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gender equality and non-discrimination

A comparative analysis of non-discrimination law in Europe

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A comparative analysis of non-discrimination law in Europe 2019

The 28 EU Member States, Albania, North Macedonia,
Iceland, Liechtenstein, Montenegro, Norway, Serbia and
Turkey compared

Prepared by Isabelle Chopin and Catharina Germaine
for the European network of legal experts
in gender equality and non-discrimination

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Preface

Nineteen years ago, a major and unprecedented evolutionary change occurred in the European Union with the adoption in 2000 of two pieces of EU legislation in the field of anti-discrimination: the Racial Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC). The transposition and implementation of these legal provisions into the national legal systems of the 28 Member States is described in a series of annually updated country reports produced by the European network of legal experts in gender equality and non-discrimination. In addition, the network also includes candidate countries (Albania, Montenegro, North Macedonia, Serbia and Turkey) and the EEA countries (Iceland, Liechtenstein and Norway).

The European network of legal experts in gender equality and non-discrimination was created in 2014, through a call for tenders from the European Commission to create a new single network following the work completed by the European network of legal experts in the non-discrimination field (managed by the Migration Policy Group and Human European Consultancy) and the European network of legal experts in the field of gender equality (managed by Utrecht University). This new network is managed by the Human European Consultancy, the Migration Policy Group and Utrecht University. The network reports annually on the national legislation of these countries compared with the anti-discrimination standards set by the EU.

The national reports are written by independent national experts in each country covered by the network. The information is provided in response to questions set out in a template format that closely follows the provisions of the two directives, although the countries included in the network do not all have the same compliance obligations. The 36 reports cover national law, the establishment of enforcement mechanisms, case-law and the adoption of other measures. They contain information current as of 1 January 2019.¹ As such, they are a valuable source of information on national anti-discrimination law and can be found on the network's website at: www.equalitylaw.eu.

This comparative analysis, drafted by Isabelle Chopin and Catharina Germaine (Migration Policy Group), compares and analyses the information set out in the country reports relating to 2018 in a format mirroring that of the country reports themselves and draws some conclusions from the information contained in them.

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¹ Where major changes in legislation have been adopted at national level after the cut-off date of 1 January 2019, they have been included and this has been indicated accordingly.

Introduction

The objective of this report is to compare and contrast anti-discrimination law in the 28 EU Member States, five EU candidate countries (namely Albania, North Macedonia, Montenegro, Serbia and Turkey) and the EEA countries (Iceland, Liechtenstein and Norway), based on the country reports written by the European network of legal experts in gender equality and non-discrimination, as updated in respect of 2018. The state of play and the major developments are summarised in this publication. The report presents the general trends in European anti-discrimination policy and points out some of the remaining dilemmas in the application of anti-discrimination legislation. It gives an overview of the main substantive issues in both directives: the grounds of discrimination, the definition of grounds and scope, exceptions to the principle of equal treatment and positive action, access to justice and effective enforcement, and equality bodies.

All Member States were required to review and amend their existing legislation to comply with the requirements of the directives. The Racial Equality Directive and the Employment Equality Directive had to be transposed into national law by 19 July 2003 and 2 December 2003 respectively in the (then) 15 EU Member States. Countries acceding the EU after this date had to transpose both directives by the date of their accession: 1 May 2004 for 10 new Member States, 1 January 2007 for Bulgaria and Romania, and finally 1 July 2013 for Croatia. The current candidate countries have entered the transposition process and must align their national legislation with EU law by the date on which they enter the EU. EU directives on anti-discrimination are not binding on EEA countries, as the EEA agreement only provides obligations on those countries vis-à-vis EU legislation related to the internal market. National provisions on anti-discrimination exist, but the level of protection offered in practice does not always meet EU standards. It goes beyond the scope of this report to assess the extent to which Member States have fully complied with the directives or to assess the legislative impact of the European directives on the laws of all the countries examined. However, the report could potentially be used as one of the instruments for making such an assessment. During the transposition process, it became apparent that judicial interpretation might be necessary to provide further clarity of some key concepts and provisions. Nineteen years after the adoption of the Directives, both national courts and the Court of Justice of the EU have provided some interpretation to this effect, as will be further developed below.

This synthesis overview of the national situation in 36 countries is complemented by the comprehensive country reports. Readers can turn to these country reports for detailed information about the law of a particular country, current as of 1 January 2019.

1 Protected grounds of discrimination

1.1 Introduction to the transposition of the anti-discrimination directives

Two ground-breaking Council directives were adopted in 2000, prohibiting discrimination on grounds of racial or ethnic origin, religion or belief, age, disability and sexual orientation. The directives presented profound challenges to the existing national approaches to combating discrimination based on these grounds across Europe and aimed to ensure that all individuals living in the EU, regardless of their nationality, could benefit from effective legal protection against such discrimination. All Member States were required to review and amend their existing legislation to comply with the requirements of the directives, while candidate countries were similarly required to do so in order to comply with EU law in force by their date of accession.

The Racial Equality Directive requires Member States to prohibit certain forms of discrimination, namely direct and indirect discrimination, harassment and instructions to discriminate, on the grounds of racial or ethnic origin. It covers a wide range of areas: employment, self-employment and occupation, as well as vocational training, social protection including social security and healthcare, social advantages, education and access to and supply of goods and services available to the public, including housing. The Employment Equality Directive is limited to protection in employment and occupation as well as vocational training, and prohibits direct and indirect discrimination as well as harassment and instructions to discriminate, on the grounds of religion or belief, age, sexual orientation and disability.

The European Union's commitment to the principle of non-discrimination was reaffirmed in December 2000 in the Charter of Fundamental Rights, which states that 'Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited'. Since the entry into force of the Lisbon Treaty in December 2009, the Charter has the same binding legal value as the Treaties.

On 17 November 2017, the European Parliament, the Council and the European Commission proclaimed the European Pillar of Social Rights. It is a soft-law document built upon 20 key principles. By proclaiming the European Pillar of Social Rights, the European Union took a strong stance towards non-discrimination.² In his speech after the proclamation of the European Pillar of Social Rights, President Juncker said:

'The European social model has been a success story and has made Europe a world-class place to live and work. Today we assert our common values and commit ourselves to a set of 20 principles and rights. From the right to fair wages to the right to health care; from lifelong learning, a better work-life balance and gender equality to minimum income: with the European Pillar of Social Rights, the EU stands up for the rights of its citizens in a fast-changing world.'

Even though all Member States have transposed the two directives into their national law, a number of discrepancies remain in the different national anti-discrimination legislations. For example, the methods of transposition differ greatly between countries, from those where one single legal instrument contains the entire anti-discrimination legal framework to those where a large number of provisions are spread throughout national law in areas such as labour law, criminal law and administrative law.

² The non-discrimination principles it covers include: equal opportunity (Principle 3); active support to employment (Principle 4); the right to secure and adaptable employment (Principle 5); fair wages (Principle 6); information about employment conditions and protection in case of dismissals (Principle 7); and the inclusion of people with disabilities (Principle 17).

A number of different transposition methods can be identified among the states:

- adoption of anti-discrimination acts which more or less reproduce the directives;
- adoption of anti-discrimination acts covering more grounds than the directives;
- adoption of combinations of multi-ground anti-discrimination acts and single-ground acts;
- adoption of several pieces of single-ground anti-discrimination legislation³;
- adoption of combinations of specific legislation and an employment act;
- adoption of combinations of specific amendments to legislation, labour and criminal codes and some administrative law;
- adoption of a much wider general act.

Under Article 258 TFEU (ex-Article 226 TEC), the European Commission can launch infringement proceedings against Member States that it considers to have failed to fulfil their Treaty obligations, for instance by failing to transpose the Racial Equality Directive or the Employment Equality Directive. The Commission may initiate proceedings for non-communication of transposition or for non-conformity where the transposition, or eventually the implementation, is incomplete or incorrect. Since the deadline for transposition, the Commission has scrutinised the compliance of national law to this end and has initiated infringement proceedings against a number of Member States for non-conformity with one or both of the directives. In several cases, these proceedings led to judgments of the CJEU finding that the Member States were indeed in breach of EU law. In 2018 there were three ongoing infringement proceedings – against the **Czech Republic, Hungary and Slovakia** – all of which concern discrimination against Roma children in education.⁴

On 17 January 2014, the European Commission adopted its second report on the state of implementation of both the Racial Equality Directive and the Employment Equality Directive in the EU Member States. In this report the Commission notes that all 28 Member States have transposed the directives and acquired some experience of working within this framework.⁵ The focus of the report is therefore on the application by the Member States of the directives and their interpretation by national courts as well as by the Court of Justice of the European Union. The issues of concern raised by the Commission mirror those raised in this report.

1.2 Grounds of discrimination

The Racial Equality Directive requires Member States to prohibit discrimination on the ground of racial or ethnic origin in the fields of employment, social protection including social security and healthcare, social advantages, education, and supply of and/or access to goods and services, including housing. In addition, the Employment Equality Directive requires the prohibition of discrimination to be extended in the field of employment to the grounds of religion or belief, disability, age and sexual orientation. Neither directive contains any definition of any of the grounds. This section examines how the Member States, candidate countries and EEA countries have incorporated the different grounds of discrimination into national law.

Most countries have chosen not to define the grounds of discrimination in their implementing legislation (for instance, **Albania, Croatia, France, Hungary, Italy, Latvia, Lithuania, Luxembourg, North Macedonia, Poland, Romania, Serbia, Slovakia and Slovenia**). A small group of countries have included definitions of at least some of the grounds, either within the legislation itself or in accompanying documentation, such as an explanatory memorandum. This group includes **Bulgaria, the Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Iceland, Ireland, Montenegro, the Netherlands,**

3 There are currently few single-ground laws; where there are single-ground laws, they mostly concern disability.

4 See European Commission, Infringement number 20142174 (Czech Republic), 20152025 (Slovakia) and 20152206 (Hungary), respectively.

5 European Commission (2014), Report from the Commission to the European Parliament and Council: Joint Report on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('Racial Equality Directive') and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ('Employment Equality Directive'), COM(2014) 2 final, Brussels, 17 January 2014. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0002&from=EN>.

Portugal, Sweden and the **United Kingdom**. In many countries, definitions or guidelines for definitions have subsequently been provided by national court rulings.

All countries have included the general principle of equal treatment or specific grounds of discrimination in their constitution (except **Denmark** and the **United Kingdom**, which does not have a written constitution). Constitutional provisions are generally either not directly applicable or they have vertical effect only in litigation involving the state as the respondent. However, constitutional provisions are deemed to be applicable to horizontal relations as well in **Bulgaria, Cyprus, Denmark, Estonia, Finland, Greece, Iceland, Liechtenstein, Luxembourg, the Netherlands, Norway, Portugal, Serbia, Slovenia, Spain** and **Turkey**. Horizontal direct effect remains theoretical or largely debatable in a minority of countries (for instance, **Belgium, Hungary, Italy, Montenegro, North Macedonia** and **Poland**). In **France**, constitutional provisions are indirectly applicable against private parties by way of the ‘exception of constitutionality’ procedure requesting a referral to the Constitutional Council.

General constitutional equality guarantees apply in most countries, thus theoretically covering the material scope of the directives (see Chapter 2), at least in the public sector. However, it is highly unlikely that constitutional provisions alone are adequate to sufficiently transpose the directives. Therefore, most countries have adopted specific legislative provisions listing exhaustively the areas to which discrimination legislation applies.

Most countries have transposed the directives through civil or labour law, with a minority having also maintained, introduced or amended criminal law provisions (e.g. **Belgium, Denmark, Estonia, France** and **Luxembourg**). Although anti-discrimination provisions still exist in various pieces of legislation in some countries (e.g. **Latvia**), this method has largely been replaced by more general anti-discrimination provisions and legislation. Similarly, there has been a discernible move towards multiple-ground equal treatment bodies.

Some countries, such as **Finland, Sweden** and the **United Kingdom**, having previously opted for a single act, have taken the opportunity to clarify existing provisions and to fill the gaps and inconsistencies caused by a patchy legal framework. Although some issues have indeed been dealt with since the adoption of Sweden’s single act, various gaps still remain, in particular between gender and the other grounds.

Similarly, in the **Netherlands**, a revised Dutch national action programme against discrimination was presented in 2016, bringing together under a single umbrella the various programmes and plans to combat discrimination and rendering anti-discrimination policy more strategic and comprehensive.⁶ A progress report was published in 2017 and includes an overview of specific measures that have been taken or are planned to further implement the national action programme.⁷ In **Iceland**, comprehensive anti-discrimination legislation was finally adopted in June 2018: the Act on Equal Treatment irrespective of Race or Ethnic Origin and the Act on Equal Treatment in the Labour Market, which cover the grounds of race or ethnic origin, religion or belief, disability, reduced capacity to work, age, sexual orientation and gender identity, gender expression and gender characteristics.⁸ The two acts are based on the directives and aim to implement their provisions.

In all 28 Member States, national anti-discrimination law includes other prohibited grounds in addition to those required by the directives. In **France**, for instance, several new protected grounds were added in 2016, including ‘loss of autonomy’, ‘expressing oneself in a language other than French’ and economic

6 The Netherlands (2016), *Nationaal Actieprogramma tegen discriminatie* (National action programme against discrimination), Tweede Kamer, 2015-2016, 30 950, no. 84.

7 The Netherlands (2017), Overview of measures from the national action programme against discrimination, <https://www.rijksoverheid.nl/documenten/publicaties/2017/03/23/overzicht-maatregelen-uit-het-nationaal-actieprogramma-tegen-discriminatie>.

8 Iceland, Act No. 85/2018 and Act No. 86/2018, both adopted on 11 June 2018 and entering into force on 1 September 2018, with the exception of some age-related provisions, which enter into force on 1 July 2019.

vulnerability as well as gender identity. In contrast, however, in **North Macedonia** and **Turkey**, although some additional grounds not provided for in the directives are covered, sexual orientation is not.

The table below shows the variety of grounds that have been introduced at the national level (including the five grounds mentioned in the two directives) in general anti-discrimination legislation.

Table 1: Grounds protected in national general anti-discrimination legislation⁹ (at federal level)

| Country | Grounds of discrimination protected in general anti-discrimination legislation |
|------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ALBANIA (Law on Protection from Discrimination) | Gender, race, colour, ethnicity, language, political, religious or philosophical beliefs, economic, education or social situation, gender identity, sexual orientation, pregnancy, parentage, parental responsibility, age, family or marital condition, civil status, residence, health status, genetic predispositions, disability, affiliation with a particular group or any other grounds. |
| AUSTRIA (Equal Treatment Act; Federal Equal Treatment Act) | Gender, ethnic affiliation, religion, belief, age, sexual orientation. ¹⁰ |
| BELGIUM (Racial Equality Federal Act; General Anti-Discrimination Federal Act) | Alleged race, colour, origin, ethnic or national origin, nationality, age, sexual orientation, civil status, birth, property, religious or philosophical belief, actual or future state of health, disability, physical or genetic characteristics, political opinion, language, social origin, trade union opinion (<i>conviction syndicale</i>). |
| BULGARIA (Protection Against Discrimination Act) | Sex, race, national origin, ethnicity, human genome, nationality, origin, religion or faith, education, beliefs, political affiliation, personal or social status, disability, age, sexual orientation, family status, property status, or any other ground provided for by law or an international treaty to which Bulgaria is a party. |
| CROATIA (Anti-discrimination Act) | Race or ethnic origin or colour, gender, language, religion, political or other belief, national or social origin, property, trade union membership, education, social status, marital or family status, age, health condition, ¹¹ disability, genetic heritage, gender identity and expression, ¹² sexual orientation. |
| CYPRUS (Equal Treatment in Employment and Occupation Law; Equal Treatment (Racial or Ethnic Origin) Law) | Race or ethnic origin religion or belief, age, sexual orientation. ¹³ |
| CZECH REPUBLIC (Anti-Discrimination Act) | Race, colour, ethnic origin, nationality (<i>národnost</i>), sex, sexual orientation, age, disability, religion or belief. ¹⁴ |

⁹ When one of the grounds covered by the directives is not covered by the general anti-discrimination legislation but by some other national legislation, this is indicated specifically.

¹⁰ In addition, disability is covered by the Act on the Employment of People with Disabilities and the Federal Disability Equality Act.

¹¹ The ADA introduced 'health condition' as a separate prohibited ground for discrimination with the aim of protecting persons with certain health conditions that do not constitute disability (e.g. persons infected with HIV).

¹² It is noted that, given the specific wording of the Anti-discrimination Act, which refers to 'gender identity, expression or sexual orientation', there is common confusion as to whether gender identity and expression constitute separate discrimination grounds or not. The Ombudsperson interprets it as one discrimination ground.

¹³ In addition, disability is covered by the Law on Persons with Disabilities.

¹⁴ In addition, as of 1 January 2018, the Anti-discrimination Act stipulates that, in situations relating to free movement of workers where EU Regulation 492/2011 applies, EU citizenship will also be deemed a discrimination ground.

| Country | Grounds of discrimination protected in general anti-discrimination legislation |
|---------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| DENMARK (Act on the Prohibition of Discrimination in the Labour Market etc.; Act on Ethnic Equal Treatment) | Race, age, disability, skin colour, religion, belief, sexual orientation, political opinion, national, social or ethnic origin. |
| ESTONIA (Equal Treatment Act) | Ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation. |
| FINLAND (Non-Discrimination Act) | Origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics. |
| FRANCE (Law relating to the adaptation of National Law to Community Law in matters of discrimination ¹⁵) | Mores (<i>moeurs</i>), sexual orientation, sex, pregnancy, gender identity, belonging, whether real or supposed to an ethnic origin, nation, race or specific religion, physical appearance, last name, family situation, union activities, political and philosophical opinions, age, health, disability, genetic characteristics, loss of autonomy, place of residence, capacity to express oneself in a language other than French, economic vulnerability, refusal to be victim of bullying, banking residence (<i>domiciliation bancaire</i>). |
| GERMANY (General Act on Equal Treatment) | Sex, race or ethnic origin, religion or belief, ¹⁶ disability, age, sexual identity. ¹⁷ |
| GREECE (Equal Treatment Law) | Racial or ethnic origin, descent, colour, language, religious or other beliefs, disability or chronic illness, age, family or social status, sexual orientation, gender identity or characteristics. |
| HUNGARY (Equal Treatment Act) | Sex, racial affiliation, colour of skin, nationality (not in the sense of citizenship), belonging to a national minority, mother tongue, disability, health condition, religion or belief, political or other opinion, family status, maternity (pregnancy) or paternity, sexual orientation, gender identity, age, social origin, financial status, part-time nature of employment legal relationship or other legal relationship relating to employment or fixed period thereof, belonging to an interest representation organisation, other situation, attribution or condition of a person or group. |
| ICELAND (Act on Equal Treatment irrespective of Race or Ethnic Origin; Act on Equal Treatment in the Labour Market) ¹⁸ | Race or ethnic origin, religion or belief, disability, reduced capacity to work, age, sexual orientation, gender identity, gender expression. |
| IRELAND (Employment Equality Acts; Equal Status Acts) | Gender, age, race, ¹⁹ religion, civil status, family status, disability, sexual orientation, membership of the Traveller community, housing assistance. |

¹⁵ Law No. 2008-496 of 27 May 2008.

¹⁶ In Germany, 'belief' is not an explicitly protected ground in civil law.

¹⁷ The term 'sexual identity' is considered to have the same meaning as 'sexual orientation'.

¹⁸ These acts were adopted during the reporting period, on 11.06.2018, and entered into force on 01.09.2018.

¹⁹ Section 6(2)(h) of the Employment Equality Act and Section 3(2)(h) of the Equal Status Act stipulate that the ground of race includes 'nationality' and ethnic or national origin.

| Country | Grounds of discrimination protected in general anti-discrimination legislation |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ITALY (Legislative Decree on equality of treatment between persons irrespective of racial or ethnic origin; ²⁰ Legislative Decree Implementing Directive 2000/78/EC for equal treatment in employment and occupation) ²¹ | Race and ethnic origin, religion or belief, disability, age, sexual orientation. |
| LATVIA | — ²² |
| LIECHTENSTEIN | — ²³ |
| LITHUANIA (Equal Treatment Act) | Age, gender, disability, sexual orientation, race, 'nationality', ²⁴ ethnic origin, origin, citizenship, ²⁵ religion, belief, convictions, views, language, social status. |
| LUXEMBOURG (General Anti-Discrimination Law; ²⁶ Public Sector Law) ²⁷ | Race or ethnic origin, religion or belief, age, disability, sexual orientation, nationality. |
| MALTA (Equal Treatment in Employment Regulations; Equal Treatment of Persons Order) | Racial or ethnic origin disability sex, sexual orientation, pregnancy or maternity leave, gender reassignment, age, religion or religious belief. |
| MONTENEGRO (Law on the Prohibition of Discrimination) | Race, skin colour, national affiliation, social or ethnic origin, affiliation to the minority nation or minority national community, language, religion or belief, political or other opinions, sex, sex change, gender identity, sexual orientation and/or intersex characteristics, health conditions, disability, age, material status, marital or family status, membership or assumed membership of a group, political party or other organisation, other personal characteristics. |
| NETHERLANDS (General Equal Treatment Act) | Sex, race, religion, belief, political opinion, nationality, heterosexual or homosexual orientation, civil (or marital) status. ²⁸ |
| NORTH MACEDONIA (Law on Prevention and Protection Against Discrimination) | Sex, race, colour of skin, gender, belonging to a marginalised group, ethnicity, language, citizenship, social origin, religion or religious belief, other forms of belief, education, political affiliation, personal or social status, 'mental or physical disability', age, family or marital status, property, health condition, and any other ground prescribed by law or ratified international treaty. |
| NORWAY (Equality and Anti-Discrimination Act) | Gender, pregnancy, leave in connection with childbirth or adoption, care responsibilities, ethnicity, ²⁹ religion, belief, disability, sexual orientation, gender identity, gender expression, age or combinations of these factors. |

20 Legislative Decree No. 215/2003 of 09.07.2003.

21 Legislative Decree No. 216/2003 of 09.07.2003.

22 There is no general anti-discrimination legislation in Latvia. The grounds covered by the directives are however covered notably by the Labour Law of 20.06.2001, the Law on Prohibition of Discrimination of Natural Persons-Economic Operators of 19.12.2012, the Law on Social Security of 07.09.1995, the Education Law of 29.09.1998 and the Consumer Rights Protection Law of 18.03.1999.

23 There is no general anti-discrimination legislation in Liechtenstein. Disability is covered by the Act on Equality of People with Disabilities.

24 The Lithuanian term is *tautybė*, which refers to 'belonging to a national minority'.

25 Citizenship is a protected ground only for citizens of EU Member States and of EEA countries, as well as their family members.

26 Law of 28 November 2006.

27 Law of 29 November 2006.

28 In addition, disability is covered by the Disability Discrimination Act, while age is covered by the Age Discrimination Act.

29 Ethnicity includes national origin, descent, skin colour and language.

| Country | Grounds of discrimination protected in general anti-discrimination legislation |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| POLAND (Equal Treatment Act) | Gender, race, ethnic origin, nationality, citizenship, ³⁰ religion, belief, political opinion, disability, age, sexual orientation. |
| PORTUGAL (Law establishing the legal regime for the prevention, prohibition and fight against discrimination on the grounds of race/ethnic origin, nationality, ancestry and territory of origin) ³¹ | Ancestry, race, nationality, ethnic origin, territory of origin. ³² |
| ROMANIA (Ordinance regarding the prevention and punishment of all forms of discrimination) ³³ | Race, nationality, ethnic origin, language, religion, social status, beliefs, gender, sexual orientation, age, disability, non-contagious chronic disease, HIV-positive status, belonging to a disadvantaged group, any other criterion. |
| SERBIA (Law on the Prohibition of Discrimination) | Race, skin colour, ancestry, citizenship, national affiliation or ethnic origin, language, religious or political beliefs, gender, gender identity, sexual orientation, financial position, birth, genetic characteristics, health, disability, marital and family status, previous convictions, age, appearance, membership of political, trade union and other organisations, other real or presumed personal characteristic. |
| SLOVAKIA (Anti-discrimination Act) | Sex, religion or belief, race, affiliation with a nationality (<i>národnosť</i>) or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender, the reason of reporting criminality or other anti-social activity. |
| SLOVENIA (Protection Against Discrimination Act) | Gender, ethnicity, race or ethnic origin, language, religion or belief, disability, age, sex, sexual orientation, gender identity or gender expression, social standing, economic situation, education, any other personal characteristic. |
| SPAIN (Law on Fiscal, Administrative and Social Measures) | Race or ethnic origin, religion or belief, age, disability, sexual orientation. |
| SWEDEN (Discrimination Act) | Sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation, age. |
| TURKEY | – ³⁴ |
| UNITED KINGDOM (GB: Equality Act) | Great Britain (England, Wales and Scotland): sex (including gender reassignment, married/ civilly partnered status/ pregnancy), colour, nationality (including citizenship), ethnic origins, national origins, disability, sexual orientation, religion or belief, age. |
| | Northern Ireland: – ³⁵ |

30 Since the entry into force of the Act of 29 April 2016, which transposed EU Directive 2014/54/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers, 'citizenship' is included in the Equal Treatment Act for limited categories of people only.

31 Law No. 93/2017 of 23.08.2017.

32 In addition, religion or belief, age, disability and sexual orientation are covered by the Labour Code of 12.02.2009.

33 Ordinance (GO) 137/2000 of 31.08.2000.

34 There is no general anti-discrimination legislation in Turkey. Disability is covered notably by the Law on Persons with Disabilities of 01.07.2005, while the grounds of race and ethnic origin, religion or belief, age and disability are covered by Law No. 6701 on the Human Rights and Equality Institution of Turkey of 06.04.2016. Sexual orientation is not a protected ground in Turkey.

35 There is no general anti-discrimination legislation in Northern Ireland. The grounds covered by the directives are covered by the following acts: the Disability Discrimination Act of 08.11.1995, the Race Relations Order of 19.03.1997, the Fair Employment and Treatment Order of 16.12.1998 (covering religion and belief), the Employment Equality (Sexual Orientation) Regulations of 01.12.2003, and the Employment Equality (Age) Regulations of 14.06.2006, respectively.

1.2.1 Racial or ethnic origin

Several issues can arise in relation to the definition of ‘racial or ethnic origin’. While the Racial Equality Directive requires Member States to prohibit discrimination on the ground of ‘racial or ethnic origin’, national anti-discrimination law in many countries uses a slightly different terminology, by prohibiting discrimination on grounds such as ‘ethnicity’ or ‘ethnic affiliation’. In addition, in several countries, national law prohibits discrimination on other grounds that are arguably linked to or of relevance for ‘racial or ethnic origin’.³⁶ Such grounds include nationality or national origin, language, colour and membership of recognised national minorities. There are also undeniable links between the grounds of racial or ethnic origin on the one hand and religion or belief on the other.

Recital 6 of the Racial Equality Directive declares:

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

There have been debates around the use of the term ‘race’ within anti-discrimination legislation. Despite the clear statement made in Recital 6 of the directive, some countries have taken the view that including the terms ‘race’ or ‘racial origin’ in anti-discrimination legislation reinforces the perception that humans can be distinguished according to ‘race’. For this reason, they have avoided using these terms altogether in transposing legislation. For example, the **Swedish** Discrimination Act defines ‘ethnicity’ (Chapter 1, Section 5(3)), as ‘national or ethnic origin, skin colour or similar circumstance’. In **Finland**, the term used in the previous Non-Discrimination Act, ‘ethnic or national origin’, was replaced with the word ‘origin’. The definition in the Government proposal includes ethnic origin, national origin, societal origin, race and colour of skin.³⁷ **German** anti-discrimination legislation includes the term ‘race’ but its inclusion generated heated criticism and opposition. In **Iceland**, the explanatory notes to the new Racial Equality Act set out that ‘race’ refers to historically important divisions of people into races, based on physical appearance such as skin colour and/or other aspects often considered characteristic for a particular race, although explicit reference is also made to Recital 6 of the Directive. **Belgian** law refers to ‘alleged race’, while in **France**, various legal provisions refer to ‘real or assumed’ (*vraie ou supposée*) race or ethnic origin, in an attempt to underline the non-acceptance of the concept of ‘race’.³⁸ In **Norway**, the Equality and Anti-Discrimination Act of 2017 lists ‘national origin, descent, skin colour and language’ as part of ‘ethnicity’.³⁹ These examples are binding for the interpretation of the concept of ethnicity, but not exhaustive examples.

One of the areas in the Racial Equality Directive where judicial interpretation was needed was the extent to which characteristics such as colour, national origin, membership of a national minority, language or social origin might fall within the scope of ‘racial or ethnic origin’. This can be the case when national laws implementing the Racial Equality Directive list such characteristics as separate grounds of discrimination. For instance, the **Hungarian** Fundamental Law refers to ‘race’ and ‘colour’, while the Equal Treatment Act also mentions ‘racial affiliation’, ‘belonging to a national minority’ and ‘nationality’ (not in the sense of citizenship). It is also often unclear whether the concepts of ethnic/national minority found within specific laws regulating the protection of national minorities will be relied upon when national courts interpret anti-discrimination legislation in countries such as **Austria**, **Poland** and **Slovenia**. In **Ireland**, the race ground under the Employment Equality Acts and the Equal Status Acts covers individuals who are of ‘different race, colour, nationality or ethnic or national origins’. According to case law, ‘national origin’ is

36 See the table in the previous section, immediately above.

37 Finland, *Government Proposal on the Non-Discrimination Act 19/2014*, p.66, available at: <http://www.finlex.fi/fi/esitykset/he/2014/20140019>.

38 See the discussion of amendment No. 15 to Article L122-45 of the Labour Code (now re-codified as Article L1132-1 of the Labour Code), during the adoption of Law No. 2001-1066 of 16.11.2001, available at: <http://www.senat.fr/seances/s200101/s20010109/sc20010109007.html>.

39 This new legislation entered into force on 1 January 2018.

‘acquired by a person at the time of birth and connects that person with one or more groups of people who can be described as a “nation”’. Moreover, since 2017, Travellers are formally recognised as an ethnic group,⁴⁰ meaning that they are covered by the race ground as well as by the separate ground of being a member of the ‘Traveller community’.⁴¹

Some guidance in this regard has been provided by the Court of Justice in the past few years, notably in the *CHEZ* judgment of 2015 where the Court stated that ‘the concept of ethnicity (...) has its origin in the idea of societal groups marked in particular by common nationality, religious faith, language, cultural and traditional origins and backgrounds’.⁴² The Court thus followed closely the guidance already provided by the European Court of Human Rights.⁴³

This guidance highlights how closely linked the concepts of ethnic origin and religion can be. Within the directives, it is evident that the distinction between these two grounds is crucial because the material scope of the Racial Equality Directive is much more extensive than that of the Employment Equality Directive covering religion.

The following examples show how some Member States are dealing with this close interconnection between race and religion. In the **United Kingdom**, discrimination against Sikhs⁴⁴ or Jews⁴⁵ has been accepted as discrimination on racial grounds (specifically, ethnic origin). Furthermore, the Employment Appeal Tribunal accepted in December 2014 that discrimination on the basis of caste could fall within discrimination on the basis of ethnic origin.⁴⁶ Due to the historical background of Nazi ideology in **Germany**, anti-Semitism is regarded as discrimination on the grounds of race and not of religion. In **Sweden**, national courts do not always need to specify whether the relevant ground in a specific case is religion or ethnicity, considering that the scope of protection is the same for both grounds. This was further underlined by the Government Bill for the Discrimination Act, which stated that together, these two grounds ‘cover a broad area and it can be assumed that in practice it is of subordinate importance which of the discrimination grounds is referred to in e.g. a negotiation or before a court’.⁴⁷

Jyske Finans: ethnic origin cannot be determined on the basis of a single criterion⁴⁸

The case concerns the practice of a Danish credit institution that imposed on a customer, whose driving licence mentions a country of birth that is not an EU or EFTA Member State, an additional identification requirement, which was to provide a copy of his passport or residence permit.

The applicant is a Danish national born in Bosnia and Herzegovina who applied to the credit institution for a loan and was therefore asked to submit an additional identification paper. The Danish Board of Equal Treatment considered that the applicant had been indirectly discriminated against on the basis of ethnic origin and awarded him compensation. The Danish court upheld this decision, holding that the person concerned had been directly discriminated against. The decision was appealed against.

40 Ireland (2017), 941(1) *Dáil Éireann Debates* 461-463 (Traveller Ethnicity: Statements), Wednesday, 1 March 2017. Available at: <https://data.oireachtas.ie/ie/oireachtas/debateRecord/dail/2017-03-01/debate/mul@main.pdf>.

41 See for instance Ireland, Workplace Relations Commission, *O'Donoghue v. The Minister for Social Protection*, DEC-S2018-014, of 5 June 2018, available at: <https://www.workplacerelations.ie/en/Cases/2018/June/DEC-S2018-014.html>.

42 CJEU, Case C-83/14, judgment of 16.07.2015, ECLI:EU:C:2015:480, para 46.

43 European Court of Human Rights (ECtHR), *Timishev v. Russia*, Nos. 55762/00 and 55974/00 of 13 December 2005, paragraph 55. Available at: <http://hudoc.echr.coe.int/eng?i=001-71627>.

44 UK, *Mandla v. Dowell Lee* [1983] UKHL 7, 2 AC 548.

45 UK, Employment Appeal Tribunal, *Seide v. Gillette Industries Ltd.* [1980], IRLR 427.

46 UK, Employment Appeal Tribunal, *Chandhok v. Tirkey*, [2015] IRLR 195. Available at: http://www.bailii.org/uk/cases/UKCAT/2014/0190_14_1912.html.

47 Sweden, Government Bill No. 2007/08:95, *A stronger protection against discrimination*, p. 122, available at: <https://www.regeringen.se/49bafd/contentassets/9992e1e8bedd4019aaa6a9e8565f778b/ett-starkare-skydd-mot-diskriminering-prop-20070895>.

48 CJEU, Judgment of 6 April 2017, *Jyske Finans A/s v. Ligebehandlingsnævnet*, C-668/15, ECLI:EU:C:2017:278. Available at: <http://curia.europa.eu/juris/>.

The Court of Appeal requested a preliminary ruling from the CJEU on the interpretation of the Racial Equality Directive.

The CJEU, in a decision of April 2017, states that ‘the concept of “ethnicity” has its origin in the idea of societal groups marked in particular by common nationality, religious faith, language, cultural and traditional origins and backgrounds. Ethnic origin cannot be determined on the basis of a single criterion but, on the contrary, is based on a whole number of factors, some objective and others subjective. As a consequence, a person’s country of birth cannot, in itself, justify a general presumption that that person is a member of a given ethnic group such as to establish the existence of a direct or inextricable link between those two concepts.’ The Court adds that ‘it cannot be presumed that each sovereign State has one, and only one, ethnic origin.’

In the present case, the country of birth was the only criterion that led the Board of Equal Treatment and then the national court to find that the practice in question constituted discrimination on the basis of ethnic origin. However, the CJEU notes that the credit institution’s practice is based on a criterion that is not directly or indirectly linked to the ethnic origin of the person concerned.

To conclude, the Court holds that Article 2(2)(a) and (b) of Directive 2000/43 must be interpreted as not precluding a practice such as that at hand.⁴⁹ Following the CJEU preliminary ruling, the Danish Board of Equal Treatment reopened the case in 2018, repealing its previous decision and concluding that the applicant had experienced neither direct nor indirect discrimination.⁵⁰

1.2.2 Religion or belief

No state has attempted to provide a comprehensive definition of ‘religion or belief’ within anti-discrimination legislation (e.g. an exhaustive inventory of protected religions or a general conceptual definition), nor has it ever been defined at the international level. In 2017 however, the Court of Justice of the EU provided some guidance in its seminal *Achbita* ruling, confirming that the concept of religion ‘should be interpreted as covering both the *forum internum*, that is the fact of having a belief, and the *forum externum*, that is the manifestation of religious faith in public.’⁵¹

In the second implementation report on the Racial Equality Directive and the Employment Equality Directive adopted on 17 January 2014,⁵² the Commission clarified that the concept of ‘belief’ should be read in the context of ‘religion or belief’ and that it refers to a belief or a philosophical conviction that does not need to be of a religious nature, but it does not cover political opinion.⁵³

Some countries (for example, the **Czech Republic** and **Spain**) provide guidance as to what religion is not, through legislation regulating the freedom of religion. Further guidance on the meaning of ‘religion or belief’ is provided in some states by explanatory documentation accompanying legislation or by court rulings, such as in **Austria**, **Estonia**, **France**, **Ireland**, the **Netherlands**,⁵⁴ and the **United Kingdom**. In **Germany**, the Constitutional Court has developed extensive case law in this regard.

49 Also see: Farkas, L. (2018), ‘Throwing the babies out with the bathwater: the CJEU, xenophobia and equality bodies after *Jyske Finans*’ in *European Equality Law Review* 2018/1. Available at: <https://www.equalitylaw.eu/downloads/4639-european-equality-law-review-1-2018-pdf-1-086-kb>.

50 Denmark, Board of Equal Treatment, Decision No. 9559 of 21 June 2018.

51 CJEU, Judgment of 14 March 2017, *Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV*, C-157/15, ECLI:EU:C:2017:203, para 28. See text box below.

52 European Commission (2014), 2: Report from the Commission to the European Parliament and the Council – Joint Report on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (‘Racial Equality Directive’) and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (‘Employment Equality Directive’), SWD (2014) 5 final accompanying COM (2014) 2 final, 17 January 2014, available at <http://eur-lex.europa.eu/>.

53 It should be noted that Ireland has failed to transpose the directive with regards to non-religious beliefs.

54 Dutch anti-discrimination law refers to the term *levensovertuiging* (philosophy of life) as this had already been interpreted through case law. It includes broad philosophies, such as humanism, but it does not extend to every view of society. In addition to *levensovertuiging*, the Dutch General Equal Treatment Act (GETA) also covers *godsdienst* (religion).

There are some interesting examples of guidance on the definition of religion. According to the guidelines to the **Danish** Act on the Prohibition of Discrimination in the Labour Market etc., 'religion' is understood as formally approved or recognised religions.⁵⁵ In practice however, it is not necessary to demonstrate membership in a formally recognised religious community to be able to avail oneself of the provisions of the act. In **Great Britain**, according to the Explanatory Notes to the UK Equality Act 2010, 'the religion must have a clear structure and belief system'. It adds that 'the criteria for determining what is a "philosophical belief" are that it must be genuinely held; be a belief and not an opinion or viewpoint based on the present state of information available; be a belief as to a weighty and substantial aspect of human life and behaviour; attain a certain level of cogency, seriousness, cohesion and importance; and be worthy of respect in a democratic society, compatible with human dignity and not conflict with the fundamental rights of others. So, for example, any cult involved in illegal activities would not satisfy these criteria...'.⁵⁶

1.2.2.1 Specific issues relating to religion or belief – Religious symbols and dress codes⁵⁷

There has been a serious increase in case law relating to dress codes and religious symbols since the adoption of the directives,⁵⁸ indicating that the manifestation of religious belief through dress or symbols is one of the key issues in the practical implementation of the directives.

Erica Howard, *Religious clothing and symbols in employment*⁵⁹

'The debates about the wearing of religious clothing and symbols (at work) do not occur in a vacuum, they have taken and are taking place against the background of discussions in many European countries about immigration and the integration of immigrant communities in their host societies. In the last 4 or 5 decades, many European countries have seen the arrival of migrants from all over the world, often from different religions than the mainly Christian population of Europe although, for some EU Member States, this has not happened until much more recently. Not only do the migrants have a different religion, they also often practice this religion in a much more public way. This, together with the events of 9/11, the bombings in Madrid and London, the recent attacks in France, Belgium, Spain and the UK and other acts of terrorism linked to Islamic religious motives, have led to especially Muslims being seen as a threat to European societies. This, in turn, has led to debates about the integration, or lack of integration, of Muslims and other migrants into their host society. For many, the visible expression of religion or belief through religious clothing and symbols in the public space, especially the wearing by Muslim women of face-covering veils (niqab or burqa)⁶⁰ or headscarves (hijab), is seen as a sign of

55 *Vejlledning om forskelsbehandlingsloven* (Guidance on the Act on the Prohibition of Discrimination in the Labour Market etc. No. 9237 of 6 January 2006). See: <https://www.retsinformation.dk/Forms/R0710.aspx?id=30653>.

56 Great Britain, Equality Act 2010, *Explanatory Notes*, paragraphs 51-53. Available at: http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpgaen_20100015_en.pdf.

57 For a detailed analysis of the legal issues surrounding the wearing of religious clothing and symbols in employment, see also the thematic report, Howard, E. (2017), *Religious clothing and symbols in employment – A legal analysis of the situation in the EU Member States*, European network of legal experts in gender equality and non-discrimination for the European Commission.

58 See, for example, ECtHR, *Lautsi and others v. Italy* [GC] (No 30814/06), Judgment of 18 March 2011 or ECtHR, *Eweida and others v. United Kingdom* (Nos 48420/10; 59842/10; 51671/10; 36516/10), Judgment of 15 January 2013, CJEU (Grand Chamber), judgment of 14 March 2017, *Achbita*, C-157/15, ECLI:EU:C:2017:203.

59 Howard, E. (2017), *Religious clothing and symbols in employment – A legal analysis of the situation in the EU Member States*, European network of legal experts in gender equality and non-discrimination for the European Commission.

60 The niqab is a veil that covers the head and face with the exception of the eyes. The burqa is a loose robe that covers the female form from head to toe with the exception of the hands and with gauze covering or a slit for the eyes. It must be noted that very few women in Europe wear a burqa; the vast majority of women wearing face-covering veils in Europe wear the niqab or similar type veils. See on this: Brems, E. (2014), 'Introduction to the Volume', in Brems, E. (ed.) *The Experiences of Face Veil Wearers in Europe and the Law* (Cambridge, Cambridge University Press) p. 3. There are other names for Islamic headscarves and face covering veils, but this report will use the term 'hijab' or (Islamic) headscarf for the headscarf which leaves the face free, while the terms 'niqab' and 'burqa' will be used for veils or clothing that covers the whole or part of the face.

not wanting to integrate and be part of that society.⁶¹ This has led to calls for bans on the wearing of such clothing or symbols in public spaces or at certain public or private work places.’

