE	Ireland	58
	GR	Greece	58
15	LU	Luxembourg	56
16	NO	Norway	54
17-	ES	Spain	50
	DE	Germany	50
	EU-10		48
19	LT	Lithuania	48
→ 20	PL	Poland	46
21	SK	Slovakia	44
22	AT	Austria	42
23	MT	Malta	38
24-	CH	Switzerland	33
→	LV	Latvia	33
	DK	Denmark	33
27	CZ	Czech Republic	27
28	EE	Estonia	23

A robust legal and policy framework on fighting discrimination ensures that migrant newcomers can take up the opportunities offered to them in labour market access policies and in many other areas of life such as education, housing, and healthcare. On account of the high and rigorous standards set in the EC directives on racial and employment equality, a migrant newcomer to most corners of Europe is protected against various forms of racial, ethnic, and religious discrimination in the field of employment and vocational training. Nevertheless, MIPEX finds overall definitions and concepts to be only slightly favourable on average in the EU, since the grounds of unlawful discrimination do not include nationality in 12 Member States, including Latvia, Estonia, and Slovakia. Furthermore many of the finer grain details in these definitions and concepts are open to judicial interpretation and not addressed in law. Such is the case for discrimination by association and on the basis of assumed characteristics in 14 Member States. This list includes Poland, which, besides this one weak spot, comes out slightly favourably on its definitions and concepts. The Latvian legislation contains extensive limitations, gaps, and ambiguities on key definitions

and grounds. Indeed Latvia's definitions were criticised as too restrictive in the European Commission's January 2008 letters of formal notice on the transposition of the employment equality directive.<sup>12</sup>

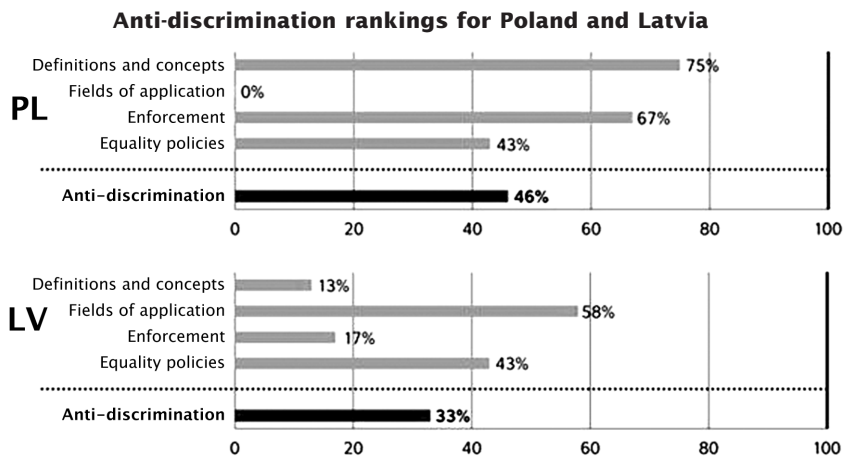
In terms of the fields of application of anti-discrimination law, a migrant's protection against discrimination outside the workplace is an area of significant gaps in law and judicial interpretation across Europe. Hungary is the only Central or Eastern European country to provide a basic framework for protection against all three grounds of discrimination (race/ethnicity, religion, and nationality) in all areas of life, alongside countries like Canada, France, Italy, Sweden, and the UK. Interestingly, Latvia had applied its unfavourably limited definitions in all fields.

<sup>12</sup> Commission Press Release. Commission acts to close gaps in employment equality rules (European Commission; Brussels, 31 January 2008), IP/08/155.

What's more, all residents on the population register are protected from discrimination in healthcare. Elsewhere in the region, no such provisions outside employment and vocational training existed in the Czech Republic and Estonia which are still late in transposing the EC directives. Lithuania and Slovakia had gone slightly further in extending protection to primary and secondary education. The greatest areas of concern lie in Poland, where the definitions of discrimination do not apply to most areas of life due to absence of judicial interpretation.

The enforcement mechanisms that encourage victims to bring forward a case differ significantly between Central and Eastern European countries and Western European countries, where they are on average slightly favourable for promoting integration. Slightly unfavourable mechanisms were observed in Lithuania, the Czech Republic, Denmark, and Estonia. In Poland and Latvia, complainants benefit from shifts in the burden of proof and protection against victimisation in only a few areas of life. However, the similarities between the two countries on this dimension end there, since Latvia is the only EU Member State with largely unfavourable enforcement mechanisms. Whereas in Poland, migrants who bring forward a case would have access to more procedures on more grounds, with possibilities in the law for legal aid and a wide range of sanctions for convicted perpetrators.

Latvia and Poland's drastically different scores on these three dimensions produce the same underlying weakness in their anti-discrimination legislation;<sup>13</sup> migrants in both countries cannot rely on effective legal protection against discrimination. In Poland judicial interpretation has not confirmed that the slightly favourable definitions and enforcement mechanisms can be applied in the various areas of life. In Latvia the limited definitions and enforcement mechanisms, the least favourable of the 28 countries surveyed, can nevertheless be applied in most areas of life.



<sup>13</sup> For more on the use of strategic litigation, see: Strategic litigation of race discrimination in Europe (European Roma Rights Centre, Interrights, MPG; Brussels, 2004). <http://www.migpolgroup.com/documents/2181.html>

**Practices:**

- The majority of EU Member States have gone beyond the requirements of European anti-discrimination law to cover nationality as a ground of unlawful discrimination. In these cases, the whole body of anti-discrimination law, being specific anti-discrimination legislation, constitutional provisions, and articles of the penal codes, addresses a number of grounds linked to personal qualities.
- For example, the Hungarian Parliament passed on 22 December 2003 an Act on Equal Treatment and the Promotion of Equal Opportunities that prohibits discrimination on a variety of grounds, including nationality, national or ethnic origin, and mother tongue. The Act also allowed for positive measures of temporary duration aimed at correcting inequalities for certain disadvantaged groups. The European Commission against Racism and Intolerance found the adoption of the Act to be a significant step forward for the fight against racial discrimination and recommended that the authorities ensure full implementation, resourcing, and monitoring of the impact of the Act.<sup>14</sup>
- The Netherlands received a perfect MIPEX score on the enforcement of anti-discrimination law. Complainants can bring their cases to judicial civil and administrative procedures as well as an alternative dispute resolution procedure, the Equal Treatment Commission. The ETC is a semi-judicial body that provides free, low-threshold procedures and renders non-binding opinions. Non-Dutch speakers who would have difficulty filing a written petition can specify their complaint in oral interviews with an ETC representative. Throughout these procedures complainants can receive various forms of assistance from legal entities with a legitimate interest in promoting equality (anti-racism NGOs). State legal aid and interpreters are available for those with low incomes. Articles 8 and 10 of the GETA (*General Equal Treatment Act*) provide shifts in the burden of proof and protection against victimisation for those who bring forward a case. The GETA allows for a wide range of sanctions of possible sanctions to be applied by the courts in an “effective, proportionate, and dissuasive” manner.<sup>15</sup>
- New national legislation to transpose the EC directives made the enforcement of anti-discrimination laws in many Member States’ anti-discrimination law more favourable for promoting integration. The two editions of MIPEX have noted improvements like shifts in the burden of proof and protection against victimisation in many countries, including Germany, Greece, Luxembourg, Portugal, and Slovenia.

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<sup>14</sup> European Commission against racism and intolerance. Third Report on Hungary (Council of Europe; Strasbourg, 8 June 2004), CRI(2004)25.

<sup>15</sup> Holtmaat, Rikki. Report on measures to combat discrimination: directives 2000/43/EC and 2000/78/EC: country report the Netherlands (European Commission; Brussels, 8 January 2007), 64–65.

The last dimension, equality policies, considers the role played active equality bodies and states in the fight against discrimination and the promotion of equal opportunities. Equality policies are the relative area of weakness on anti-discrimination for the EU Member States on average, with a “halfway” score falling 17 points below those for fields of application or enforcement. This area of weakness is shared for Western and Eastern Europe, since the two-point gap between the EU-15 and EU-10 is here the smallest in the entire strand. Latvia and Poland lie in the middle between unfavourable policies identified in the Czech Republic, Denmark, Estonia and Germany and slightly favourable ones in Hungary and Lithuania.