Issues related to religious symbols or dress worn by public employees or students in public schools are very closely linked to the principles of secularity and neutrality of the state. States greatly vary in their approach to this topic. In **Germany**, the Federal German Constitutional Court ruled that a general ban of such religious symbols was not reconcilable with the fundamental right to freedom of religion and the equality guarantee of the Basic Law.⁶² The court attempts to balance interests of religious freedom and accommodation and public interests (such as integration and the individual development of pupils), as illustrated by some of its decisions. For example, in one case the court highlighted that the wearing of a headscarf is by now common in Germany and a necessary consequence of pluralist society, thus, a kindergarten teacher employed by a public authority can wear such a garment.⁶³ In another case, public interest prevailed over religious freedom as the complainant did not show that the burkini is not sufficient to comply with religious rules on the concealment of the body and the court decided that she could not be excused from swimming lessons.⁶⁴ In **Austria**, the Anti-Face-Covering Act prohibits the covering of ‘one’s facial features by means of clothing or other means in such a way that they are no longer recognisable in public space or public buildings’. In the **Czech Republic**, a national court has ruled that school regulations can prohibit the wearing of headwear as they have a legitimate right to remain neutral in religious affairs.⁶⁵

In the private sphere, many employers impose dress codes, which sometimes refer to religious neutrality, thereby prohibiting employees from wearing religious symbols or dress. In **France**, the Labour Code was amended⁶⁶ to allow employers to include in their in-house regulations the principle of neutrality as a rule and introduce restrictions on public expressions of belief by employees. These restrictions should be justified by the exercise of other fundamental rights and liberties or by the necessities of the good functioning of the service, as long as they are proportionate to the objective pursued. Furthermore, the CJEU dealt with two cases in 2017 that involved employees dismissed due to their refusals to comply with such dress codes.⁶⁷

Secularity and neutrality of private employers – the headscarf cases

The *Achbita*⁶⁸ and *Bougnaoui*⁶⁹ cases were referred by French and Belgian national courts in 2015 for preliminary rulings by the Court of Justice of the EU and concerned the ability of private employers to prohibit employees from wearing conspicuous religious dress or symbols.

Ms Achbita worked as a receptionist and signalled after several years of employment that she intended to wear a headscarf during working hours, which was not permitted under the company’s unwritten,

61 The heated debate about the wearing of the ‘burkini’ in France in the summer of 2016 is an example of this. A burkini (a portmanteau word made up from the words ‘burqa’ and ‘bikini’) is a piece of women’s clothing for swimming that is in two pieces and that covers the whole body except the face, hands, and feet. See on the burkini issue: Hochman, T. (2016) *Islam on the Beach – The Burkini Ban in France*: <http://verfassungsblog.de/islam-on-the-beach-the-burkini-ban-in-france/> and Howard, E. (2016) *What (Not) to Wear on a French Beach this Summer*: <https://mdxminds.com/2016/08/31/what-not-to-wear-on-a-french-beach-this-summer/>.

62 German Federal Constitutional Court, Judgment No. 1 BvR 471/10 of 27 January 2015.

63 German Federal Constitutional Court, Judgment No. 1 BvR 354/11 of 18 October 2016.

64 German Federal Constitutional Court, Judgment No. 1 BvR 3237/13 of 8 November 2016.

65 Municipal Court in Prague, *Ahmednuur Ayan Jamaal / Střední zdravotní škola Ruská*, Judgment No. 12 Co130/2017 of 19 September 2017. The decision seems to concern both State and private schools.

66 France, Law No. 2016-1088 of 8 August 2016 on employment, the modernisation of social dialogue and the protection of professional careers, Article 2. Available at: <https://www.legifrance.gouv.fr/eli/loi/2016/8/8/2016-1088/loi/texte>.

67 CJEU, Judgment of 14 March 2017, *Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v. G4S Secure Solutions NV*, C-157/15, ECLI:EU:C:2017:203 and Judgment of 14 March 2017, *Asma Bougnaoui and Association de défense des droits de l’homme (ADDH) v. Micropole SA*, C-188/15, ECLI:EU:C:2017:204.

68 Judgment of 14 March 2017, *Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v. G4S Secure Solutions NV*, C-157/15, ECLI:EU:C:2017:203. See also the Opinion of Advocate General Kokott delivered on 31 May 2016.

69 Judgment of 14 March 2017, *Asma Bougnaoui and Association de défense des droits de l’homme (ADDH) v. Micropole SA*, C-188/15, ECLI:EU:C:2017:204. See also the Opinion of Advocate General Sharpston delivered on 13 July 2016.

but commonly known⁷⁰ neutrality rule. Ms Bougnaoui wore a headscarf from the beginning of her employment and was in face-to-face contact with clients, one of which asked that she not wear her headscarf during her on-site assignment. Both women were ultimately dismissed.

On 14 March 2017, the CJEU delivered its rulings in both cases, thus providing for the first time some interpretative guidance with regard to alleged discrimination on the ground of religion in the workplace.

In *Achbita*, the Court found an internal company rule of religious neutrality does not constitute direct discrimination based on religion or belief. It may however constitute indirect discrimination if it puts persons adhering to a particular religion or belief at a particular disadvantage, unless it is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. In *Bougnaoui*, the CJEU concluded that 'the willingness of an employer to take account of the wishes of a customer no longer to have the services of that employer provided by a worker wearing an Islamic headscarf cannot be considered a genuine and determining occupational requirement'.

In a ruling of 9 October 2017, the Belgian Court of Cassation overturned the decision of the Labour Court of Antwerp in the *Achbita* case and followed the interpretation of the CJEU, concluding that there had been no discrimination in the case.⁷¹

In France, the Court of Cassation also followed the reasoning of the CJEU and stated that the decision to dismiss the claimant, because of her refusal to remove her veil when demanded by clients, constituted direct discrimination. The court concluded that there was no neutrality rule justifying disciplinary action, but an ad hoc rule targeting a specific religious sign.⁷²

In recent years, there has been an interesting increase in cases where religion has been invoked to justify exemptions from the prohibition of discrimination outside employment, notably on the ground of sexual orientation. Such cases have become widely debated in for instance the **United Kingdom** and **Poland** and often concern the area of access to goods and services.⁷³

1.2.3 Disability

On 23 December 2010, the EU ratified the UN Convention on the Rights of Persons with Disabilities and was thus the first international organisation to accede to an international treaty on human rights.⁷⁴ All legislation, policies and programmes at EU level must comply with the Convention's provisions on disability rights, within the limits of EU responsibilities. Countries that have ratified the Convention should take action in the following areas: access to education, employment, transport, infrastructure and buildings open to the public, and granting the right to vote, improving political participation and ensuring full legal capacity of all people with disabilities.⁷⁵

In 2006, the CJEU provided its first decision on the meaning of 'disability' in the case of *Chacón Navas*, distinguishing disability from sickness.⁷⁶ In 2013, the CJEU eventually rendered another landmark decision on the concept of 'disability', while also referring explicitly to the obligations of EU Member States following the ratification by the EU of the UN CRPD.⁷⁷ The Court underlined the importance of

70 It is contested on a national level to what extent the neutrality policy was in fact 'commonly known' within the company before the case surfaced.

71 Belgian Court of Cassation, *Achbita*, Judgment No. S.12.0062.N of 9 October 2017. Available at: www.UNIA.be/en.

72 French Court of Cassation, Social Chamber, *Asma Bougnaoui, ADDH v. Micropole SA*, No. 13-19855 of 22 November 2017. Available at: https://www.courdecassation.fr/jurisprudence_2/chambre_sociale_576/2484_22_38073.html.

73 See also Lordache, R. (2019) 'Matters of individual conscience or non-discriminatory access to public services and goods?' in *European Equality Law Review*, Issue 2019/1, pp. 30-43.

74 For the full list of countries that have signed/ratified the Convention, please see Annex 2.

75 On 7 March 2018, the Irish Government finally passed a motion to ratify the UN Convention on the Rights of Persons with Disabilities, 11 years after Ireland signed the Convention. Ireland was the last EU Member State to ratify the CRPD.

76 CJEU, Judgment of 11 July 2006, *Chacón Navas v. Eures Colectividades SA*, C-13/05, ECLI:EU:C:2006:456, Paras. 43-45. See commentary by Lisa Waddington (2007), *Common Market Law Review* 44 (2), p. 487.

77 CJEU, Judgment of 11 April 2013, *HK Danmark, acting on behalf of Jette Ring v. Dansk almennyttigt Boligselskab and HK Danmark, acting on behalf of Lone Skouboe Werge v. Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S*, Joined Cases C-335/11 and C-337/11, ECLI:EU:C:2013:222. Commentary by Lisa Waddington (2013) in *European Anti-discrimination Law Review*, Issue 17, p. 11.

interpreting the Employment Equality Directive in a manner that is consistent with the UN Convention, and held that the concept of ‘disability’ must be understood as:

a limitation which results in particular from physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers. (Paragraph 38)

The Court also noted that the impairment must be ‘long-term’ and that a curable or incurable illness which leads to the required degree of limitation does fall within the concept of ‘disability’. An illness that does not cause such a limitation, however, does not constitute a ‘disability’ within the meaning of the directive.⁷⁸

Ruiz Conejero: dismissal due to intermittent absences resulting from a disability is discriminatory⁷⁹

The request for a preliminary ruling to the Court of Justice concerned the conformity of Article 52(d) of the Spanish Worker’s Statute, which allows for termination of an employment contract on the basis of intermittent, albeit justified, absences, with Directive 2000/78/EC.

The claimant had challenged his dismissal on the basis of this provision due to intermittent absences from work, which were the consequence of illnesses attributed to his disability. He claimed that the dismissal amounted to discrimination on the ground of disability.

The CJEU found that the national provision in question risks placing disabled workers at a disadvantage and causing a difference of treatment indirectly based on disability. Therefore, Directive 2000/78 must be interpreted as precluding such national legislation, unless it can be objectively justified by a legitimate aim and the measures implemented to achieve that aim are appropriate and do not go beyond what is necessary to achieve it, which is a matter for the referring court to determine.

Following the decision of the CJEU, Social Court 1 of Cuenca concluded that the claimant’s dismissal was null and void due to discrimination on the ground of disability.⁸⁰

The majority of national legislation contains many examples of definitions of disability (e.g. **Albania, Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, France, Germany, Greece, Hungary, Luxembourg, Montenegro, North Macedonia, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain and Turkey**) but these often stem from the context of social security legislation rather than anti-discrimination law. In **Bulgaria**, the Pre-School and School Education Act includes both the definitions of ‘pupil with chronic illnesses’ and ‘special educational needs’. The Ordinance on Integrative Education also provides a definition of ‘communicative impairments’.

A tentative assessment of national definitions of disability as compared with the CJEU’s *HK Danmark* ruling indicates that the definitions of disability applied in most of the EU Member States for the purpose of anti-discrimination appear *a priori* in line with the ruling. For instance, in **Italy**, national courts quoted the CJEU case law and held that the notion of disability includes the state of health of a person who suffers from an illness ‘which, in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers, and the limitation is a long-term one [...]’.⁸¹ By contrast, some discrepancies exist in countries such as **Cyprus, Poland**⁸² and **Slovakia**. However, in **Slovakia**, the Supreme Court clarified that the CRPD is part of the Slovak legal order and takes precedence over national legislation.⁸³ **Bulgaria** sets out a wider interpretation

78 CJEU, Judgment of 11 April 2013, *HK Danmark*, Joined Cases C-335/11 and C-337/11, ECLI:EU:C:2013:222, Paras. 39-42.

79 CJEU, Judgment of 18 January 2018, *Carlos Enrique Ruiz Conejero v. Ferroservicios Auxiliares SA and Ministerio Fiscal*, Case C-270/16, ECLI:EU:C:2018:17.

80 Spain, Social Court 1 of Cuenca, Case No. 171/2018, 7 March 2018.

81 Italy, Court of Pisa, Judgment of 16 April 2015, available at: <http://www.osservatoriodiscriminazioni.org/index.php/2015/10/19/tribunale-pisa-ordinanza-del-16-aprile-2015/>.

82 However, the ratification by Poland of the UN CRPD implies that the provisions of the Convention may be relied upon directly before national courts or administrative bodies.

83 Supreme Court of the Slovak Republic, Decision No. 75žo/83/2014 of 24 September 2015.

of disability as it does not require the limitation to result in 'hinder[ing] the participation of the person concerned in professional life'⁸⁴ – the existence of an impairment or limitation is sufficient, regardless of the implications this may have for the individual's professional life.

The definitions of disability in a number of countries fail to make reference to the interaction with various barriers and only focus on the limitations and impairments of the person concerned. These countries' definitions would thereby not be fully consistent with the case law of the CJEU and with Article 1 of the UN CRPD (**Austria, Cyprus, the Czech Republic, Estonia, Ireland, Latvia, Liechtenstein, Romania, Sweden**⁸⁵ and the **United Kingdom**). In **Denmark**, although the anti-discrimination legislation does not define disability, the case law of the Board of Equal Treatment and of the Supreme Court provides abundant guidance on the concept, relying heavily on the burden on the claimant to demonstrate the existence of a medical impairment.⁸⁶ A landmark decision was delivered by the Supreme Court in 2017, confirming that the claimant's condition does not necessarily need to be caused by a medically diagnosed illness, but must be evaluated based on all the circumstances of the case, including information from doctors and other health professionals describing the impairment.⁸⁷ In **Romania**, the National Council for Combating Discrimination discussed the concept of disability and opted for an inclusive use of the term – an approach that might be interpreted as being in line with CJEU case law.⁸⁸ In **Germany**, a new definition of disability entered into force on 1 January 2018.⁸⁹ Although this new definition seeks to ensure compliance with the case law of the CJEU and Article 1 of the UN CRPD, it remains to be seen how the previous case law of the Federal Labour Court will be adapted to the new legal definition. Similarly, in **Bulgaria**, a new People with Disabilities Act was adopted in 2018, introducing new definitions of key concepts including 'persons with disabilities', defined as 'persons with a physical, mental, intellectual or sensory insufficiency, which in interaction with the environment may hinder their full and effective participation in the life of society'. The new definition aims to abandon the medical approach to disability taken in the previous Integration of People with Disabilities Act, thereby bringing Bulgarian law closer to the CRPD and CJEU approach to disability. However, the new law also introduces a new definition of 'persons with long-term disabilities', which still refers to a medically certified disability of at least 50 %.⁹⁰

Some countries, including **Albania, Estonia, Hungary, Lithuania, Malta, Montenegro** and **Serbia** go beyond the employment field by referring to everyday activities or all aspects of social life and, likewise, **Bulgaria, Sweden** and **Iceland** do not restrict the scope of relevant impairment to professional activities only.

The CJEU's requirement for it to be probable that the impairment will last is echoed in various definitions of disability in national law. For example, in both **Austria**⁹¹ and **Germany**,⁹² impairments must be likely to last for more than six months in order to amount to disabilities, while in the **United Kingdom**⁹³ the

84 Bulgaria, Integration of Persons with Disabilities Act, 2004, Sections 1.1 and 1.2 Additional Provisions.

85 However, in Sweden, although the definition is not per se compatible with the social model of disability, it is irrelevant in practice as Swedish courts consider whether the alleged discriminator believed that the person who was allegedly discriminated against did or did not have a disability, rather than examining whether the elements of the definition are fulfilled or not.

86 See, for example, Denmark, Supreme Court decision No. 104/2014, delivered on 11 August 2015 and printed in U2015.3827H as well as Board of Equal Treatment decision No. 39/2015 of 25 March 2015.

87 Denmark, Supreme Court decision No. 305/2016, delivered on 22 November 2017 and printed in U2018.853H.

88 Romania, National Council for Combating Discrimination (*Consiliul Național pentru Combaterea Discriminării*), Decision 509, file no. 433/2012, *FEDRA v. SC SECOM SRL*, 26 November 2012.

89 Germany, Act on Strengthening the Participation and Self-Determination of Persons with Disabilities ('Federal Participation Act'), 23 December 2016.

90 The People with Disabilities Act was adopted on 18.12.2018 but entered into force on 1.01.2019, after the cut-off date of this report, which therefore still refers to the previous legislation still in force at 31.12.2018.

91 Austria, Federal Disability Equality Act, BGBl I No. 82/2005, Para. 3.

92 Germany, Social Code IX, 2001, Section 2.1 and Federal Disability Equality Act, 2002, Section 3.

93 Great Britain, Equality Act, 2010, Schedule 1.

impairment should last or be likely to last for at least 12 months. In contrast, other states require the impairment to be indefinite in duration (**Cyprus**⁹⁴ and **Sweden**).⁹⁵

Danish Board of Equal Treatment requires long-term duration of an impairment for a finding of disability⁹⁶

The claimant in this case was a finance assistant who needed rest and reduced screen time after a head trauma. Because of her difficulties in concentrating, she also needed to be able to focus on one thing at a time. The claimant had been working part-time due to illness for a period of 10 months when she was dismissed. At the time of the dismissal, the claimant was working 15 hours a week and the prognosis for her to be able to work full time again was estimated to be 18 months. On that basis, the Board found that the impairment was not 'long-term' and could therefore not be qualified as a disability within the meaning of the prohibition of discrimination. Thus, the Board concluded that the claimant did not have a disability at the time of dismissal.

It is not yet clear whether the Court regards the formula provided in *Chacón Navas* and *HK Danmark* as an exhaustive definition of disability. In particular, this definition leaves no space for the protection of those assumed to be disabled or likely to have a future disability. These scenarios are anticipated in some national legislation. For instance, **Irish** legislation covers discrimination on the basis of an existing disability, one which previously existed or may exist in the future, or is imputed to a person.⁹⁷ **Dutch** law covers 'an actual or assumed disability or chronic disease',⁹⁸ thereby protecting (for example) a person who previously had cancer but no longer experiences any symptoms. The **Slovak** Anti-discrimination Act states that 'discrimination on the ground of previous disability, or discrimination against a person in a case in which it could be, based on external symptoms, possible to presume that she or he is a person with a disability, shall be deemed to be discrimination on the ground of disability'.⁹⁹ **UK** law also protects individuals with respect to past and future disabilities. Case law shows that discrimination based on the perception of a future disability amounts to direct disability discrimination.¹⁰⁰ **Swedish** law does not consider the claimant's specific abilities themselves, but rather the discriminator's perception of these abilities. Therefore, it is irrelevant for the outcome of a case whether the claimant experiences any symptoms or not.¹⁰¹

1.2.3.1 Specific provisions on disability – the reasonable accommodation duty

One of the most significant innovations within the Employment Equality Directive is the duty placed on employers to 'take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer'.¹⁰² This provision has been implemented very unevenly across the Member States. In its landmark decision *HK Danmark*, the CJEU provided further clarification on the concept of reasonable accommodation as defined by the Employment Equality Directive. The Court held that in this regard the directive must be interpreted in accordance with the UN CRPD as 'referring to the elimination of the various barriers that hinder the full and effective

94 Cyprus, Law on Persons with Disabilities, No. 127(I)/2000.

95 Sweden, Discrimination Act, 2008:567, Chapter 1, Section 5(4). The Swedish term '*varaktig*' has been translated in the Government's unofficial translation as 'permanent'. The term permanent should here be looked at as meaning long-term or durable; in other words, it is probable that the impairment *will* last.

96 Denmark, Board of Equal Treatment, decision No. 9848 of 19.09.2018, available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=203441>.

97 Ireland, Employment Equality Acts 1998-2015, Section 2(1).

98 Netherlands, Act on equal treatment on the grounds of disability or chronic disease, 3 April 2006, Article 1(b).

99 Slovakia, Act on equal treatment in certain areas and on protection against discrimination and on amending and supplementing certain acts, as amended, No 365/2004, Section 2a(11)(d).

100 UK Employment Appeal Tribunal, *Chief Constable of Norfolk v. Coffey*, Decision No. UKEAT/0260/16 of 19 December 2017, available at: http://www.bailii.org/uk/cases/UKEAT/2017/0260_16_1912.html.

101 See, for example, Swedish Labour Court, *Sveriges Civilingenjörsförbund and MK v. T&N Management AB*, judgment No. 32, of 30 March 2005.

102 Directive 2000/78/EC, Article 5.

participation of persons with disabilities in professional life on an equal basis with other workers'.¹⁰³ Reasonable accommodation may therefore include both material and organisational measures such as adapted working hours.

In many countries, judicial interpretation is still scarce or lacking regarding the limits and scope of the duty to provide reasonable accommodation. The following states have legal provisions that approximate to the reasonable accommodation duty found within the directive: **Albania, Austria, Belgium, Bulgaria, Croatia,**¹⁰⁴ **Cyprus**, the **Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Iceland, Ireland, Italy,**¹⁰⁵ **Latvia, Lithuania,**¹⁰⁶ **Luxembourg, Malta**, the **Netherlands, North Macedonia, Norway, Poland, Portugal, Slovakia, Slovenia, Spain** and the **United Kingdom**. These vary considerably, from states that provide a basic duty with little elaboration on how this should be implemented (e.g. **Lithuania**)¹⁰⁷ or how a disproportionate burden must be assessed (e.g. **Croatia** and **North Macedonia**) to states with more extensive guidance on the practical application of the reasonable accommodation duty (e.g. the **United Kingdom**). In the **Netherlands**, the Netherlands Institute for Human Rights (NIHR) demands a high level of accommodation that is closely linked with the specific wishes of the individuals. The NIHR emphasises that the purpose of the obligation to provide reasonable accommodation is to realise the autonomy of disabled persons to the greatest extent possible. Moreover, the duty to provide reasonable accommodation applies in the fields of education and goods and services,¹⁰⁸ in addition to the field of employment and vocational training. As of 1 January 2017, the Disability Discrimination Act extends the duty to provide reasonable accommodation and enshrines a general duty to improve accessibility for persons with disabilities in addition to the obligation to adopt reasonable accommodation in individual cases (Article 2a (1)).¹⁰⁹ In **Bulgaria**, the Protection Against Discrimination Act makes provision for reasonable accommodation for people with disabilities in employment and education in Articles 16 and 32 respectively. Moreover, the Ordinance on Inclusive Education¹¹⁰ governing education for pupils with disabilities in mainstream and special schools defines 'reasonable facilitations',¹¹¹ which is to be understood as a reasonable accommodation duty. In **Belgium**, the duty to provide reasonable accommodation applies in the entire material scope of the directives, i.e. going far beyond the limits of employment. In **Cyprus**, the duty to provide 'reasonable measures' is not restricted to the workplace but also covers a wide range of areas, as long as the burden is not disproportionate or unjustified.¹¹² In **Sweden**, the Discrimination Act prohibits 'inadequate accessibility' as a separate form of discrimination. This provision protects persons with disabilities from being 'disadvantaged through a failure to take measures for accessibility to enable the person to come into a situation comparable with that of persons without this disability where such measures are reasonable on the basis of accessibility requirements in

103 CJEU, Judgment of 11 April 2013, *HK Danmark (Ring and Skouboe Werge)*, Joined Cases C-335/11 and C-337/11, ECLI:EU:C:2013:222, Para 54.

104 The law does not elaborate on whether a formal proof of disability is necessary to trigger the duty of reasonable accommodation. As to the experience of the Disability Ombudsperson, in practice a formal proof of disability is requested and in cases in which the person does not have any of the necessary documentation, disability in relation to work can be determined by the Institute for Expertise, Professional Rehabilitation and Employment of Persons with Disabilities.

105 The Italian legislation states that public employers 'shall apply this provision without any additional burden and with human, financial and instrumental resources already available'.

106 However, the wording of the Equal Treatment Act and the new Labour Code lacks precision and seems to be narrower than that of the Employment Equality Directive. Lithuania has also ratified the UN Convention on the Rights of Persons with Disabilities but its provisions do not seem sufficiently precise to be directly applicable by national courts.

107 The Labour Code adopted in 2017 and providing a duty of reasonable accommodation in the sphere of employment did not provide additional clarification on the scope of the duty but merely reproduces the wording of the Law on Equal Treatment.

108 Some specific restrictions still apply to public transport (Article 7 DDA) and housing (Articles 6a-c DDA).

109 This amendment of the DDA was already adopted in 2016 as part of the acts on ratification and implementation of the Convention on the Rights of Persons with Disabilities, but its entry into force was postponed to 1 January 2017. See <https://zoek.officielebekendmakingen.nl/stb-2016-215.html>.

110 Bulgaria, Ordinance on Integrative Education, entry into force 27 October 2017.

111 It is defined as 'all kinds of necessary and appropriate modifications and adjustments that do not result in disproportionate or unjustified burdening of others, when those are necessary in every individual case to ensure a person with a disability the recognition or exercise of all rights and basic freedoms on an equal footing with all others within the meaning of the Convention on the Rights of Persons with Disabilities'.

112 Cyprus, Law amending the Law on Persons with Disabilities N. 63(I)/2014, 23 May 2014. Available at www.cylaw.org/nomoi/arith/2014_1_063.pdf.

laws and other statutes, and with consideration to the financial and practical conditions, the duration and nature of the relationship or contact between the operator and the individual, and other circumstances of relevance'.¹¹³ In **Montenegro**, national law imposes no legal duty on employers to provide individualised reasonable accommodation for job seekers or employees with disabilities, although the UN CRPD is directly applicable. In **Serbia**, employers bear a duty to undertake technical adaptations in the workplace to enable a disabled employee to carry out their work effectively. Due to its scope and limitations however, this duty is not in compliance with the directive.

There are concerns regarding the extent of the duty to provide reasonable accommodation in several countries. In **France**,¹¹⁴ the duty to provide reasonable accommodation is narrower in scope than under the directive, as it has not been transposed, for instance, to cover officials working in the Parliament, who can only rely on the direct application of the Employment Equality Directive on the basis of domestic case law.¹¹⁵ In **Hungary**, the duty of reasonable accommodation has not been implemented entirely. Concerns are particularly serious with regard to access to employment as Act XXCI of 1998 on the Rights of Persons with Disabilities and the Guaranteeing of their Equal Opportunities contains the obligation to accommodate the needs of people with disabilities at the recruitment stage and to adapt the working environment for current employees. It does not seem to prescribe that reasonable effort should be made to adapt the workplace to special needs with a view to enabling a disabled job applicant to do the work. In **Germany**, there is no specific provision imposing a general duty to provide reasonable accommodation on employers and it is considered that the provision of reasonable accommodation falls under the contractual obligation of employers to take proper care of the legitimate needs of their employees.¹¹⁶ However, there is no general regulation of reasonable accommodation that covers all areas within the material scope of the directive, including, among others, job applicants. A similar situation exists in **Malta**, where reasonable accommodation is restricted to employees and does not cover job seekers. In **Romania**, Act 448/2006 on the Promotion and Protection of the Rights of Persons with Disabilities establishes in general terms duties to facilitate access to various public and private services and facilities and in labour relations, but does not provide for reasonable accommodation as a duty for employers. In **Lithuania**, the wording of the relevant provision lacks precision and only refers to a duty on employers to 'take appropriate measures to provide conditions for disabled people to obtain work, to work, to pursue a career or to study, including adapting premises'. In **Italy**, the relevant provision does not *define* reasonable accommodation or offer employers any sort of guidance, but states that when public employers provide reasonable accommodation, they 'shall apply this provision without any additional burden and with human, financial and instrumental resources already available'.¹¹⁷ Finally, the duty to provide reasonable accommodation has not been included fully in national legislation in **Liechtenstein**.¹¹⁸

UK Court finds that the duty to make adjustments applies even when not requested by the employee¹¹⁹

The claimant suffered from dyspraxia and dyslexia. Due to her disabilities, it took longer for her to complete her work. She made a flexible working request to work compressed hours i.e. a 36-hour week spread over four days instead of five days. Her request was approved but she brought a claim against her employer for failure to make reasonable adjustments on the basis that it should have also reduced her workload to reduce the substantial disadvantage she suffered compared to her non-

113 Sweden, Discrimination Act, as amended by Act 2014:958, of 8 July 2014, Chapter 1, Section 4(3).

114 See France, Administrative Supreme Court (*Conseil d'État*) decisions in the *Perreux* case of 30 October 2009 and the *Bleitrach* case of 30 October 2010.

115 For more details on the French situation regarding reasonable accommodation, please see the tables below.

116 Germany, Civil Code, Section 241.2.

117 Italy, Legislative Decree of 28 June 2013 No. 76, then converted into Law No. 99 of 9 August 2013 on Preliminary urgent measures for the promotion of employment, in particular of young people, the promotion of social cohesion, and other urgent financial measures.

118 However, Article 7(3) of the Act on Equality of People with Disabilities states that indirect discrimination has occurred if no attempts have been made to accommodate the situation of the person concerned.

119 British Employment Appeal Tribunal, UKEAT/0202/16/BA, 20 January 2017, *Home Office (UKVI) v. Kuranchie*, http://www.bailii.org/uk/cases/UKEAT/2017/0202_16_1901.html.

disabled colleagues. The Employment Appeal Tribunal found that the employer should have made the reasonable adjustment of reducing her workload to avoid the disadvantage she suffered – allowing her to work compressed hours did not remove the disadvantage. Moreover, the Tribunal found that this duty applies even if the reasonable adjustment had not been requested by the employee at the time.

Whilst the definition of the duty varies, it is commonly subject to the limitation that it should not create a ‘disproportionate’ or ‘unreasonable’ burden for the employer (in **Albania, Austria, Belgium, Bulgaria**,¹²⁰ **Cyprus**, the **Czech Republic, Denmark, Estonia, France**,¹²¹ **Germany, Greece, Iceland, Ireland, Italy** (public employers), **Latvia, Lithuania, Luxembourg, Malta**, the **Netherlands, North Macedonia, Norway**,¹²² **Poland, Portugal, Slovakia, Slovenia, Spain** and **Turkey**). The preamble of the directive provides an indication of the criteria to be taken into account in determining the reasonableness of a particular accommodation. Recital 21 identifies three issues to consider, and these are often included in national legislation or case law:

- the financial and other costs entailed: **Bulgaria**, the **Czech Republic, Estonia, Finland, France, Germany, Ireland, Liechtenstein**,¹²³ **Malta, Norway, Slovenia, Spain, Sweden, Turkey** and the **United Kingdom**;
- the scale and financial resources of the organisation or undertaking: **Austria, Denmark, Estonia, Finland, Ireland, Liechtenstein, Malta, Norway, Slovakia, Slovenia, Spain** and the **United Kingdom**; and
- the possibility of obtaining public funding or any other assistance: **Austria**, the **Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Liechtenstein, Malta**, the **Netherlands, Norway, Poland, Portugal, Slovakia, Spain** and the **United Kingdom**.

In **Iceland**, the Labour Equality Act of 2018, which created a duty on employers to make reasonable accommodation for people with disabilities, does not define a ‘reasonable’ accommodation or a ‘disproportionate’ burden. However, the explanatory notes to the bill do provide lists of examples of what these concepts could entail. In **Portugal**, pending the adoption of a law detailing the rules of financial assistance to be provided by the State, an entitlement to reasonable accommodation exists only if the State covers 100 % of the costs. However, as the duty to provide reasonable accommodation always implies a judgement of proportionality, the obligation might be triggered regardless of the law detailing financial assistance to the employers.

In **Denmark**, although the statutory definition of the duty to provide reasonable accommodation is vague, there have been a number of court and equality body cases specifying the limits of this duty. This rich body of case law shows that the employer needs to prove that such accommodation would impose a disproportionate burden,¹²⁴ that it is only if the employer knows or ought to know about the employee’s disability that the duty can apply,¹²⁵ and that the size of the employer’s business is relevant for assessing the reasonableness of accommodations.¹²⁶

120 Instead of referring to an ‘unreasonable’ or disproportionate burden, Bulgarian law limits the duty when ‘costs are unfoundedly large and would seriously hinder’ the employer. Protection Against Discrimination Act, Article 16.

121 French law does not refer to a disproportionate ‘burden’ but rather ‘disproportionate costs’, thus focusing entirely on the financial aspects of the situation. See France, Labour Code, Article 5213-6, paragraph 2.

122 In Norway, if it is determined that the measures taken were suitable/adequate, the general proportionality test is applied.

123 Although Liechtenstein lacks a duty for employers to provide reasonable accommodation, Article 7(2) of the Act on Equality of People with Disabilities specifies the extent of the duty to avoid indirectly discriminating by failing to attempt to accommodate the situation of an employee with disability.

124 See, for instance, Maritime and Commercial Court, Judgment of 29 April 2015 in case No. F-9-12.

125 See, for instance, Supreme Court, Judgment of 11 August 2015 in case No. 104/2014. Printed in U2015.3827H.

126 See, for instance, Board of Equal Treatment, Decision 125/2015 of 26 August 2015.

Refusal to provide a ‘flex-job’ amounts to failure to make reasonable accommodation¹²⁷

A 2017 ruling from the Danish Supreme Court illustrates that if an employee needs reduced working hours because of her disability, the employer must show a willingness to look into possible accommodations, such as enabling flex-job arrangements, part-time working etc. The case dealt with a woman who had undergone a serious brain surgery and experienced abnormal tiredness and was on sick leave for several months. The employer rejected the request for a ‘flex-job’ with reduced working hours as reasonable accommodation for the employee. She was dismissed three weeks after and argued that the dismissal was discriminatory because of her disability. The Supreme Court referred to the medical records of the claimant who had no prospect of returning to a full-time position as she was suffering from a ‘diagnosed disabling fatigue’. The Supreme Court thus concluded that the impairment at the time of the dismissal constituted a disability encompassed by the Act on the Prohibition of Discrimination in the Labour Market. The Supreme Court also stated that the employer had failed to fulfil its obligation to establish reasonable accommodation as it refused the claimant’s request of a ‘flex-job’ without examining all the possible options more closely.

National legislation is often ambiguous about whether failure to provide reasonable accommodation is to be treated as a form of unlawful discrimination (e.g. **Hungary, Latvia and Slovenia**). In some countries, there is still no case law that could lead to the conclusion that such an approach is being taken (e.g. **Estonia, Luxembourg**). In **Cyprus**, no reasonable accommodation case has ever been tried in the courts, but the Code of Conduct on Disability Discrimination in the workplace issued by the equality body in 2010 explicitly provides that an employer’s failure to adopt reasonable accommodation measures amounts to unlawful discrimination and is punishable with a fine or imprisonment, like all other forms of discrimination.¹²⁸ **Irish** case law holds that a failure to provide reasonable accommodation amounts to discrimination.¹²⁹ The courts did not, however, state whether it is a form of direct or indirect discrimination. In **Greece**, failure to meet the duty to provide reasonable accommodation was found to amount to direct discrimination, although the court did not explicitly mention this duty.¹³⁰ That issue was clarified in the Explanatory Report to Law 4488/2017, which states that failure to meet the duty to provide reasonable accommodation amounts to direct discrimination.¹³¹ In **Lithuania**, some guidance was provided in 2014 when the Vilnius Regional Court found that the failure of an employer to evaluate a disabled employee’s realistic possibilities for continuing to work or to consider adjusting his working conditions constituted direct discrimination on the ground of disability.¹³² However, it is worth noting that the amendments to the Labour Code of 2017 do not specify that failure to adopt reasonable accommodation constitutes direct discrimination.¹³³ In **Croatia and France**, a failure to meet the duty constitutes unlawful discrimination, but it is not specified whether this is classified as direct or indirect discrimination. In contrast, failure to provide reasonable accommodation constitutes indirect discrimination in **Austria, the Czech Republic, and Denmark**. In **Slovakia**, failure to provide reasonable accommodation constitutes a violation of the principle of equal treatment (which is broader than the prohibition of discrimination and also encompasses the duty to adopt measures to prevent discrimination) and it does not equate to direct or indirect discrimination. However, this does not mean that in specific situations the actions or omissions of an employer cannot at the same time also fall within definitions of the specific forms of discrimination defined by the Slovak Anti-discrimination Act – mainly direct or indirect discrimination or harassment. Indeed, in 2015 the Supreme Court held in a case on the right to inclusive education of a child with a

127 Danish Supreme Court judgment of 22 November 2017 in case No. 305/2016. Appeal of Eastern High Court judgment of 30 June 2016 in Case No. B-477-15.

128 Cyprus, Code of conduct issued by the equality body in order to clarify Art. 5(1) of the Law on Persons with Disabilities No 127(I)2000, as amended by Law No 72(I) of 2007. It is available at: <http://www.ombudsman.gov.cy/>.

129 Ireland, Labour Court, *Michal Wojcik and Sodexo Ireland Ltd*, Decision No. EDA1517 of 23 November 2015, <https://www.workplacerelations.ie/en/Cases/2015/November/EDA1517.html>.

130 Greece, Court of First Instance of Athens, Decision 2048/2008.

131 Greece, Explanatory Report to Law 4488/2017, p. 25-26, available in Greek at: <http://www.hellenicparliament.gr/UserFiles/2f026f42-950c-4efc-b950-340c4fb76a24/s-syndas-eis-%CE%BF%CE%BB%CE%BF.pdf>.

132 Lithuania, Vilnius Regional Court, decision No 2A-557-640/2014 of 27 February 2014.

133 Lithuania, Labour Code, 2016, No. XII-2603. Available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89>.

disability that a refusal to provide reasonable accommodation is a form of discrimination.¹³⁴ In **Sweden**, failure to provide reasonable accommodation in an individual case amounts to 'inadequate accessibility,' which constitutes a separate form of discrimination. Similarly, in **Belgium, Finland** and the **United Kingdom**, failure to provide reasonable accommodation is defined as a specific form of discrimination and in the **Netherlands** as a prohibited form of making a distinction,¹³⁵ although it is not specified whether this would be direct discrimination, indirect discrimination or a third form of prohibited distinction.

The employer's awareness of the disability as a precondition for the duty to provide reasonable accommodation – the *Danish Skouboe Werge* case¹³⁶

The Danish *Ring* and *Skouboe Werge* cases were referred to the CJEU (C-335/11 and C-337/11), giving rise to its landmark judgment in *HK Danmark*, which provided guidance on the concept of disability and on the duty to provide reasonable accommodation. Following the CJEU ruling, the Danish Maritime and Commercial Court delivered two judgments on 31 January 2014.¹³⁷ The Danish court found that the adaptation of the workplace with a height-adjustable desk as well as part-time employment constituted reasonable accommodation. The two claimants were each awarded compensation equal to 12 months' salary.

One of the cases (*Skouboe Werge*) was appealed and the Supreme Court delivered its judgment on 23 June 2015.¹³⁸ The Supreme Court observed that it is a precondition for the employer's obligation to establish reasonable accommodation that the employer knows or ought to know about the disability. The parties of the case had been e-mailing each other during the sickness absence of the employee, but the note from the specialist doctor with the long-term prognosis was not sent to the employer. On that basis, the Court did not find that the employer at the time of the dismissal knew or ought to have known about the fact that the illness had caused a disability. In conclusion, there was no basis for ascertaining that the employer had failed to provide reasonable accommodation. Thus, the Supreme Court overruled the judgment by the Danish Maritime and Commercial Court and acquitted the employer.

Table 2: Reasonable accommodation (RA) is provided for people with disabilities in national law (at the federal level)

| Country | RA provided for people with disabilities | Failure to provide RA counts as discrimination |
|--------------------------------|--------------------------------------------------------------------------------|------------------------------------------------|
| | Law | |
| ALBANIA | Law on Protection from Discrimination, Art. 3(7) | Yes |
| | Labour Code, Art.9(1) and 9(8) | Yes |
| | Law on the Inclusion and Accessibility of Persons with Disabilities, Art. 3(6) | Yes |
| AUSTRIA | Act on the Employment of People with Disabilities, § 7c/4-7. | Yes |
| BELGIUM | General Anti-discrimination Federal Act, Arts. 4(12) and 14. | Yes |
| BULGARIA ¹³⁹ | Protection Against Discrimination Act, Art. 16. | No |
| | Integration of Persons with Disabilities Act, Art. 24 | No |

134 Decision of the Supreme Court of the Slovak Republic, No. 7Sžo/83/2014, 24 September 2015.

135 See: Netherlands, Equal Treatment Commission (Commissie Gelijke Behandeling (CGB)), ETC 2004-140, where it held: 'It concerns a sui generis form of (making a) distinction, which does not yet occur in the other equal treatment laws'.

136 CJEU, joined cases C-335/11 and C-337/11, *HK Danmark*, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab and HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S, judgment of 11 April 2013, ECLI:EU:C:2013:222. Commentary by Lisa Waddington (2013) in *European Anti-discrimination Law Review*, issue 17, page 11

137 Denmark, the Maritime and Commercial Court, Judgments No. F-13-06 and No. F-19-06 of 31 January 2014. See U.2014.1223S for the printed judgment No. F-19-06.

138 Denmark, Supreme Court, Judgment in case No. 25/2014 of 23 June 2015. Printed in U2015.3301H.

139 Protection can also be found in the Labour Code, Art. 314; Civil Servant Act, Art. 30; and the Healthy and Safe Work Conditions Act, Art.16 (1.4).

| Country | RA provided for people with disabilities | Failure to provide RA counts as discrimination |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|
| | Law | |
| CROATIA | Anti-discrimination Act, Art. 4(2). ¹⁴⁰ | Yes |
| | Act on professional rehabilitation and employment of persons with disability, Art. 7(2) | No ¹⁴¹ |
| CYPRUS | Law on Persons with Disabilities, Art. 5(1A). | No ¹⁴² |
| CZECH REPUBLIC | Anti-Discrimination Act, Sec. 3 (2). | Yes |
| DENMARK | Act on Prohibition of Discrimination in the Labour Market etc., Sec. 2(a). | Yes |
| ESTONIA | Equal Treatment Act, Art. 11. | No |
| FINLAND | Non-Discrimination Act, Sec. 15. | Yes |
| FRANCE ¹⁴³ | Labour Code, Art. L5213-6. | Yes |
| | Law relating to the adaptation of National Law to Community Law in matters of discrimination, Art. 2 | |
| GERMANY | Social Code IX, Sec. 164.4. | Yes |
| GREECE | Equal Treatment Law, Art. 5. | Yes |
| | Law on provisions for pensions in the public sector and various insurance provisions, on strengthening of protection of employees, on rights of persons with disabilities and other provisions, Art. 63 | |
| HUNGARY | Act on the Rights of Persons with Disabilities and the Guaranteeing of their Equal Opportunities, Art. 15. ¹⁴⁴ | Yes |
| | Act on the Labour Code, Art.51 | |
| ICELAND | Act on Equal Treatment in the Labour Market, Art. 10 | No |
| IRELAND | Employment Equality Acts 1998-2015, Sec. 16. | Yes |
| ITALY | Legislative Decree Implementing Directive 2000/78/EC, Art. 3(3-bis). | Yes |
| LATVIA | Labour Law, Art. 7(3). | No |
| LIECHTENSTEIN | – ¹⁴⁵ | No ¹⁴⁶ |
| LITHUANIA | Law on Equal Treatment, Art. 7(9). | No ¹⁴⁷ |
| | Labour Code, Art. 26(2) | |

140 Protection can also be found in the Act on Professional Rehabilitation and Employment of Persons with Disability.

141 Although failure to meet the duty of reasonable accommodation for people with disabilities is not included in the law, it can be noted that the Ombudsperson with Persons with Disabilities in annual reports continuously points out that the failure to meet the duty of reasonable accommodation counts as discrimination.

142 Although the law does not expressly provide that failure to meet the duty of reasonable accommodation amounts to discrimination, this may be inferred from the wording of the law, which stipulates that, in order to comply with the principle of equal treatment, reasonable accommodation is anticipated and for this purpose the employer must take all necessary measures so as the person with disability may have access to a job position, may exercise his profession or may attend training, provided the burden is not unreasonable. Article 5(1A) of the Law on Persons with Disabilities.

143 Non-registered disabled people, non-salaried disabled workers and disabled people who are members of liberal professions, magistrates who are not considered as civil servants and are covered by Ordinance no. 58-1270 of 22 December 1958, public agents working in Parliament, contractual public agents who hold one of the various statuses which are excluded from the application of Law no. 84-16 of 11 November 1984 on the status of contractual public agents in Article 3, para. 5, are not covered by the above-mentioned texts implementing reasonable accommodation into French Law (Articles 24 IV and 32 of Law No. 2005-102 for equal rights and opportunities, participation and citizenship of disabled persons, of 11 February 2005).

144 The Disability Law is clear regarding any aspect of employment except for access to employment, where it still requires judicial interpretation.

145 Judicial interpretation is required of Article 7(3) of the Act on Equality of People with Disabilities, which stipulates that indirect discrimination has occurred if no attempts have been made to accommodate the situation of the person concerned.

146 Judicial interpretation is required of Article 7(3) of the Act on Equality of People with Disabilities. Furthermore, some form of reasonable accommodation is foreseen although it is not clear whether employment is covered.

147 Legislation does not stipulate explicitly that failure to meet the duty to provide reasonable accommodation amounts to discrimination, and there is no relevant case law. The Equal Opportunities Ombudsperson considers however that such a failure does amount to discrimination; see Equal Opportunities Ombudsperson (2019), *Annual Report for 2018*, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/04/lgk-2018-m-veiklos-ataskaita-.pdf>.

| Country | RA provided for people with disabilities | Failure to provide RA counts as discrimination |
|------------------------------|-------------------------------------------------------------------------------------------------------|------------------------------------------------|
| | Law | |
| LUXEMBOURG | General Anti-Discrimination Law, Art. 20. | No |
| | Law on disabled persons, Art. 8. | No |
| MALTA | Equal Opportunities (Persons with Disabilities) Act, Art. 7. | Yes |
| | Equal Treatment in Employment Regulations, Art. 4A. | Yes |
| MONTENEGRO | .. ¹⁴⁸ | – |
| NETHERLANDS | Disability Discrimination Act, Art. 2. | Yes |
| NORTH MACEDONIA | Law on Prevention and Protection Against Discrimination, Arts. 5(12) and 8. | Yes |
| NORWAY | Equality and Anti-Discrimination Act, Art. 22 | Yes |
| POLAND | Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities, Art. 23a. | Yes |
| PORTUGAL | Labour Code, Art. 86(1). | Yes |
| ROMANIA | Law on the protection and promotion of the rights of persons with a handicap, Art. 5(4). | No ¹⁴⁹ |
| SERBIA ¹⁵⁰ | Law on the Prevention of Discrimination against Persons with Disabilities, Art. 22(4). ¹⁵¹ | Yes |
| SLOVAKIA | Anti-discrimination Act, Sec. 7. | Yes |
| SLOVENIA | Act on Equal Opportunities of People with Disabilities, Art. 3(3). | No ¹⁵² |
| SPAIN | General Law on the Rights of Persons with Disabilities and their Social Inclusion, Art. 2.m | Yes |
| | Law on prevention of occupational risks, Arts. 14, 15 and 25. | Yes |
| SWEDEN | Discrimination Act, Ch. 1 Sec. 4 p.3, in conjunction with Ch. 2 Sec. 1. | Yes ¹⁵³ |
| TURKEY | Law on the Human Rights and Equality Institution of Turkey, Arts. 4/1-f and 5(2) | Yes |
| | Law on Persons with Disabilities, Arts. 4/A and 14(4) | No |
| UNITED KINGDOM | (GB) Equality Act, Sec. 20. | Yes |
| | (NI) Disability Discrimination Act 1995, Sec. 4A | Yes |

1.2.3.2 Specific provisions on disability – health and safety

Article 7(2) of Directive 2000/78/EC allows Member States to maintain or adopt provisions on the protection of health and safety at work with regard to disabled people. Some national legislators have interpreted this provision as permitting health and safety exceptions to non-discrimination on the ground of disability, e.g. **Cyprus**, **Greece**, **Ireland**, **Luxembourg**, the **Netherlands** and **Slovakia**.

In other countries, there is no explicit provision under the anti-discrimination legislation, but exceptions can be found under other pieces of legislation. In **Portugal**, it is the employer who assesses the measures

¹⁴⁸ Although the Law on Professional Rehabilitation and Employment of Persons with Disabilities provides a general duty to adapt workplaces and working operations to the needs to persons with disabilities (Article 15), no duty to provide individualised measures of reasonable accommodation exists in Montenegro.

¹⁴⁹ While failure to meet the duty to provide reasonable accommodation is not explicitly stipulated as amounting to discrimination, it is considered as such in practice by the national equality body and by the courts. See notably: National Council for Combating Discrimination, Decision *M.E.R. v. Dr PG and Mayoralty of V.*, 17.10.2007.

¹⁵⁰ In addition, Art. 11(4) of the Law on the Professional Rehabilitation and Employment of Persons with Disabilities provides technical, professional and financial support for the adaptation of work tasks and/or the workplace. This provision does not however create an individual right to claim reasonable accommodation.

¹⁵¹ The duty only encompasses technical adaptations.

¹⁵² Judicial interpretation is required.

¹⁵³ In Sweden, failure to provide reasonable accommodation amounts to a specific form of discrimination, i.e. inadequate accessibility.

that are needed to protect the health and safety of employees with disabilities and the Labour Code allows employers to exclude a disabled person if the work will pose a risk to that person's health and safety. However, a disabled person can challenge this decision before the labour courts. In **Bulgaria**, under the Healthy and Safe Working Conditions Act, employers have a duty to assign to their employees only tasks that are compatible with their capabilities.¹⁵⁴ Furthermore, in view of the specific dangers for employees with a reduced work capability¹⁵⁵ and under a number of other laws and pieces of secondary legislation governing specific fields, health requirements exist for access to employment in those fields, such as transportation (including aviation) and other risk-intensive occupations.

Lastly, some countries do not provide specific exceptions in relation to disability in the context of the health and safety provisions of the directive, but consider that a general exception with a legitimate aim is relevant in these situations. This is the case in **Romania**, where the general exception of objective and justified limitation, allowed by Article 4¹ of the Anti-discrimination Law, could be applicable.

1.2.4 Sexual orientation

The introduction of legal protection against discrimination for the first time on the ground of sexual orientation proved to be controversial and was challenging for many of the states. Very few countries have defined sexual orientation within anti-discrimination legislation. In **Bulgaria**, sexual orientation is defined under the Protection Against Discrimination Act as 'heterosexual, homosexual or bisexual orientation', (Section 1.10 Additional Provisions). A similar approach is adopted in **Ireland** and **Sweden**. **British** legislation refers to 'a sexual orientation towards (a) persons of the same sex, (b) persons of the opposite sex, or (c) persons of either sex'.¹⁵⁶ The 2006 **German** General Equal Treatment Act adopts the term 'sexual identity' while the Federal German Constitutional Court refers to both sexual identity and sexual orientation as being part of each individual's autonomous personality. This is understood to go beyond sexual orientation and also encompasses protection against discrimination for transsexual people.¹⁵⁷ Similarly, in **Austria** 'sexual orientation' is generally considered to cover heterosexuality, homosexuality and bisexuality. Although **Belgian** anti-discrimination legislation does not contain a definition of sexual orientation, it is worth mentioning that the Inter-federal plan to fight homophobic and transphobic violence, which was adopted in 2013, defines sexual orientation as 'heterosexuality, homosexuality and bisexuality'. It further specifies that '[s]exual orientation is not a choice. Sexual orientation is defined on the basis of the gender of individuals for whom an individual has both physical and emotional attraction and affection'.¹⁵⁸

Although explicitly mentioned in the **Hungarian** Equal Treatment Act of 2003, the provision prohibiting discrimination in the Fundamental Law of Hungary does not list sexual orientation among the grounds explicitly protected from discrimination. However, it can be considered that all the grounds covered by the directives fall within the open-ended list of grounds protected by the Constitution.

Regarding candidate countries, anti-discrimination provisions in **North Macedonia**¹⁵⁹ and **Turkey** do not explicitly mention sexual orientation as a protected ground, while anti-discrimination laws in **Montenegro** and **Serbia** do. In **Turkey**, in 2017, the Constitutional Court ruled explicitly, by referring to the European

154 Bulgaria, Healthy and Safe Working Conditions Act, Article 16 (1.2a).

155 Bulgaria, Healthy and Safe Working Conditions Act, Article 16 (1.3).

156 Great Britain, Equality Act 2010, Section 12. In Northern Ireland, the Employment Equality (Sexual Orientation) Regulations 2003 provide a similar definition (Reg 2(2)).

157 See Federal Constitutional Court of 6 December 2005; 1 BvL 3/03, paragraph 48 *et seq.*

158 Belgium (2013), *Inter-federal plan to fight homophobic and transphobic violence*, 31 January 2013, available at: http://igvm-iefh.belgium.be/sites/default/files/advisories/plan_daction_interfederal_violences_homophobes_transphobes_fr.pdf.

159 It is, however, mentioned as a ground protected from discrimination in other laws, such as for instance the Law on Labour Relations, Official Gazette of the Republic of Macedonia, No 62/2005, as last amended in 2015, Article 6. In Macedonia, a draft for a new law, the Law for Prevention and Protection Against Discrimination, aims to introduce several changes in the legal framework, such as the addition of the ground of sexual orientation and the shift from 'mental or physical disability' to 'disability' (Article 5, 2017 draft-ADL).

Court of Human Rights' case law, that sexual orientation is a prohibited ground of discrimination.¹⁶⁰ As far as EEA countries are concerned, national legislation in **Liechtenstein** gives no definition of sexual orientation. **Norway** provides a definition similar to that used in many countries, as sexual orientation covers heterosexual, homosexual and bisexual orientation. In **Iceland**, since 2018, sexual orientation has been defined simply as 'the ability of an individual to be attracted to or fall in love with another person.'¹⁶¹

Many of the difficulties encountered in implementing the sexual orientation provisions of the directive relate to the breadth of any exceptions applying to employers with a religious ethos (see section 3.2 below). These exceptions are sensitive because they stir up debate around reasonable accommodation beyond disability in the EU: some employers may be hostile to homosexuality because of their religious beliefs, while others are looking to strike the right balance between the interests of employees holding religious convictions and the interests of lesbian, gay, bisexual and transsexual people.¹⁶²

Another key issue relates to partners' benefits (see the *Maruko* case)¹⁶³ and the extent to which national law permits employers to limit work-related benefits to those employees who are married (e.g. a pension entitlement for a surviving spouse). This issue is further examined below in section 3.6 related to family benefits.

Clarifying the scope of the term 'sexual orientation' is challenging as in many states, there are few or no examples of cases of discrimination on the grounds of sexual orientation being brought before the courts. Issues around confidentiality or fear of victimisation may deter some individual victims from initiating proceedings. Moreover, in some states the wider political climate remains unfriendly or openly hostile to equality for lesbian, gay and bisexual people (e.g. **North Macedonia, Poland and Lithuania**).

1.2.5 Age¹⁶⁴

Age is generally assumed to be an objective characteristic with a natural meaning and hence it is rarely defined. The **Swedish** Discrimination Act defines age as the 'length of life to date' and includes all ages, ensuring that the young and the old are protected. Likewise, most states have not restricted the scope of the legislation, but the **Irish** Employment Equality Acts 1998-2015 limit their application to 'persons above the maximum age at which a person is statutorily obliged to attend school',¹⁶⁵ while the protection in the field of access to goods and services only applies to those aged above 18.¹⁶⁶ Similarly, in **Denmark** as regards employment, payment and dismissal, persons aged below 18 are not protected against direct discrimination if differential treatment is stipulated in a collective agreement.¹⁶⁷ Moreover, the prohibition against differential treatment due to age does not apply with regard to the employment and conditions of pay and dismissal of young people under the age of 15, since their employment is not regulated by a collective agreement. In **Cyprus**, courts have ruled that retirement ages fall outside the scope of the directive and are thus exempt from judicial scrutiny.¹⁶⁸

160 The Court referred to the term 'sexual preference' although the case concerned gender identity. Constitutional Court of Turkey (*Anayasa Mahkemesi Kararı*), Application no. 2014/19308, 15 February 2017.

161 Iceland, Act No. 86/2018 on Equal Treatment in the Labour Market, of 11 June 2018, Article 3.11.

162 See ECtHR, *Lillian Ladele and Gary McFarlane v. the United Kingdom*, Application numbers 48420/10 and 59842/10, Judgment of 15 January 2013.

163 European Court of Justice, Judgment of 1 April 2008, *Maruko*, C-267/06, EU:C:2008:179.

164 For a detailed analysis of the justifications for age discrimination, see section 3.3 below.

165 Ireland, Employment Equality Acts 1998-2015, Section 6(3)(a).

166 Ireland, Equal Status Acts 2000-2018, Section 3(3)(a).

167 Denmark, Act on the Prohibition of Discrimination in the Labour Market etc., Section 5(a)(4).

168 Supreme Court of Cyprus, Appeal Jurisdiction, *Michael Raftopoulos v. Republic of Cyprus*, Appeal no. 3/2012, 10 October 2017, available at http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2017/3-201710-3-123.htm&qstring=%EC%E9%F7%E1%EB%E1%EA%2A%20and%20%E1%E1%F6%F4%EF%F0%EF%F5%EB%EF%2A.

1.3 Assumed and associated discrimination

Discrimination can sometimes occur because of an assumption about another person, which may or may not be factually correct, e.g. that the person has a disability. Alternatively, a person may face discrimination because they associate with persons of a particular characteristic, e.g. a non-Roma man may be denied admission to a bar because he is with friends from the Roma community. In many countries, the application of discrimination law to such scenarios is neither stipulated nor expressly prohibited, and only future judicial interpretation will clarify this issue. This is the case for instance in **Estonia, Germany**,¹⁶⁹ **Italy, Latvia, Liechtenstein, Lithuania, Malta**,¹⁷⁰ **Poland, Romania** and the **UK**.¹⁷¹ In **Poland**, discrimination by association has been found in two cases, both relating to employees who were dismissed due to their association with the LGBT community.¹⁷² In **Cyprus**, the Law on persons with disability includes assumption of disability within the definition of disability, thus extending the prohibition of discrimination on this ground to discrimination by assumption.¹⁷³ As regards the other grounds and discrimination by association, judicial interpretation is still needed in Cyprus. Similarly, in **Spain**, explicit protection against discrimination by association covers only the ground of disability. Discrimination by assumption is only implicitly included in the Spanish legislation. By contrast, the **Danish** Act on Ethnic Equal Treatment prohibits assumed discrimination (through its official commentary) as well as discrimination by association only on the grounds of racial or ethnic origin,¹⁷⁴ while judicial interpretation is required for the other grounds, which are covered by the Act on the Prohibition of Discrimination in the Labour Market etc. However, the Supreme Court has found that discrimination by association with regards to the ground of disability is prohibited.¹⁷⁵ A landmark Supreme Court ruling from November 2017 seems to recognise the unlawfulness of discrimination based on perceived disability.¹⁷⁶ In the case, the Supreme Court explicitly clarified that to have a disability covered by anti-discrimination law, it is not a requirement that the condition in question is caused by a medically diagnosed illness. Instead, the impairment must be evaluated according to all the circumstances of the case. By doing so, the court leaves substantial room for the coverage of discrimination by assumption under anti-discrimination law. At the same time however, a series of decisions by the Board of Equal Treatment and by the courts have assessed disability from a purely medical approach, failing to examine whether the employer assumed or perceived the claimant to have a disability. Further guidance is therefore necessary in this regard in Denmark. In **France**, national law is interpreted as prohibiting discrimination by association¹⁷⁷ and explicitly prohibits discrimination based on 'real or supposed' belonging to an ethnic origin, nation, race or specific religion.

Anti-discrimination legislation in **Bulgaria, Croatia, Finland, Greece, Ireland, Norway, Portugal, Serbia** and **Slovenia** explicitly prohibits both discrimination on perceived or assumed grounds and discrimination by association. Similarly, **Austrian** law prohibits discrimination by association as well as discrimination by assumption, as confirmed by the Supreme Court in 2013.¹⁷⁸ In **Sweden**, and **Great Britain**, both discrimination by association and by assumption are considered to be prohibited due to the wording of the anti-discrimination legislation: the Swedish Discrimination Act prohibits discrimination that 'is associated with' the protected grounds and the GB Equality Act prohibits discrimination 'because

169 However, as for discrimination in employment, the General Equal Treatment Act (Section 7.1) contains an explicit regulation that the prohibition of discrimination extends to assumed characteristics.

170 In Malta, however, the Equal Opportunities (Persons with a Disability) Act 2000 explicitly prohibits assumed discrimination (Article 3(1)(b)) with regards specifically to the ground of disability. Some reference to associated discrimination can also be found in the Equal Opportunities (Persons with Disability) Act 2000 (Articles 6 and 11).

171 However, in the United Kingdom the explanatory notes to the 2010 Equality Act indicate that discrimination by association and discrimination on the basis of perception are intended to be covered by the act.

172 See notably: District Court Warszawa Śródmieście, 9 July 2014, PTPA on behalf of XY v. Company Z, sygn. VI C 402/13 (first instance). The appeal and the second instance ruling dealt with the effectiveness, dissuasiveness and proportionality of the sanction.

173 However, it is interesting to note that, so far, there has never been any case examined by the Cypriot Courts or by the equality body where the primary carer of a person with disability was not a close relative.

174 Denmark, Act on Ethnic Equal Treatment, commentary to Section 3 and 3(1), respectively.

175 Danish Supreme Court, judgment of 8 October 2014, printed in U2015.16H.

176 Danish Supreme Court, Case 305/2016, judgment delivered on 22 November 2017.

177 France, Caen Appeal Court, *Enault v. SAS ED*, No. 08/04500, 17 September 2010.

178 Austrian Supreme Court decision No 90bA40/13t of 24 July 2013. Some inconsistencies remain however on the provincial level.

of' a protected characteristic. In the **Czech Republic** and **Turkey**, discrimination on the ground of assumed characteristics – but not on the basis of association – is forbidden. In **Slovakia**, discrimination by association is prohibited only with regard to the grounds of racial or ethnic origin and religion or belief, while discrimination by assumption is prohibited for all grounds. In **Albania**, discrimination by association is explicitly prohibited, as is discrimination 'because of a supposition of such an association', i.e. an assumption of association.

There are noteworthy specificities in several countries regarding the prohibition of discrimination either by association or by assumption. For instance, in **Croatia**, discrimination based on 'misconception'¹⁷⁹ is prohibited, although there is still no case law on discrimination based on a perception or assumption of a person's characteristic. As mentioned earlier, in several states the legislation refers to 'real or assumed' race or ethnicity (e.g. **France**) or to a disability that existed in the past or which may exist in the future (e.g. the **Netherlands**). In the Flemish Framework Decree of 10 July 2008 in **Belgium**, the definition of direct discrimination expressly states that it is applicable in cases of discrimination based on an assumed characteristic. On the federal level, the preparatory works of the Racial Equality Federal Act and the General Anti-discrimination Federal Act indicate that these acts apply to discrimination by assumption and by association.

***Molla Sali v Greece*: First ECtHR Grand Chamber judgment on discrimination by association¹⁸⁰**

The case concerned the inheritance rights of the applicant to the property of her deceased husband, who was a member of the Muslim community of Thrace in eastern Greece.¹⁸¹ The applicant's husband had drawn up a will in accordance with the Greek Civil Code, bequeathing his entire estate to his wife. The legality of this will was later challenged by the deceased's two sisters, who claimed that their brother's inheritance rights were subject to Sharia law and to the jurisdiction of the mufti rather than the provisions of the Civil Code. The national courts found that the relevant legislative provisions had been intended to protect the Muslim community of Thrace, constituted a special body of law and did not breach the principle of equality or the right of access to a court (as invoked by the applicant). Consequently, the applicant was deprived of three-quarters of the property bequeathed to her.

Examining the comparator element, the Grand Chamber of the Court noted that the applicant, 'as the beneficiary of a will made in accordance with the Civil Code by a testator of Muslim faith, was in a relevantly similar situation to that of a beneficiary of a will made in accordance with the Civil Code by a non-Muslim testator'.¹⁸² The Court further concluded that the applicant was thus treated differently, 'on the basis of "other status", namely the testator's religion' (Paragraph 141). Finally, with regard to the objective justification of the difference in treatment, the Court recognised that Greece is bound by its international obligations concerning the protection of the Thrace Muslim minority (invoked by the State Party) but did not find that the impugned measure was proportionate to the aim of ensuring the protection of that minority.

Finally, the Court found that, '[r]efusing members of a religious minority the right to voluntarily opt for and benefit from ordinary law amounts not only to discriminatory treatment but also to a breach of a right of cardinal importance in the field of protection of minorities, that is to say the right to free self-identification' (Paragraph 157). Noting finally that Greece was the only country to apply Sharia law to its citizens against their wishes, the Court concluded that the difference in treatment of the applicant on the basis of her late husband's religious beliefs had no objective and reasonable justification. It found a violation of Article 14 read in conjunction with Article 1 of Protocol No. 1.

¹⁷⁹ Croatia, Anti-discrimination Act, 2008, Article 1(3).

¹⁸⁰ ECtHR, *Molla Sali v. Greece*, [GC] Application No. 20452/14, judgment of 19 December 2018.

¹⁸¹ The protection of the religious distinctiveness of Greek Muslims in Thrace is based on three international treaties: the Treaty of Athens of 14 November 1913, the Treaty of Sèvres of 10 August 1920 and the Lausanne Peace Treaty of 24 July 1923. They provide, under certain conditions, the applicability of Islamic religious law (Sharia law) to relationships between Muslims in matters of family law.

¹⁸² In the opinion of the concurring judge Mitis, the religious beliefs of the applicant herself should also have been considered – in addition to those of her husband – notably due to the concern raised by a number of international organisations regarding the situation of Muslim women and children in Western Thrace. The Grand Chamber appears, however, to have made a point of refraining from mentioning that the applicant was herself a member of the same Muslim community as her husband.

In the context of the second implementation report on the Racial Equality Directive and the Employment Equality Directive, adopted on 17 January 2014,¹⁸³ the Commission referred to the existing national case law and maintained that the directives also prohibit a situation where a person is directly discriminated against on the basis of a wrong perception or assumption of protected characteristics.¹⁸⁴

1.4 Multiple and intersectional discrimination

The EU has recognised the significance of multiple discrimination, although neither the Employment Equality Directive nor the Racial Equality Directive specifically address the issue. Explicit provisions are provided in only a few countries. This is the case for instance in **Norway** (since 1 January 2018), and in **Portugal**, where multiple discrimination is understood as ‘a combination of two or more discrimination factors’, covering the grounds of race/ethnic origin, nationality, ancestry and territory of origin.¹⁸⁵ In **Greece**, initially, a provision adopted in 2011 explicitly referred for the first time to multiple discrimination, with its application limited to the employment field.¹⁸⁶ This was later completed with an explicit prohibition of multiple discrimination in the Equal Treatment Law 4443/2016.¹⁸⁷ The Protection Against Discrimination Act in **Bulgaria** defines multiple discrimination as ‘discrimination based on more than one [protected] ground’.¹⁸⁸ It places a statutory duty on public authorities to give priority to positive action measures to the benefit of victims of multiple discrimination.¹⁸⁹ In case of multiple discrimination, the Commission for Protection against Discrimination (the equality body) holds hearings in a larger panel of five members, instead of the ordinary three-member panel.¹⁹⁰ However, although both the equality body and administrative courts have heard cases where multiple grounds of discrimination were invoked, no rulings have so far discussed any of the implications of a plurality of grounds. In the **United Kingdom**, the only provision on ‘dual discrimination’ (Section 14 of the Equality Act) has not come into force, although there is some case law recognising the relevance of taking into consideration a plurality of grounds.¹⁹¹ In the **Netherlands**, the Government decided not to follow the then Equal Treatment Commission’s suggestion to include multiple discrimination in the General Equal Treatment Act.¹⁹² In **Germany**, Section 4 of the General Act on Equal Treatment provides that any unequal treatment on the basis of several prohibited grounds has to be justified with regard to each of those grounds. In addition, Section 27(5) states that in cases of multiple discrimination the Federal Anti-discrimination Agency and the competent agents of the federal Government and the Parliament must co-operate. Multiple discrimination constitutes an aggravating circumstance under the **Romanian** Anti-discrimination Law,¹⁹³ while multiple discrimination

183 European Commission (2014), 2: Report from the Commission to the European Parliament and the Council – Joint Report on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (‘Racial Equality Directive’) and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (‘Employment Equality Directive’), COM (2014) 2 final, Brussels, 17 January 2014, available at http://ec.europa.eu/justice/discrimination/files/com_2014_2_en.pdf.

184 European Commission (2014), 2: Report from the Commission to the European Parliament and the Council – Joint Report on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (‘Racial Equality Directive’) and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (‘Employment Equality Directive’), COM (2014) 2 final, Brussels, 17 January 2014, p. 10, available at http://ec.europa.eu/justice/discrimination/files/com_2014_2_en.pdf.

185 Portugal, Law 93/2017 establishing the legal regime of prevention, prohibition and fight against discrimination on the ground of race/ethnic origin, nationality, ancestry and territory of origin

186 Greece, Act 3996/2011 concerning the general reform of the Labour Inspectorate adopted on 5 August 2011, Article 2(1): ‘The labour inspectorate supervises the implementation of the principle of equal treatment irrespective of racial or ethnic origin, religion or other beliefs, disability, age or sexual orientation, taking into consideration instances of multiple discrimination in accordance with Article 19 of Act 3304/2005’.

187 Greece, Equal Treatment Law 4443/2016, Article 2(2)(g).

188 Bulgaria, Protection Against Discrimination Act, Additional Provisions, Art. 1.11.

189 Bulgaria, Protection Against Discrimination Act, Article 11(2). Under Art. 11(1) authorities are placed under a general statutory duty to take positive action whenever necessary to achieve the legislation’s goals.

190 Bulgaria, Protection Against Discrimination Act, Article 48(3).

191 See for instance, Employment Appeal Tribunal, *Debiq v Ministry of Defence (No.2)*, UKEAT/0075/11/SM.

192 Netherlands, lower house of Parliament (*Tweede kamer*), 2011-2012, 28 481, No 16, p. 4.

193 Romania, Anti-discrimination Law, Article 2(6): ‘Any distinction, exclusion, restriction or preference based on two or more of the criteria foreseen in para. 1 shall constitute an aggravating circumstance in establishing responsibility for a minor offence, unless one or more of its components is not subject to criminal law’.

must be considered when assessing the amount of immaterial damages in **Austria** and **Liechtenstein**. In **Austria**, the explanatory notes further clarify that cases of discrimination based on multiple grounds need to be assessed taking an overall view and that the claims cannot be separated or cumulated by grounds. In **Croatia**, **Serbia** and **Slovenia**, multiple discrimination is a 'severe' form of discrimination, which needs to be considered when the amount of compensation or severity of other sanctions is evaluated.

Belgian court finds 'double discrimination' on grounds of gender and age.¹⁹⁴

The case concerned a 44-year-old man who applied for an administrative position in a company providing services on the basis of service vouchers. On the same day of his application, he received a refusal justified on the ground that the company essentially worked with women aged between 20 and 30 years old and that therefore, he could not fit in this tight group. The Labour Tribunal of Liège found that the facts at issue revealed a situation of 'double discrimination' based on sex and age. Thus, the Tribunal found not only a violation of the General Anti-Discrimination Federal Act because of age discrimination, but also a violation of the Gender Equality Federal Act because of sex discrimination. The Tribunal thus awarded compensation to the applicant, which amounted to double the lump sum award provided in each of the violated provisions.

However, all existing national provisions have had limited effects in practice and case law remains very scarce. In the few existing cases reported, no specific approach with regard to the comparator had been followed by either the courts or the equality bodies, and the plurality of grounds does not generally have a direct impact on the amounts of compensation awarded. The **Swedish** Labour Court has held that one single omission (to invite an elderly woman for a job interview) that constitutes two types of discrimination, does not raise the level of the discrimination award.¹⁹⁵

194 Belgium, Labour Tribunal of Liège, decision of 11.08.2017, case No. R.G. 16/294/A.

195 Sweden, Labour Court, *The Equality Ombudsman v. State Employment Board*, judgment No. 91/2010, of 15.12.2010.

2 Definitions and scope

An overview of Member State and candidate country anti-discrimination legislation reveals considerable progress in this area since the adoption of the directives. The great majority of states have introduced legislation that expressly forbids each of the four types of discrimination. Moreover, in most cases, the definitions provided in national legislation are very similar to the definitions found in the directives. Many states have chosen essentially to reproduce the text of the directives on these core concepts. This chapter will examine the regulation of each type of discrimination across the national legal systems.

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

2.1 Forms of discrimination

2.1.1 *Direct discrimination*

All the countries examined have adopted legislation that closely reflects the definition of direct discrimination found in the directives in relation to the relevant grounds, except for **Liechtenstein**, where direct discrimination is prohibited only on the ground of disability. In **Turkey**, direct discrimination is not prohibited on the ground of sexual orientation.

In most countries, there are common elements to the definitions of direct discrimination:

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

These elements can be generally found in legislation in **Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Montenegro, the Netherlands, North Macedonia, Norway, Poland** (although the definition of direct discrimination given in the Labour Code is still erroneous with regard to the comparator), **Portugal, Serbia, Slovakia, Slovenia, Sweden** and the **United Kingdom**. In **Albania** and **Spain**, the law does not determine whether past and hypothetical comparators are covered, while the **French** definition does not cover hypothetical comparisons.¹⁹⁶ Even when the definition of direct discrimination complies with the directives, it does not necessarily apply to the full material scope required by the directives and may coexist with other legislation containing different definitions of direct discrimination. In **Croatia**, although the definition of direct discrimination contained in the Anti-discrimination Act clearly follows that of the directives, the case law is still not clear, as courts seem to consider discriminatory intent to be a significant element of direct discrimination.¹⁹⁷ Although different from the definitions proposed by Directive 2000/43/EC and Directive 2000/78/EC, the **Romanian** Anti-

196 French courts do however use hypothetical comparisons, see for example in a case relating to discrimination on the ground of origin, Court of Cassation, Social Chamber, 3 November 2011, No. 10-20765, Dos Santos.

197 People's Ombudsperson (2014), Ombudsperson's Report for 2014, p. 21, available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/> and the Gender Equality Ombudsperson (2010) Analysis of the case law in the field of anti-discrimination law, available at: <http://www.prs.hr/index.php/analize-i-istrazivanja/obrazovanje-4/181-istrazivanje-sudske-prakse-u-podrucju-antidiskriminacijske-zastite-2010>.

discrimination Law is in line with the directives since it provides a detailed definition, attempting to cover the whole range of actions and omissions leading to discrimination.

It is worrying that in a few countries, direct discrimination may be generally justified under certain circumstances, in addition to the specific exceptions stipulated by the directives (further examined in section 3 below). In **Hungary**, a general objective justification for direct discrimination applies to the grounds covered by the Employment Equality Directive notably when the act or activity is 'found by objective consideration to have a reasonable ground directly related to the relevant legal relationship' (if the act concerns no fundamental right other than the right to non-discrimination). However, it is unclear whether this exemption applies in the field of employment.¹⁹⁸ In **Finland**, differential treatment on the ground of ethnic origin is allowed in fields such as education and 'when using public power or performing public administrative tasks', when the treatment is based on legislation, has an acceptable aim and the means used are in due proportion for achieving that aim.¹⁹⁹ In **Cyprus**, a series of Supreme Court decisions have introduced a theory of 'reasonable discrimination,' which amounts to considering that discrimination that is 'reasonable' is lawful.²⁰⁰ The court also determined that the non-discrimination principle does not apply in cases of dissimilar situations. In 2015, the Supreme Court reiterated this approach, while recalling however that exceptions to the principle of equality and non-discrimination must be interpreted narrowly, citing CJEU case law in this regard.²⁰¹ In a 2017 judgment, the Supreme Court reiterated its line of reasoning and concluded that discrimination is permitted only where the individuals concerned are in dissimilar and non-comparable situations.²⁰² Although the **Latvian** definition of direct discrimination appears to be in line with the directives, the general justification – applicable in fields such as education, access to and provision of goods and services, social protection and social advantages – does not distinguish between direct and indirect discrimination.

Table 3: Prohibition of direct discrimination in national law (for decentralised states, only federal law is indicated)

| Country | Law | Article | Defined | Definition equivalent to the directives |
|-----------------|---------------------------------------------------|-------------------|---------|-----------------------------------------|
| ALBANIA | Law on Protection from Discrimination | Art.3(2) | Yes | Yes |
| AUSTRIA | Federal Equal Treatment Act | § 13 | Yes | Yes |
| | Equal Treatment Act | §§ 17/1, 18, 31/1 | Yes | Yes |
| | Act on the Employment of People with Disabilities | § 7b/1 | Yes | Yes |
| | Federal Disability Equality Act | § 4/1 | Yes | Yes |
| BELGIUM | Racial Equality Federal Act | Art. 12 | Yes | Yes |
| | General Anti-Discrimination Federal Act | Art. 14 | Yes | Yes |
| BULGARIA | Protection Against Discrimination Act | Art. 4(1) | Yes | Yes |
| | Integration of Persons with Disabilities Act | Art. 3 | Yes | Yes |

198 Hungary, Equal Treatment Act, Article 7(2).

199 Finland, Non-Discrimination Act, Section 11(1).

200 Cyprus, Supreme Court, *George Mattheou v. The Republic of Cyprus through the Chief of Police and the Minister of Justice and Public Order*, No 1497/2008, 30 April 2012 available at http://cyllaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2012/4-201204-1497-08.htm&qstring=%EC%E1%F4%E8%E1%E9%2A%20and%20%E1%F3%F4%F5%ED%EF%EC%2A. In this case the court rejected a claim for discrimination because it was not proven that the differential treatment was not premised upon 'reasonable discrimination'.

201 Cyprus, *Petros Michaelides v. The Republic of Cyprus through the Minister of Labour and Social Insurance*, Supreme Court, Review Jurisdiction, Case No. 2005/2012, 27 January 2016, available at http://cyllaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2016/4-201601-2005-2012.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A%20and%202016.

202 Cyprus Supreme Court, Appeal Jurisdiction, *Michael Raftopoulos v. Republic of Cyprus*, Appeal no. 3/2012, 10 October 2017, available at http://cyllaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2017/3-201710-3-123.htm&qstring=%EC%E9%F7%E1%EB%E1%EA%2A%20and%20F1%E1%F6%F4%EF%F0%EF%F5%EB%EF%2A.

| Country | Law | Article | Defined | Definition equivalent to the directives |
|-------------------------------|----------------------------------------------------------------------------------------------------|-----------------------------|---------|-----------------------------------------|
| CROATIA ²⁰³ | Anti-discrimination Act | Art. 2(1) | Yes | Yes |
| CYPRUS | Equal Treatment in Employment and Occupation Law | Art. 6(1)(a) | Yes | Yes |
| | Equal Treatment (Racial or Ethnic origin) Law | Art. 5(1) | Yes | Yes |
| | Law on Persons with Disabilities | Art. 3(a) | Yes | Yes |
| CZECH REPUBLIC | Anti-Discrimination Act | Sec. 2(3) | Yes | Yes |
| DENMARK | Act on Prohibition of Discrimination in the Labour Market etc. | Sec. 1(2) | Yes | Yes |
| | Act on Ethnic Equal Treatment | Sec. 3(2) | Yes | Yes |
| | Act on the Prohibition of Discrimination due to Disability | Sec. 5(2) | Yes | yes |
| ESTONIA | Equal Treatment Act | Art. 3(2) | Yes | Yes |
| FINLAND | Non-Discrimination Act | Sec. 8 | Yes | Yes |
| FRANCE | Law relating to the adaptation of National Law to Community Law in matters of discrimination | Art. 1 | Yes | No |
| GERMANY | General Act on Equal Treatment | Sec. 3.1 | Yes | Yes |
| GREECE | Equal Treatment Law | Art. 2(2)(a) | Yes | Yes |
| HUNGARY | Equal Treatment Act | Art. 8 | Yes | Yes |
| ICELAND | Act on Equal Treatment irrespective of Race or Ethnic Origin | 3(2) | Yes | Yes |
| | Act on Equal Treatment in the Labour Market | 3(2) | Yes | Yes |
| IRELAND | Employment Equality Acts 1998-2015 | Sec. 6(1) | Yes | Yes |
| | Equal Status Acts 2000-2018 | Sec. 3(1) | Yes | Yes |
| ITALY | Legislative Decree No 215/2003 Implementing Directive 2000/43/EC | Art. 2, para. 1 a) | Yes | Yes |
| | Legislative Decree No 216/2003 Implementing Directive /2000/78/EC | Art. 2, para. 1 a) | Yes | Yes |
| | Law on Measures for the Judicial Protection of Persons with Disabilities Victims of Discrimination | Art. 2 | Yes | Yes |
| LATVIA | Labour Law | Art. 29(1) and (5) | Yes | Yes |
| | Law on Prohibition of Discrimination against Natural Persons – Economic Operators | Art. 2(1) and 4(2) | Yes | Yes |
| | Consumer Rights Protection Law | Art. 3. ¹ (1, 6) | Yes | Yes |
| | Law on Social Security | Art. 2. ¹ (1, 3) | Yes | Yes |
| LIECHTENSTEIN | Act on Equality of People with Disabilities | Art. 6(1) | Yes | Yes |
| LITHUANIA | Law on Equal Treatment | Art. 2(9) | Yes | Yes |
| LUXEMBOURG | General Anti-Discrimination Law ²⁰⁴ | Arts. 1a and 18 | Yes | Yes |

203 The Labour Code and the Same-sex Life Partnership Act also prohibit direct discrimination, with limited scopes of application.

204 In addition, the Public Sector Law of 29 November 2006 prohibits direct discrimination in the public sector.

| Country | Law | Article | Defined | Definition equivalent to the directives |
|---------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|---------|-----------------------------------------|
| MALTA | Equal Treatment in Employment Regulations | Art. 3(2)(a) | Yes | Yes |
| | Equal Treatment of Persons Order | Art. 2(2) | Yes | Yes |
| | Equal Opportunities (Persons with Disabilities) Act | Arts. 3A,5 and 6 | No | N/a |
| MONTENEGRO ²⁰⁵ | Law on the Prohibition of Discrimination | Art. 2, para.1 | Yes | Yes |
| | Law on the Prohibition of Discrimination of Persons with Disabilities | Art. 2 | No | No |
| NETHERLANDS | General Equal Treatment Act | Art. 1.a and b | Yes | Yes |
| | Disability Discrimination Act | Art. 1.a and b | Yes | Yes |
| | Age Discrimination Act | Art. 1.a and b | Yes | Yes |
| NORTH MACEDONIA ²⁰⁶ | Law on Prevention and Protection Against Discrimination | Art. 6(1) | Yes | No |
| NORWAY ²⁰⁷ | Equality and Anti-Discrimination Act | Art. 7 | Yes | Yes |
| POLAND ²⁰⁸ | Equal Treatment Act | Art. 3 | Yes | Yes |
| PORTUGAL | Law establishing the legal regime for the prevention, prohibition and fight against discrimination on the ground of race/ethnic origin, nationality, ancestry and territory of origin | Art.3(1)(b) | Yes | Yes |
| | Law which prohibits and punishes discrimination based on disability and on a pre-existing risk to health | Art. 3(a) | Yes | Yes |
| | Labour Code | Art. 23 (1) (a) | Yes | Yes |
| | Law on the non-discrimination principle in self-employment | Art. 5(2)(a) | Yes | Yes |
| ROMANIA | Ordinance (GO) 137/2000 regarding the prevention and the punishment of all forms of discrimination | Art. 2(1) | Yes | Yes |
| SERBIA | Law on the Prohibition of Discrimination | Art. 2(1) | Yes | No ²⁰⁹ |
| SLOVAKIA | Anti-discrimination Act | Sec. 2a(2) and 2(1) | Yes | Yes |
| SLOVENIA | Protection Against Discrimination Act | Arts. 6(1) and 4(2) | Yes | Yes |
| | Employment Relationship Act | Art. 6(3) | Yes | Yes |
| | Act on Equal Opportunities of People with Disabilities | Art. 3 | Yes | Yes |

²⁰⁵ The Labour Law also prohibits direct discrimination, but only in the field of employment.

²⁰⁶ The Labour Law (Art. 7(2)), the Law on Child Protection (Art. 14(1)), and the Law on Social Protection (Art. 21(1)) also prohibit direct discrimination.

²⁰⁷ The Working Environment Act (Art. 13-1) also prohibits direct discrimination, adding political views and trade union membership to the list of grounds protected by the Equality and Anti-Discrimination Act.

²⁰⁸ The Labour Code also prohibits direct discrimination only in the employment field.