As often occurs in indexing exercises, Latvia and Poland receive the same “halfway” score and rank but for entirely different strengths and weaknesses on the various indicators. The state’s role on promoting equality is a relative strength for Poland and weakness for Latvia, while the powers and legal standing of the equality body is a relative strength for Latvia and weakness for Poland. The state in Latvia, as in most EU Member States, does not tend to mainstream equality into its functions, whereas Poland’s National Program on Countering Racial Discrimination, Xenophobia and Related Intolerance for 2004–2009 introduced the obligation for public bodies to disseminate information on anti-discrimination and give trainings to its staff. In contrast, the National Human Rights Office in Latvia can offer independent legal advice to a wide range of victims, investigate the facts of their case, and engage in judicial and administrative proceedings. The Polish government had not established as of March 2007 the single equality body in the sense of article 13.2 of the Racial Equality Directive. In the absence of such a body, potential victims in Poland cannot receive independent assistance from the various ministries, departments, ombudsmen, and teams responsible for actions against ethnic, racial, religious, and nationality discrimination.

**Practices:**

- In 2004, France adopted the Law on creating the Specialised Body, the HALDE. The law was one of the key recommendations of the 2004 Stasi Commission, led by the Ombudsman of the Republic and based on a wide consultation with government, civil society, and social partners. The HALDE was formally launched in June 2005 with a staff of 66 and a budget of 10.5 million euros for the fiscal year 2006. Its mandate is designed to cover all grounds of discrimination to be readily adaptable to evolutions in French anti-discrimination law. The HALDE serves as an “auxiliary of Justice” through the use of mediation, deliberation, and recommendations. Already in its first year the HALDE received 4000 complaints, resolved 2799, rendered recommendations on 344, and presented observations before courts in 48 cases.<sup>16</sup>

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<sup>16</sup> For more see: Latraverse, Sophie. Report on measures to combat discrimination: directives 2000/43/EC and 2000/78/EC: country report France (European Commission; Brussels, 8 January 2007).

- The UK Equality Act of 2006 created the Commission for Equality and Human Rights (CEHR) with the aim of improving effectiveness and expert assistance on the fight discrimination in general and on all grounds. The CEHR, operational since 2007, has brought together the pre-existing Commission for Racial Equality, Disability Rights Commission and Equal Opportunities Commission. The CEHR not only retains the powers of its predecessors, but also gains wider powers to monitor positive action among public bodies and to seek injunctive relief to prevent discriminatory acts.<sup>17</sup>
- The Dutch Ministry of Social Affairs and LTO-Nederland, an employers' organisation in the market-gardening sector, have co-financed a discrimination prevention project in collaboration with trade unions. In addition to labour market integration measures like language and skill-development classes, the project established equal opportunity code of conduct for employers, a grievance procedure, and independent committees to evaluate complaints of discrimination in employment and to monitor participation rates. Similar voluntary codes of conduct among employers have emerged in Northern Ireland and other parts of the UK.
- A July 2006 Swedish public procurement regulation obliges governmental authorities to insert anti-discrimination clauses into public contracts of certain lengths and natures, with the aim of ensuring that those awarded parties respect equality. Equality clauses for vulnerable groups also feature in the employment policies of cities like Copenhagen.
- The Canadian government introduced the Employment Equity Act in 1995 to ensure that the makeup of public bodies and certain federally regulated industries reflect the population they serve. The act requires employers to identify and eliminate employment barriers for designated groups, including visible minorities, and propose targeted training and recruitment measures.
- The Norwegian government likewise pursues the equality goal that no person is denied employment for reasons unrelated to their ability. As part of the government's Plan of Action to Combat Racism and Ethnic Discrimination, the Minister of Social Affairs and Employment has obliged all state firms to interview at least one properly qualified job-seeker of immigrant origin for each vacancy. Within the trial period of June 2004 to June 2005, agencies interviewed 1600 individuals with a non-Western background and hired 28% of them. Cities like Antwerp and Amsterdam use flexible targets to aim for a certain percentage of employees of public bodies to have a migrant background.

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<sup>17</sup> For more see: O'Conneide, Colm. Report on measures to combat discrimination: directives 2000/43/EC and 2000/78/EC: country report the United Kingdom (European Commission; Brussels, 8 January 2007).



- The United Kingdom makes each Permanent Secretary (the most senior civil servant in each ministry) responsible for ensuring departments deliver on their diversity commitments with the support of new specialised posts such as Diversity Sponsors and Diversity Champions.