²⁰⁹ The definition is limited to less favourable treatment and does not cover detriment.

| Country | Law | Article | Defined | Definition equivalent to the directives |
|-----------------------|-----------------------------------------------------------------------------------|---------------------------|---------|-----------------------------------------|
| SPAIN | Law on Fiscal, Administrative and Social Measures | Art. 28.1.b | Yes | No ²¹⁰ |
| | General Law on the Rights of Persons with Disabilities and their Social Inclusion | Art. 2.c | Yes | No ²¹¹ |
| SWEDEN | Discrimination Act | Ch. 1 S. 4 p.1 | Yes | Yes |
| TURKEY | Law on the Human Rights and Equality Institution of Turkey | Arts. 2(1) d and 4(1) (ç) | Yes | No |
| | Law on Persons with Disabilities | Arts. 3/a, 4 and 4/A | Yes | Yes |
| UNITED KINGDOM | (GB) Equality Act | Sec. 13 | Yes | Yes |
| | (NI) Race Relations Order | Art. 3 | Yes | Yes |
| | (NI) Fair Employment and Treatment Order | Art. 3 | Yes | Yes |
| | (NI) Disability Discrimination Act | Sec. 3A | Yes | Yes |
| | (NI) Employment Equality (Age) Regulations | Reg. 3 | Yes | Yes |
| | (NI) Employment Equality (Sexual Orientation) Regulations | Reg. 3 | Yes | Yes |

2.1.2 Indirect discrimination

A large proportion of states have introduced a definition of indirect discrimination that generally reflects the definition adopted in the directives. This includes **Albania, Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Montenegro, the Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden** and the **United Kingdom**. In **Liechtenstein** indirect discrimination is only prohibited on the ground of disability. In **Turkey**, as with the definition of direct discrimination, although the wording is compatible with the directives, sexual orientation as a ground is not protected. In **Serbia**, the definition of indirect discrimination can be interpreted as being limited to the actual occurrence of disadvantage, making it impossible to challenge apparently neutral provisions before they incur disadvantages for actual victims.

The directives envisage a comparison between the effect of a measure on persons with a particular characteristic and its impact on other persons. National law varies in the comparison required for establishing indirect discrimination. In the **United Kingdom**, the definition of indirect discrimination requires evidence that the measure placed the individual complainant, as well as the group to which he or she belongs, at a disadvantage.²¹² In 2017, the Supreme Court confirmed that it is not necessary to establish the reason for the particular disadvantage caused to the claimant, but rather that it is sufficient to show that a provision, criterion or practice is the main cause of the disadvantage suffered by the group and the individual claimant.²¹³ In **Slovenia**, the law requires the individual complainant to be in an 'equal or similar situation and conditions' to the comparator for indirect discrimination to be established.²¹⁴ In **Bulgaria**, since December 2016 indirect discrimination is defined as 'placing a person or persons who have a [protected] characteristic, or, who without having such a characteristic, together with the former suffer less favourable treatment, or are placed at a particular disadvantage deriving from an apparently

210 Although the definition is not equivalent to that of the directive, it is interpreted as such by the jurisprudence.

211 Although the definition is not equivalent to that of the directive, it is interpreted as such by the jurisprudence.

212 Great Britain, Equality Act 2010, Section 19.

213 UK Supreme Court, *Essop and others v. Home Office (UK Border Agency)* [2017] UKSC 27 5 April 2017 <http://www.bailii.org/uk/cases/UKSC/2017/27.html>.

214 Slovenia, Protection Against Discrimination Act, Article 6(2).

neutral provision, criterion, or practice, unless the provision, criterion, or practice are objectively justified with a view to a legitimate aim and the means to achieving that aim are appropriate and necessary.²¹⁵ The positive change of clarifying that indirect discrimination by association is prohibited is somewhat overshadowed by the unclear language of the new provision, which may impact on its effectiveness.

Swedish Labour Court finds indirect discrimination when refusal to shake hands led to non-recruitment²¹⁶

In this case, the claimant had applied for a job as an interpreter and was invited for an interview. However, the recruitment process was terminated when the claimant refused to shake hands with a company representative of the opposite sex due to religious reasons. Instead of shaking hands, the claimant held her hand over her heart as a sign of respect.

The Labour Court determined that the refusal to shake hands was a manifestation of the claimant's religion and was, as such, protected by the ECHR. The respondent asserted that it had a handshake policy to ensure neutrality among interpreters. However, the court noted a number of different elements, in particular that the work involved phone interpreting and that a refusal to shake hands would have been accepted if the person invoked a fear of germs rather than religious reasons. Furthermore, the claimant stated that she did not shake hands with anyone when she was in mixed company, but rather greeted everyone in the same way. On these facts the court determined that the company's actions were not appropriate and necessary, thus constituting indirect discrimination, given the particular facts of the case.

Table 4: Prohibition of indirect discrimination in national law (in the case of decentralised states only federal law is indicated)

| Country | Law | Article | Defined | Definition equivalent to the directives |
|-------------------------------|---------------------------------------------------|-------------------|---------|-----------------------------------------|
| ALBANIA | Law on Protection from Discrimination | Art.3(3) | Yes | Yes |
| AUSTRIA | Federal Equal Treatment Act | § 13 | Yes | Yes |
| | Equal Treatment Act | §§ 17/1, 18, 31/1 | Yes | Yes |
| | Act on the Employment of People with Disabilities | § 7b/1 | Yes | Yes |
| | Federal Disability Equality Act | § 4/1 | Yes | Yes |
| BELGIUM | Racial Equality Federal Act | Art. 12 | Yes | Yes |
| | General Anti-Discrimination Federal Act | Art. 14 | Yes | Yes |
| BULGARIA | Protection Against Discrimination Act | Art. 4(1) | Yes | Yes |
| | Integration of Persons with Disabilities Act | Art. 3 | Yes | Yes |
| CROATIA ²¹⁷ | Anti-discrimination Act | Arts. 2(2) | Yes | Yes |
| CYPRUS | Equal Treatment in Employment and Occupation Law | Art. 6(1)(b) | Yes | Yes |
| | Equal Treatment (Racial or Ethnic origin) Law | Art. 5 | Yes | Yes |
| | Law on Persons with Disabilities | Art. 3(a) | Yes | Yes |
| CZECH REPUBLIC | Anti-Discrimination Act | Sec.1(3) and 2(2) | Yes | Yes |

215 Bulgaria, Law amending and supplementing the Protection Against Discrimination Act, adopted on 30 December 2016 and available at: <http://www.parliament.bg/bg/laws/ID/42259>.

216 Sweden, Labour Court, decision No. 51/2018 of 15.08.2019, available at: <http://www.arbetsdomstolen.se/upload/pdf/2018/51-18.pdf>.

217 The Labour Code and the Same-sex Life Partnership Act also prohibit indirect discrimination, with limited scopes of application.

| Country | Law | Article | Defined | Definition equivalent to the directives |
|----------------------------------|-----------------------------------------------------------------------------------------------------|----------------------------------|---------|-----------------------------------------|
| DENMARK | Act on Prohibition of Discrimination in the Labour Market etc. | Sec. 1(3) | Yes | Yes |
| | Act on Ethnic Equal Treatment | Sec. 3(3) | Yes | Yes |
| | Act on the Prohibition of Discrimination due to Disability | Sec 5(3) | Yes | Yes |
| ESTONIA | Equal Treatment Act | Art. 3(4) | Yes | Yes |
| FINLAND | Non-Discrimination Act | Sec. 8 | Yes | Yes |
| FRANCE | Law relating to the adaptation of National Law to Community Law in matters of discrimination | Art. 1 | Yes | Yes |
| GERMANY | General Act on Equal Treatment | Sec. 3.2 | Yes | Yes |
| GREECE | Equal Treatment Law | Art. 2(2)(b) | Yes | Yes |
| HUNGARY | Act on Equal Treatment and the Promotion of Equal Opportunities | Art. 9 | Yes | No ²¹⁸ |
| ICELAND | Act on Equal Treatment irrespective of Race or Ethnic Origin | Art. 3(3) | Yes | Yes |
| | Act on Equal Treatment in the Labour Market | Art. 3(3) | Yes | Yes |
| IRELAND | Employment Equality Acts 1998-2015 | Sec. 22 and 31 | Yes | Yes |
| | Equal Status Acts 2000-2018 | Sec. 3(1)(c) | Yes | Yes |
| ITALY | Legislative Decree No 215/2003 Implementing Directive 2000/43/EC | Art. 2, para. 1, b. | Yes | Yes |
| | Legislative Decree No 216/2003 Implementing Directive 2000/78/EC | Art. 2, para. 1, b. | Yes | Yes |
| | Law on Measures for the Judicial Protection of Persons with Disabilities Victims of Discriminations | Art. 2, para.3 | Yes | Yes |
| LATVIA | Labour Law | Art. 29(1) and (6) | Yes | Yes |
| | Law on Prohibition of Discrimination against Natural Persons – Economic Operators | Art. 2(1) and 4(2) | Yes | Yes |
| | Consumer Rights Protection Law | Art. 3. ¹ (1) and (6) | Yes | Yes |
| | Law on Social Security | Art. 2. ¹ (1) and (4) | Yes | Yes |
| LIECHTENSTEIN | Act on Equality of People with Disabilities | Art. 6(2) | Yes | Yes |
| LITHUANIA | Law on Equal Treatment | Art. 2(5) | Yes | Yes |
| LUXEMBOURG | General Anti-Discrimination Law | Arts. 1b and 18 | Yes | Yes |
| MALTA | Equal Treatment in Employment Regulations | Art. 3(2)(b) | Yes | Yes |
| | Equal Treatment of Persons Order | Art. 2 | Yes | Yes |
| | Equal Opportunities (Persons with Disabilities) Act | Arts. 4 and 5(4) | No | N/A |
| MONTENEGRO ²¹⁹ | Law on the Prohibition of Discrimination | Art. 2(1) | Yes | Yes |
| | Law on the Prohibition of Discrimination of Persons with Disabilities | Arts. 2 and 4 | No | No |
| NETHERLANDS | General Equal Treatment Act | Art. 1.c | Yes | Yes |
| | Disability Discrimination Act | Art. 1.c | Yes | Yes |
| | Age Discrimination Act | Art. 1.c | Yes | Yes |

²¹⁸ Not fully, due to an exemption clause.

²¹⁹ The Labour Code also prohibits indirect discrimination, but only in the field of employment.

| Country | Law | Article | Defined | Definition equivalent to the directives |
|---------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|---------|-----------------------------------------|
| NORTH MACEDONIA ²²⁰ | Law on Prevention and Protection Against Discrimination | Art. 6. (2) | Yes | Yes |
| NORWAY ²²¹ | Equality and Anti-Discrimination Act | Art. 8 | Yes | Yes |
| POLAND ²²² | Act on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment | Art. 3 | Yes | Yes |
| PORTUGAL | Law establishing the legal regime for the prevention, prohibition and fight against discrimination on the grounds of race/ethnic origin, nationality, ancestry and territory of origin | Art. 3(1)(c) | Yes | Yes |
| | Law which prohibits and punishes discrimination based on disability and on a pre-existing risk to health | Art. 3(b) | Yes | Yes |
| | Labour Code | Art. 23(1)(b) | Yes | Yes |
| | Law on non-discrimination principle in self-employment | Art. 5(2)(b) | Yes | Yes |
| ROMANIA | Ordinance (GO) 137/2000 regarding the prevention and the punishment of all forms of discrimination | Art. 2(3) | Yes | Yes |
| SERBIA | Law on the Prohibition of Discrimination | Art. 7 | Yes | No |
| SLOVAKIA | Anti-discrimination Act | Sec. 2a(3) and 2(1) | Yes | Yes |
| SLOVENIA | Protection Against Discrimination Act | Arts. 6(2) and 4(2) | Yes | Yes |
| | Employment Relationship Act | Art. 6(3) | Yes | No ²²³ |
| | Act on Equal Opportunities of People with Disabilities | Art. 3 | Yes | No ²²⁴ |
| SPAIN | Law on Fiscal, Administrative and Social Measures | Art. 28.1.c | Yes | No ²²⁵ |
| | General Law on the Rights of Persons with Disabilities and their Social Inclusion | Art. 2.d | Yes | No ²²⁶ |
| SWEDEN | Discrimination Act | Ch. 1 S. 4 pt. 2 | Yes | Yes |
| TURKEY | Law on the Human Rights and Equality Institution of Turkey | Arts. 2(1)-e and 4(1)(d) | Yes | No |
| | Law on Persons with Disabilities | Arts. 3/b and 4/A | Yes | Yes |
| UNITED KINGDOM | (GB) Equality Act | Sec. 19 | Yes | Yes |
| | (NI) Race Relations Order | Art. 3 | Yes | Yes |
| | (NI) Fair Employment and Treatment Order | Art. 3 | Yes | Yes |
| | (NI) Employment Equality (Age) Regulations | Reg. 3 | Yes | Yes |
| | (NI) Employment Equality (Sexual Orientation) Regulations | Reg. 3 | Yes | Yes |

220 The Labour Law (Art. 7(3)), the Law on Child Protection (Art. 14(2)), and the Law on Social Protection (Art. 21(1)) also prohibit indirect discrimination.

221 The Working Environment Act (Art. 13-1(1)) also prohibits indirect discrimination, adding political views and trade union membership to the list of grounds protected by the Equality and Anti-Discrimination Act.

222 The Labour Code also prohibits indirect discrimination, but only in the field of employment.

223 Judicial interpretation is required.

224 Judicial interpretation is required.

225 Even if the definition is not equivalent to that of the directive, it is interpreted as such by the jurisprudence.

226 Even if the definition is not equivalent to that of the directive, it is interpreted as such by the jurisprudence.

2.1.3 Harassment

The concept of harassment, in particular sexual harassment, was traditionally developed in the 1990s from EU gender equality legislation. Harassment in the anti-discrimination directives does not differ much from the established baseline and is defined as unwanted conduct relating to racial or ethnic origin, religion or belief, disability, age, or sexual orientation with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.²²⁷ The majority of states have adopted definitions of harassment that appear in line with that contained in the directives. This includes **Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Montenegro, the Netherlands, North Macedonia, Norway, Poland, Portugal, Serbia, Slovakia, Slovenia, Sweden, Turkey**²²⁸ and the **United Kingdom**. However, the definition does not explicitly require the conduct to be unwanted in several Member States, including in **Denmark, France, Hungary, the Netherlands, Slovakia and Sweden**. In **Albania**, although the definition corresponds to that prescribed by the directives, the term used in national law is ‘annoyance’ rather than ‘harassment’. In **Austria**, the definition refers to conduct that is ‘unacceptable, undesirable and offensive (indecent)’.

In the remaining countries, there is some ambiguity concerning the definition of harassment. In **Spain**, ‘hostile’ and ‘degrading’ are not included in the national definition, which refers to the creation of an intimidating, humiliating or offensive environment only. In **Sweden**, the definition does not require that the behaviour creates any specific type of environment, but only that it violates the dignity of a person. Thus, the definition does not include conduct with the *purpose* of violating a person’s dignity (but without the *effect* of doing so). In **Romania**, harassment is defined in the Anti-discrimination Law, in the Act on Equal Opportunities between Men and Women and in the Criminal Code, but none of the definitions provided are in complete compliance with the definition of harassment set out in the directives. The definition in the Anti-discrimination Law refers only to the effect of the unwanted conduct related to any of the protected grounds, thereby excluding conduct with the purpose (but without the effect) of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In **Liechtenstein**, harassment as defined under the non-discrimination directives is prohibited only on the ground of disability. In **Belgium**, the definition of harassment under the Act of 4 August 1996 on the welfare of workers requires ‘several acts’ (i.e. a pattern of repetitive behaviour), whereas the EU equality and anti-discrimination directives do not demand such a condition to apply the definition of harassment.

The directives do not provide specific rules on how to determine whether conduct is such as to violate a person’s dignity or to create an intimidating, hostile, degrading, humiliating or offensive environment. Several states have sought to clarify this in national legislation. For instance, under **Slovakia’s** Anti-discrimination Act, harassment means conduct which results in or can result in the creation of an intimidating, hostile, shameful, humiliating, insulting, degrading or offensive environment and that has or can have the purpose or effect of violating a freedom or human dignity. In **Great Britain**, the Equality Act provides that, in deciding whether conduct amounts to harassment, account must be taken of the perception of the claimant, the other circumstances of the case and whether it is reasonable for the conduct to have the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment. In the Equal Treatment of Persons Order in **Malta**, harassment refers to any unwelcome act, request or conduct, including spoken words, gestures or the production, display or circulation of written words, pictures or other material that any person can be subjected to. The Government proposal of the Non-Discrimination Act in **Finland** pointed out that talks, gestures, facial expressions, e-mails or presenting inappropriate material can all count as harassment.²²⁹ In **Ireland**, various forms of communication have been the subject of successful harassment complaints, including ‘spoken words’, text messages and graffiti. Moreover, case law shows that a complainant does not need to demonstrate that she/he falls

²²⁷ Directives 2000/43/EC and 2000/78/EC, Article 2(3).

²²⁸ In Turkey, harassment related to sexual orientation is not prohibited.

²²⁹ Finland, Government Proposal on the Non-Discrimination Act 19/2014, p. 78.

under one of the discriminatory grounds since it is sufficient that the impugned conduct is 'related to' a ground.

Bulgarian court finds that hate speech in Parliament amounts to harassment of all Bulgarian Roma under national law²³⁰

The case concerned public statements made in the Bulgarian Parliament in 2014 by a Member of Parliament who later became Deputy Prime Minister. The statements were particularly hateful and concerned the entire Roma population, notably Roma women and their (alleged lack of) maternal instincts. The complaint was brought by a Roma individual to the Protection Against Discrimination Commission (PADC), the quasi-judicial equality body, and concerned alleged harassment and incitement to discrimination against the entire Roma community as well as against the individual claimant.

The PADC found in favour of the claimant and imposed a fine of BGN 1 000 (EUR 500), as well as an injunction to abstain from further such statements. Following the respondent's appeal, the Burgas Administrative Court found that the impugned statements were an affront to Bulgarian Roma and created an intimidating environment for them all. The court further confirmed that the statements were not protected within the ambit of freedom of expression. The public nature of the statements and their ensuing dissemination in the media as well as the respondent's position as the leader of a parliamentary party indicated greater potential to infringe upon the dignity of those targeted. Therefore, the court confirmed the sanctions imposed by the PADC.

Another area left open by the directives is the responsibility of the employer for acts of harassment by other workers or by third parties such as customers. In many states, employers can be held liable for the actions of their workers to varying degrees. Some countries have chosen to place a specific duty on employers to take action to prevent and redress harassment in the workplace. For example, the 2006 **German** General Equal Treatment Act places employers under a legal duty to prevent discrimination occurring in the workplace. This includes a duty to protect employees from discrimination by third parties.²³¹ Similarly, **Norway** imposes a special duty on employers to prevent harassment in their areas of responsibility.²³² In **Ireland**, employers and service providers are liable for harassment by employees and third parties such as tenants, clients and customers.²³³ However, liability may not be imposed if an employer or service provider can show that they took reasonably practicable steps to prevent harassment.²³⁴ In **Sweden** harassment by colleagues or third parties is not prohibited as such, although the employer can be held liable for damage caused by his/her failure to investigate and implement measures to prevent harassment between employees. This duty, however, does not extend to harassment by third parties such as clients. In the **Netherlands**, colleagues cannot be held responsible for harassment whereas the employer or individuals acting on their behalf can be held liable. In **Hungary**, the Equal Treatment Act does not provide protection against harassment committed by colleagues at work. In the **United Kingdom**, the provisions of the Equality Act that dealt with employers' vicarious liability for third-party harassment were repealed in 2013 (Section 40(2) and 40(3)). However, the UK Employment Appeal Tribunal has ruled that a claimant – an Iranian social worker – could rely directly on the Racial Equality Directive to hold his employer liable for harassment by a third party where the employer had failed to take adequate steps to protect him from the abusive conduct of a child in care.²³⁵

230 Bulgaria, Burgas Administrative Court, decision No. 564 in case No. 1786/2017, *Valery Simeonov v. A.A.*, of 23.03.2018, available at: www.admcourt-bs.org/CMS_ADM/images_content/1786_2017R.htm.

231 Germany, General Equal Treatment Act, Section 12.4.

232 Norway, GEADA, adopted on 16 June 2017, Section 26.

233 Ireland, Employment Equality Acts 1998-2015, Section 14A; Equal Status Acts 2000-2018, Section 11.

234 Irish Labour Court, *Dublin Bus v. McCamley*, EDA 164, 18.02.2016; *A Store v A Worker*, EDA 163, 28.01.2016.

235 Employment Appeal Tribunal, *Sheffield City Council v. Norouzi* [2011] EqLR 1039, [2011] IRLR 897.

Table 5: Prohibition of harassment in national law (in decentralised states, only federal law is indicated)

| Country | Law | Article | Defined | Definition equivalent to the directives |
|-------------------------------|----------------------------------------------------------------------------------------------|--------------------|---------|-----------------------------------------|
| ALBANIA | Law on Protection from Discrimination | Art. 3(5) | Yes | Yes |
| AUSTRIA | Federal Equal Treatment Act | § 13 | Yes | Yes |
| | Equal Treatment Act | §§ 17/1, 18, 31/1 | Yes | Yes |
| | Act on the Employment of People with Disabilities | § 7b/1 | Yes | Yes |
| | Federal Disability Equality Act | § 4/1 | Yes | Yes |
| BELGIUM | Racial Equality Federal Act | Art. 12 | Yes | Yes |
| | General Anti-Discrimination Federal Act | Art. 14 | Yes | Yes |
| | Federal Act on the welfare of workers while carrying out their work | Art. 32 ter 2° | Yes | No |
| BULGARIA | Protection Against Discrimination Act | Art. 5 | Yes | Yes |
| CROATIA ²³⁶ | Anti-discrimination Act | Art. 3(1) | Yes | Yes |
| CYPRUS | Equal Treatment in Employment and Occupation Law | Art. 6(1)(c) | Yes | Yes |
| | Equal Treatment (Racial or Ethnic origin) Law | Art. 5(2)(c) | Yes | Yes |
| | Law on Persons with Disabilities | Art. 3(2)e | Yes | Yes |
| CZECH REPUBLIC | Anti-Discrimination Act | Sec. 1(3) and 2(2) | Yes | Yes |
| DENMARK | Act on Prohibition of Discrimination in the Labour Market etc. | Sec. 1(4) | Yes | Yes |
| | Act on Ethnic Equal Treatment | Sec. 3(4) | Yes | Yes |
| | Act on the Prohibition of Discrimination due to Disability | Sec 5(4) | Yes | Yes |
| ESTONIA | Equal Treatment Act | Art. 3(3) | Yes | Yes |
| FINLAND | Non-Discrimination Act | Sec. 8 | Yes | Yes |
| FRANCE | Law relating to the adaptation of National Law to Community Law in matters of discrimination | Art. 1 | Yes | Yes |
| GERMANY | General Act on Equal Treatment | Sec. 3.3 | Yes | Yes |
| GREECE | Equal Treatment Law | Art. 2(2)(c) | Yes | Yes |
| HUNGARY | Act on Equal Treatment and the Promotion of Equal Opportunities | Art. 10(1) | Yes | Yes |
| ICELAND | Act on Equal Treatment irrespective of Race or Ethnic Origin No. 85/2018 | Art. 7(1) | Yes | Yes |
| | Act on Equal Treatment in the Labour Market No. 86/2018 | Art. 7(1) | Yes | Yes |
| IRELAND | Employment Equality Act | Sec. 14A | Yes | Yes |
| | Equal Status Act | Sec. 11 | Yes | Yes |
| ITALY | Legislative Decree No 215/2003 Implementing Directive 2000/43/EC | Art. 2(3) | Yes | Yes |
| | Legislative Decree No 216/2003 Implementing Directive 2000/78/EC | Art. 2(3) | Yes | Yes |

236 The Labour Act also prohibits harassment, without defining it, but applies only in the field of employment.

| Country | Law | Article | Defined | Definition equivalent to the directives |
|---------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|---------|-----------------------------------------|
| LATVIA | Labour Law | Art. 29(1) and (4) | Yes | Yes |
| | Law on Prohibition of Discrimination of Natural Persons – Economic Operators | Art. 2(1) and 4(3) | Yes | Yes |
| | Consumer Rights Protection Law | Art. 3. ¹ (7, 8) | Yes | Yes |
| | Law on Social Security | Art. 2. ¹ (1) and (5) | Yes | Yes |
| | Law on the Support of Unemployed and Job Seekers | 2. ¹ (1) and (5) | Yes | Yes |
| LIECHTENSTEIN | Act on Equality of People with Disabilities | Art. 8 | Yes | Yes |
| LITHUANIA | Law on Equal Treatment | Art 2(1) and (7) | Yes | Yes |
| LUXEMBOURG | General Anti-Discrimination Law | Arts. 1(3) and 18 | Yes | Yes |
| MALTA | Equal Treatment in Employment Regulations | Art. 3(3) | Yes | Yes |
| | Equal Treatment of Persons Order | Arts. 2(2)(c) and 4 | Yes | Yes |
| | Equal Opportunities (Persons with Disabilities) Act | Art. 5(2) | Yes | Yes |
| MONTENEGRO ²³⁷ | Law on the Prohibition of Discrimination | Art. 7 | Yes | Yes |
| | Law on Prohibition of Harassment at Work | Art. 4 | Yes | No ²³⁸ |
| NETHERLANDS | General Equal Treatment Act | Art. 1.a | Yes | Yes |
| | Disability Discrimination Act | Art. 1.a | Yes | Yes |
| | Age Discrimination Act | Art. 2 | Yes | Yes |
| NORTH MACEDONIA ²³⁹ | Law on Prevention and Protection Against Discrimination | Art. 7 (1) | Yes | Yes |
| NORWAY ²⁴⁰ | Equality and Anti-Discrimination Act | Art. 13 | Yes | Yes |
| POLAND ²⁴¹ | Act on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment | Art. 3 | Yes | Yes |
| PORTUGAL | Labour Code | Art. 29(1)(c) | Yes | Yes |
| | Law establishing the legal regime for the prevention, prohibition and fight against discrimination on the grounds of race/ethnic origin, nationality, ancestry and territory of origin | Art. 3(1)(f) | Yes | Yes |
| | Law on the non-discrimination principle in self-employment | Art. 5(5)-(6) | Yes | Yes |
| ROMANIA | Ordinance regarding the prevention and the punishment of all forms of discrimination | Art. 2(5) | Yes | No |
| SERBIA | Labour Law | Art. 21(2) | Yes | Yes |
| | Law on the Prohibition of Discrimination | Art.12 | No | N/A |

²³⁷ The Labour Code also prohibits harassment, only in the employment field.

²³⁸ Judicial interpretation is required due to the differences in wording between national law and the directives.

²³⁹ The Labour Law (Art. 9(3)) and the Law on Protection against Harassment in the Workplace (Art. 5) (definition not equivalent to that of the directives) also prohibit harassment in employment.

²⁴⁰ The Working Environment Act (Art. 13-1(2)) also prohibits harassment, adding political views and trade union membership to the list of grounds protected by the Equality and Anti-Discrimination Act.

²⁴¹ The Labour Code also prohibits harassment, but only in the field of employment.

| Country | Law | Article | Defined | Definition equivalent to the directives |
|-----------------------|-----------------------------------------------------------------------------------|--------------------------|---------|-----------------------------------------|
| SLOVAKIA | Anti-discrimination Act | Sec. 2a(4) and 2(1) | Yes | No ²⁴² |
| SLOVENIA | Protection Against Discrimination Act | Arts. 8(1), 7, and 4(2) | Yes | Yes |
| | Employment Relationship Act | Art. 7 | Yes | Yes |
| SPAIN | Law on Fiscal, Administrative and Social Measures | Art. 28.1.d | Yes | Yes ²⁴³ |
| | General Law on the Rights of Persons with Disabilities and their Social Inclusion | Art. 2.f | Yes | Yes |
| | Workers' Statute | Art. 4.2.e | Yes | Yes ²⁴⁴ |
| SWEDEN | Discrimination Act | Ch. 1 S. 4 pt. 4 | Yes | Yes |
| TURKEY | Law on the Human Rights and Equality Institution of Turkey | Arts. 2(1)-j and 4(1)(g) | Yes | No |
| UNITED KINGDOM | (GB) Equality Act | Sec. 26 | Yes | Yes |
| | (NI) Race Relations Order | Art. 4A | Yes | Yes |
| | (NI) Fair Employment and Treatment Order | Art. 3A | Yes | Yes |
| | (NI) Employment Equality (Sexual Orientation) Regulations 2006 | Reg. 5 | Yes | Yes |
| | (NI) Disability Discrimination Act | Sec. 3B | Yes | Yes |
| | (NI) Employment Equality (Age) Regulations | Reg. 6 | Yes | Yes |

2.1.4 Instructions to discriminate

Article 2(4) of the Racial Equality Directive and of the Employment Equality Directive stipulates that 'an instruction to discriminate (...) shall be deemed to be discrimination'.²⁴⁵ A similar provision has been included in the national legislation of the great majority of countries, with a small number of exceptions (e.g. **Serbia**). In **Liechtenstein**, only instructions to discriminate on the ground of disability are prohibited under anti-discrimination law.²⁴⁶

The lack of a definition of instructions to discriminate in the directives leads to some discrepancies among the countries. For example, under **Bulgarian** law, only an intentional instruction to discriminate is regarded as discrimination. In a few countries, a hierarchical relationship between the instructor and the instructed person is required. In **Norway**, a relationship of subordination, obedience or dependency between the instructor and the person receiving instructions must exist, while in **Denmark** the relationship between them must be of a hierarchical nature. Similarly, in **Sweden**, the definition of instructions to discriminate requires that the person receiving the instruction either is in a subordinate or dependent position relative to the instructor or has committed her/himself to performing an assignment for that person. In **Finland**, instructions, guidelines or orders that relate to or create discrimination only constitute discrimination if the one giving the instructions, guidelines or orders has a power to impose these as obligations.²⁴⁷

²⁴² Judicial interpretation is necessary as it can be argued that the definition of harassment contained in the Anti-discrimination Act is narrower than that contained in the directives, as it must take place 'on [the prohibited] grounds', as compared to the directives where it is sufficient for it to be 'related to' any of the grounds.

²⁴³ The words 'hostile' and 'degrading' are not included in the Spanish definition.

²⁴⁴ The words 'hostile' and 'degrading' are not included in the Spanish definition.

²⁴⁵ Directives 2000/43/EC and 2000/78/EC, Article 2(4).

²⁴⁶ In addition, public incitement to hatred or discrimination on other grounds is prohibited by the Criminal Code.

²⁴⁷ Finland, *Government Proposal on the Non-Discrimination Act 19/2014*, p. 69, available at: <http://www.finlex.fi/fi/esitykset/he/2014/20140019>.

National law varies greatly among the countries regarding the scope of liability for instructions to discriminate. In some countries, only the instructor (and not the instructed discriminator) can be held liable for instructions to discriminate. These include **Estonia, Greece, the Netherlands and Poland**. However, in a large majority of the countries, both the instructor and the discriminator can be held liable, including **Albania, Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Finland, France, Germany, Hungary, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Montenegro, North Macedonia, Norway, Portugal, Romania, Slovakia, Slovenia, Spain, Turkey** and the **United Kingdom**. In **Denmark**, either the instructor or the discriminator can be held liable, but not both. In **Sweden**, there are situations in the employment field where no one can be held liable due to the requirement of disadvantageous effect of the instruction towards one or more persons. In **Ireland**, employers and service providers (e.g. landlords, schools, hospitals) are legally liable for discrimination, including by instruction, carried out by their employees. The legislation specifies that anything done by a person during his or her employment shall be treated as done also by that person's employer, regardless of the employer's knowledge or approval. An employer can evade liability by proving that it took such steps as were reasonably practicable to prevent the employee (a) from doing that act, or (b) from doing in the course of his or her employment acts of that description. In **Iceland**, where legislation prohibiting instructions to discriminate was only adopted in 2018, it is not yet clear how liability would be determined and judicial interpretation is therefore required.

Table 6: Prohibition of instructions to discriminate in national law (in the case of decentralised states only federal law is indicated)

| Country | Law | Article | Defined |
|-----------------------|----------------------------------------------------------------------------------------------|------------------|---------|
| ALBANIA | Law on Protection from Discrimination | Art. 3(6) | Yes |
| AUSTRIA | Federal Equal Treatment Act | §13 | Yes |
| | Equal Treatment Act | § 17/1, 18, 31/1 | Yes |
| | Act on the Employment of People with Disabilities | § 7b/1, | Yes |
| | Federal Disability Equality Act | § 4/1 | Yes |
| BELGIUM | Racial Equality Federal Act | Art. 12 | Yes |
| | General Anti-Discrimination Federal Act | Art. 14 | Yes |
| BULGARIA | Protection Against Discrimination Act | Art. 5 | No |
| CROATIA | Anti-discrimination Act ²⁴⁸ | Art. 4(1) | No |
| CYPRUS | Equal Treatment in Employment and Occupation Law | Art. 6(1)(d) | No |
| | Equal Treatment (Racial or Ethnic origin) Law | Art. 5(2)(d) | No |
| | Law on Persons with Disabilities | Art. 2 | No |
| CZECH REPUBLIC | Anti-Discrimination Act | Sec. 2(2) | Yes |
| DENMARK | Act on Prohibition of Discrimination in the Labour Market etc. | Sec. 1(5) | Yes |
| | Act on Ethnic Equal Treatment | Sec. 3(5) | Yes |
| | Act on the Prohibition of Discrimination due to Disability | Sec 5(5) | Yes |
| ESTONIA | Equal Treatment Act | Art. 3(5) | No |
| FINLAND | Non-Discrimination Act | Sec. 8 | No |
| FRANCE | Law relating to the adaptation of National Law to Community Law in matters of discrimination | Art. 1 | Yes |
| GERMANY | General Act on Equal Treatment | Sec. 3.5 | Yes |
| GREECE | Equal Treatment Law | Art. 2(2)(d) | Yes |

248 The law prohibits 'encouragement' to discriminate, which should cover both instructions and incitement, but case law confirming this is still lacking.

| Country | Law | Article | Defined |
|----------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|---------|
| HUNGARY | Act on Equal Treatment and the Promotion of Equal Opportunities | Art. 7(1) | No |
| ICELAND | Act on Equal Treatment irrespective of Race or Ethnic Origin No. 85/2018 | Art. 7(1) | No |
| | Act on Equal Treatment in the Labour Market No. 86/2018 | Art. 7(1) | No |
| IRELAND ²⁴⁹ | Employment Equality Acts 1998-2015 | Sec.2(1), 8, 13, 14 and 15 | No |
| ITALY | Legislative Decree No. 215/2003 Implementing Directive 2000/43/EC | Art. 2(4) | No |
| | Legislative Decree No. 216/2003 Implementing Directive 2000/78/EC | Art. 2(4) | No |
| LATVIA | Labour Law | Art. 29(4) | No |
| | Law on Prohibition of Discrimination against Natural Persons – Economic Operators | Art. 4(3) | No |
| | Consumer Rights Protection Law | Art. 3. ¹ (7) | No |
| | Law on Social Security | Art. 2. ¹ (2) | No |
| LIECHTENSTEIN | Act on Equality of People with Disabilities | Art. 9 | Yes |
| LITHUANIA | Law on Equal Treatment | Arts. 2(1) and (10) | No |
| LUXEMBOURG | General Anti-Discrimination Law | Arts. 1 and 18 | Yes |
| MALTA ²⁵⁰ | Equal Treatment in Employment Regulations | Art. 3(4) | Yes |
| | Equal Treatment of Persons Order | Arts. 2(2)(c) and 4 | Yes |
| MONTENEGRO ²⁵¹ | Law on the Prohibition of Discrimination | Art. 2(5) | Yes |
| NETHERLANDS | General Equal Treatment Act | Arts. 1.a and b | No |
| | Disability Discrimination Act | Art. 1.a | No |
| | Age Discrimination Act | Art. 1.a | No |
| NORTH MACEDONIA | Law on Prevention and Protection Against Discrimination | Art. 9 | No |
| NORWAY ²⁵² | Equality and Anti-Discrimination Act | Art. 15 | Yes |
| POLAND ²⁵³ | Act on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment | Arts. 3 and 9 | Yes |
| PORTUGAL | Law establishing the legal regime for the prevention, prohibition and fight against discrimination on the grounds of race/ethnic origin, nationality, ancestry and territory of origin | Art. 3(3) | No |
| | Law which prohibits and punishes discrimination based on disability and on a pre-existing risk to health | Art. 5(1) | No |
| | Labour Code | Art. 23(2) | No |
| | Law on the non-discrimination principle in self-employment | Art. 5(3) | No |

²⁴⁹ In addition, although the Equal Status Acts 2000-2018 do not prohibit instructions to discriminate explicitly, it can be argued that the prohibition on procurement or attempted procurement of 'prohibited conduct' under Section 13 includes the issuing of instructions.

²⁵⁰ Instructions to discriminate are also prohibited in the Constitution of Malta (Art. 45), Civil Code (Art.1044) and Criminal Code (Art.42).

²⁵¹ The Criminal Code (Art. 370(1)) also prohibits instructions to discriminate but does not provide a definition.

²⁵² The Working Environment Act (Art. 13-1(2)) also prohibits instructions to discriminate, adding political views and trade union membership to the list of grounds protected by the Equality and Anti-Discrimination Act.

²⁵³ The Labour Code also prohibits instructions to discriminate, but only in the field of employment.

| Country | Law | Article | Defined |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|--------------------|
| ROMANIA | Ordinance (GO) 137/2000 regarding the prevention and the punishment of all forms of discrimination (Anti-discrimination Law) ²⁵⁴ | Art. 2(2) | No |
| SERBIA | ... ²⁵⁵ | - | - |
| SLOVAKIA | Anti-discrimination Act | Sec. 2a(6) and 2(1) | Yes |
| SLOVENIA | Protection Against Discrimination Act | Arts. 9, 7, indent 2 and 4(2) | Yes |
| | Employment Relationship Act | Art. 6(3) | Yes |
| SPAIN | Law on Fiscal, Administrative and Social Measures | Art. 28.2 | No |
| SWEDEN | Discrimination Act | Ch. 1 S. 4 pt. 6 | Yes |
| TURKEY | Law on the Human Rights and Equality Institution of Turkey | Arts. 2(1)-b and 4(1) (b) | Yes ²⁵⁶ |
| UNITED KINGDOM | (GB) Equality Act | Sec. 111 | No |
| | (NI) Race Relations Order | Art. 30 | No |
| | (NI) Fair Employment and Treatment Order | Art. 35 | No |
| | (NI) Disability Discrimination Act | Sec. 16C | No |
| | (NI) Employment Equality (Sexual Orientation) Regulations ²⁵⁷ | - | No |
| | (NI) Employment Equality (Age) Regulations | Reg. 5 | No |

2.2 Scope of discrimination

2.2.1 Personal scope

The Racial Equality Directive and Employment Equality Directive are applicable to all persons. This means that national anti-discrimination laws should apply to all persons on a Member State's territory, irrespective of whether they are EU or third-country nationals. On the whole, protection against discrimination in the Member States on any of the grounds included in the directives is not conditional on nationality, citizenship or residence status.²⁵⁸ Even so, some countries have included nationality in their list of protected grounds (see table in section 3.3 below).

Recital 16 of the Racial Equality Directive states that it is important to protect all natural persons against discrimination and that Member States should also provide, where appropriate and in accordance with their national traditions and practice, protection for legal persons where they suffer discrimination on the grounds of the racial or ethnic origin of their members. The Employment Equality Directive does not have an equivalent recital, but there is no reason why both natural and legal persons should not be understood under the term 'persons' in this directive as well. In many countries both natural and legal persons are protected against discrimination, including **Belgium, Bulgaria, Croatia, Hungary, Iceland, Luxembourg, Malta, Montenegro, North Macedonia, Portugal, Slovakia, Slovenia** and **Turkey**. In some countries however, legal persons remain categorically unprotected, such as in the **Czech Republic**,

²⁵⁴ The NCCD interprets the prohibition of 'orders to discriminate' of Art. 2(2) of GO 137/2000 as a prohibition of instructions to discriminate.

²⁵⁵ Art. 13(1) of the Law on the Prohibition of Discrimination only stipulates that 'causing and encouraging inequality, hatred and enmity on the grounds of national, racial or religious affiliation, language, political opinions, gender, gender identity, sexual orientation or disability' amounts to a severe form of discrimination.

²⁵⁶ While the wording of the definition seems to be in line with the directives, sexual orientation is not listed as a protected ground.

²⁵⁷ Judicial interpretation required.

²⁵⁸ In France, for example, the principle of equality is applicable to non-nationals unless the legislature can justify a difference in treatment on the basis of public interest, cf. Constitutional Council, 22 January 1990, 296 DC, R.F.D.C. No 2 1990, obs. Favoreu.

Denmark, Norway and Sweden,²⁵⁹ while in **Austria** the federal anti-discrimination legislation is silent on the issue and would require judicial interpretation to determine whether or not legal persons are protected. In **Ireland**, the legal acts are also silent on the issue, but national case law has established that only natural persons are protected.²⁶⁰ In **Estonia**, the Equal Treatment Act refers to the rights of persons and the local legal tradition implies that only natural persons can be victims of discrimination (unless this is challenged in the national courts). Similarly, in the **Netherlands**, it is commonly held that legal persons are not protected against discrimination. However, the then Equal Treatment Commission has held in a number of opinions that a group of natural persons that is collectively subject to discrimination, such as a religious organisation or an association of professionals, may benefit from the protection against discrimination.²⁶¹ In **Poland**, protection against discrimination for legal persons extends only to the grounds of race, ethnic origin and nationality of their members. In the **United Kingdom**, legal persons have traditionally not been protected against discrimination, but in 2015, an Employment Appeal Tribunal confirmed that the word 'person' in the Equality Act should be interpreted to include legal persons.²⁶² With regard to the ground of disability however, only natural persons are protected as the law refers to 'a disabled person'.

Neither directive indicates whether it should be understood as making both natural and legal persons liable for discriminatory acts. Nor do they state exactly who should be held liable for discriminatory behaviour. The question of liability is particularly relevant in cases of discrimination in employment, as often the employer bears responsibility for the actions of his or her employees, for example, for discrimination against a client or for harassment by one employee against another. For instance, in **Ireland**,²⁶³ the **Netherlands**²⁶⁴ and **Sweden**, anti-discrimination legislation is directed at employers, and usually the person who actually discriminated cannot be held personally liable. In **Spain**, however, liability for discrimination is personal and only the person (natural or legal) who has acted in a discriminatory way is liable under the law, rather than the employer or service provider. In 2018, the **Bulgarian** Supreme Court of Cassation ruled in two cases that both an individual perpetrator of discrimination and that individual's employer or contractor were liable for discriminatory acts perpetrated during work.²⁶⁵

It is less common to make employers liable for the actions of third parties, such as tenants, clients or customers who discriminate against their employees. In **Portugal**, for instance, employers and providers of services can only be held liable for actions of third parties where a special duty of care is imposed by law or where a special relationship can be established, for example subcontractors.²⁶⁶ Similarly, in the **Netherlands**, records of parliamentary debates are thought to make clear that the Dutch legislature did not intend that anti-discrimination legislation should be enforceable against a colleague or a third party, on the basis that there is no contract or relationship of authority between the parties.²⁶⁷ Under **Croatian** anti-discrimination law, the employer is in general liable for the damages suffered by their employees at work or in connection with work, but it is still uncertain how this provision would be applied in cases of

259 In Sweden, the Discrimination Inquiry Commission has proposed protection for legal persons in several areas (but not all) covered by non-discrimination legislation. However, this proposal has not been finally accepted.

260 Ireland, Equality Tribunal, *Gloria (Ireland's Lesbian & Gay Choir) v. Cork International Choral Festival Ltd.*, DEC-S2008-078, 28.10.2008, available at: <https://www.workplacerelations.ie/en/Cases/2008/October/DEC-S2008-078-Full-Case-Report.html>.

261 See for instance Equal Treatment Commission Opinions Nos. 1996-110, 1998-31 and 1998-45.

262 UK, Employment Appeal Tribunal *EAD Solicitors LLP and others v Abrams* UKEAT/0054/15/DM, 5 June 2015 http://www.bailii.org/uk/cases/UKEAT/2015/0054_15_0506.html.

263 Ireland, Employment Equality Acts 1998-2015. Section 8(1) prohibits discrimination by employers and employment agencies. Most of the prohibitions within the legislation are aimed at the employer, and no clear provision is made to enable actions against the person(s) who actually discriminated. The exceptions are Section 14 of the act, which refers to liability being imposed on a person responsible for procuring or attempting to procure discrimination, and Section 10 which refers to liability being imposed on a person who publishes or displays discriminatory advertising.

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

265 Bulgaria, Supreme Court of Cassation, Ruling No. 266 of 23 March 2018 in case No. 4603/2017; Decision No. 144 of 8 June 2018 in case No. 4603/2016.

266 Portugal, Labour Code, Article 551(3).

267 Netherlands, Explanatory Memorandum to the Act on equal treatment on the ground of age in employment, occupation and vocational training (Act on equal treatment on the ground of age in employment), Second Chamber of Parliament, 2001-2002, 28 170, No 3, p. 19.

discriminatory actions by third parties against employees.²⁶⁸ In **Romania**, according to the case law of the national equality body, employers can be held liable for actions of their employees if there is joint responsibility, but not for actions of third parties. The national equality body has used personal liability in determining the degree of responsibility of each party.

Trade unions and other trade or professional organisations are usually not liable for the discriminatory actions of their members. In **Norway**, trade unions can be held liable for the actions of their members only if the members operate on behalf of the organisation or if key members give instructions.

2.2.2 Material scope

Both the Racial Equality Directive and the Employment Equality Directive require discrimination to be forbidden in employment and vocational training. Article 3(1) of both directives lists the areas in which the principle of equal treatment must be upheld.

Table 7: Material scope of the Racial Equality and Employment Equality directives

| Racial Equality Directive | Employment Equality Directive |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (a) conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion | (a) conditions for access to employment, to self-employment and 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 | (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 | (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 | (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 |
| (e) social protection, including social security and healthcare | |
| (f) social advantages | |
| (g) education | |
| (h) access to and supply of goods and services which are available to the public, including housing | |

The material scope of the directives is met in **Austria, Bulgaria, Croatia, Cyprus**, the **Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Malta**, the **Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden** and the **United Kingdom**.

The material scope is not fully covered in **Liechtenstein, Serbia** and **Turkey**. In addition, in **Latvia**, national law does not clearly cover vocational training outside the employment relationship, on any of the five grounds. In **Lithuania**, it remains doubtful whether the Racial Equality Directive has been implemented correctly in certain fields of application, such as social protection and social advantages and with regards to self-employment. In **Belgium**, the division of responsibilities between the different levels of government still causes discrepancies regarding the implementation of the material scope of

²⁶⁸ Croatia, Labour Act, Article 111.

the directives.²⁶⁹ In **Spain**, beyond the field of employment, the anti-discrimination legislation is not ‘real and effective’ as no sanctions are provided in the event of a violation. In **Iceland**, the legislation adopted in 2018 does not explicitly prohibit discrimination in the area of social advantages, which might be an oversight as the explanatory notes to the bill provides an explanation of ‘social advantages’ and what they are.

To fulfil the requirements of the directives, national anti-discrimination law must apply to the public and private sectors, including public bodies. Not all states currently meet this requirement. In **Hungary**, not all private entities are covered by the Equal Treatment Act of 2003. The **Hungarian** legislature took a unique approach among the EU Member States, in that it does not list the fields falling under its scope, but instead lists the public and private entities that must respect the requirement of equal treatment in all actions falling under the scope of the Equal Treatment Act. These are mostly public bodies and include state, local and minority self-governments and public authorities (Article 4 of the Equal Treatment Act). Four groups of private entities are listed (Article 5): (i) those who offer a public contract or make a public offer; (ii) those who provide public services or sell goods; (iii) entrepreneurs, companies and other private legal entities using state support; and (iv) employers and contractors.

In several countries, the material scope of anti-discrimination law goes beyond the requirements of the directives (for a list of examples, see the textbox in Section 2.2.2.6 below).

2.2.2.1 Employment

Equality must be guaranteed in all sectors of public and private employment and occupation, including contract work, self-employment, military service and statutory office, for all five grounds covered by both directives. A number of countries fall short of this protection, for instance by failing to cover fully self-employment and/or occupation, as in **Greece**,²⁷⁰ **Lithuania**,²⁷¹ **Slovakia**²⁷² and the **United Kingdom**.²⁷³ The **French** anti-discrimination legislation does not cover certain specific professions in the public sphere such as Parliament officials and magistrates, and the specific legislation regulating these professions contains no comparable anti-discrimination provisions.²⁷⁴ In the **Netherlands**, the term ‘liberal profession’ has been used instead of self-employment but has at all times been interpreted broadly, in particular by the Netherlands Institute for Human Rights (previously the Equal Treatment Commission), in order to guarantee that not only doctors, architects etc. are covered, but also freelancers, sole traders, entrepreneurs and so on.

In **Germany**, the General Act on Equal Treatment covers employment and working conditions, including pay and dismissals.²⁷⁵ As regards dismissals however, this act stipulates that only the existing general and particular regulations for dismissal are to be applied. The most important act in this regard is the Law on Protection against Dismissal,²⁷⁶ which does not contain any prohibition of discrimination. Nevertheless, the Federal Labour Court has held that the General Act on Equal Treatment does apply to situations where no special rules of dismissal are applicable, for instance during a probation period.²⁷⁷

269 For instance, discrepancies still persist as regards social advantages and access to goods and services in general, which are regional responsibilities.

270 Self-employment is not explicitly included in the scope of the Equal Treatment Law 4443/2016 under Article 3, but the provision can be interpreted in a way that it includes self-employment. The 2017 amendments to the Labour Code merely reproduce the wording of the provision in the Law on Equal Treatment and do not add any clarification on this.

271 Self-employment is not explicitly mentioned in the Equal Treatment Act, and legislation regulating particular professions such as attorney, notary, etc. does not provide anti-discrimination provisions. Further interpretation of the Equal Treatment Act by courts or the Equal Opportunities Ombudsman is required.

272 In Slovakia, contract work which falls beyond the scope of the Labour Code would probably not be covered by anti-discrimination law.

273 See however: United Kingdom, Supreme Court judgment of 13.06.2018, *Pimlico Plumbers Ltd and another v Smith* UKSC 29, available at: <https://www.bailii.org/uk/cases/UKSC/2018/29.html>. See also the text box below.

274 France, Law No. 83-634 of 13 July 1983 on the rights and obligations of civil servants, Article 3.

275 Germany, General Act on Equal Treatment, Section 2.1.2.

276 Germany, Law on Protection against Dismissal of 25 August 1969 (BGBl. I, 1317). Last amended on 20.04.2013 (BGBl. I, 868).

277 Germany, Federal Labour Court, 6 AZR 190/12, 19 December 2013, Para. 22.

UK Supreme Court confirms the applicability of the Equality Act to self-employed plumber²⁷⁸

The claimant worked for Pimlico Plumbers (the respondent) as a plumbing and heating engineer from 2005-2011. In August 2011, the claimant issued proceedings against the respondent, alleging among other things that he had been discriminated against on grounds of disability. In order to be able to take forward his claim under the Equality Act, the claimant needed to show that he was working under a contract of employment, a contract of apprenticeship or a contract 'personally to do work', in accordance with Section 83(2)(a) of the Equality Act 2010.

The contractual terms under which the claimant was working were not clear regarding his true employment status. Although his contract contained terms that might suggest self-employed status, other terms suggested that he had the status of employment, which was required for the purposes of a discrimination claim.

The Employment Tribunal held that although the claimant had not been an employee in the sense required to claim certain employment rights such as unfair dismissal, he had been in employment for the purposes of Section 83(2)(a) of the Equality Act and could therefore continue with his discrimination claim. The respondent unsuccessfully appealed this decision to the Employment Appeal Tribunal and then to the Court of Appeal, before appealing to the Supreme Court.

In June 2018, the Supreme Court confirmed that the Employment Tribunal was entitled to find that the claimant was employed within the meaning of the term in the Equality Act, as he was contracted to undertake to personally perform his work or services for Pimlico Plumbers. He could therefore continue with his disability claim.

Military service is not included in the scope of legislation transposing the directives in **Latvia**, while in the **Czech Republic**, the Act on service by members of the security forces and the Act on career soldiers contain a special anti-discrimination provision, which does not list disability among the protected grounds. Similarly, in **Malta**, the provisions of Legal Notice 461 of 2004 do not apply to the armed forces in so far as discriminatory treatment on the grounds of disability and age is concerned.

The extent to which volunteer work falls within the scope of employment is left open by the directives. The approach at national level in this regard varies among the countries. In **Ireland**, the High Court has held that unpaid volunteers are not covered by the Employment Equality Acts.²⁷⁹ A similar position was held by the **Danish** Board of Equal Treatment in 2015 with regard to an unpaid volunteer worker whose tasks could not be considered as paid employment.²⁸⁰ In 2018 however, the Board changed its position when deciding a case involving the age discrimination claim of a voluntary lieutenant in the Danish Home Guard. The Board concluded that although the claimant was not paid, he was obliged to perform a certain number of duties and had contributed to the Home Guard with 800 hours of his time per year. The claim was therefore encompassed by the Act on the Prohibition of Discrimination in the Labour Market etc.²⁸¹

2.2.2.2 Social protection

Some concerns remain with regard to the transposition of the Racial Equality Directive in the area of social protection. In **Belgium**, some legislation at the regional level would need to be amended so as to include social protection in the material scope of the prohibition of discrimination.²⁸² In **Lithuania**, the Equal Treatment Act does not explicitly cover social security and healthcare but it does envisage a general duty to implement equal opportunities: 'State and municipal institutions and agencies must,

278 United Kingdom, Supreme Court, decision No. [2018] UKSC 29, of 13/06/2018, *Pimlico Plumbers Ltd and another v. Smith*, available at: <https://www.bailii.org/uk/cases/UKSC/2018/29.html>.

279 Irish High Court, *An Garda Síochána v. O'Leary*, 30 May 2013, IEHC 267, available at: <http://www.courts.ie/Judgments.nsf/0/53FE83D658C8C00480257B9600322FCD>.

280 Danish Board of Equal Treatment, Decision No. 111/2015.

281 Denmark, Board of Equal Treatment, Decision No. 9254 of 7 March 2018.

282 The Equal Treatment Ordinance of the Region of Brussels-Capital does not include social protection in its material scope, nor does the Decree on equal treatment between persons in vocational training (*Commission communautaire française* [Cocof]).

within their competence, ensure that equal rights and opportunities are enshrined in all legal acts irrespective of gender, race, nationality, citizenship,²⁸³ language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion'. This could be interpreted to encompass social security and healthcare as well, as these fields are not explicitly excluded. The practice of the Ombudsman indicates that the equality body considers the wording of the Equal Treatment Act regarding goods and services to be broad enough to include healthcare services, while the interpretation regarding other aspects of social protection remains unclear.²⁸⁴ In **Ireland**, the Equal Status Acts 2000-2018 do not explicitly refer to 'social protection' or 'healthcare', but do cover access to goods and services, defining the latter as a 'service or facility of any nature which is available to the public generally or a section of the public'.²⁸⁵ However, the Equality Tribunal (now the Workplace Relations Commission) has interpreted the definition of 'service' to include social protection from the outset.²⁸⁶ There are no specific provisions referring to social protection on the protected grounds of the directives in **Liechtenstein**.²⁸⁷

Article 3(3) of the Employment Equality Directive provides that the directive's scope does not extend to 'payments of any kind made by state schemes or similar, including state social security or social protection schemes'. This exception is not found in the Racial Equality Directive, which in contrast lists 'social protection' in its scope (Article 3(1)(e)). Some Member States have sought to rely on Article 3(3) of the Employment Equality Directive in their anti-discrimination legislation, e.g. **Cyprus**, **Greece** and **Italy**. However, in **Cyprus** the mandate of the equality body covers discrimination in the field of social protection for all the grounds of the two directives.²⁸⁸

2.2.2.3 Social advantages

Protection against discrimination in social advantages is not explicitly provided as required by the Racial Equality Directive in **Hungary**,²⁸⁹ **Iceland**,²⁹⁰ **Ireland**,²⁹¹ **Liechtenstein**, **Lithuania**²⁹² and **Serbia**. None of the relevant legislation in the **United Kingdom** makes explicit reference to social advantages, although much of what might fall under 'social advantages' would be covered by the general scope of the legislation. In **Belgium**, although federal legislation does prohibit discrimination in this field, full implementation of the Racial Equality Directive would still require some amendments of legislation at the regional level.²⁹³

The term 'social advantages' is mostly left undefined in national legislation. An exception is the **Netherlands**, where the Explanatory Memorandum to the General Equal Treatment Act indicates that this notion refers to advantages of an economic and cultural nature, which may be granted by both

283 This ground only applies to citizens of the EU and EEA countries and their family members (partners, however, are not explicitly included).

284 Lithuanian Equal Opportunities Ombudsperson (2010), *Annual Report for 2010*, available in Lithuanian at <http://www.lygybe.lt>.

285 Ireland, Equal Status Acts 2000-2018, Section 2(1).

286 Ireland, Equality Tribunal, *Donovan v. Donnellan* DEC-S2001-011, 17.10.2001, available at: <http://www.equalitytribunal.ie/en/Cases/2001/October/DEC-S2001-011.html>; Applied in e.g. *McQuaid v Department of Social Protection*, DEC-S2014-015, 02.10.2014, available at: <https://www.workplacerelations.ie/en/Cases/2014/October/DEC-S2014-015.html>.

287 However, the Act on Equality of People with Disabilities (Art. 10) prohibits disability discrimination in the granting of voluntary social benefits in connection with an employment relationship.

288 Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No 42(I)/ 2004, Article 6(2) (e). Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

289 Although providers of social advantages would generally fall under the personal scope of the Equal Treatment Act (Article 4), and their discriminatory acts would thereby be covered by the Act on the basis of Article 8, irrespective of the area in which they take place.

290 In Iceland, social advantages may have been excluded from the Racial Equality Act by mistake, as the explanatory notes to the bill explicitly refer to social advantages.

291 While the Irish Equality Tribunal upheld some discrimination complaints in this area, a circuit court judgment has cast doubt on the applicability of anti-discrimination law to social advantages provided by the public sector: Circuit Court, *Pobal v Hoey*, unreported judgment, 14 April 2011.

292 The practice of the Lithuanian Ombudsman seems to indicate however that the equality body does accept complaints in the area of social advantages.

293 The Decree on equal treatment between persons in vocational training (*Commission communautaire française [Cocof]*) does not include social advantages in its material scope.

private and public entities. These may include student grants and price concessions for public transport and cultural or other events. Advantages offered by private entities include, for example, concessionary prices for the cinema and theatre.²⁹⁴ With regard to **Slovakia**, it seems that the provision that stipulates that the rates of payment of child benefit, parental care allowance and childbirth allowance are dependent on compliance with preventive measures, is discriminatory.²⁹⁵

2.2.2.4 Education

Among the analysed countries it is only in **Liechtenstein** that national legislation does not prohibit discrimination in the field of education on the grounds of racial or ethnic origin, as formulated in the Racial Equality Directive. Rather, many countries go beyond the requirements of the Directive in this area and extend protection against discrimination to all five grounds analysed in this report. For example, in **France**, protection against discrimination in the area of education extends to all grounds covered by French law, including the grounds covered by the Employment Equality Directive. Similar legal frameworks exist in the **Czech Republic**, **Finland**, **Slovenia** and **Slovakia**, for example.

Nevertheless, some limitations to the specific scope of protection in this field can occur. For instance, in **Poland**, the Supreme Administrative Court found in 2018 that university bodies' administrative decisions regarding postgraduate studies are not subject to judicial-administrative control. Therefore, the Court did not examine the substance of the discrimination claim concerning the refusal by a private vocational college to admit the claimant for postgraduate studies in environmental protection due to his failure to include the opinion of a priest among his application documents.²⁹⁶ Furthermore, establishing an inclusive mainstream education system remains a challenge for many countries, especially when it comes to the situation of children with disabilities and Roma children.

Children and pupils with disabilities

The situation of children with disabilities and their integration into mainstream education as opposed to segregated 'special' schools or classes for children with special educational needs (SEN) is an issue that arises in many countries. The **German** Federal Constitutional Court in the relevant leading case held that a general ban on integrated schooling was unconstitutional. The decision to place a child in a special school for people with disabilities against the will of the parents constituted a breach of the Basic Law, if it was possible for the child to attend an ordinary school without special pedagogical help, if his or her special needs could be fulfilled using existing means, and other interests worthy of protection, especially of third parties, did not weigh against integrated schooling.²⁹⁷ As a rule, although many countries declare that SEN should be included in mainstream education, implementation of this requirement is often lacking in practice, for instance in **Bulgaria**. This is also the case in **Croatia**, although an ordinance was finally adopted in 2018 regarding one important aspect, the criteria for the provision of teaching assistants.²⁹⁸ The **Lithuanian** Ombudsman for Children's Rights initiated an investigation in 2016 into the situation of children and pupils with disabilities in education across the country. The results were presented in a report and show issues of concern both of a general nature on the level of municipal coordination of policies related to persons with disabilities as well as more specific problems related to a lack of specialist

294 See for example CJEU, Judgment of 12 July 1984, *Castelli*, C-261/83, ECLI:EU:C:1984:280 and Judgment of 27 March 1985, *Hoeckx*, C-249/83 ECLI:EU:C:1985:139, as referred to in the Dutch Explanatory Memorandum to the EC Implementation Act, Second Chamber of Parliament 2002-2003, 28 770, No 3, p. 15.

295 UNCRC (2016), *Concluding observations on the combined third to fifth periodic reports of Slovakia*, CRC/C/SVK/CO/3-5, 20 July 2016. Available at : https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/SVK/CO/3-5&Lang=En.

296 Poland, Supreme Administrative Court, *M.J. v. CSMC*, case No. II SA/Bd 732/17, dated 17.04.2018.

297 See Federal Constitutional Court, BVerfG 96, 288.

298 Croatia, Ordinance on assistants in teaching and professional communication mediators, *Official Gazette* 102/2018, 6 November 2018, available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2018_11_102_1992.html.

assistance or of physical accessibility of schools.²⁹⁹ In the **Czech Republic**, a series of amendments was adopted between 2015 and 2017 to reform the Schools Act with the aim of ensuring inclusive education for children with special needs. While it appears that these reforms have led to an increase in the number of children with special needs attending mainstream education, there are also some signs that the change in the law is not always followed by a change in practice. In 2018, a court decision found that the practice of requiring parents to contribute to the salary costs of their child's pedagogical assistant amounted to direct discrimination.³⁰⁰ In **Poland**, controversial changes with regard to pupils with disabilities were adopted in 2017, requiring that individual teaching based on special needs is to be organised at home, rather than in school.³⁰¹ The implementation of these changes in regulation is being monitored by the national equality body and by the Children's Rights Ombud.

In **Ireland**, a new model regarding the allocation of teaching resources was adopted in 2017. Funds are now assigned in relation to the school's profile and not to the medical diagnoses. By doing so, the main flaws of the previous system, which resulted in delays and disadvantaged pupils who couldn't afford to have their needs assessed, should be overcome.³⁰² Moreover, the budget for 2018 allocated an additional EUR 30 million to enable the recruitment of a further 1 000 special needs assistants to provide non-teaching care support to children.³⁰³ In **Poland**, the special Ordinance of the Minister of National Education on conditions for the organisation of education, developmental support and care for children and young people with disabilities and behavioural issues in mainstream and integrated pre-school facilities, schools and classes introduced several obligations on schools, such as the duty to provide appropriate learning conditions, specialised equipment and support for parents, etc.³⁰⁴ In **Latvia**, a reform of the special education system has been underway since 2016, with the aim of creating a comprehensive support system to allow the integration of learners with special needs in mainstream classrooms. In **Belgium**, the duty to provide reasonable accommodation for people with disabilities also applies in the field of education. In practice, however, many education providers fail to meet this duty and national courts are regularly called upon to enforce the law in this area.³⁰⁵

Belgian Court finds discrimination due to refusal to enrol a pupil with Down's syndrome³⁰⁶

The case concerned a pupil with Down's syndrome who had completed his first year in a nursery school but was prevented from re-enrolling at the same school for his second year. The school officials carried out an informal enquiry among the teachers to determine who would be willing to welcome him into their classroom and to provide suitable support. Apart from the pedagogical assistants, no teacher responded positively, and the school thus asked the parents to look for another school. Given the conspicuous discriminatory treatment, the equality body Unia decided to bring the case to court.

In November 2018, the first instance court of Antwerp found that refusing to enrol the child in these circumstances amounted to a denial of reasonable accommodation, which is discriminatory within the meaning of the Flemish Decree of 10 June 2008 on equal opportunities and equal treatment.

The required reasonable accommodation was mainly organisational. The pupil had the right to complementary support by an inclusive education teacher and by trainee teachers. These additional staff members were not employed only for the pupil in question, as they continued working in the

299 Lithuanian Ombudsman for Children's Rights (2016), *The report of Institution of the Ombudsman for Children's Rights, 2016-03- Nr. (6.7.-2014-16)PR*, available in Lithuanian at: <http://www3.lrs.lt/docs2/DFFLQRXU.PDF>.

300 Czech Republic, Municipal Court in Prague, decision No. 29 Co 466/2017, dated 15 March 2018.

301 Poland, Ordinance of the Minister of National Education of 28 August 2017 amending the ordinance on the individual obligatory annual pre-school preparation of children and individual teaching of children and youth; Dz.U.2017.1656.

302 Ireland, National Council for Special Education (2013) *Supporting Children with Special Educational Needs in Schools. NCSE Policy Advice Paper No. 4*, available at: http://ncse.ie/wp-content/uploads/2014/09/Supporting_14_05_13_web.pdf.

303 See further, <https://www.education.ie/en/Press-Events/Press-Releases/2017-Press-Releases/PR2017-06-12.html>.

304 Poland, Ordinance of the Minister of National Education on conditions for the organisation of education, developmental support and care for children and young people with disabilities and behavioural issues in mainstream and integrated pre-school facilities, schools and classes (Dz.U. 2015, poz. 1113), amended in 2017 (Dz.U.2017.1652), in force since 1 September 2017.

305 See Belgium, Court of First Instance of Antwerp, Judgment of 7 November 2018, available at: www.unia.be/files/Documenten/Rechtspraak/Rechtbank_Eerste_aanleg_Antwerpen_7_november_2018.pdf.

306 Belgium, Court of First Instance of Antwerp, Judgment of 7.11.2018, available at: www.unia.be/files/Documenten/Rechtspraak/Rechtbank_Eerste_aanleg_Antwerpen_7_november_2018.pdf.

school even after he left. The court refuted that the accommodations would be excessive, from both an organisational as well as a financial perspective.

The court confirmed that specialised education for disabled students must remain the exception, and therefore considered that all necessary adjustments are in principle reasonable until their disproportionate nature is established.

Children and pupils of Roma origin

Issues also arise in relation to discrimination of children from racial and ethnic minorities in education. Of particular concern is the segregation of Roma children, which constitutes one of the most widespread manifestations of discrimination against the Roma.³⁰⁷ This issue seems to have constituted one of the European Commission's priorities these past years, as infringement proceedings have been launched against several countries for failure to correctly transpose and/or implement the Racial Equality Directive in this regard.³⁰⁸ There are Roma in all the countries covered with the apparent exception of **Iceland, Liechtenstein and Malta**.

Discrimination of Roma in education, including segregation, can take different forms. Among these, the following three categories will be studied here: attendance by disproportionate numbers of Roma children in 'special' schools for children with intellectual disabilities; segregated classes or sections for Roma pupils within 'mixed' schools; and the prevalence of 'ghetto-schools'. In general, one or several of these forms of discrimination can be found in many European countries, including for example **Bulgaria, Croatia, Cyprus, the Czech Republic, Greece, Hungary, North Macedonia, Romania, Serbia and Slovakia**.

First, a disproportionate number of Roma children attend remedial 'special' schools for children with intellectual disabilities and are thereby separated from the mainstream school system and receive an inferior level of education, which affects their life chances, in **Bulgaria, the Czech Republic, Hungary, Latvia, Romania, Slovakia and Slovenia**.³⁰⁹ Following a finding of discrimination by the ECtHR in 2013 due to the lack of safeguards accompanying the placement of Roma children as members of a disadvantaged group in remedial schools for children with 'mild mental disabilities',³¹⁰ as well as national court rulings in the same vein,³¹¹ the European Commission initiated an infringement procedure against **Hungary** in 2016 with regard to the segregation of Roma children in education and the placement of a disproportionate number of Roma children in 'special' schools for children with intellectual disabilities.³¹² The Commission urged Hungary to align its national law with the Racial Equality Directive and, as a result, amendments to national legislation were introduced. On the other hand, research seems to suggest that segregation in mainstream education (i.e. not in special schools) has been on the rise.³¹³ In the **Czech Republic**, the Schools Act was amended in 2015 not only to ensure inclusive education for pupils with disabilities but also to eradicate school segregation of Roma children. The effective implementation of the reform will depend on the allocation of sufficient (human) resources and awareness-raising activities targeting schools as well as special pedagogical centres. In **Slovakia**, a report published by the Ministry of Finance in 2018 shows that Roma children account for 63 % of all children in special classes and

307 A thematic report written in 2014 by Lilla Farkas, ground-coordinator for race and ethnic origin for the European network of legal experts in the non-discrimination field, entitled *Report on discrimination of Roma children in education*, provides a more detailed analysis of this issue. <https://www.equalitylaw.eu/publications/thematic-reports>.

308 Proceedings have been brought against the Czech Republic (2014), Slovakia (2015) and Hungary (2016).

309 See thematic report: Farkas, L. (2014), *Report on discrimination of Roma children in education*, European network of legal experts in the non-discrimination field.

310 ECtHR, *Horváth and Kiss v. Hungary*, No 11146/11, Judgment of 29 January 2013.

311 Hungary, Eger Regional Court, 12.P.20.166/2014/92, 10 March 2016.

312 Press release available at: http://europa.eu/rapid/press-release_MEMO-16-1823_en.htm.

313 Hajdu, T., Hermann, Z., Horn, D. and Varga, J. (2019), *A közoktatás indikátorrendszere 2019* (The indicator system of public education 2019), https://www.mtaki.hu/wp-content/uploads/2020/01/A_kozoktatasi_indikatorrendszere_2019.pdf, p. 181.

42 % of those in special schools.³¹⁴ In **Slovenia**, data shows that Roma children are overrepresented in special needs schools: about 12 % of Roma children attended such schools in the school year 2017/2018, compared to 6 % of other children. In addition to these countries, Council of Europe Commissioner for Human Rights Nils Muižnieks noted in a position paper on segregation in education published in 2017 that a disproportionate number of Roma children and pupils are enrolled in ‘special’ education in **Belgium, Lithuania, North Macedonia and Serbia**.³¹⁵

Secondly, Roma segregation also occurs in some mainstream schools through the existence of segregated classes. This is the case in **Croatia, the Czech Republic, Greece, Hungary, Romania, Slovakia**. In **Slovakia**, ‘zero-grade’ classes are catch-up classes established for children who are not expected to be able to absorb the standard curriculum of the first year of primary school as a result of their social and linguistic environment. Although formulated neutrally, these measures have in practice been aimed most specifically at Roma children, and Roma children are also their almost exclusive beneficiaries. The Schools Act was amended in 2015,³¹⁶ notably to repeal a section relating to the placement of pupils from ‘socially disadvantaged environments’ in ‘special schools’.³¹⁷ However, the amended act still allows for the establishment of ‘specialised classes’ for the education of those pupils who are ‘not likely to successfully manage the content of education in the corresponding year’. Even though it declares that children from socially disadvantaged backgrounds are to be placed into classes together with other children or pupils, this rule still does not apply to zero grade³¹⁸ and specialised classes.³¹⁹ In 2018, the **Czech** Ombudsman issued a recommendation providing a detailed analysis of the consequences of the current situation of Roma segregation in education, amounting to a substantial loss in GDP for the Czech Republic.³²⁰

There are only a few instances where segregated Roma classes have been challenged under national legal systems, for instance in **Bulgaria, Croatia, Greece, Hungary, Romania and Slovakia**.

Thirdly, in a large number of countries, (e.g. **Bulgaria, Cyprus, Hungary, Serbia and Slovakia**) residence patterns also lead to a high concentration of Roma children in certain schools, resulting in ‘ghetto schools’. For instance **Slovakia** and the **United Kingdom** have legislation expressly prohibiting segregation in schools between persons of different racial or ethnic groups, but concerns have been expressed by various stakeholders about such *de facto* segregation arising from residence patterns. These schools follow the same curriculum but the quality of education and the physical condition of the buildings are often inferior. Some states are considering making attempts to try to remedy this form of *de facto* segregation. The European Court of Human Rights found that **Greece** is discriminating against Roma children due to the practice of segregation in a Roma-only ‘ghetto’ school, first in 2008³²¹ and then again – regarding the same school – in 2012.³²² In **Hungary**, the establishment of a new centralised state body for education has not resulted in strengthened action against segregation. In **Bulgaria**, the Pre-School and School Education Act bans the segregation of children of ‘a different’ ethnicity in separate groups or classes, but

314 Slovakia, Ministry of Education, Science, Research and Sport (2019), *Revízia výdavkov na skupiny ohrozené chudobou a sociálnym vylúčením: Priebežná správa* (Revision of expenses for groups threatened by poverty and social exclusion: Interim report), January 2019, p. 21, available at: <https://www.minedu.sk/revizia-vydavkov-na-skupiny-ohrozene-chudobou-alebo-socialnym-vylucenim-2020/>.

315 Council of Europe Commissioner for Human Rights (2017), *Fighting school segregation in Europe through inclusive education: A position paper*, available at: <https://rm.coe.int/fighting-school-segregation-in-europe-through-inclusive-education-a-posi/168073fb65>.

316 By Act No 188/2015.

317 Slovakia, Ordinance of the Ministry of Education, Science, Research and Sport of the Slovak Republic No 2013/2015 that changes the Ordinance of the Ministry of Education No 320/2008 on Primary School.

318 Zero grade classes can be established under Section 60(4) of the Schools Act.

319 Slovakia, Schools Act, 245/2008, Section 107(3). After the cut-off date of this report, in 2019, the Schools Act was amended to impose compulsory preschool education as of the age of 5 and remove the possibility of creating zero-grade classes. Slovakia, Act No. 209/2019 amending the Act No. 245/2008 on Education.

320 Czech Republic, Public Defender of Rights (2018), *Doporučení veřejné ochránčyně práv ke společnému vzdělávání romských a neromských dětí* (Suggestions of the Public Defender of Rights in the field of joint education of Roma and non-Roma children) – official journal, available at: https://ochrance.cz/fileadmin/user_upload/ESO/86-2017-DIS-VB_Doporučení_desegregace.pdf.

321 ECtHR, *Sampanis and others v Greece*, No 32526/05, Judgment of 5 June 2008.

322 ECtHR, *Sampanis and others v Greece*, No 59608/09, Judgment of 11 December 2012.

it does not prevent segregation in different kindergartens and schools.³²³ Furthermore, the legal definition of segregation requires the state of separation to be forced, thus implying that children may waive their right not to be segregated (or that their parents may waive it for them).

Hungarian court finds Education Ministry liable for segregation of Roma pupils

In 2009, the Chance for Children Foundation initiated an *actio popularis* lawsuit against the failure of the then Ministry of Education and Culture to take effective action – directly and/or through the administrative bodies responsible for the operation of schools – against the segregation of Roma children in education. The Foundation claimed that the ministry had failed to fulfil its obligations stemming from the Equal Treatment Act and from the National Public Education Act, thus violating the segregated Roma pupils’ right to equal treatment. In its petition, the Foundation referred to research carried out in 2005, which concluded that there were 44 schools with between 50 % and 80 % Roma pupils and that segregation was accompanied by substandard physical conditions and educational services.

The ministry did not question the fact that Roma pupils were highly overrepresented in the schools concerned. However, it denied responsibility for this situation on the basis that (i) it exercised its rights and performed its duties regarding educational institutions through lower-level administrative bodies and that (ii) data protection regulations prevented the collection of data on the pupils' ethnic origin, thereby preventing action against ethnically based segregation.

In April 2018, the Metropolitan Court concluded first that the ministry must have been sufficiently aware of the situation and of the fact that it was not improving. If not, it would mean that its monitoring mechanisms/guidelines were deficient, for which it would also be liable. As the entity ultimately responsible for the lawful operation of the Hungarian education system, the ministry was therefore liable for failure to meet the statutory requirement of non-segregation. Secondly, the court noted that in this case, the right not to be segregated prevailed over the protection of sensitive personal data.³²⁴

Regarding sanctions, the court imposed a very detailed list of obligations upon the ministry, including the obligation to ban the admission of new first-graders to the schools where segregation was still in place; to instruct the entities operating the schools concerned to prepare desegregation plans; to publish these desegregation plans on its website and continuously monitor their implementation; to amend its inspection guidelines to enable the estimation of the proportion of pupils perceived to be of Roma ethnicity and to instruct the competent Government offices to carry out inspections on the basis of these new guidelines. Finally, the ministry was ordered to pay a public interest fine of approximately EUR 156 250 (HUF 50 million) to be spent on the civil monitoring of desegregation programmes within the next five years.

The very detailed obligations prescribed by the court were based on the finding that the ministry's efforts to monitor and address the issue of segregation had not led to any improvements in the 10 years that had passed since the publication of the relevant research. The court thus found that it would be meaningless to simply oblige the ministry to put an end to the violation without prescribing how that must be done.

Finally, the high public interest fine was determined on the basis of the prolonged nature of the violation and the severe consequences for the pupils concerned.³²⁵

In addition, in many states, including **Belgium, Croatia, Cyprus, Finland, Lithuania, Montenegro, North Macedonia, Poland, Portugal, Slovenia** and **Turkey** school absenteeism and disproportionately high drop-out rates are serious issues among the Roma, Sinti and Traveller communities.

323 Bulgaria, Pre-School and School Education Act, adopted 13 October 2015, entered into force 1 August 2016, as last amended on 12 December 2017, Article 62 (4) and Article 99 (4) and (6).

324 Hungary, Metropolitan Court, Decision No. 40.P.23.675/2015/84, 18.04.2018, available at: <http://cfch.hu/sites/default/files/23675-2015-84-1%20%C3%A9let%C3%A9let%C3%A9let%20Es%C3%A9lyt%20a%20H%C3%A1tr%C3%A1nyos%20-%20Nemzeti%20Er%C5%91forr%C3%A1s%20.pdf>.

325 After the cut-off date of this report, on 14.02.2019, the Metropolitan Appeals Court confirmed the assessment of the first instance court regarding the liability of the respondent but modified the judgment significantly regarding the sanctions imposed. See Metropolitan Appeals Court, Judgment No. 2.Pf.21.145/2018/6/I, 14.02.2019.

There have been several attempts by governments to address the segregation of Roma pupils. In **Romania**, the Ministry of National Education and Scientific Research issued two orders in 2016,³²⁶ aiming to combat segregation in the education system, but the two orders are still not enforced due to the lack of implementation mechanisms. In **Norway**, the Government action plan to improve the Roma situation in Oslo includes elements related to schooling, in particular specific education provided in Norwegian as well as classes in the mother tongue. Computers are also made available for distance and home education. The **Serbian** Ministry of Justice adopted a Rulebook on the criteria and procedures for the admission of Roma pupils to secondary schools³²⁷ as part of the EU accession process, which led to a substantial increase in the number of enrolled pupils, from 420 (2015/2016 academic year) to 1 512 (2016/2017 academic year).³²⁸

2.2.2.5 Access to and supply of goods and services

The Racial Equality Directive prohibits discrimination concerning access to and supply of goods and services, including housing, that are available to the public. The boundaries of this prohibition have generated debate in many countries, although more than half of the countries examined do not restrict protection to publicly available goods and services (**Albania, Bulgaria, Croatia, Cyprus, Finland, France, Iceland, Ireland, Italy, Latvia, Lithuania**,³²⁹ **Luxembourg, Malta, Montenegro, North Macedonia, Poland, Romania, Spain and Turkey**).

A few legislatures have provided definitions to delineate the circumstances in which discrimination is prohibited. **Swedish** law prohibits discrimination in the supply of goods and services, including housing, which are provided 'outside the private or family sphere', and thus the law does not apply to private transactions (similar provisions apply in **Finland**). In the field of housing, this limitation implies that private persons selling or renting out their property 'on sporadic occasions' are not covered by the Discrimination Act. By contrast, there is some concern over the exception from the material scope of the provision of goods and services under **German** law for all transactions concerning a special relationship of trust and proximity between the parties or their families, including the letting of flats. In **Austria**, case law has clarified the meaning of the terms 'available to the public', stating that offers of goods and services are excluded from the principle of equal treatment only when they are 'directed towards a close circle of family and friends'.³³⁰

As with education, access to housing is another area where Roma face serious barriers and difficulties in many states. For instance, the difficult situation experienced by Roma individuals in **Slovenia** was confirmed by the 2017 report of the Council of Europe Commissioner for Human Rights, which outlines that Roma are prevented from accessing social housing and continue to live in settlements isolated from the rest of society in conditions that are well below the minimum standard of living.

326 Romania, Ministry of National Education and Scientific Research, Order no. 6158 adopting the action plan on school desegregation, and Framework order no. 6134 for prohibiting school segregation in primary and secondary education, 22 December 2016. Available at: <http://edu.ro/politici-publice-%C3%AFn-educa%C8%9Bie-pentru-prevenirea-combaterea-%C8%99i-interzicerea-segreg%C4%83rii-%C8%99colare>.

327 Serbia, Rules on the criteria and procedures for admission of students belonging to the Roma national minority to secondary schools under favourable conditions for the achievement of full equality (*Pravilnik o merilima i postupku za upis učenika – pripadnika romske nacionalne manjine u srednju školu pod povoljnijim uslovima radi postizanja pune ravnopravnosti*), Official Gazette of the Republic of Serbia, no. 12/2016, 12 March 2016.

328 Republic of Serbia Council for the Implementation of the Action Plan for Chapter 23 (2016), *Report on the Implementation of the Action Plan for Chapter 23*, p. 206.

329 Note that religious communities or associations, as well as associations founded by these religious communities or their members, are not obliged to comply with the Equal Treatment Act while providing goods and services, when the purpose of this provision is of a religious character.

330 Austria, Viennese Court of Commerce, decision 1R 129/10g, 19 January 2011.

Hungary: further developments in the Miskolc cases

In recent years, Hungarian municipalities have attempted to push Roma populations out of settlements and/or prevent them from moving in. A symbolic case in this regard is the 'Numbered Streets' case in Miskolc (northeast Hungary), which has led to a number of decisions of the Equal Treatment Authority and of national courts since 2015, finding discrimination on the grounds of social status, financial situation and/or Roma origin.³³¹ Notably, the Hungarian Supreme Court (Curia) held in 2015 that a municipal policy of providing financial compensation for the termination of 'low comfort' social housing tenancy contracts (in practice almost exclusively held by Roma) only if the tenants undertook to buy property outside of the municipal territory amounted to discrimination on the ground of financial status and social status (ethnicity was not mentioned).³³² In practice, however, most of the Roma inhabitants of the Numbered Streets were either forced to move into even more substandard areas or left the municipality altogether.³³³

In parallel to these cases, another complaint was filed by two NGOs before the Commissioner for Fundamental Rights regarding the practice of the Miskolc municipal authorities of public health, child protection, social administration, etc. in carrying out recurring and concentrated inspections in the segregated, mainly Roma neighbourhoods. The complainants argued that this practice amounted to racially based harassment, and their claim was upheld by the Commissioner for Fundamental Rights in 2015.

The two NGOs subsequently submitted an *actio popularis* civil law claim to the Miskolc Regional Court, in which they challenged both the elimination of social housing and the concentrated and harassing inspection raids. In its decision of 12 December 2018, the Miskolc Regional Court concluded that the Municipality of Miskolc and the Miskolc Municipal Law Enforcement Body had violated the human dignity and the right to non-discrimination of the Roma population in Miskolc as a result of the raids held in the Roma neighbourhoods, the elimination of social housing without providing adequate guarantees against homelessness and the manner in which the municipality communicated the issue to the public. The court found that these practices and this form of public communication amounted to harassment based on ethnicity.³³⁴ It obliged the respondents to publish an apology on the municipal website and through the Hungarian news agency and to pay a public interest fine of EUR 31 250 (HUF 10 million).³³⁵

The municipality submitted an appeal against the decision and the mayor declared publicly that he had no intention of changing his policies.³³⁶

In recent years, there have been many reports of forced expulsion and segregation (e.g. in **Bulgaria, Greece, Italy, Romania and Turkey**) or in relation to campsites and stopping places for Roma and Travellers (e.g. in **France** and the **UK**). Although these issues do not necessarily fall within the scope of the Directive, they do cause serious concern for the Roma and Traveller populations on the national level across Europe. In **France** for instance, the Government has been systematically evicting Travellers and Roma from illegally occupied land since 2012. Despite the issuance of a Ministerial Instruction in January 2018 to revise this eviction policy,³³⁷ a total of 9 688 persons were thus evicted in 2018. Some 85 %

331 See notably: Equal Treatment Authority, Decision No. EBH/67/22/2015 of 15.07.2015, available at: <http://www.egyenlobanasmod.hu/hu/jogeset/ebh672015>; and Metropolitan Administrative and Labour Court, Decision No. 6.K.33.048/2015/17 of 25.01.2016.