## 2.4. Putting down roots with a family

Bringing families together may give a migrant newcomer the sense of stability in community life that facilitates the integration and long-term stability of diverse societies. Family reunion policies appear as one area of convergence between Western and Eastern Europe, a potential impact of transposition around the EC's directive's minimum standards. Despite many points of convergence in Polish and Latvian policies for a migrant to access the labour market, they differ significantly when turning to his or her right to be joined by family members. The Polish legislation ranks 8<sup>th</sup> with a slightly favourable score resembles that of Estonia and Lithuania as well as countries receiving significant family migration and Polish labour migration like Germany and the Netherlands. Latvian policies fall only half-way to best practice (23<sup>rd</sup>) and are classed alongside countries like France, Switzerland, Denmark, and Austria, known for their restrictive and highly politicised legislation.

The 28 countries surveyed in MIPEX show the greatest divergences on family reunion policies when it comes to the sponsor's residence period and definition of the family. A non-EU migrant sponsor in Poland must wait through a longer period of residence than those living in Latvia, but they can then sponsor a wider range of family members. The same is true for those in Estonia and Lithuania, while Hungary's eligibility provisions are universally more favourable and Slovakia's less favourable. The more inclusive definition of the family in Poland includes married or unmarried minor children, dependent adult relatives in the ascending lines, and adult children under certain conditions. Slight variations on this flexible definition are found in the Czech Republic, Hungary, and Lithuania.

Eligible migrant families must then meet conditions for acquisition in Central and Eastern Europe that on the whole conform to the European average. Very few EU Member States make the right to family life contingent upon passing a test or course, but most require proof of a job or certain level of income. Procedures in

### Family reunion ranking

1	SE	Sweden	92
2	PT	Portugal	84
3	IT	Italy	79
4	CA	Canda	76
5	SI	Slovenia	71
6-	LT	Lithuania	68
	FI	Finland	68
8-	ES	Spain	66
	PL	Poland	66
	NO	Norway	66
	MT	Malta	66
12-	UK	United Kingdom	61
	DE	Germany	61
	EE	Estonia	61
	BE	Belgium	61
16-	NL	Netherlands	59
	EU-15		59
	All 28		58
17-	CZ	Czech Republic	58
	EU-25		57
	EU-10		55
18-	LU	Luxembourg	50
	IE	Ireland	50
	HU	Hungary	50
21	FR	France	45
22	CH	Switzerland	43
23	LV	Latvia	42
24	GR	Greece	41
25	SK	Slovakia	38
26	DK	Denmark	36
27	AT	Austria	34
28	CY	Cyprus	32



the Visegrad and Baltic countries include a further appropriate accommodation requirement, tend to take less than six months, and come with high direct and indirect costs. Those in the Czech Republic appear slightly longer and those in Lithuania and Poland slightly less expensive. This notable convergence around the EU average merits further research into how governments in the region transposed the directive and its various “derogation clauses” and how common the use of informal discretionary conditions is among public administration.

Migrant families are on average less secure in their status in Central and Eastern Europe than in Western Europe. Poland receives one of the most favourable scores among the Central and Eastern European countries, alongside the Czech Republic and Estonia, while this area is a conspicuous weakness for Latvian legislation in comparison to the other EU Member States. Across the EU, a family member’s permit is renewable for long periods and often equal in length to that of their sponsor’s. A look to the Baltic and Visegrad countries reveals a wide range of grounds for the refusal of their application or the withdrawal of their status. In Latvia this blacklist includes assisting in the entry or shelter of undocumented migrants, while in Poland it extends to illegal employment or a lack of sufficient financial means for subsistence. Moreover immigration law in both countries does not regulate that the solidity of the family relationship, duration of residence, and existing links must be taken into account in decisions. But in Latvia, contrary to the practice in most EU Member States, legislation does not explicitly guarantee various avenues for appeal or provide long-term periods for family members with temporary residence permits.

The rights and opportunities for family members are partially favourable across the EU. Member States tend to grant family members equal access as their sponsor to education, employment, and social assistance, but are less likely to facilitate their access to a residence permit autonomous of their sponsor. This pattern holds true for Latvia, which like the other Baltic States, guarantees equal access in these vital areas to nationals and non-nationals alike. And as is the case

**Family reunion scores for Poland and Latvia**