332 Hungary, Supreme Court (Curia), decision No. Kőf.5003/2015/4 of 28.04.2015, available at: <http://www.kuria-birosag.hu/hu/onkugy/kof500320154-szamu-hatarozat>.

333 Doros, J. (2017), 'Számozott utcák - Nincstelenségből a nyomorba vezet az út' (Numbered streets – the road leads from indigence to poverty), *Népszava* (online edition), 28.03.2017, available at: https://nepszava.hu/1124790_szamozott-utcak-nincstelensegbol-a-nyomorba-vezet-az-ut.

334 Such harassment is prohibited in national law although it would not necessarily fall within the scope of the Racial Equality Directive. Violations were notably found of Articles 7, 8 and 10 of the Equal Treatment Act.

335 Hungary, Miskolc Regional Court, Judgment No. 13.P.20.601/2016/95 of 12.12.2018.

336 Borsodihír (2018), 'Miskolc polgármestere elküldte a jogvédőket a fenébe' (The mayor of Miskolc told human rights defenders to go to hell), *Borsodihír* (online edition), 13.12.2018, available at: <https://borsodihir.hu/helyben-jaro/2018/12/miskolc-polgarmestere-elkuldte-a-jogvedeket-a-fenebe>.

337 France, Instruction of Government supporting a renewed policy for the suppression of slums and illegal camps, No. NOR: TERL1736127, 25 January 2018, available at: http://circulaires.legifrance.gouv.fr/pdf/2018/01/cir_42949.pdf.

of them did not receive any shelter or housing offers.³³⁸ In **Lithuania**, with the specific aim of avoiding such forced evictions, the Vilnius City Municipality adopted an integration to society programme³³⁹ for the Roma community living in the Kirtimai settlement on the outskirts of the city.³⁴⁰ With regard to housing, the aim of the programme is to provide social housing options to the residents of the settlement and to offer (mainly financial) incentives to encourage voluntary resettlement. In 2018, 24 families left the settlement and received compensation for rent while six other families were offered social housing.

Some countries have chosen to go beyond the scope of the Directives in the area of services available to the public. For example, in the **Netherlands**, national anti-discrimination law is used to prevent that Roma and Travellers end up with a shortage of trailing sites, which would be considered to constitute discrimination under national law. In this regard, the Minister of the Interior and Kingdom Relations issued a policy framework in 2018 with the aim of ensuring Roma cultural rights and legal security in the area of housing.³⁴¹ This policy followed the publication by the Ombudsman of a report in 2017 concluding that several municipal authorities' housing policies were in violation of national law, therefore discriminating against Roma individuals by not making available sufficient caravan or trailer sites.³⁴²

2.2.2.6 Beyond the directives

Many states have maintained the diverging scope of the two directives, only expressly outlawing discrimination in social protection, social advantages, education and goods and services available to the public in relation to racial and ethnic discrimination. However, a number of states provide the same protection for other grounds of discrimination as well, if not all grounds, and thus go beyond the requirements of the directives.

The following illustrates areas in which countries exceed EU law provisions:

- Whereas in **Austrian** federal legislation the distinction between the scope of the two directives is maintained, in all provincial legislations it is levelled up.
- In **Bulgaria**, the Protection Against Discrimination Act provides comprehensive protection and prohibits discrimination within a universal material scope.
- In **Croatia**, the Anti-discrimination Act applies to housing in general without any exceptions and covers racial or ethnic origin, gender, language, religion, political or other belief, national or social origin, property, trade union membership, education, social status, marital or family status, age, health condition, disability, genetic heritage, gender identity and expression and sexual orientation.
- **Denmark** extends the prohibition of discrimination on the grounds of religion or belief and sexual orientation to the fields of education and access to goods and services including housing. Furthermore, discrimination on the ground of disability is prohibited in all areas covered by the Racial Equality Directive.
- The **Finnish** Non-Discrimination Act of 2014 prohibits discrimination in all public and private activities (excluding only private life, family life and practice of religion), on the grounds of origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics.

338 CNDH Romeurope (2019), *Monitoring report*, published on 18 March 2019, available at: <https://www.romeurope.org/wp-content/uploads/2019/03/Expulsions-bidonvilles-squats-2018-Note-détaillée-VF.pdf>.

339 Lithuania (2016), *Vilnius Kirtimai Roma Community Integration to Society Programme 2016–2019*, available in Lithuanian at: <http://www.vilnius.lt/vaktai2011/Defaultlite.aspx?Id=3&DocId=30278696>.

340 Approximately 500 people live in slum-like conditions in the Kirtimai settlement, which is the only one of its kind in the country.

341 Netherlands Ministry of the Interior and Kingdom Relations (2018), Policy framework municipal trailer and camping sites policy, available at: www.rijksoverheid.nl/documenten/rapporten/2018/07/02/beleidskader-gemeentelijk-woonwagen-en-standplaatsenbeleid.

342 Ombudsman (2017), Trailer resident seeks trailer site. An investigation into the reliability of the public authorities for trailer inhabitants, available at: www.nationaleombudsman.nl/system/files/bijlage/DEF%20Rapport%202017060%20Woonwagenbewoner%20zoekt%20standplaats.pdf.

- In **France**, protection against discrimination in the areas of education, social protection, social advantages and access to and supply of goods and services extends to all grounds covered by French law.³⁴³
- **Hungarian** law has practically unlimited material scope, treating all grounds of discrimination equally.
- The scope of the **Italian** Anti-discrimination decrees partially corresponds with other pre-existing legislation still in force, primarily the Immigration Act of 1998. This act offers protection against discrimination based on race, religion and nationality that mostly overlaps with that of the decrees, covering all the fields specified in the two directives.
- In **Luxembourg**, the General Anti-Discrimination Law prohibits discrimination on all the grounds covered by both directives, in all the fields covered by the Racial Equality Directive, levelling up the protection on all grounds.
- In **Malta**, the Equal Opportunities (Persons with Disability) Act provides protection against discrimination on the grounds of disability in the fields of education and access to and supply of goods and services.
- In **Montenegro**, Article 23 of the Law on the Prohibition of Discrimination of Persons with Disabilities (LPDPD) forbids discrimination based on disability in the field of health care and health insurance.
- In **Norway**, protection against discrimination in the fields of social protection, social advantages and access to and supply of goods and services covers all grounds of the directives.
- **Romanian** anti-discrimination legislation applies to a large number of criteria going beyond those provided by the directives, and the scope of the Anti-discrimination Law is applicable to areas beyond those spelled out in the directives.
- In **Slovakian** law, the right to healthcare is guaranteed equally to every person irrespective of sex, religion or belief, race, affiliation with a nationality or ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender,³⁴⁴ the reason of reporting criminality or other anti-social activity, other status. The Anti-discrimination Act prohibits discrimination in housing on the same grounds.
- In **Slovenia**, protection is enjoyed with regard to all of the grounds listed in the directives and other grounds of discrimination in the fields of social protection, social advantages, education and goods and services.
- In **Sweden**, discrimination is prohibited on the grounds of sex, transgender identity or expression, ethnic origin, religion or other belief, disability, age and sexual orientation in essentially all areas of society, ranging from working life, education and social security and healthcare, including social services, state grants for education, social insurance and related benefit systems, to the provision of goods, services and housing.
- In the **United Kingdom**, discrimination on the grounds of race, national or ethnic origin, nationality and colour, disability, sexual orientation and religion or belief (with some exceptions) is prohibited in all forms and levels of education, in the provision of goods and services, and in the performance of public functions by public authorities (believed to cover social protection, including healthcare and social security). Northern Ireland has broad prohibitions against discrimination on the ground of political opinion.

343 It should however be noted that French law only covers 'belonging or not belonging, real or assumed, to a specific religion' as opposed to 'religion or belief' as covered by the Employment Equality Directive.

344 The Slovak word 'rod' can be translated as either lineage or gender.

3 Exceptions to the principle of non-discrimination and positive action

The directives are based on a dichotomy between direct discrimination, which cannot be justified, and indirect discrimination, which is open to objective justification. Most countries have complied with this approach, although there are some states where it may be argued that national law continues to permit the justification of direct discrimination (e.g. **Latvia**,³⁴⁵ **Montenegro** and **Slovenia** with regard to the ground of race and ethnicity).

Justification of direct discrimination in Slovenia

The Protection Against Discrimination Act (PADA) in general does not permit direct discrimination. However, Article 13(1) states that, despite the general requirement to ensure equal treatment in Article 5 of the PADA, differential treatment based on personal characteristics is not excluded, if such treatment is based on a legitimate goal and if the means for achieving this goal are appropriate, necessary and proportionate. This provision might be read as if direct discrimination on the ground of race and ethnicity is also justified as long as the principle of proportionality is respected, which would not be in line with Article 2 of the Racial Equality Directive.

Parallel to the possibility of objectively justifying indirect discrimination, the directives permit a number of exceptions applicable to the ban on both direct and indirect discrimination. Some of these apply to all grounds of discrimination (e.g. genuine occupational requirements), whereas others are ground-specific (e.g. employers with a religious ethos). States are not required to include any or all of the possible exceptions.

The directives also permit positive action to be taken in certain circumstances. This is not an exception to the principle of equal treatment. On the contrary, these are measures which are necessary to ensure 'full equality in practice'. States are not required adopt positive action measures, although they cannot prohibit the adoption of such measures on the national level.

3.1 Genuine and determining occupational requirements

Article 4 of the Racial Equality Directive and the Employment Equality Directive

'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, religion or belief, age, disability or sexual orientation] 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.'

All countries surveyed have chosen to include an exception relying on Article 4(1) of the directives within their national legislation. The **Netherlands** takes an interesting approach by specifying that only *external racial appearances* may constitute a genuine occupational requirement.³⁴⁶ This means that 'race' per se is not regarded as a permissible ground for a given distinction; only physical differences (skin colour, hair type, etc.) may form the basis for a distinction, to the exclusion of sociological differences. There is no exception relying on Article 4 of the directives in relation to any other ground.

³⁴⁵ Latvian legislation in fields such as social security, education and access to goods and services does not distinguish between direct and indirect discrimination, thereby causing confusion regarding the limits of the possibility of justifying (indirect) discrimination. See for instance Article 21(1) of the Law on Social Security.

³⁴⁶ Netherlands, General Equal Treatment Act, Article 2(4)(b), as inserted by the 2004 EC Implementation Act.

In some countries, the precise wording of national legislation varies from that found within the directives (e.g. **Italy**). This creates the risk that the exception is wider than permitted, but this will depend on subsequent interpretation by national courts. In **Great Britain**, the relevant provision of the Equality Act (Schedule 9, part 1) does not contain the words 'genuine and determining', as it is assumed that the objective of such a requirement cannot be legitimate or proportionate if it is not genuine and determining. In **Denmark**, the relevant provision is particularly restrictive, as each employer who wishes to make use of the exception has to obtain a specific dispensation from the Government minister who is responsible for the type of activity exercised by the employer. Such dispensation can only be given once a specific statement has been made by the Minister of Labour with regards to the specific position to be filled. In **Hungary**, recent amendments to the provision on genuine and determining occupational requirements have raised doubts concerning its compliance with the directives. While the new wording of the exception is more restricted than that of the directives (applying only to recruitment but not to other aspects of employment), there is a risk that this exception is interpreted as *lex specialis* while the general exempting clause is considered as *lex generalis*, applying therefore in all areas of employment except recruitment. As the general exempting clause provides a simple reasonability test, such an interpretation of the amended provision would lead to a wider margin for exception than set out by the directives.

EEA and candidate countries have also chosen to include the genuine and determining occupational requirements exception in their equality and anti-discrimination legislation. For instance, the Equality for People with Disabilities Act in **Liechtenstein** provides that exceptions are permitted if special skills or physical conditions are required for a specific job. Similarly, **Norway** allows justification of direct discrimination if it is necessary for the performance of the work, in line with the Employment Equality Directive. In **Montenegro**, the Labour Law contains a provision that follows closely the wording of Article 4 of the directives, although it is incorrectly titled 'Positive discrimination'. In **Serbia**, the Law on the Prohibition of Discrimination and the Labour Law both provide for an exception that relies on Article 4 of the directives. In **Turkey**, Article 7(1)(a) of the Law on the Human Rights and Equality Institution of Turkey (no. 6701) states that 'differential treatments' shall not be considered as discriminatory when they are appropriate and proportional to the aim pursued and where inherent professional requirements exist with respect to employment and self-employment. In a ruling issued on 15 November 2017, the Constitutional Court clarified that it is not possible to specifically identify the inherent requirements for each professional activity and that such requirements will need to be assessed on an individual basis in the implementation of the law.³⁴⁷ In **Iceland**, the Labour Equality Act adopted in 2018 introduced a provision on genuine and determining occupational requirements that is applicable for all grounds.

Belgian Council of State finds that a maximum age requirement in employment is a genuine and determining occupational requirement³⁴⁸

A proceeding for annulment was initiated before the Belgian Council of State against a refusal to appoint a candidate for a position at the Brussels Regional Agency for Public Cleanliness because of his age. A regulation provides that 35 is the maximum age at which someone can apply for this position. This condition does not apply to workers hired before they reach that age. The claimant, who is older, asserted that fixing the maximum age of 35 for candidates to apply for a position of worker for public cleanliness cannot constitute a genuine occupational requirement and is, therefore, a direct discrimination based on age, prohibited by the Brussels Civil Service Equal Treatment Ordinance that transposes Directive 2000/78 in the field of Civil Service (Articles 4, 6°, and 7 to 10). On 26 September 2017, the Council of State ruled on the proceeding and found that the condition at hand is not illegal and is appropriate and necessary to guarantee the legitimate objective that the position can be fulfilled for a certain amount of time by newly appointed workers. Indeed, the Council of State considered that, since the position requires excellent physical condition, it is liable that people of a certain age could not fulfil the essential requirements of the work at stake. The Council of State also underlined that,

³⁴⁷ Turkish Constitutional Court, Judgment, E. 2016/132, K. 2017/154, 15 November 2017, at para. 15. More generally, the Constitutional Court considered 'special skills, physical qualities, graduation from certain schools, acquisition of certain documents and information' as examples of inherent professional requirements that would justify differential treatment.

³⁴⁸ Belgian Council of State, Decision No. 239/217 of 26 September 2017. Available at: <http://www.raadvst-consetat.be/?lang=fr>.

in this matter, its control is only a marginal one (standard of abuse of authority) and that it is for the claimant to prove that the requirement is not essential for the position. The proceeding for annulment was rejected.

3.2 Employers with an ethos based on religion or belief

Article 4(2) Employment Equality Directive:

‘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 constitute 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.’

Most of the controversy around the implementation of the provisions of the Employment Equality Directive on religion or belief centres on the extent of any exceptions provided for employers with an ethos based on religion or belief (e.g. churches or religious schools). The Directive only allows for differential treatment on the grounds of religion or belief under this provision, and it cannot be used to justify discrimination on another ground, for example sexual orientation. In 2018, the Court of Justice of the EU was finally provided with the opportunity to silence some of the controversy surrounding this exception, through the long-awaited Grand Chamber rulings in the cases of *Egenberger*³⁴⁹ and *I.R. v J.Q.*³⁵⁰

***Egenberger*: CJEU landmark ruling on exception for employers with a religious ethos**

The claimant applied for a post advertised by a body associated with a German Protestant church. While the main task was to produce a parallel report on the UN Convention on the Elimination of All Forms of Racial Discrimination, the work also consisted of representing the diaconate of Germany and coordinating the opinion-forming process internally. The claimant had the relevant experience and knowledge for the post, but she was not of a religious faith, which was explicitly required in the advertisement for the post. She was therefore not invited for an interview. She took the case to the German courts alleging discrimination on the ground of religion or belief.

The referring court observed that the well-established case law of the German Federal Constitutional Court on churches’ privilege of self-determination shows that the judicial review should be limited to a review of plausibility on the basis of the church’s self-perception. The referring court therefore asked the CJEU whether that limited judicial review was compatible with the Directive. In that regard, the CJEU found that the right of autonomy of churches must be balanced with the right of workers not to be discriminated against on the ground of religion or belief. Accordingly, in the event of a dispute, that balancing exercise should be the subject of an effective judicial review by an independent authority, and ultimately by a national court.

Secondly, the referring court asked the CJEU for clarifications on the interpretation of the three criteria of ‘genuine, legitimate and justified occupational requirement’ with regard to employers with a religious

349 CJEU, Grand Chamber judgment of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257. See also *European Equality Law Review*, Issue 2018/2, pp. 98-99.

350 CJEU, Grand Chamber judgment of 11 September 2018, *IR v JQ*, C-68/17, ECLI:EU:C:2018:696. See also *European Equality Law Review*, Issue 2019/1, pp. 66-67.

ethos, in the meaning of Article 4(2) of the Directive. The Court concluded that, in principle, it is not for the national courts to rule on the ethos as such on which the purported occupational requirement is based, but they must nevertheless decide on a case-by-case basis whether the three criteria are fulfilled from the point of view of that ethos. In doing so, national courts must ascertain whether the requirement put forward is necessary and objectively dictated – having regard to the ethos of the church (or organisation) concerned – by the nature of the occupational activity in question or the circumstances in which it is carried out. In addition, the requirement must comply with the principle of proportionality.

Finally, the referring court asked the CJEU whether a national court was required, in a dispute between individuals, to disapply a provision of national law that could not be interpreted in conformity with Article 4(2). The Court recalled that it is for the national courts to interpret the national law transposing the Directive, as far as possible, in line with the Directive. Where such an interpretation is not possible however, national courts must disapply any contrary provision of national law. Since the Charter of Fundamental Rights of the EU is applicable, the national court must ensure the judicial protection deriving for individuals from the prohibition of all discrimination on the ground of religion or belief (Article 21 of the Charter) and the right to effective judicial protection (Article 47 of the Charter).

It is important to distinguish between national legislation that does not apply to religious organisations and national legislation that does apply, but provides certain exceptions. For example, in 2012, the **Dutch** (then) Equal Treatment Commission³⁵¹ found that a church, when renting out houses owned by the church, cannot make distinctions between potential tenants based on their religion as this activity falls outside the internal affairs of the church, placing them within the scope of national anti-discrimination law.

Not all countries chose to explicitly include the Article 4(2) exception: this is the case in **Albania, Finland, France, Iceland, Liechtenstein, Portugal, Romania, Serbia** and **Sweden**. Although the **Romanian** Anti-discrimination Law (Ordinance 137/2000) does not include specific provisions on an exemption for employers with an ethos based on religion or belief to comply with the Employment Equality Directive, the provisions of Article 4 on genuine and determining occupational requirements and Articles 23-26 of Law 489/2006 on Religious Freedom and the General Status of Religious Denominations, on the employment of own employees, can be interpreted to allow ethos or religion-based exceptions. In a similar manner, in **Finland**, the Non-Discrimination Act does not provide for an exception for employers with an ethos based on religion or belief, but the Government proposal cites Article 4(2) and additionally, it states that ‘setting such a requirement cannot lead to discrimination on another ground.’ In contrast, the following states have adopted provisions in national law which seek to rely on Article 4(2): **Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Germany, Greece, Hungary, Italy, Ireland, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, North Macedonia, Poland, Slovakia, Slovenia, Spain, Turkey** and the **United Kingdom**. In **Norway**, the exception is explicitly specified only in relation to the recruitment process but follows from the legal preparatory works in relation to all other aspects of employment. It concerns organisations or enterprises with an aim to promote particular life stances or religious views, regarding the applicant’s religion, life stance or marital/cohabitation status.

Some states have provided exceptions that appear to go beyond the strict terms of the Employment Equality Directive (e.g. **Hungary**), appear to be too wide (e.g. **Italy**), or remain ambiguous (e.g. the **UK**).

3.3 Justification of differences of treatment on grounds of age

The Employment Equality Directive permits national law to include a range of exceptions in relation to both direct and indirect age discrimination.

351 Netherlands, Opinion of the Equal Treatment Commission, Opinion No. ETC 2012-84 dd of 4 May 2012.

Article 6(1) Employment Equality Directive:

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

The directive goes on to list examples of differences that could be allowed, including the fixing of minimum conditions of age, professional experience or seniority for access to employment. As a consequence, there remains very substantial uncertainty across the states as to which forms of age discrimination will be treated as justified by national courts. In *Mangold v. Helm*,³⁵² the Court of Justice provided an early indication that directly discriminatory practices need to be carefully scrutinised by national courts. That ruling has been followed by an extensive body of case law from the CJEU related to age discrimination, which has greatly affected national implementation. In this context, it is important to underline that the CJEU has consistently ruled since 2010 that prohibition of discrimination on the grounds of age must be considered as a general principle of EU law to which the directive merely gives expression.³⁵³

Several Member States have simply inserted the text of Article 6 of the Employment Equality Directive into national law, including **Cyprus, Greece, Malta, Portugal** and **Slovakia**. Meanwhile, **Finland, France, Germany, Ireland, Italy, Luxembourg, Romania**, and **Slovenia** have provisions that resemble all or part of Article 6. Although **Iceland** adopted anti-discrimination legislation in the field of employment in 2018, the entry into force of the age-related provisions was deferred to 1 July 2019 to allow the social partners sufficient time to examine existing collective agreements and to amend them where necessary.

A key issue relating to the age provisions of the Employment Equality Directive is retirement. In principle, compelling employees to leave work because they have reached a certain age is direct age discrimination that would require objective justification. Meanwhile, Recital 14 indicates that retirement ages may be regarded as justified age discrimination. It states that ‘this Directive shall be without prejudice to national provisions laying down retirement ages’. National law varies greatly in this area, ranging from states with no national compulsory retirement age to states that permit compulsory retirement by public and private employers at a specific age.

At the outset, it is important to distinguish between the age at which people become entitled to receive pensions (pensionable age) and the age at which they are required to cease employment (retirement age). Sometimes these are linked in national law. In **Cyprus** and **Malta**, protection against unfair dismissal is lost at pensionable age and in **Hungary** such protection is reduced. In **Latvia**, the Constitutional Court has held that it is not disproportionate to require civil servants to retire at pensionable age.³⁵⁴

The approach in national law to retirement age can be loosely grouped into three categories. First, there are Member States where national law does not impose any compulsory retirement age, nor does it remove protection from unfair dismissal for workers after a certain age. In general, this includes **Estonia**,³⁵⁵ the **Netherlands, Poland, Slovakia** and the **United Kingdom**. In **Denmark**, retirement ages could be set by collective agreements or individual employment contracts until 1 January 2016, when a law adopted in 2014 entered into force.³⁵⁶ As of that date, no contracts or collective agreements containing a retirement age can be entered into.³⁵⁷ In **Germany**, although there is no general mandatory retirement age, there are

352 CJEU, Judgment of 22 November 2005, *Mangold v Helm*, C-144/04, ECLI:EU:C:2005:709. *Mangold*, and in particular the CJEU's exercise of powers in that case, was (unsuccessfully) challenged before the Federal Constitutional Court in Germany. See the German Federal Constitutional Court, Decision 2 BvR 2661/06 of 6 July 2010.

353 CJEU, Judgment of 19 January 2010, *Seda Küçükdeveci v Swedex GmbH & Co*, C-555/07, ECLI:EU:C:2010:21.

354 Constitutional Court of Latvia, Case 2003-12-01, Decision of 18 December 2003.

355 In Estonia, there are exceptions for a small number of categories of military and law-enforcement officials as well as for some specific professions such as judges.

356 Denmark, Act No. 1489 of 23 December 2014.

357 In Denmark, the Act on Civil Servants imposes retirement at the age of 70 for certain civil servants working within the judiciary as well as for priests (Sections 34(2) and 43(2) of the Consolidated Act No. 488 of 6 May 2010 as amended).

a number of special regulations regarding maximum ages for specific categories of public servants, both on federal and *Land* level. In addition, both collective agreements and individual employment contracts commonly stipulate that retirement is to coincide with the federal pensionable age of 67 (being phased in).

In a second group of states, retirement ages are specified for public sector employees only. The precise age varies: **Albania** (65),³⁵⁸ **Belgium** (65), the **Czech Republic** (70), **Greece** (67), **Iceland** (70), **Ireland** (70),³⁵⁹ **Latvia** (65 – being phased in), **Lithuania** (65),³⁶⁰ **Luxembourg** (65),³⁶¹ **Norway** (70), **Portugal** (70), **Slovenia** (65), **Spain** (65) and **Turkey** (65).³⁶² In **Cyprus** different retirement ages apply to different public-sector employees, depending on the profession, the rank and the year of joining the service.³⁶³ In **Poland**, the law imposes certain retirement ages for judges, public prosecutors, court enforcement officers and notaries. In **Austria**, since September 2017 the law has set out an automatic shift in the pension stage for public sector employees when they reach the age of 65 years. The employment contract can only be extended for one year and it is renewable up to a maximum of five years if there is ‘an important operational reason’ related to the service for such a measure. In **Hungary**, the general retirement age of civil servants will be 65 by the year 2022, although civil service can be prolonged under certain circumstances until the age of 70.³⁶⁴

The ECtHR finds that different legal consequences of reaching the pensionable age between the private and the public sector are not discriminatory³⁶⁵

In Hungary, there is a difference between the private and the public sphere in relation to the legal consequences of reaching the pensionable age. In the private sphere, there is no state pension age, at which individuals must begin to collect their state pensions. By contrast, in the public sphere individuals must begin to collect their state pensions at a certain age. The differentiation between the public and private sphere was challenged before the European Court of Human Rights in the case *Fábián v. Hungary*.³⁶⁶ The claimant’s pension was suspended on the ground that he could not receive a State pension and simultaneously be employed in the public sector. No such rule was put in place for pensioners working in the private sector. The Court concluded that there had been a violation of the applicant’s rights under Article 14 in conjunction with his right to property. However, in its judgment of 5 September 2017, the Grand Chamber overturned the first instance judgment and held that since the applicant had not demonstrated that as a member of the civil service whose employment, remuneration and social benefits are dependent on the State, he was in a relevantly similar situation to those pensioners who were employed in the private sector, the differentiation did not amount to discrimination.

Finally, there are states where national law permits the compulsory retirement of employees, whether in the public or private sector, because they have reached a certain age: **Bulgaria**, **Finland** (68/70), **France** (67/70),³⁶⁷ **Croatia** (65), **Liechtenstein** (65), **Italy** (70), **Malta** (65 – being phased in), **Montenegro**

358 In Albania, the public sector retirement age is the same as the general pensionable age: 65 for men and 60 years and 10 months for women. Furthermore, there are some exceptions, notably for academics.

359 In Ireland, the statutory retirement age is dependent on the date of recruitment. For people who joined the public service before 1 April 2004 or since 1 January 2013, the statutory retirement age is generally 70. Public servants recruited between April 2004 and December 2012 have no compulsory retirement age. Distinct compulsory retirement ages are set for members of An Garda Síochána (police), the Defence Force, firefighters and prison officers.

360 In Lithuania, retirement can be postponed on a case-by-case basis for a maximum of two years.

361 In Luxembourg, in exceptional circumstances, a civil servant can remain in office until the age of 68 on request. The employer has to give their consent and has no obligation to maintain the civil servant in office.

362 Other retirement ages apply to certain categories of public sector employees in Turkey (Retirement Fund Law No. 5434, Art. 40).

363 Cyprus, Law on Pensions No 97(I)/1997 as amended, Article 12.

364 Hungary, Act CXCI of 2011 on Civil Servants, adopted on 30 December 2013, Article 60(1)(j).

365 ECtHR, *Fábián v. Hungary* [GC], No. 78117/13 of 5 September 2017. Available at: <http://hudoc.echr.coe.int/eng?i=001-176769>.

366 ECtHR, *Fábián v. Hungary*, No. 78117/13 of 15 December 2015. Available at: <http://hudoc.echr.coe.int/eng?i=001-159210>.

367 In France, retirement is imposed in the public sector when the employee reaches the age of 67. It can only be extended (for a maximum of three years) if the employee has the care of children still living at home or pursuing their education. In the private sector, employers can impose retirement as of the age of 70.

(65/67),³⁶⁸ **North Macedonia** (67),³⁶⁹ **Romania** (63/65),³⁷⁰ **Serbia** (65) and **Sweden** (67). In **Ireland**, retirement ages are generally provided for in employment contracts, although any mandatory retirement age must be capable of objective justification both by the existence of a legitimate aim and evidence that the means of achieving that aim is appropriate and necessary.³⁷¹ In **Bulgaria**, although there is no generally applicable compulsory retirement age (other than in certain sectors of civil service), employers may, at their discretion, dismiss their employees who have acquired the right to an old-age pension.³⁷²

Bulgarian Supreme Courts dismiss link between pension entitlement and age

Since 2016, the Supreme Administrative Court (SAC) has consistently held that persons dismissed on the ground of having become entitled to an old-age and seniority pension were not discriminated against on the ground of age.³⁷³ The court justifies these decisions by noting that under the law, the grounds for the dismissals were not age but the entitlement to a pension, which was independent of age as seniority was also taken into account. The SAC seems to regard taking seniority into account as quite different from taking age into account, ignoring the link between the two, without elaborating further on the justification for such a finding. It has also ignored the fact that age *per se* is also a factor for pension entitlement under the law.

The Supreme Court of Cassation (final instance in civil cases) has produced similar case law on at least two occasions in 2018,³⁷⁴ while the SAC has also continued this tendency.³⁷⁵ None of these rulings discussed proportionality or any other manner of justification.

In 2011, the CJEU examined the compatibility with the Employment Equality Directive of a collective agreement providing for the automatic termination of employment contracts at retirement age in the case of *Prigge and Others v Deutsche Lufthansa*.³⁷⁶ The Court found the relevant provision of the collective agreement to constitute direct discrimination on grounds of age, and that the measure could not be justified under the exception provided in Article 2(5) of the directive regarding public security. The Court also determined that possessing physical capabilities as an airline pilot can fall within the meaning of Article 4(1) of the directive on genuine and determining occupational requirements, and that such capabilities may diminish with age. However, although the objective relating to airline safety therefore was legitimate within the meaning of Article 4(1), the social partners had imposed a disproportionate requirement as both national and international legislation authorised pilots to carry out their professional activities until the age of 65, under certain conditions, while the collective agreement at hand provided for the automatic retirement of airline pilots at the age of 60. Finally, the Court proceeded to the justification test under Article 6 of Directive 2000/78/EC and ruled that air traffic safety did not constitute a legitimate aim related to employment policy, labour market and vocational training.

Another key issue is the justification with regard to age, and national practice varies greatly in this area. Article 6(1)(b) of the Employment Equality Directive expressly allows laws that seek to promote the vocational integration or protection of young people, older workers and persons with caring responsibilities. Such laws are very common. Almost every state has some legislation or practices that aim to protect and promote young employees, or to ensure a balance of age in the workforce. For instance, the **UK** permits age distinctions in the payment of the national minimum wage in order to encourage employers to employ younger workers, which seems controversial under the CJEU case law on age. In **Denmark**, the

368 The retirement age is 65 for women and 67 for men.

369 The retirement age is 64, but an employee who wishes to postpone retirement can do so until the age of 67.

370 The retirement age is 63 for women and 65 for men.

371 Ireland, S.I. No. 600/2017 – Industrial Relations Act 1990 (Code of Practice on Longer Working) (Declaration) Order 2017, 20.12.2017, <http://www.irishstatutebook.ie/eli/2017/si/600/made/en/print>.

372 The ages for acquiring an old-age pension vary depending notably on the number of years of service.

373 See notably Bulgarian Supreme Administrative Court Decisions No. 611 of 12.07.2016 in case No. 1541/2016, No. 4418 of 14.04.2016 in case No. 4245/2016 and No. 2988 of 9.03.2018 in case No. 13638/2017.

374 Bulgarian Supreme Court of Cassation, Rulings No. 368 of 18.05.2018 in case No. 483/2017 and No. 401 of 28.05.2018 in case No. 188/2018.

375 See for instance Bulgarian Supreme Administrative Court, Decision No. 4727 of 12.04.2018 in case No. 2769/2018.

376 CJEU, Judgment of 13 September 2011, *Prigge and Others v Deutsche Lufthansa AG*, C-447/09, ECLI:EU:C:2011:573.

Act on the Prohibition of Discrimination in the Labour Market etc. provides a general exception allowing collective agreements to establish different conditions of employment, remuneration and dismissal for employees aged below 18. In 2013, the Danish Supreme Court found that this provision is in compliance with the Employment Equality Directive, as it constitutes an appropriate means to ensure the integration of young employees in the labour market.³⁷⁷ Confusion around the justification issue is clearly noticeable throughout the EU, in particular as regards compulsory retirement and domestic case law also shows that national jurisdictions are not always consistent in finding discrimination.

Minimum and maximum age requirements, in particular in access to employment, seem to be widely permitted. These can be described as direct age requirements, whereas a requirement of a certain number of years of experience constitutes an indirect age requirement. The **Czech Republic** has examples of both direct age requirements (minimum age requirements for employment and self-employed activity and maximum age limits set for certain professions) and indirect age requirements (conditions of pay dependent on years of experience and requirement of a certain education and a minimum period of training for entrance to professions).

3.4 Armed forces and other specific occupations

Article 3(4) Employment Equality Directive

‘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.’

A few states have included an explicit exemption for the armed forces in relation to both age and disability: **Cyprus, Denmark,**³⁷⁸ **France, Greece, Ireland, Italy, Malta, Slovakia** and the **United Kingdom**. In **Germany**, the Soldiers General Act on Equal Treatment covers all grounds except for age and disability. Similarly, the specific anti-discrimination provisions contained in legislation regulating the security and armed forces in the **Czech Republic** do not cover age and disability as protected grounds. In **Norway**, the Armed Forces Act states that military personnel are exempt from the prohibition on age discrimination of the Working Environment Act. There is no specific disability-related exception in the legislation, but general health requirements apply.

Others have simply maintained age and capability requirements in their regulations on the armed forces without expressly declaring an exemption from the equal treatment principle, e.g. **Albania, Estonia, Hungary, Latvia, Lithuania, Montenegro, Poland, Portugal, Romania** and **Spain**. Military service requires candidates not to be older than a certain fixed age in, for instance, **Slovenia**, while the limitation in the **Dutch** Age Discrimination Act was only of temporary nature. In several states, the exceptions seem to be wider than provided for in Article 3(4). For example, **Irish**³⁷⁹ law provides exemptions on the basis of age in respect of the police, the prison service or any emergency service.

3.5 Nationality

Article 3(2) Racial Equality Directive and Employment Equality Directive

‘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

³⁷⁷ Danish Supreme Court, Case 185/2010, decision of 14 November 2013.

³⁷⁸ The Danish Act on the Prohibition of Discrimination in the Labour Market etc. stipulates that the Ministry of Defence can make exceptions for the armed forces in relation to age and disability. The ministry has made use of this option (Executive Order No 350 of 30 March 2012).

³⁷⁹ Ireland, Employment Equality Acts 1998-2015, Section 37(4).

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.’

In addition to the protected grounds covered by the two directives, several Member States have included nationality as an expressly protected ground in national anti-discrimination law, including **Belgium, Bulgaria, Cyprus**,³⁸⁰ **Finland, Lithuania**,³⁸¹ the **Netherlands, Portugal, Romania, Serbia** and the **United Kingdom**.³⁸² In **Spain**, the Organic Law on the Rights and Freedoms of Foreigners in Spain and their Social Integration (OL 4/2000) establishes the principle of non-discrimination and covers direct and indirect discrimination by nationality (as in citizenship), although the definitions are not similar to those used in the directives. The terms ‘race’ or ‘ethnic origin’ are considered to include nationality in countries such as **Ireland**, where nationality is explicitly listed as an aspect of the race ground. In **Sweden**, the ground of ethnicity explicitly covers ‘national or ethnic origin, skin colour or any similar circumstance’, which essentially includes citizenship. Finally, in **France**, case law has confirmed that the explicitly protected ground of ‘belonging to a nation’ must be interpreted to cover citizenship.³⁸³ In addition, there are several countries where the lists of protected grounds include the term ‘nationality’ but where this term is not considered to mean ‘citizenship’ but rather ‘national affiliation’ or similar concepts. This is the case for instance in the **Czech Republic, Poland** and **Slovakia**.

Nationality discrimination of 848 Moroccan employees by the French public railway company, SNCF³⁸⁴

In the 1970s, SNCF (the French public railway service) hired 2 000 Moroccan employees to fill lower skilled jobs. However, French citizenship was required for employment under ‘permanent employee status’, and they were therefore hired as contractual agents under a specific status (known as PS25) that was used for temporary employees and for persons holding a list of jobs that were not covered by the statutory regime. The Moroccan employees spent their entire careers at SNCF, with less favourable employment and retirement conditions than those applicable to French permanent employees. While half of them became French citizens, only 113 of the 2 000 Moroccan employees obtained permanent employee status. After retiring, the claimants brought a case to court, claiming damages for their career and retirement conditions.

In January 2018, the Court of Appeal of Paris confirmed the decision of the Employment Tribunal from 2015 and concluded that there had been discrimination in the career and retirement rights of the Moroccan employees. Considering the mass of evidence, the court held that the shift in the burden of proof imposed on the employer the obligation to establish that the difference of treatment was justified by objective elements unrelated to discrimination based on nationality.

The employer argued that the regulation reserving permanent employee status to French nationals was justified because at the time the railroad was considered to be part of the public service. The court dismissed this argument, as the SNCF’s representative had argued many times that the reason for not modifying the regulation was the financial burden that would result from integrating foreign workers into the status of French workers.

The court concluded that the condition of nationality contravened the bilateral conventions between France (and the EU) and Morocco and amounted to a violation of Article 14 ECHR and Protocol No. 1 to the ECHR. Each of the 848 claimants was awarded compensation amounting to more than EUR 240 000 for the loss of career, pension benefits and training as well as non-pecuniary damage. The overall liability of the SNCF is estimated at EUR 180 million.

380 In Cyprus, the ground of nationality may be seen as covered by the scope of the law ratifying Protocol 12 to the European Convention on Human Rights.

381 In Lithuania, ‘citizenship’ is a protected ground only for citizens of the EU and EEA countries and their family members.

382 In EU law, discrimination on grounds of nationality is prohibited under Article 18 TFEU.

383 See for instance Court of Cassation, Criminal Chamber, No. 01-85650, of 17 December 2002, available at: <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000007070672&fastReqId=831302130&fastPos=6>.

384 France, Court of Appeal of Paris, decision No. 15/11389 of 31.01.2018, available at: https://juridique.defenseurdesdroits.fr/index.php?lvl=notice_display&id=24074.

A number of Member States have specific exclusions from the scope of their implementing legislation which apply to discrimination based on nationality: **Cyprus, Greece, Italy, Luxembourg and Malta**. In **Cyprus**, the law regulating the grant of nationalities includes a provision according to which no automatic citizenship is recognised to an applicant whose parent entered Cyprus unlawfully or resides in Cyprus unlawfully; in such a case the grant of citizenship is left at the discretion of the Council of Ministers. Although the provision appears neutral, it may exclude from citizenship those persons born to a parent from Turkey who migrated to and settled in Cyprus in the post-war era.

3.6 Family benefits

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

In countries where same-sex couples can get married, i.e. **Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, Malta, the Netherlands, Norway, Portugal, Spain, Sweden** and the **United Kingdom**,³⁸⁵ limiting benefits to married couples does not result in discrimination on the grounds of sexual orientation. In other states, national legislation on the recognition of same-sex partnerships has had the impact of requiring marital benefits to be extended to registered partners. However, this is not an automatic consequence of same-sex partnership legislation.

There remain many states where restricting work-related benefits to married employees is likely to be regarded as lawful. These include some states where the issue has not been expressly addressed in national legislation, but it is the view of the national experts that courts would interpret the law as permitting benefits to be officially restricted to married employees (e.g. **North Macedonia, Montenegro, Poland and Turkey**). **Austrian** non-discrimination legislation was amended in 2018 to (1) include the ground of ‘family status’ as a protected ground in public employment and (2) define gender as including ‘family status’ in private employment.³⁸⁶ It thus seems clear that work-related family benefits only for married employees would now amount to discrimination.

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

Article 2(5) of the Employment Equality Directive

‘This Directive shall be without prejudice to measures laid down by national law which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and for the protection of the rights and freedoms of others.’

Several states have adopted exceptions relying on Article 2(5), including **Cyprus, Estonia**,³⁸⁷ **Greece, Iceland, Ireland, Italy, Lithuania, Malta, Montenegro, Poland** and the **United Kingdom**. The **Dutch** Age Discrimination Act and Disability Discrimination Act provide for exception for the protection of public security and health, but the legislation does not specify that these measures need to be based on a law.

³⁸⁵ Marriage for same-sex couples is permitted in Great Britain, but not in Northern Ireland.

³⁸⁶ Austria, Federal Equal Treatment Act, Section 13(1); and Equal Treatment Act, Sections 3 and 4.

³⁸⁷ The Estonian exception is not limited to the grounds covered by Directive 2000/78 but also extends to racial or ethnic origin, in breach of Directive 2000/43. See Estonia, Equal Treatment Act, Article 9(1).

In **Croatia**, the Anti-discrimination Act contains an exception for conduct aimed at ‘preserving health and preventing criminal acts and misdemeanours’, stipulating that such conduct cannot lead to direct or indirect discrimination on the grounds of race or ethnic origin, skin colour, religion, gender, ethnic or social origin, sexual orientation or disability.³⁸⁸ In **Portugal**, even though the laws implementing the directives do not include any specific exceptions concerning public security, these exceptions may be considered implicit. A similar situation exists in **Hungary**, where national law does not include an explicit exception, but these grounds could be referred to under the general exempting clause of the Equal Treatment Act.

3.8 Other exceptions

In some states, national legislation includes exceptions that are not expressly specified in the directives. Some of these may be incompatible with the directives, but it is difficult to be certain in advance of case law testing their scope. For example, in **Lithuania**, the Equal Treatment Act provides exceptions that relate to knowledge of the state language, participation in political activities and enjoyment of different rights on the basis of citizenship. In **Albania**, the Law on Protection from Discrimination stipulates that ‘Distinctions in compensation and benefits, established based on grounds mentioned in Article 1 of this law, do not constitute discrimination when the distinctions are reasonable and in proportion to a risk that is assessed on the basis of current and statistical data that can be verified and are closely linked to the risk.’³⁸⁹ The Anti-discrimination Act in **Croatia** contains a rather controversial exception regarding regulation of ‘the rights and obligations arising from family relations’ when it is stipulated by law, ‘particularly with the aim of protecting the rights and interests of children, which must be justified by a legitimate aim, the protection of public morality and the favouring of marriage in line with the provisions of the Family Act’.

In **Austria**, in the context of discrimination-free advertising of housing, Section 36 of the Equal Treatment Act allows for a justification of differentiation based on ethnicity in cases where the provision of housing constitutes a particularly close or intimate relationship of the parties or their relatives. The **Irish** Equal Status Act as well as the **Hungarian** Equal Treatment Act also contain a number of exceptions and exemptions to the non-discrimination rule that could be problematic with regard to the directives. In **Romania**, Article 2(8) of the Anti-discrimination Law states that its provisions cannot be interpreted as limiting freedom of expression and the right to access to information. However, there are no guidelines on balancing freedom of expression and the right not to be discriminated against, the case law of the equality body and of the courts is not coherent, and there are reported cases in which misinterpretation of this exception has led to harassment not being penalised.

3.9 Positive action

Article 5 of the Racial Equality Directive and Article 7(1) of the Employment Equality Directive

‘With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to any of the grounds referred to in Article 1.’

In most countries, anti-discrimination legislation stipulates explicitly that positive action measures are permitted in relation to some or all grounds, although the specific scope and requirements vary. In **Denmark** for instance, individual employers cannot adopt positive action measures as this possibility is reserved to the legislature and Government ministers through public projects.³⁹⁰ **Spanish** non-discrimination law contains similar provisions, although it also provides that collective agreements may include measures

388 Croatia, Anti-discrimination Act, Article 9(2)(1).

389 Albania, Law on Protection from Discrimination, Article 20(5).

390 A specific exception is made for positive action measures for older persons and persons with disabilities. See Act on the Prohibition of Discrimination in the Labour Market etc., Section 9(3).

to ‘encourage equality of opportunity’. In **Estonia**, the law indicates that the Equal Treatment Act ‘does not prejudice the maintaining or adoption’ of positive action measures, without specifying who could adopt such measures and under what circumstances. In 2018, the **Belgian** Government finally decided to adopt an Executive regulation setting the conditions for employers who wish to put in place positive action measures for the benefit of underrepresented groups.³⁹¹ In the **Netherlands**, positive action schemes including narrowly tailored preferential treatment are only possible with respect to the grounds of sex, race and disability, as these are considered to be the only grounds that are causing ‘structural disadvantages’³⁹² in society. By contrast, in **Great Britain**, the Equality Act allows for the adoption of proportionate positive action measures where a person ‘reasonably thinks that— (a) persons who share a protected characteristic suffer a disadvantage connected to the characteristic, (b) persons who share a protected characteristic have needs that are different from the needs of persons who do not share it, or (c) participation in an activity by persons who share a protected characteristic is disproportionately low’.

The scope for positive action is often a matter clarified through case law. In **Cyprus**, the Supreme Court has been called upon several times to determine the constitutionality of several sets of legal provisions granting priority in employment in the public sector to different categories of people, such as people with disabilities, veterans of war, etc. The Supreme Court has consequently developed a practice of declaring void and unconstitutional any law introducing positive action that is challenged.³⁹³ In 2015 however, the Supreme Court reversed its practice by rejecting a claim that a law adopted in 2009 and imposing a quota of employees with disabilities in public employment was unconstitutional. The court thus clarified that the principle of equality provides protection against arbitrary differentiations but does not exclude reasonable ones, which are allowed as a result of the essential nature of the circumstances.³⁹⁴ In **Croatia**, the most important legal discussion related to positive action measures aimed at ensuring the representation of ethnic minorities when employing civil servants and judges. In **Bulgaria**, the case law is currently ambivalent with regards to positive action measures, notably following a court decision from 2018 ruling that scholarships reserved for Roma pupils were directly discriminatory against non-Roma people.³⁹⁵

Several Member States have introduced legal duties to promote equality. In some countries, these duties take the form of broad obligations to advance equality contained in national constitutions (e.g. **Greece**, Article 116(2) or **Spain**, Article 9(2)). In other countries, non-discrimination law places a specific duty on some or all public authorities, for example in **Bulgaria**, where all authorities are required to take measures whenever necessary to equalise opportunities for disadvantaged groups – prioritising measures for victims of multiple discrimination – and to guarantee participation by ethnic minorities in education.³⁹⁶ In practice however, no such measures are known to exist. In **Finland**, the Non-Discrimination Act obliges all public authorities as well as private organisations using public power or performing public administrative tasks, providers of education and those employers who employ more than 30 employees, to take steps to foster equality.³⁹⁷ **Swedish** anti-discrimination law requires employers as well as education providers to carry out continuous goal-oriented work with regards to all grounds protected by Swedish law. There are still provisions however on positive duties that are limited to the ground of gender. In **Lithuania**, the new Labour Code, which entered into force in 2017, introduced an obligation on public and private entities that employ more than 50 employees to adopt measures for promoting equality policies in the workplace.³⁹⁸

391 Belgium, Executive regulation dated 11.02.2020, OJ (*Moniteur belge*), 1.03.2019.

392 Structural disadvantage is defined as ‘suffering disadvantage in several fields at the same time which are not temporary in nature.’ (Tweede Kamer, 2001-2002, 28 169, p.17).

393 See, for example, Cyprus Supreme Court, *Charalambos Kittis et al v. The Republic of Cyprus* (2006), Appeal case No 56/06 (08.12.2006).

394 Cyprus, Supreme Court, *Costas Tsikas et al v. Republic of Cyprus through the Committee of Educational Service*, Ref. Nos1519/2010 kai 1520/10, 3.09.2015, available at http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201509-1519-10etc.htm&qstring=%F7%E1%F1%F4%2A%20and%20%E8%E5%EC%E5%EB%E9%F9%E4%2A%20and%20%E4%E9%EA%E1%E9%F9%EC%E1%2A%20and%202015.

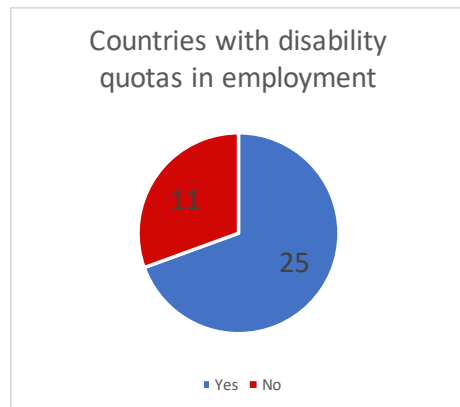
395 Bulgaria, Sofia City Administrative Court, Decision No. 7471 of 10.12.2018 in case No. 9628/ 2018.

396 Bulgaria, Protection Against Discrimination Act, Article 11.

397 Finland, Non-Discrimination Act (1325/2014), Section 6.

398 Lithuania, Labour Code, 2016, No. XII-2603, art. 26. Available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89>.

In the **United Kingdom**, since 2011, all public authorities are under a positive obligation to have due regard to the need to ‘eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the 2010 Equality Act, advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; [and] foster good relations between persons who share a relevant protected characteristic and persons who do not share it’.



Disability is the ground for which the most positive action measures are already in place. These can be found in the great majority of countries. There is, for example, a quota system for the employment of disabled people in **Albania, Austria, Belgium** (in the public sector), **Bulgaria, Croatia, Cyprus** (in the wider public sector), the **Czech Republic**,³⁹⁹ **France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Malta, Montenegro**, the **Netherlands, Poland, Portugal**,⁴⁰⁰ **Romania, Serbia, Slovakia, Slovenia, Spain** and **Turkey**. However, alternatives to employing disabled people, such as paying a fee or tax, are almost always offered. In **Ireland**, a policy objective of the Government is for 3 % of employees in the civil and public

service to be people with disabilities, although no sanctions are in place if the target is not achieved. Nevertheless, the target was met in 2011 and has been slightly exceeded since then.⁴⁰¹ The Irish Government has undertaken to progressively increase the statutory target towards 6 % by 2024.⁴⁰² Similarly, in the **Netherlands**, the Government has adopted specific targets to encourage employers to employ people with disabilities. These targets apply to public and private sector employers with more than 25 employees and when employers are not able to comply with these requirements, a ‘quota charge’ may be imposed. As the targets were met only by the private sector, the quota charge was levied on the public sector, taking effect as of 1 January 2018.⁴⁰³

In countries where a quota exists, the funds collected from employers who fail to meet the quota (whether in the form of a fine, a fee or a tax) are often earmarked to benefit people with disabilities specifically. This is the case for instance in **Albania, Austria, France, Germany, Italy, Montenegro, Poland, Serbia** and **Slovenia**. However, in the following countries, such funds are paid to the general state budget: **Bulgaria, Croatia**, the **Czech Republic, Romania** and **Slovakia**. In countries such as **Ireland** and **Portugal**, the quotas are not strictly binding, and there are no sanctions for employers who fail to comply with the quota.

399 In the Czech Republic, employers with more than 25 employees have to implement one of three types of measures: employing at least 4 % of employees with disabilities; commissioning goods or working programmes from employers who employ at least 50 % of employees with disabilities; or making payments to the state budget. The system has been criticised for its lack of effectiveness as most employers choose to make payments to the state budget.

400 It is however not possible to determine whether the quota system in Portugal is being enforced or not, as no relevant data is available.

401 Ireland, <http://nda.ie/Publications/Employment/Employment-of-people-with-disabilities-in-the-public-service/Reports-on-compliance-with-public-sector-jobs-target/2015-Report-on-Compliance-with-Part-5-on-the-Employment-of-People-with-Disabilities-in-the-Public-Sector.html>.

402 Government of Ireland (2015) *Comprehensive Employment Strategy for People with Disabilities 2015-2024*, <http://www.justice.ie/en/JELR/Comprehensive%20Employment%20Strategy%20for%20People%20with%20Disabilities%20-%20FINAL.pdf/Files/Comprehensive%20Employment%20Strategy%20for%20People%20with%20Disabilities%20-%20FINAL.pdf>.

403 This is done by a ministerial decree, see *Regeling activering quotaheffing*, *Staatscourant* 2017 no. 58942, <https://zoek.officielebekendmakingen.nl/stcrt-2017-58942.html>.

4 Access to justice and effective enforcement

Access to justice for victims of discrimination as well as the existence of effective, proportionate and dissuasive remedies are essential to ensure the effective enforcement of the non-discrimination obligations imposed on the EU Member States.

4.1 Judicial and administrative procedures

Article 7(1) Racial Equality Directive and Article 9(1) Employment Equality Directive

‘Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under [these Directives] are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.’

In no state are discrimination disputes resolved purely in the courts. The vast majority of states combine judicial proceedings – which may be civil, criminal, labour and/or administrative – with non-judicial proceedings. Mediation or conciliation proceedings may be available as a mandatory part of the court proceedings, as in **Austria** (in cases concerning disability), **Italy**, **Portugal**, **Spain** and **Sweden**, or separately, as for example in **Croatia**, **Estonia**, **Finland**, **Germany**, **Hungary**, **Malta**, **Montenegro**, **North Macedonia**, **Poland**, **Serbia**, **Slovakia** and **Slovenia**. In **Sweden**, when a trade union is representing one of its members, negotiations must take place with the employer before a case is brought to the Labour Court, with a view to reaching a settlement agreement. Some national proceedings are exclusively for private or public-sector complaints, while others deal with both. In **Belgium**, mediation is available in cases involving an offence punishable by imprisonment of a maximum of two years.

4.1.1 Available procedures

Some non-judicial proceedings are general but provide an effective forum for discrimination cases, whereas others have been established especially for discrimination cases as an alternative dispute resolution procedure, complementary to the normal courts. Among the general non-judicial procedures are inspectorates, ombudsmen and human rights institutions, while specific non-discrimination procedures include notably quasi-judicial equality bodies.

Labour inspectorates are charged with enforcing employment law, including equal treatment provisions, in **Albania**, the **Czech Republic**, **Finland**,⁴⁰⁴ **France**, **Italy**, **Latvia**, **Montenegro**, **Poland**, **Portugal**, **Slovakia** and **Spain**. In **Lithuania**, individuals have the option to directly apply to employment disputes commissions or courts. Employment disputes commissions are permanent bodies, working under the State Labour Inspectorate, which are composed of three members: a chairman (state official, appointed by the State Labour Inspectorate), a representative of an employer organisation and a representative of a professional union. The commission has the power to award the payment of salaries, compensation and material and immaterial damages in cases of unfair dismissal.⁴⁰⁵ Similarly, in **Estonia**, labour dispute committees have an important role in resolving labour disputes, including those involving discrimination. In **Slovakia** and **Spain**, victims can also submit complaints to education inspectorates, and in **Hungary** they can complain to the Hungarian Authority for Consumer Protection. In **Ireland**, the previous specialised equality tribunal was dismantled in 2015, when its functions were grouped together with those of all

404 In Finland, compliance by employers with anti-discrimination legislation is supervised by the Occupational Health and Safety Authority.

405 This procedure was introduced in 2017 with the amendment to the Labour Code. Lithuania, Labour Code, 2016, No. XII-2603. Available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89>.

bodies involved with workplace relations into the new Workplace Relations Commission.⁴⁰⁶ This body, which specialises in workplace-related conflicts and issues, also hears discrimination cases falling within the scope of the Equal Status Acts 2000-2018, in the fields of education and goods and services, including housing. In **Slovakia**, the Slovak Trade Inspection agency has the power to issue binding decisions that are subject to judicial review with regard to complaints concerning discrimination.

In a number of Member States, specialised bodies may be entitled to examine complaints brought by victims of discrimination. Powers and outcomes differ greatly, as in certain countries compensation or sanctions may be imposed, whereas in others the specialised body may only issue non-binding recommendations.

Some countries propose conciliation, such as **Latvia** where the Ombudsman's Office examines and reviews complaints of human rights violations and attempts to resolve conflicts through conciliation, which, if unsuccessful, is followed by non-binding recommendations. Similarly, the **Estonian** Chancellor of Justice provides an impartial conciliation procedure upon application by the victim. In the context of discrimination by natural or legal persons in private contexts, the decision of the Chancellor of Justice is legally binding, while the Chancellor of Justice (in cases of discrimination by public institutions) and Commissioner for Gender Equality and Equal Treatment (public and private domain) are empowered to conduct ombudsman-like procedures with non-legally binding results. Participation in the conciliation procedure before the Chancellor of Justice is not compulsory. In **Malta**, depending on the nature of the complaint, victims can turn to several specialised bodies, including the Industrial Tribunal, the Commission for the Rights of Persons with Disability and the National Commission for the Promotion of Equality. Additionally, the Mediation Act encourages and facilitates the settlement of disputes through mediation by the Malta Mediation Centre. In **Finland**, the Non-Discrimination and Equality Tribunal may confirm a settlement between the parties or prohibit the continuation of conduct that is contrary to the prohibition of discrimination or victimisation. The tribunal may also order a party to fulfil its obligations by imposing a conditional fine. Proceedings before the tribunal are free of charge and do not require the use of a legal counsel. The Non-Discrimination Ombudsman may issue statements on any discrimination case submitted to him/her, lead conciliation proceedings, where necessary forward the complaint to the pertinent authorities, if agreed to by the complainant, and provide legal assistance. In a few countries, the specialised equality bodies can impose sanctions, such as the **Bulgarian** Protection Against Discrimination Commission or the **Portuguese** High Commissioner for Migrations, or can even award compensation to victims, such as the **Danish** Board of Equal Treatment.⁴⁰⁷ In **Iceland**, a new Equality Complaints Committee was established in 2018 to decide on cases of alleged violations of the new Racial Equality and Labour Equality Acts.

In **Hungary**, the Equal Treatment Authority can take action against any discriminatory act and can impose severe sanctions on people and entities violating the prohibition of discrimination. The Ombudsman (Commissioner for Fundamental Rights) can also investigate cases of discrimination by any public authority or public service provider, provided that all administrative remedies have been exhausted or none exist. The **Austrian** Equal Treatment Commission and the **Netherlands** Institute for Human Rights can both issue non-binding opinions. These do not preclude applicants from seeking binding court judgments on the same case, in which case the courts are obliged to take the opinion into consideration and give clear reasons for any dissenting decisions. In **Romania**, a victim of discrimination or any interested NGO can file a complaint with the National Council on Combating Discrimination and/or file a civil complaint for civil damages with a court of law unless the act is criminal, in which case Criminal Code provisions apply. The two remedies (the national equality body and civil courts) are not mutually exclusive, and the claimant can choose to use them simultaneously, which in practice creates difficulties for the parties, the equality

406 Ireland, Workplace Relations Act 2015, No. 16, of 20 May 2015, available at: <http://www.irishstatutebook.ie/eli/2015/act/16/enacted/en/pdf>.

407 Further information regarding sanctions can be found in section 4.5 below.

body and the judiciary. Moreover, an action before the equality body does not suspend the period of prescription (time limit) for filing a civil case.

There are special court procedures in a few countries. **Spain** has an emergency procedure in the social (labour) courts for actions for the defence of fundamental rights and civil liberties. In **Belgium**, claimants may request an injunction imposing immediate cessation of a discriminatory practice, although the national equality body Unia has demonstrated that this measure does not in fact achieve its aim of accelerating the procedure.⁴⁰⁸ In **Poland**, under the Labour Code,⁴⁰⁹ a ‘compensation complaint’ procedure is available: victims of discrimination in employment are entitled to initiate judicial proceedings and seek compensation. The Labour Court determines the compensation to be awarded, taking into consideration the type and gravity of the discrimination. This specific remedy was intended to avoid the need to use more general legal remedies such as Article 415 of the Civil Code (general compensation clause), although the use of general remedies is not excluded. In addition, the 2010 Act on Equal Treatment introduced a compensation complaint available to any person (natural or legal) who claims an infringement to the principle of equal treatment, in any field of application of the act. The relevant general provisions of the Civil Code and the Civil Procedure Code apply. In **Sweden**, since 2017 complaints of violation of the Discrimination Act in respect of education can be lodged with the Higher Education Appeals Board. However, the board lacks the power to issue any kind of discrimination compensation order and can only require the correction of the discriminatory act or omission.⁴¹⁰

4.1.2 *Obstacles to effective access to justice*

Although the number of complaints submitted to courts or equality bodies has been gradually rising, the volume of case law on discrimination in most countries is still relatively low, which may well point towards real and perceived barriers to justice. Transposition of the directives has gone some way towards improving this situation due to the directives’ enforcement provisions (see below) and the increased likelihood of civil procedures being used over the criminal law procedures that have traditionally been used but which pose difficulties in terms of proof and the prerogative of the state prosecutor. One potentially important barrier to effective access to justice is the lack of effective remedies, including compensation, for victims of discrimination.⁴¹¹

A number of deterrents and potential barriers to litigation can still be identified. First, there are concerns that the complexity of discrimination law may be deterring victims of discrimination from bringing cases in, for instance, **Austria**, **Luxembourg** and the **United Kingdom**. Skilled, experienced assistance for victims can help counter this, but such aid remains limited in availability (in contrast to the professional advice and representation usually available to respondents).

The lack of sufficient financial means to pursue a case is another barrier cited in several countries and is closely related to the lack of adequate representation. In most countries, legal representation is either mandatory or – at least – necessary in practice, due to the complexity of procedures and of the legal framework. The availability of free legal aid constitutes a core requirement to ensure access to justice for victims of discrimination. In practice however, there are many countries where access to free legal aid is either very limited or dependent on complex procedures (e.g. **Croatia**, **Hungary**, **Lithuania**, **Slovakia**, **Turkey** and the **United Kingdom**). An additional factor that may discourage victims from initiating legal action is the level of court fees in some countries, such as in the **Czech Republic** and **Slovakia**. Although the court fees in the Czech Republic were reduced from approximately EUR 80 to EUR 40 as of September 2017, there does not appear to be any consequent increase in discrimination complaints. One explanation could be that the court fees are only a fraction of the total costs borne by claimants, where

408 Unia (2016), *Evaluation Report [of the Anti-discrimination Federal Acts]*, February 2016, pp. 10 and 53, available at: http://unia.be/files/Documenten/Evaluation_2016.pdf.

409 Poland, Labour Code, Article 183d.

410 Sweden, Act 2017:282 Changing the Discrimination Act, adopted 13.04.2017.

411 For further information, please see Section 4.5 below.

the most important part is lawyers' fees. Similarly, the **Belgian** equality body Unia highlighted in its 2016 anti-discrimination legislation evaluation report that it is very difficult for claimants who are not eligible for legal aid to bring a claim before the courts due to numerous obstacles, including very high costs and the risk of paying a procedural indemnity if the case is dismissed.⁴¹² In **Bulgaria**, the Protection Against Discrimination Act stipulates that procedures both before the general courts and before the quasi-judicial equality body are exempt from all costs, both state fees and expenses (Articles 53 and 75(2)). In practice, however this provision is not respected as the losing party is generally ordered to pay the winning party's fees and expenses.⁴¹³

UK Supreme Court rules that the payment of fees to file discrimination cases in an employment tribunal is unlawful⁴¹⁴

From July 2013 until July 2017, claimants in employment tribunals were required to pay fees of EUR 282 (GBP 250) to file discrimination cases and a further EUR 1 072 (GBP 950) in advance of the hearing. Fees could be remitted for the very low earning claimants (an estimated 24 %), but data show that employment claims reduced dramatically since the introduction of these fees.⁴¹⁵ In July 2017, the Supreme Court found the introduction of these fees to be unlawful, because of their effect on access to justice, and also because they resulted in gender discrimination. Since that decision, individual claims before employment courts have increased by 90 %.⁴¹⁶

Another potential barrier is posed by short time limits for bringing a case, as the directives leave it to the national legislature to set any time limits it deems appropriate. In the **Netherlands**, an applicant who wishes to contest the lawfulness of the termination of an employment contract (discriminatory dismissal or victimisation dismissal) under civil law must do so within two months of the termination of the employment contract. Under **Germany's** General Equal Treatment Act there is a time limit of two months for claiming material or non-material damages in labour or civil law, beginning either with the receipt of the rejection of a job application by the applicant or with the knowledge of the disadvantageous behaviour. In **Ireland**, the Equal Status Acts 2000-2018 require a complainant to notify the respondent in writing within two months of the date of the incident, of the nature of the complaint and the intention to pursue the matter with the Workplace Relations Commission if there is no satisfactory response. Even with the possibility of an extension, there is concern that such short time limits can be problematic for victims, especially people with literacy difficulties, people with inadequate command of the state's official language and disabled people. The three-month time limit in **Greece** is very strict, regardless of the sector, while in **Latvia** the three-month time limit to bring a discrimination claim in employment is much shorter than the two-year time limit that is generally applicable in other labour disputes. In **Sweden**, the time limits for bringing a case in employment matters seem to be based on the assumption that the victim is represented by a trade union, and if that is not the case they constitute a serious barrier to access to justice. Indeed, if the claim aims to have a dismissal declared void, the time limit for filing is a matter of weeks from the act of dismissal or – in certain cases – one month after the termination of the employment.⁴¹⁷ Although the **Danish** Act on the Board of Equal Treatment does not contain any time limit for initiating proceedings, there is a general principle in Danish law that a person can lose his or her claim by acting passively. The board has applied this principle in specific cases, for instance in a case where the claimant had signed a resignation agreement in January 2012 and only introduced his claim

412 Unia (2017), *Evaluation Report* (of the Anti-Discrimination Federal Acts), February 2017, pp. 10 and 58 <https://www.unia.be/en>.

413 This practice is based on an interpretative ruling by the Supreme Administrative Court, which is not specific to cases under the Antidiscrimination law (No. 3 of 13.05.2010, rendered in commercial case No. 5 of 2009). The application of this ruling to anti-discrimination cases contradicts the Protection Against Discrimination Act, Article 75 (2).

414 UK Supreme Court, *R (on the application of UNISON) v Lord Chancellor*, decision of 26 July 2017, UKSC 51, available at: <https://www.supremecourt.uk/cases/docs/uksc-2015-0233-judgment.pdf>.

415 This according to the official statistics of October to December 2015, <https://www.gov.uk/government/statistics/tribunal-and-gender-recognition-statistics-quarterly-october-to-december-2015>.

416 Source: Ministry of Justice, annual statistics and Employment Tribunal statistics. Available at: <https://www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificate-statistics-quarterly-october-to-december-2017>.

417 Sweden, Discrimination Act, Chapter 6, Sections 4 and 5.

before the board in December of the same year.⁴¹⁸ In **France**, the complexity of the different time limits (although they are not particularly short) applicable for different types of actions, in particular in the field of employment, create an additional barrier.

Furthermore, the length and the complexity of procedures may act as deterrents to those seeking redress, as is said to be the case in, for example, **Austria, Croatia, Cyprus, Malta, Portugal** and **Serbia**. There are serious concerns in **Hungary** that some judicial proceedings take over three to four years to complete. In **Cyprus**, the equality body does not have the power to award compensation. In practice, it is often unable to provide any remedy in cases of discrimination when the delay in treating the case has caused either a third party to acquire rights which cannot be revoked, or the time limit to pass for the victim to apply to the court.⁴¹⁹

Finally, the infrequency of litigation may itself be a deterrent to victims of discrimination as the prevailing impression may be that success is improbable. The more that cases are reported in the media, the more knowledgeable victims will become about their rights and options for upholding these rights. There is a tendency for the media to report on high-profile cases involving racial or ethnic and religious discrimination rather than age or disability cases. The media are likely to report even less in countries where cases are not made public. For instance in **Austria, Belgium** and **Italy** there is no systematic publication of decisions by either the judges or the equality body.

4.2 Legal standing and associations

Article 7(2) of the Racial Equality Directive and Article 9(2) of the Employment Equality Directive

‘Member States shall ensure that associations, organisations or other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of [these Directives] are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under [these Directives].’

Under the directives, EU Member States have some discretion as to how this clause is implemented in terms of the type of legal standing that associations can have, and therefore national legal orders present many different patterns that are difficult to compare. In some countries, the relevant anti-discrimination legislation provides associations and/or trade unions or other organisations with some legal standing specifically in cases of discrimination. These include **Albania, Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Estonia,**⁴²⁰ **France, Germany, Greece,**⁴²¹ **Hungary, Iceland, Ireland, Italy, Lithuania, Malta, Montenegro, North Macedonia, Norway, Portugal, Romania, Slovakia, Slovenia, Spain, Serbia** and **Sweden**. In a number of countries however, no such specific provision is made for cases of discrimination, although general provisions of civil, administrative or labour law provide some standing to associations under certain conditions (e.g. **Denmark, Latvia, Liechtenstein, the Netherlands, Poland** and **Turkey**).

4.2.1 Entities which may engage in procedures

In many countries, legal standing – whether to engage on behalf or in support of victims – is limited to those associations or organisations that fulfil certain requirements, based on, for example, a certain number of years of existence and/or explicit mention of the fight against discrimination in their statutes. In

418 Board of Equal Treatment, Decision No. 234/2013.

419 See, for instance, Report Ref. A.K.I. 32/2008 dated 06 April 2012, regarding discriminatory age requirements for recruitment to police special services.

420 In Estonia, the legal standing of organisations is strictly limited to conciliation proceedings before the Chancellor of Justice.

421 In Greece, however, associations, organisations or trade unions acting on behalf of victims of discrimination must do so through an accredited lawyer, which is quite costly.

France, for example, the Law of 16 November 2001 specifies the ability of all representative trade unions and NGOs that have been in existence for over five years to act either on behalf or in support of victims of discrimination, before any jurisdiction.⁴²² In addition, the equality body the Defender of Rights, can present observations in any case before any jurisdiction. Similarly, in **Belgium**, there are three categories of legal entities that may engage in proceedings on behalf or in support of a victim of discrimination: the equality body Unia; officially recognised associations which have had a legal personality for at least three years and state as their objective the defence of human rights or the fight against discrimination; and workers' and employers' organisations. However, where the victim of the alleged discrimination is an identifiable (natural or legal) person, an action brought by such bodies will only be admissible if they prove that the victim has consented to the action. In **Germany**, under the General Equal Treatment Act, anti-discrimination associations are entitled to support claimants in court proceedings, provided that they fulfil certain criteria (such as having at least 75 members and operating permanently rather than on an *ad hoc* basis to support one claim). In **Luxembourg**, under the General Anti-Discrimination Law of 28 November 2006, for associations to assist a victim of discrimination before the courts they must have legally existed for five years and be recognised by the Ministry of Justice as being nationally representative in the field of anti-discrimination.

In **Italy**, legal standing of associations active in the fight against discrimination varies depending on the legal basis for the action. As regards racial or ethnic origin, Legislative Decree 215/2003 authorises associations to engage in proceedings in support or on behalf of complainants only if they are included in a list approved by a decree of the Department for Equal Opportunities.⁴²³ Such organisations are listed on the basis of criteria set out in the joint decree, which include having been established for at least one year and having promotion of equal treatment and combating discrimination as their only or primary aim. The list was updated in 2013 and contains more than 550 associations.⁴²⁴ Regarding the grounds of discrimination covered by Directive 2000/78/EC, however, standing to litigate is much broader and is accorded on an *ad hoc* basis to any organisation or association regarded as having a 'legitimate interest' in the enforcement of the relevant legislation.⁴²⁵

In some countries, legal standing of associations, organisations and/or trade unions is not dependant on specific criteria other than having a legitimate interest in the issue raised by the case. In **Cyprus**, non-discrimination law provides that organisations are entitled to engage on behalf or in support of victims if they have a 'legitimate interest'. This contrasts however with the constitutional principle limiting legal standing to individuals who are personally aggrieved. Furthermore, since 2017, the equality body has only accepted complaints from victims and not, as previously, from NGOs representing them. In the **United Kingdom**, there are no restrictions on the type of organisations which may be authorised by courts and tribunals to make a 'third-party intervention', whereby they may present legal arguments on a point of law that is at issue in the proceedings. Such interventions are often permitted in complex discrimination law cases. In **Croatia**, the right to intervene is given to bodies, organisations, institutions, associations or other people engaged in the protection of the right to equal treatment related to the group whose rights are at issue in the proceedings. In **Bulgaria**, public interest NGOs and trade unions may either join proceedings brought by a victim in their support or represent the complainants directly. Under **Slovakian** law, the equality body (the Slovak National Centre for Human Rights), any NGO that seeks to protect victims of discrimination and trade unions can intervene as a third party in court proceedings. In **Norway**, organisations must have anti-discrimination work as their sole or partial purpose in order to have legal standing in cases regarding equality.⁴²⁶

422 France, Article R779-9 of the Code of Administrative Justice; Article 3 the New Code of Civil Procedure; Article 2, Code of Penal Procedure; Articles L1134-2 and L1134-3 of the Labour Code; Article 8, paras 1 and 2, Law No 83-634 of 13 July 1983 in the public sector.

423 Italy, Legislative Decree No. 215/2003, Article 5.

424 Italy, Decree of the Department for Equal Opportunities of 6.09.2018, available at: <http://www.unar.it/wp-content/uploads/2018/09/Decreto.pdf>.

425 Italy, Legislative Decree No. 216/2003. Article 5.

426 As stated in GEADA which entered into force on 1 January 2018.

In **Austria**, only one statutory organisation, the Litigation Association of NGOs against Discrimination, has been given third-party intervention rights in the courts in support of the complainant, with his or her consent (Section 62 of the Equal Treatment Act). All specialised NGOs can join this association, but non-members are not granted any special procedural rights—if they want to intervene they have to prove their legal interest in the case. An NGO, the **Austrian** National Council of Disabled Persons, has been given a similar right of intervention in disability cases, in addition to the Litigation Association's own right to act. In **Lithuania**, the Equal Treatment Act stipulates that associations whose field of activity encompasses representation in the courts of victims of discrimination on a particular ground of discrimination have the right to engage on behalf or in support of complainants, with their approval, in judicial and administrative procedures. However, it is unclear how this provision will interact with more restrictive general provisions of the Code of Civil Procedure and the Law on the Proceedings of Administrative Cases.

4.2.2 To engage 'on behalf of'

A majority of the countries examined allow associations and/or trade unions to engage in proceedings 'on behalf of' victims of discrimination (i.e. representing them), including **Austria, Belgium, Bulgaria, Croatia, Cyprus**, the **Czech Republic, Denmark, Estonia**,⁴²⁷ **France, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Malta, Montenegro**, the **Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden** and **Turkey**. However, the conditions for associations to engage on behalf of victims of discrimination as well as the scope of such potential action vary among the countries. **Spanish** Act 62/2003 transposing the directives provides that in cases outside employment, 'legal entities legally authorised to defend legitimate collective rights and interests may engage on behalf of the complainant, with his or her approval, in any judicial procedure in order to make effective the principle of equal treatment based on racial or ethnic origin' (Article 31). There is no corresponding provision for employment-related cases, in which only trade unions and employers' organisations can engage. With complainants' consent, trade unions can appear in court in the name and interest of their members.

In **Slovakia**, representation of victims by NGOs as well as the national equality body (the Slovak National Centre for Human Rights) is allowed before the ordinary courts and the Supreme Court, but Constitutional Court proceedings remain excluded.⁴²⁸ In **Austria**, associations and other legal entities may act on behalf of victims of discrimination only in proceedings where representation by a barrister is not mandatory. Such proceedings are very rare, but include those before the Equal Treatment Commission. In **Latvia**, organisations and foundations whose aims are the protection of human rights and individual rights may represent victims of discrimination in court, but as of 4 January 2014 this option exists only before the lower instance courts.⁴²⁹ Thus, an association having acted on behalf of a victim of discrimination before the first two instances may no longer appeal the decision of the Court of Appeal before the Court of Cassation. However, in 2003, the Constitutional Court found a similar provision to be in violation of the Constitution, and it was repealed.⁴³⁰

In **Lithuania**, the legal standing of associations to bring cases before the Equal Opportunities Ombudsperson on behalf of victims remains uncertain, in particular since 2013 when the Supreme Administrative Court held that associations can lodge a complaint with the Ombudsperson only when their own rights have been directly violated.⁴³¹ In practice however, the Ombudsperson does handle complaints lodged by organisations, generally by initiating proceedings 'on its own initiative' on the basis

427 In Estonia, the legal standing of organisations to act on behalf of victims of discrimination is strictly limited to conciliation proceedings before the Chancellor of Justice.

428 Slovakia, Civil Dispute Act, 160/2015, Section 429(2)(c).

429 Latvia, Amendments to the Civil Procedure Law, 19 December 2013, published in the Latvian Herald 2(5061), 3 January 2014, available in Latvian at: www.vestnesis.lv/?menu=doc&id=263490.

430 Decision of the Constitutional Court of the Republic of Latvia in Case No 2003-04-01 of 27 June 2003, available in Latvian at: <http://www.satv.tiesa.gov.lv/?lang=1&mid=19>.

431 Supreme Administrative Court of Lithuania, Administrative case No A492-2078/2013, Decision of 7 November 2013.

of the information provided. In **Finland**, the right to bring a case before the courts is reserved to the victim only. However, before the Non-Discrimination and Equality Tribunal either the Non-Discrimination Ombudsman or an organisation with an interest in advancing equality may bring a case, as long as the victim gives his or her consent. The Government proposal clarifies that an organisation with an interest in advancing equality can be, for example, a human rights association or an association representing consumers or social partners.⁴³² Similarly, in **Ireland**, any individual or body may be authorised by an individual claimant to represent them before the Workplace Relations Commission and the Labour Court, but not before a civil court.

Legal standing of the Finnish equality body to bring a case on behalf of a victim of harassment

In 2018, the Non-Discrimination Ombudsman brought a case before the National Non-Discrimination and Equality Tribunal, claiming that the display of a swastika/Nazi flag in a window-opening amounted to harassment⁴³³ on the ground of religion. Under the previous Non-Discrimination Act (in force until the end of 2014), the Ombudsman could bring cases before the Tribunal without identifying a victim. However, following the entry into force on 1 January 2015 of the current Non-Discrimination Act, the Ombudsman is required to obtain the consent of the victim to be able to bring a case, and the chairperson of the Jewish community of Helsinki was therefore identified as a victim, representing the community. The victim's statement underlined the fear and concern of the Jewish community due to the display of the flag over several months without any intervention by the authorities.

The Tribunal was unanimous that the behaviour of the respondent was related to religion and that it had infringed the human dignity of the victim. The Tribunal further found that the behaviour had also created a degrading or humiliating, intimidating, hostile or offensive environment towards the victim, amounting to harassment. The respondent was prohibited from repeating the harassment.⁴³⁴

Following this case, the Ombudsman has demanded in her report to the Parliament that the previous ability of the Ombudsman to bring cases without identifying a victim should be restored.⁴³⁵ The criticism of the new requirement to identify a victim may have had an effect on what kind of relationship the majority of the Tribunal required there to be between the behaviour of the defendant and the direct consequences for the victim.

The **Hungarian** Equal Treatment Act provides that 'non-governmental and interest representation organisations' as well as the Equal Treatment Authority may act on behalf of the victim in proceedings launched due to the violation of the requirement of equal treatment.⁴³⁶ The act further specifies that such organisations include: any social organisation formed under the Act on the right to assembly, public benefit status and the operation and funding of non-governmental organisations, whose objectives, as set out in its articles of association or statutes, include the promotion of equal social opportunities or the catching up of disadvantaged groups defined by an exact enumeration of the concerned protected ground(s) or the protection of human rights;⁴³⁷ the minority self-governments of particular national and ethnic minorities; and trade unions for matters related to employees' material, social and cultural circumstances and living and working conditions.⁴³⁸ In **Sweden**, NGOs have the right to bring actions

432 Finland, Government proposal on the Non-Discrimination Act 19/2014, p. 87, available at: <http://www.finlex.fi/fi/esitykset/he/2014/20140019>.

433 Harassment is defined in Section 14 of the Non-Discrimination Act as 'The deliberate or de facto infringement of the dignity of a person (...) if the infringing behaviour relates to a reason referred to in Section 8(1), and as a result of the reason, a degrading or humiliating, intimidating, hostile or offensive environment towards the person is created by the behaviour.'

434 Finland, National Non-Discrimination and Equality Tribunal decision 393/2018 of 19.12.2018, available at: https://www.yvtltk.fi/material/attachments/ytaltk/tapausselosteet/jFpTF4Rlt/YVTltk-tapausseloste-19.12.2018-hairinta-hakaristilippu_L.pdf.

435 Non-Discrimination Ombudsman (2018), *Report to the Parliament*, available at: <https://www.syrjinta.fi/documents/14490/0/The+report+of+the+Non-Discrimination+Ombudsman+to+the+Parliament/9b16017c-b442-4805-8927-9f60f1d5c681> (pp. 50-51).

436 Hungary, Equal Treatment Act, Article 18 (1).

437 As of 1 February 2012, the protected ground concerned by the legal action must be explicitly mentioned in the statutes of the organisation. Case law is still lacking but will be needed to determine whether a restrictive or flexible interpretation will be adopted of this new provision, in particular with regard to cases of intersectional discrimination.

438 Hungary, Equal Treatment Act, Article 3.

representing an individual person provided that their statutes envisage the possibility of taking into account their members' interests, depending on their own activities, their finances and the circumstances of the case, and on condition that consent is given. Furthermore, the right of the Equality Ombudsman to bring a case to court is subsidiary to the right of a trade union to represent its members. It is only where the trade union does not bring a case (or where the victim is not member of a trade union) that the Ombudsman can decide to do so.

In **Slovenia**, the conditions for representation are stricter for judicial cases of discrimination dealt with by county courts, than for any other judicial case, which makes access to justice more difficult. According to the Civil Procedure Act, anyone with legal capacity may represent a party before the county courts, while according to the new Protection Against Discrimination Act, the representative of the NGO must have passed the state legal exam (bar exam) to engage on behalf of a claimant. Similarly, **Greek** law permits NGOs and trade unions with a legitimate interest in ensuring the principle of equal treatment to represent people before any court or administrative authority, although they must act through an authorised lawyer.

There are a few countries where legal standing to act on behalf of victims is limited to trade unions, such as in **Turkey**, where this right is limited to trade unions acting on behalf of their members in cases concerning employment and social security issues. Similarly, in **Croatia**, only trade unions can act on behalf of victims of discrimination in labour disputes. While trade unions in **Denmark** have legal standing to represent their members in cases concerning pay and employment conditions, there is no similar standing for NGOs.

Table 9: Legal standing of organisations in court (or before the national equality body) in discrimination cases

| Country | Legal standing to act on behalf of victims | Legal standing to act in support of victims |
|-----------------------|-----------------------------------------------------------------------------------------|----------------------------------------------------------------|
| ALBANIA | Law on Protection from Discrimination, Art. 32(1), 33(2) and 34(1) | No ⁴³⁹ |
| AUSTRIA | Act Equal Treatment Commission and the National Equality Body, Art. 12/2 ⁴⁴⁰ | Equal Treatment Act (with limitations), Art. 62 ⁴⁴¹ |
| | Federal Disability Equality Act, Art. 13 ⁴⁴² | Federal Disability Equality Act, Art. 13 ⁴⁴³ |
| BELGIUM | Racial Equality Federal Act, Art. 32 | Racial Equality Federal Act, Art. 32 |
| | General Anti-Discrimination Federal Act, Art. 30 | General Anti-discrimination Federal Act, Art. 30 |
| BULGARIA | Protection Against Discrimination Act, Art. 71(2) ⁴⁴⁴ | Protection Against Discrimination Act, Art. 71(2) |
| CROATIA | Civil Procedure Act, Arts. 89.a and 434.a ⁴⁴⁵ | Anti-discrimination Act, Art. 21 |
| CYPRUS | Equal Treatment (Racial or Ethnic origin) Law, Art. 12 | Equal Treatment (Racial or Ethnic origin) Law, Art. 12 |
| | Equal Treatment in Employment and Occupation Law, Art. 14 | Equal Treatment in Employment and Occupation Law, Art.14 |
| | Law on Persons with Disabilities, Art. 9D | Law on Persons with Disabilities, Art. 9D |
| CZECH REPUBLIC | Anti-Discrimination Act, Sec.11 | No |
| | Civil Procedure Code, Sec.26(3) | |

439 The law is silent but according to Article 182 of the Labour Code, trade unions are entitled to act in support of their members. Furthermore, the Commissioner for Protection against Discrimination is usually requested by courts to attend the entire court proceedings as an interested party to the trial.

440 Representation before the Equal Treatment Commission.

441 Right to intervention in support of a victim for Litigation Association of NGOS Against Discrimination.

442 Limited group litigation for Austrian National Council of Disabled Persons.

443 Right to intervention in support of a victim for Austrian National Council of Disabled Persons.

444 Also, Administrative Procedure Code, Art. 18(2).

445 Only trade unions and employer's organisations have standing to act on behalf of victims of discrimination.

| Country | Legal standing to act on behalf of victims | Legal standing to act in support of victims |
|---------------------------------|----------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|
| DENMARK | Administration of Justice Act, Sec. 260 ⁴⁴⁶ | Administration of Justice Act, Sec. 252 |
| ESTONIA | Chancellor of Justice Act, Art.23 (2) ⁴⁴⁷ | No ⁴⁴⁸ |
| FINLAND | Non-Discrimination Act, Sec. 21 ⁴⁴⁹ | Non-Discrimination Act, Sec. 21 ⁴⁵⁰ |
| FRANCE | Law relating to the adaptation of National Law to Community Law in matters of discrimination, Art. 10 | Law relating to the adaptation of National Law to Community Law in matters of discrimination, Art. 10 ⁴⁵¹ |
| | Law No. 2001-1066 of 16 November 2001 relating to the fight against discrimination, Art. 2 | Law No. 2001-1066 of 16 November 2001 relating to the fight against discriminations, Art. 2 |
| GERMANY | No. | General Equal Treatment Act, Sec. 23 |
| GREECE | Equal Treatment Law, Art. 8(3) | Equal Treatment Law 4443/2016, Art. 8(3) |
| HUNGARY | Act on Equal Treatment and the Promotion of Equal Opportunities, Art. 18(1) | Act CXXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities, Art. 18(2) |
| ICELAND | Act on Equal Treatment irrespective of Race or Ethnic Origin, Art. 6 | Act on Equal Treatment irrespective of Race or Ethnic Origin, Art. 6 ⁴⁵² |
| | Act on Equal Treatment in the Labour Market, Art. 6 | |
| | Act on Civil Procedure, Arts. 16(1) and 25(3) | |
| IRELAND | Employment Equality Acts 1998-2015, Sec. 77(1) ⁴⁵³ | Employment Equality Acts 1998-2015, Sec. 79(1) ⁴⁵⁴ |
| | Equal Status Acts 2000-2018, Sec. 25(A) ⁴⁵⁵ | Equal Status Acts 2000-2018, Sec. 25(1) ⁴⁵⁶ |
| ITALY | Legislative Decree No. 215/2003 Implementing Directive 2000/43/EC, Art. 5 | Legislative Decree No. 215/2003 Implementing Directive 2000/43/EC, Art. 5 |
| | Legislative Decree No. 216/2003 Implementing Directive 2000/78/EC, Art. 5 | Legislative Decree No. 216/2003 Implementing Directive 2000/78/EC, Art. 5 |
| | Act 67/2006 on Measures for the Judicial Protection of Persons with Disabilities who are Victims of Discrimination, Art. 4 | Act 67/2006 on Measures for the Judicial Protection of Persons with Disabilities who are Victims of Discrimination, Art. 4 |
| LATVIA | Law on Organisations and Foundations, Art. 10(3) ⁴⁵⁷ | Administrative Procedure Law, Art. 138 |
| | Law on Trade Unions, Art. 12(4) | |
| LIECHTENSTEIN | Act on Equality of People with Disabilities, Art. 31 | Code of Civil Procedure Arts. 11 and 17 |
| LITHUANIA ⁴⁵⁸ | Law on Equal Treatment, Art. 12(2) | Law on Equal Treatment, Art. 12(2) |

446 The legal standing of NGOs is more restricted than that of trade unions.

447 Conciliation procedures before the equality body (private sphere only).

448 As regards civil procedures, judicial interpretation is however required of Articles 213 and 216 of the Code of Civil Procedure.

449 Organisations can only act on behalf of victims before the Non-Discrimination and Equality Tribunal in cases outside employment. They cannot act on behalf of victims in court.

450 Organisations can only act in support of victims before the Non-Discrimination and Equality Tribunal in cases outside employment. They cannot act in support of victims in court.

451 Also, Law of social modernisation no. 2002-73, Art. 24-1 as regards to housing; and Decree 75-1123 on the Code of Civil Procedure creating Article 31 of the Code of Civil Procedure, Art. 3 and Decree no 2008-799 on the Code of Administrative Justice Art. 2 relating to all fields.

452 In addition, judicial interpretation is required of the Act on Equal Treatment in the Labour Market No. 86/2018, Art. 6, and of the Act on Civil Procedure No. 91/1991, Arts. 16(1) and 25(3).

453 Only in Workplace Relations Commission and Labour Court.

454 Only in Workplace Relations Commission and Labour Court.

455 Only in Workplace Relations Commission and Labour Court.

456 Only in Workplace Relations Commission and Labour Court.

457 Except in Cassation cases where the right to legal representation is reserved to the person participating to the case or their advocate (defence counsel).

458 It remains to be seen how Art. 12(2) of the Law on Equal Treatment will be implemented, notably in conjunction with the relevant provisions of the Code of Civil Procedure.

| Country | Legal standing to act on behalf of victims | Legal standing to act in support of victims |
|------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| LUXEMBOURG | No | General Anti-Discrimination Law, Arts. 7 and 18 |
| MALTA | Equal Treatment of Persons Order Art. 16 | Equal Treatment of Persons Order Art. 16 |
| | Equal Treatment in Employment Regulations, Art. 11 | Equal Treatment in Employment Regulations, Art. 11 |
| | Equal Opportunities (Persons with Disabilities) Act, Arts. 22(k), 32(2) & (3), 33 | Equal Opportunities (Persons with Disability) Act, Arts. 22(k), 32(2) & (3), 33 |
| MONTENEGRO | Law on the Prohibition of Discrimination, Arts. 22 and 30 | Law on Civil Procedure, Art. 205 |
| NETHERLANDS | Civil Code, Arts. 3:305a and 3:305b | Civil Code, Art. 3:305a |
| NORTH MACEDONIA | Law on Prevention and Protection Against Discrimination, Art. 39 | Law on Prevention and Protection Against Discrimination ⁴⁵⁹ |
| NORWAY ⁴⁶⁰ | Dispute Act, Art. 3-3(4) | Dispute Act, Art. 15-7 |
| | Equality and Anti-Discrimination Act, Art. 40 | |
| POLAND | Act on Code of Civil Procedure, Art. 61 | Act on Code of Civil Procedure, Art. 61 |
| PORTUGAL | Law 93/2017 establishing the legal regime for the prevention, prohibition and fight against discrimination on the grounds of race/ethnic origin, nationality, ancestry and territory of origin, Art. 12(1) | Law 93/2017 establishing the legal regime for the prevention, prohibition and fight against discrimination on the grounds of race/ethnic origin, nationality, ancestry and territory of origin, Art. 12(1) |
| | Labour Code, Arts. 443(1)(d) and 477 (d) | Labour Code, Arts. 443(1)(d) and 477 (d) |
| | Labour Procedure Code, Art.5 | Labour Procedure Code, Art.5 |
| | Law 46/2006 which prohibits and punishes discrimination based on disability and on a pre-existing risk to health, Art. 15(1) | Law 46/2006 which prohibits and punishes discrimination based on disability and on a pre-existing risk to health, Art. 15(1) |
| | Law 3/2011 on the non-discrimination principle in self-employment, Arts. 5 and 8 | |
| ROMANIA | Ordinance (GO) 137/2000 regarding the prevention and the punishment of all forms of discrimination, Art. 28 | Ordinance (GO) 137/2000 regarding the prevention and the punishment of all forms of discrimination, Art. 28 |
| SERBIA | Law on the Prohibition of Discrimination, Art. 35(3) | Law on the Prohibition of Discrimination, Art. 35(3-4) |
| | Civil Procedure Code, Art. 85(3) | Civil Procedure Code, Arts. 215-217 |
| SLOVAKIA | Anti-discrimination Act, Sec. 10 | Civil Dispute Act, Sec. 95 |
| SLOVENIA | Protection Against Discrimination Act, Art. 41(1)-(3) | Protection Against Discrimination Act, Art. 41(4) |
| SPAIN | Law on Fiscal, Administrative and Social Measures, Art. 31 ⁴⁶¹ | No |
| | General Law on the Rights of Persons with Disabilities and their Social Inclusion, Art. 76 | |
| | Law on social jurisdiction, Art. 20 | |
| SWEDEN | Discrimination Act ⁴⁶² Ch. 6, Sec. 2 | No |

⁴⁵⁹ Legal standing for organisations acting in support of victims of discrimination is at the discretion of the court.

⁴⁶⁰ In addition, legal standing for organisations to act on behalf of victims of discrimination is also provided by the Working Environment Act, Art. 13-10.

⁴⁶¹ Organisations have the possibility to engage in civil and administrative proceedings but not in labour proceedings or in pre-judicial matters.

⁴⁶² Trade unions also have the right to represent their members in all disputes regarding employment (Labour Procedure Act, Ch. 4, Sec. 5).

| Country | Legal standing to act on behalf of victims | Legal standing to act in support of victims |
|-----------------------|------------------------------------------------------------------------------|---------------------------------------------|
| TURKEY | Law on Unions and Collective Agreements (no.6356), Art. 26(2) ⁴⁶³ | No ⁴⁶⁴ |
| UNITED KINGDOM | No | Yes ⁴⁶⁵ |

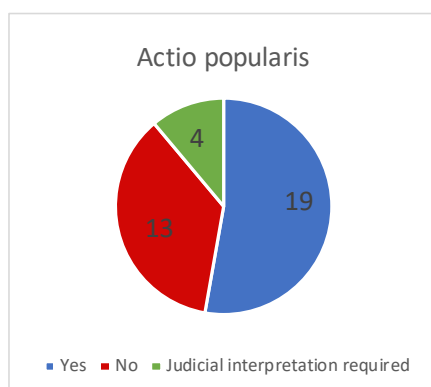
4.2.3 Collective redress

The European Commission has been assessing the need for a common EU approach to collective redress. In a working document published in 2011,⁴⁶⁶ it recognised that collective redress is necessary where the same breach of rights provided under EU law affects a large number of persons, in particular when individual actions fail to reach effective redress, in terms of stopping unlawful conduct and securing adequate compensation. Following this public consultation, in 2013 the Commission issued a recommendation to the effect that all Member States should introduce collective redress mechanisms to facilitate the enforcement of the rights that all EU citizens have under EU law.⁴⁶⁷ Such action is not covered by the two anti-discrimination directives but can be divided into class action or group action (claims on behalf of an undefined group of claimants or identified claimants and multiple claims) and *actio popularis*.⁴⁶⁸ In many countries, there is no specific procedure for discrimination cases but consumer protection law envisages group action, which can be relevant in the field of access to goods and services. However, in practice, the application of these provisions is subject to judicial interpretation.

Actio popularis is a very useful tool as it allows organisations to act in the public interest on their own behalf, without a specific victim to support or represent. According to the Court of Justice, Member States are not precluded from

‘laying down, in their national legislation, the right of associations with a legitimate interest in ensuring compliance with [the Racial Equality Directive], or for the body or bodies designated pursuant to Article 13 thereof, to bring legal or administrative proceedings to enforce the obligations resulting therefrom without acting in the name of a specific complainant or in the absence of an identifiable complainant. It is, however, solely for the national court to assess whether national legislation allows such a possibility’.⁴⁶⁹

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- 463 Limited to trade unions and only on behalf of their members in cases concerning employment and social security issues. Similar provisions are applicable in the public sector (Law on Trade Unions of Civil Servants and Collective Agreements No. 4688, Art. 19(2)-f).
- 464 The laws on civil, administrative and criminal procedure provide some standing to organisations that can demonstrate that they have been ‘harmed’, although in practice these provisions are interpreted narrowly and it is uncertain whether these provisions apply in cases of discrimination.
- 465 Organisations may do that which they are not prohibited to do and no law prohibits the provision of support to litigants.
- 466 European Commission (2011), Commission Staff Working Document Public Consultation: *Towards a coherent European approach to collective redress*, 4 February 2011.
- 467 European Commission (2013), Commission Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law, OJ L 201, 26.7.2013, pp. 60–65.
- 468 For further information, see Farkas, L. (2014) ‘Collective actions under European anti-discrimination law’, *European Anti-discrimination Law Review*, Issue 19, November 2014, p. 25.
- 469 CJEU, Judgment of 10 July 2008, Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV, C-54/07, ECLI:EU:C:2008:397.



Actio popularis is permitted by national law for discrimination cases in 19 countries (**Austria, Bulgaria, Croatia, France, Germany,**⁴⁷⁰ **Hungary, Italy, Liechtenstein,**⁴⁷¹ **Luxembourg, Malta,**⁴⁷² **Montenegro,**⁴⁷³ **the Netherlands, North Macedonia, Norway, Portugal, Romania, Serbia, Slovakia and Spain**).⁴⁷⁴

For example, in **Hungary**, social and interest representation organisations, the Equal Treatment Authority and the Public Prosecutor can bring *actio popularis* claims, provided that the violation of the principle of equal treatment was based on a characteristic that is an essential feature of the individual, and that the violation affects a larger group of persons that cannot be determined accurately. In other countries however, the

possibilities for *actio popularis* are much more limited. In **Austria** for instance, such action is possible only in cases of discrimination on the ground of disability and can be brought by a limited number of organisations.

There are four countries in which judicial interpretation would be required. In the **United Kingdom**, the Senior Court Act 1981, applicable in England and Wales, needs interpretation, as any legal or natural person with 'sufficient interest' in a matter may bring a claim under administrative law against public authorities. In practice, trade unions, NGOs as well as the equality commissions have all brought important actions against public authorities through judicial review proceedings. A requirement for judicial interpretation also applies in Scotland (Section 27B of the Court of Session Act 1988) and Northern Ireland (Order 53(5) Rules of the Court of Judicature (Northern Ireland)). In **Lithuania**, both civil and administrative law provide that *actio popularis* is possible in cases 'as prescribed by law', but no such laws have been adopted. In addition, the Supreme Administrative Court has held that, as regards administrative law, only persons whose rights have been directly affected may file a complaint with the Ombudsperson.⁴⁷⁵ In **Iceland**, the wording of the newly adopted provisions regarding legal standing in discrimination cases is not sufficiently clear regarding the potential requirement for an identified victim. In addition, in **Albania**, the law is silent on *actio popularis* but the equality body, the Commissioner for Protection from Discrimination, has established a practice of accepting such claims from organisations and trade unions.

Although *actio popularis* is not permitted by law for discrimination cases, it should be noted that in **Cyprus** the equality body used to accept and investigate complaints from organisations acting in the public interest on their own behalf without a specified victim. In 2017 however, this practice changed and complaints from MPs about incidents in the public sphere are no longer examined. Although associations cannot bring *actio popularis* claims in **Belgium** per se, the equality body Unia, as well as registered associations and representative workers' organisations, can bring actions on their own behalf to challenge alleged breaches of the non-discrimination legislation. This possibility allowed the equality body to bring the action that gave rise to the CJEU's landmark *Feryn* case.⁴⁷⁶ However, if there is an identifiable victim, such organisations can only act in support or on behalf of that victim. Finally, since 2016 the **Danish** Institute for Human Rights has a competence to bring cases of principle before the Board of Equal Treatment, including cases of general public interest.⁴⁷⁷

470 This option exists only on the basis of disability law.

471 This option is nevertheless restricted. Articles 27 to 29 and 31 of the Act on Equality of People with Disabilities entitle associations for people with disabilities to make legal claims on their own behalf for accessibility provision in public buildings, for accessibility of public roads and traffic areas, and for accessibility on public transport systems.

472 Only the National Commission for the Promotion of Equality may launch an *actio popularis*.

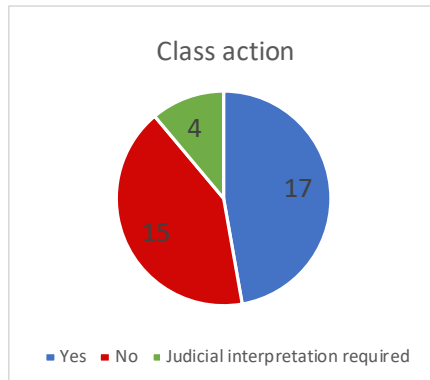
473 In Montenegro, anyone can initiate a procedure for the protection of public interest before the Constitutional Court (Article 150 of the Constitution).

474 *Actio popularis* is possible in Spain only in criminal proceedings.

475 Supreme Administrative Court of Lithuania, Administrative case No A492-2078/2013, Decision of 7 November 2013.

476 CJEU, Judgment of 10 July 2008, *Firma Feryn*, C-54/07, ECLI:EU:C:2008:397.

477 Denmark, Section 1(7) of Consolidated Act No. 1230 of 2 October 2016.



Class actions (the ability for an organisation to act in the interest of more than one individual victim for claims arising from the same event) are permitted by law for discrimination cases in 17 countries: **Albania, Bulgaria, Denmark, France, Germany, Iceland,**⁴⁷⁸ **Liechtenstein, Lithuania, Montenegro, the Netherlands, North Macedonia, Norway, Portugal, Romania, Slovakia, Slovenia** and **Sweden**. In **Germany**, new legislation entered into force on 1 November 2018, introducing for the first time a procedure for consumer rights' class action.⁴⁷⁹ It remains to be seen whether such class actions could become relevant for discrimination law. In **Lithuania**, the law does not allow associations, organisations or trade unions to represent a

class action, but it does allow class action through representation by a lawyer. **Swedish** law allows the filing of a class action in a district court for claims arising from the same issue, but only for cases outside the employment field.⁴⁸⁰ In **Slovenia**, the 2017 Class Actions Act aims to facilitate access to justice, prevent the unlawful conduct of perpetrators and enable access to compensation in cases of mass rights violations.

Judicial interpretation is still required in four countries: **Cyprus, Italy, Malta** and **Poland**.

As regards countries where class action is not permitted, it is interesting to note that the **Hungarian** legal system does not prevent associations from obtaining authorisations from more than one victim and bringing a single case, but in such a case the claims of each victim will be examined individually. **Austrian** disability law provides for a limited type of group action, which does not clearly establish class action.⁴⁸¹

Neither *actio popularis* nor class action is permitted in discrimination cases in the following countries: **Belgium**, the **Czech Republic, Estonia, Finland, Greece, Ireland, Latvia** and **Turkey**.

4.3 Burden of proof⁴⁸²

As a result of the difficulties inherent in proving discrimination, Article 8 of the Racial Equality Directive and Article 10 of the Employment Equality Directive lay down that people who feel they have faced discrimination must only establish, before a court or other competent authority, facts from which it may be presumed that there has been discrimination.⁴⁸³ The burden of proof will then shift to the respondent, who must prove that there has been no breach of the principle of equal treatment. This does not affect criminal cases (Article 8(3)/10(3)), and Member States can decide not to apply it to cases in which courts have an investigative role (Article 8(5)/10(5)). Thus, for example, in **France** the burden of proof is not shifted in administrative procedures, which are inquisitorial in nature. Nevertheless, the Council of State (the supreme administrative court) held in 2009 that, although it is the responsibility of the petitioner in discrimination cases to submit the facts that could lead the judge to presume a violation of the principle of non-discrimination, the judge must actively ensure that the respondent provides evidence that all elements which could justify the decision are based on objectivity and devoid of discriminatory

478 The Icelandic Act on Civil Procedure, Article 19a provides for a form of class action. Three or more individuals with claims against a party stemming from the same incident or situation can establish an 'action association', which can bring the case on the claimants' behalf.

479 Germany, Act to introduce civil model declaratory proceedings, 12 July 2018, with effect from 1 November 2018.

480 Sweden, Group Proceedings Act (2002:599).

481 The possibility of some sort of limited group litigation given to the Austrian National Council of Disabled Persons does not include the accumulation of interests of individuals.

482 See also Farkas, L. and O'Farrell, O. (2015) *Reversing the burden of proof: Practical dilemmas at the European and national level*, European network of legal experts in the non-discrimination field, available at <http://www.equalitylaw.eu/downloads/1076-burden-of-proof-en>.

483 The shift of burden of proof was originally developed under gender legislation (see Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex).

objectives.⁴⁸⁴ **Portuguese** law states that the principle does not apply to criminal procedures or to actions in which, in terms of the law, it is up to the court to carry out the investigation. Similarly, in **Estonia**, the shift of the burden of proof does not apply in administrative court or criminal proceedings. In **Slovakia**, the Act on Labour Inspection does not contain any explicit and clear provisions on the burden of proof in relation to identifying breaches of the principle of equal treatment.⁴⁸⁵ In **Bulgaria**, the shift of the burden of proof is applicable to both judicial proceedings and proceedings before the equality body.⁴⁸⁶ Although the shift is uniformly applicable to all forms of discrimination, including harassment and victimisation, it is not always applied consistently in all cases and further training for judges and staff of the equality body would be advisable. In the **Czech Republic**, the Constitutional Court's case law shows that in order to trigger the shift in the burden of proof, the claimant must (a) claim and prove that he/she was disadvantaged or treated in an unusual way, and (b) claim (but not necessarily prove) that such disadvantage or unusual treatment occurred as a result of some of the discrimination grounds.⁴⁸⁷ The claimant has also to demonstrate the existence of the specific ground of discrimination when it is not entirely clear in the claimant's situation. If all these conditions are fulfilled, the burden of proof is transferred to the respondent.

A minority of states appear to have failed to introduce burden of proof provisions in line with the directives. In **Latvia**, the shift of the burden of proof applies mainly to employment, but also to education and access to goods and services. No explicit provision exists regarding the shift of the burden of proof in discrimination cases in social protection and social advantages. The provision on the burden of proof in the **Austrian** Equal Treatment Act (applicable in the private sector) lowers the burden for the claimant, but in a way that is not considered to comply satisfactorily with the directives. However, the Supreme Court has provided an interpretation in line with the directive by ruling that, 'If discriminatory infringements are successfully established, it is for the respondent to prove that he or she did not discriminate'. In 2013, the same provision contained in the Federal Equal Treatment Act (applicable in the federal public sector) was amended to comply with the directives.⁴⁸⁸ In **North Macedonia**, the Anti-discrimination Act places the burden to a great extent on the complainant, as he or she must submit 'facts and proofs from which the act or action of discrimination can be established',⁴⁸⁹ contrasting with the directives, which merely require the establishment of the facts. In **Croatia**, the rule on the burden of proof does not seem to be interpreted and implemented by courts in line with the directives.⁴⁹⁰ In **Sweden**, the Labour Court embraces a strict interpretation of the rules on a shifted burden of proof. A Government White Paper in 2016 underlined that the Labour Court and the general courts now accept that this rule represents a presumption (*en presumptionsregel*) and not a shared burden of proof rule.⁴⁹¹ Nevertheless, the general court system and the Labour Court seem to differ concerning implementation.

484 France, *Conseil d'Etat*, No. 298348, 30 October 2009. A recent analysis of the regulation on the shift of the burden of proof in discrimination cases can be found in Ringelheim, J. (2019) 'The burden of proof in anti-discrimination proceedings. A focus on Belgium, France and Ireland', in *European Equality Law Review*, issue 2019/2, pp. 49-64.

485 Slovakia, Act No 125/2006 on Labour Inspection and changing and supplementing Act No 82/2005 on Illegal Work and Illegal Employment and changing and supplementing certain laws, as amended.

486 An amendment was adopted to modify the wording of the provision regulating the shift of the burden of proof, without however bringing it completely into line with the directives. See State Gazette issue No 26 of 7 April 2015.

487 Constitutional Court of the Czech Republic, No. III. ÚS 880/15, 8 October 2015; http://nalus.usoud.cz/Search/GetText.aspx?sz=3-880-15_1.

488 Austria, BGBl. I No 81/2013 of 27 December 2013, amended Art. 20a. Note that the Equal Treatment Act and the Federal Equal Treatment Act are two different acts.

489 North Macedonia, Law on Prevention and Protection Against Discrimination, Official Gazette of the Republic of Macedonia No.50/10, 44/2014, 150/2015, 31/2016, 21/2018, Constitutional Court Decision Y.6p.82/2010 of 15.09.2010. Articles 25 (para.2), 38.

490 Zagreb Municipal Court, no. Pr.4290/12, 20 June 2016; Zagreb County Court, no. GžR-1494/16, 3 January 2017; Vukovar County Court, no. Gž-2333/14, 23 November 2017; People's Ombudsperson (2014), *Ombudsperson's Report for 2014*, <http://ombudsman.hr/hr/component/jdownloads/send/29-2014/562-izvjesce-pucke-pravobraniteljice-za-2014-godinu>.

491 Swedish Government (2016) White Paper 2016:87, pp. 462-463.

Shift of the burden of proof in case of contradicting evidence of equal value in Sweden

In 2017, for the first time, there was a situation where the labour court dealt with a case that was fairly identical with another case submitted to the general court system one year earlier. In both cases the focus was on implementation of the burden of proof.

These cases turned on whether disposable sleeves are an alternative to bare lower arms for a Muslim dental student (district court)⁴⁹² or a Muslim dentist (labour court).⁴⁹³ The focus was on the application of health and safety regulations, the desire of those involved not to work with their lower arms exposed due to religious reasons and whether or not an application of this rule constituted indirect discrimination.

Two experts were questioned in those cases on the necessity of having bare arms for hygienic standards and provided opposing opinions. The district court came to the conclusion that the opinions of both experts were credible, but that it was up to the defendant to bear the burden of proof. Therefore, the defendant lost the case since it was not able to prove that disposable forearm protection would increase the risk of infection.

On the other hand, the labour court came to the opposite judgment, even though it was deciding a case based on the essentially the same evidence. The labour court said that when the employer had presented the genuinely objective theoretical hygienic reasons, the burden of proof shifted back to the claimant, even though the experts were deemed to be equally credible. Since the Equality Ombudsman failed to disprove the assertions of the employer's expert, the Equality Ombudsman lost the case. The main argument for this outcome was that, when the patient's security is at risk, the employer must be allowed a wide margin of appreciation to set hygienic rules (*försiktighetsprincipen* – the duty-of-care principle) and thus any remaining doubt must fall on the claimant.

With regards to the directives' provision on the shift of the burden of proof, the meaning of the terms 'facts from which it may be presumed that there has been direct or indirect discrimination' was one of several questions put before the Court of Justice of the European Union in the *Firma Feryn* case.⁴⁹⁴ Further guidance was also provided by the Court on this issue in the *Asociația Accept* case, where it held that 'a defendant employer cannot deny the existence of facts from which it may be inferred that it has a discriminatory recruitment policy merely by asserting that statements suggestive of the existence of a homophobic recruitment policy come from a person who, while claiming and appearing to play an important role in the management of that employer, is not legally capable of binding it in recruitment matters'.⁴⁹⁵

4.4 Victimisation

Member States must ensure that individuals are protected from any adverse treatment or adverse consequences in reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment (Article 9, Racial Equality Directive; Article 11, Employment Equality Directive). There is still a major inconsistency with this principle in some states, where protection is restricted to the employment field and thereby fails to protect against victimisation in the areas outside employment protected by the Racial Equality Directive. This is the case in **Germany, Lithuania, Spain, and Turkey**.

Although the directives do not limit the protection against victimisation to the actual claimants themselves but potentially extend it to anyone who could receive adverse treatment 'as a reaction to a complaint or to proceedings', the protection is more restricted in several countries. According to **Danish** law for instance, the protection applies to a person who files a complaint regarding differential treatment of her/

492 Sweden, Stockholm District Court, case T 3905-15, *Equality Ombudsman v the Swedish State through Karolinska Institutet*, judgment of 16 November 2016.

493 Swedish Labour Court, *Equality Ombudsman v. Peoples Dentist of Stockholm County*, Judgment No. 65/2017 of 20 December 2017. Available at: <http://www.arbetsdomstolen.se/upload/pdf/2017/65-17.pdf>.

494 CJEU, Judgment of 10 July 2008, *Firma Feryn*, C-54/07, ECLI:EU:C:2008:397.

495 CJEU, Judgment of 25 April 2013, *Asociația Accept v. Consiliul Național pentru Combaterea Discriminării*, C-81/12, ECLI:EU:C:2013:275.

himself and to a person who files a complaint of differential treatment of another person, and it is a prior condition that a causal link can be established between the victimisation and the employee's request for equal treatment. In **Belgium**, protection against victimisation is limited to victims filing a complaint of discrimination and any formal witness in the procedure. This limitation seems to mean that not 'all persons' involved are protected, for instance persons who provided assistance or support to the victim.

However, the scope of the protection is wider in most countries, such as in **Italy**, which includes protection for 'any other person' in addition to the claimant, or **Estonia** and **Poland**, where protection includes claimants as well as those who 'support' them. In **Romania**, protection against victimisation is not limited to the complainant but extends to witnesses, while the **Lithuanian** Equal Treatment Act repeats the wording of the Employment Equality Directive. The **French** Act No 2008-496 has introduced specific protection against victimisation applicable to the entire scope of civil remedies for direct or indirect discrimination covered by the directives, extending protection to anyone 'having testified in good faith' about discriminatory behaviour or having reported it.

A few countries have gone further than the requirements of the directives. For example, in **Bulgaria**, protection is accorded for victimisation by presumption and by association as well. In the **United Kingdom**, it is not required that the perpetrator of the victimisation should have been involved in the initial complaint. For example, an employer who refuses to employ a person because he or she complained of discrimination or assisted a victim of discrimination in a previous job would still be liable for victimisation.

In **Slovenia**, the Advocate of the Principle of Equality may, upon finding discrimination in the original case, order the offender to apply appropriate measures to prevent victimisation. In the event that an alleged offender does not obey the Advocate's order, the Advocate may order the offender to eliminate the consequences of victimisation.

As regards non-EU Member States, **Turkish** labour law merely prohibits the dismissal of employees (and disciplinary measures of civil servants) who seek judicial redress, while the newly adopted **Icelandic** Equality Acts will require judicial interpretation to determine whether the protection against victimisation is limited to complainants or not – although the wording of the relevant provisions appears to be sufficiently broad to be interpreted extensively. In **Liechtenstein**, a complainant or a witness is protected against reprisals for initiating a complaint or a legal action related to a violation of anti-discrimination law, exclusively on the ground of disability. In **Norway**, protection against victimisation is limited when the complainant acted with gross negligence, but apart from that, provisions on victimisation apply to the complainant, as well as to witnesses or anyone who assists the victim in bringing the claim, such as a workers' representative.

Table 10: Prohibition of victimisation in national law (in the case of decentralised states only federal law is indicated)

| Country | Law | Articles | Protection extended outside employment |
|----------------|---------------------------------------------------|--------------|----------------------------------------|
| ALBANIA | Law on Protection from Discrimination | Article 3(8) | Yes |
| AUSTRIA | Equal Treatment Act | Arts. 27, 39 | Yes |
| | Federal Equal Treatment Act ⁴⁹⁶ | Art. 20b | No |
| | Act on the Employment of People with Disabilities | Art. 7i/2 | No |
| | Federal Disability Equality Act ⁴⁹⁷ | Art. 9/5 | Yes |

⁴⁹⁶ The Federal Equal Treatment Act and the Act on the Employment of People with Disabilities include protection against victimisation in employment discrimination cases only.

⁴⁹⁷ The Federal Disability Equality Act includes protection against victimisation outside the employment field only.

| Country | Law | Articles | Protection extended outside employment |
|-----------------------|----------------------------------------------------------------------------------------------|--------------------------|----------------------------------------|
| BELGIUM | Racial Equality Federal Act ⁴⁹⁸ | Arts. 14 and 15 | Yes |
| | General Anti-discrimination Federal Act | Arts. 16 and 17 | Yes |
| BULGARIA | Protection Against Discrimination Act | Art. 5 | Yes |
| CROATIA | Anti-discrimination Act | Art. 7 | Yes |
| CYPRUS | Equal Treatment in Employment and Occupation Law | Art. 10 | No |
| | Equal Treatment (Racial or Ethnic origin) Law | Art. 11 | Yes |
| | Law on Persons with Disabilities | Art. 9E | Yes |
| CZECH REPUBLIC | Anti-Discrimination Act | Sec. 4(3) | Yes |
| DENMARK | Act on Prohibition of Discrimination in the Labour Market etc. | Sec. 7(2) | No |
| | Ethnic Equal Treatment Act | Sec. 8 | Yes |
| | Act on the Prohibition of Discrimination due to Disability | Sec. 9 | No |
| ESTONIA | Equal Treatment Act | Art. 3(6) | Yes |
| FINLAND | Non-Discrimination Act | Sec. 16 | Yes |
| FRANCE | Law relating to the adaptation of National Law to Community Law in matters of discrimination | Arts. 2 and 3 | Yes |
| GERMANY | General Act on Equal Treatment | Sec. 16 | No |
| GREECE | Equal Treatment Law 4443/2016 | Art. 10 | Yes ⁴⁹⁹ |
| HUNGARY | Act CXXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities | Art. 10(3) | Yes |
| ICELAND | Act on Equal Treatment irrespective of Race or Ethnic Origin | Art. 13 | Yes |
| | Act on Equal Treatment in the Labour Market | Art. 13 | No |
| IRELAND | Employment Equality Acts 1998-2015 | Sec. 14, 74(2) | No |
| | Equal Status Acts 2000-2018 | Sec. 3(2)(j) | Yes |
| ITALY | Legislative Decree No. 215/2003 Implementing Directive 2000/43/EC | Art. 4bis | Yes |
| | Legislative Decree No. 216/2003 Implementing Directive 2000/78/EC | Art. 4bis | No |
| LATVIA | Labour Law ⁵⁰⁰ | Art. 9 | Yes |
| LIECHTENSTEIN | Act on Equality of People with Disabilities | Art. 23(4) | Yes |
| LITHUANIA | Law on Equal Treatment | Art. 7(8) | No |
| | Labour Code | Arts. 26(2(5)) and 59(2) | No |
| LUXEMBOURG | General Anti-Discrimination Law | Arts. 4 and 18 | Yes |
| MALTA | Employment and Industrial Relations Act | Art. 28 | No |
| | Equal Treatment of Persons Order | Art. 7 | Yes |
| | Equal Opportunities (Persons with Disabilities) Act | Art. 5(3) | Yes |
| | Equality for Men and Women Act | Art. 4 | Yes |

498 Belgian law only protects victims, their representatives and witnesses against victimisation while the EU directives cover 'all persons' involved.

499 Protection against victimisation covers the scope of the Racial Equality Directive for the grounds of racial or ethnic origin, but not for the other grounds.

500 Victimisation is also dealt with outside the employment field in the following laws: the 1995 Law on Social Security, Art. 34(2), the 1999 Law on Consumer Protection, Art. 3(1), and the 2012 Law on Prohibition of Discrimination against Natural Persons – Economic Operators, Art. 6.

| Country | Law | Articles | Protection extended outside employment |
|------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|----------------------------------------|
| MONTENEGRO | Law on the Prohibition of Discrimination | Art. 4. | Yes |
| NETHERLANDS | General Equal Treatment Act | Arts. 8 and 8(a) | Yes |
| | Disability Discrimination Act | Arts. 9 and 9(a) | Yes |
| | Age Discrimination Act | Arts. 10 and 11 | Yes |
| NORTH MACEDONIA | Law on Prevention and Protection Against Discrimination | Art. 10 | Yes |
| NORWAY ⁵⁰¹ | Equality and Anti-Discrimination Act | Art. 14 | Yes |
| POLAND | Act on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment | Art. 17 | Yes |
| PORTUGAL | Labour Code | Arts. 331(1) (a)-(d), 351(1) (3), 381(b) | No |
| | Law 93/2017 establishing the legal regime for the prevention, prohibition and fight against discrimination on the grounds of race/ethnic origin, nationality, ancestry and territory of origin | Art. 13 | Yes |
| ROMANIA | Ordinance (GO) 137/2000 regarding the prevention and the punishment of all forms of discrimination | Art. 2(7) | Yes |
| SERBIA | Law on the Prohibition of Discrimination | Art. 9 | Yes |
| SLOVAKIA | Anti-discrimination Act | Sec. 2a(8) and (10) | Yes |
| | Labour Code | Sec.13(3) | No |
| SLOVENIA | Protection Against Discrimination Act | Art. 11 | Yes |
| | Employment Relationship Act | Art. 6(8) | No |
| SPAIN | Law on Fiscal, Administrative and Social Measures | Art. 37 | No |
| SWEDEN | Discrimination Act | Ch. 2, Sec. 18-19 | Yes |
| TURKEY | Labour Law | Art. 18 | No |
| UNITED KINGDOM | (GB) Equality Act | Sec. 27 | Yes |
| | (NI) Race Relations Order (RRO) | Art. 4 | Yes |
| | (NI) Fair Employment and Treatment Order | Art. 3(4) | Yes |
| | (NI) Employment Equality (Sexual Orientation) Regulations | Reg. 4 | Yes |
| | (NI) Disability Discrimination Act | Sec. 55 | Yes |
| | (NI) Employment Equality (Age) Regulations | Reg. 4 | No |

4.5 Sanctions and remedies⁵⁰²

Infringements of anti-discrimination laws must be met with ‘effective, proportionate and dissuasive’ sanctions, which may include compensation being paid to the victim (Article 15, Racial Equality Directive; Article 17, Employment Equality Directive). The meaning of this concept must be determined in each case in the light of individual circumstances.

⁵⁰¹ The Working Environment Act (Art. 2-5) also prohibits victimisation, adding political views and trade union membership to the list of grounds protected by the Equality and Anti-Discrimination Act.

⁵⁰² A thematic report on this topic produced by the European network of legal experts in the non-discrimination field provides a more detailed analysis, cf. Tobler, Christa (2005), *Remedies and sanctions in EC non-discrimination law: Effective, proportionate and dissuasive sanctions and remedies, with particular reference to upper limits on compensation to victims of discrimination*, Luxembourg. Some of the findings of this study are reproduced in this section.

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

As a whole, no single national enforcement system appears to be truly all-encompassing. Essentially, they are all mostly based on an individualistic and remedial – rather than a preventative – approach. **Irish** law provides a broad range of remedies, including compensation awards, reinstatement and re-engagement, as well as orders requiring employers to take specific courses of action. In particular, there is case law relating to compliance with these orders: the creation of an equal opportunities policy; reviewing recruitment procedures; reviewing sexual harassment procedures; formal training of interview boards; review of customer service practices; and equality training for staff. In **Spain**, penalties have been established in the employment field for all the grounds and for the ground of disability in all fields (Act 49/2007), but not in the other fields covered by Directive 2000/43/EC on grounds of racial or ethnic origin, except in criminal law. Finally, the **Polish** Equal Treatment Act only refers to ‘compensation’ (which in Polish law is generally interpreted to cover only material damage).

In some Member States, the specialised body is empowered to issue sanctions in cases where they have found discrimination. The **Bulgarian** Protection Against Discrimination Commission has powers to order preventative or remedial action and to impose financial sanctions between the equivalents of EUR 125 and EUR 1 250, amounts that would be dissuasive to the majority.⁵⁰³ These sanctions are administrative fines and are not awarded to the victim as compensation but go to the state budget. Similarly, the **Romanian** National Council on Combating Discrimination can issue administrative warnings and fines ranging from EUR 250 to 7 500 where the victim is an individual, and from EUR 500 to 25 000 where the victim is a group or a community. Until the CJEU adopted its ruling in the case of *Asociația ACCEPT*, the NCCD had developed the practice of issuing recommendations and administrative warnings particularly in cases where the respondent was a public authority and where it found that discrimination had taken place, and only rarely issued fines. Following the CJEU decision, the NCCD has increasingly issued fines and has begun to increase their amount.⁵⁰⁴ The **Cypriot** Commissioner for Administration (‘Ombudsman’) has the power to issue binding decisions and to impose small fines. It also has a duty to monitor the enforcement of its orders, and to impose fines for the failure to comply with its decisions. These fines are however so low that they can hardly be seen as a deterrent. Furthermore, the Ombudsman has not yet issued any binding decisions or imposed any fines. The Equality Tribunal in **Norway** has the competence to issue administrative decisions, including on redress and compensation, but may only issue recommendations regarding the decisions of other parts of the public administration. The **Danish** Board of Equal Treatment issues binding decisions and can award compensation. Its decisions can be appealed before the civil courts. In **Slovakia**, the Offices of Labour, Social Affairs and Family are entitled to investigate complaints regarding discriminatory job-announcements. When the Labour Office finds a violation, it can impose a

503 Bulgaria, Protection Against Discrimination Act, Articles 78-80.

504 Romanian National Council for Combating Discrimination (2019), *Raportul de activitate al Consiliului Național pentru Combaterea Discriminării 2018* (2018 Annual Report). See also, Romanian National Council for Combating Discrimination, Decision 357 of 11 May 2016.

fine of up to EUR 33 193. However, in practice the Labour Offices face difficulties in identifying the entity which published the discriminatory announcement and therefore to impose sanctions on the responsible person and/or company. In **Cyprus**, employers with more than 19 employees may be required by the court to reinstate an employee whose dismissal was either: (i) manifestly unlawful or (ii) unlawful and made in bad faith.

In the **United Kingdom**, both the British Equality and Human Rights Commission and the Equality Commission for Northern Ireland are able to use their powers of formal investigation to investigate organisations they believe to be discriminating and, where they are satisfied that unlawful acts have been committed, they can serve a binding ‘compliance notice’ requiring the organisation to stop discriminating and to take action by specified dates to prevent discrimination from recurring. They also have the power to enter into (and to enforce via legal action if necessary) binding agreements with other bodies that undertake to avoid discriminatory acts and to seek an injunction to prevent someone committing an unlawful discriminatory act.

For certain cases, the Court of Justice of the European Union’s case law contains specific indications regarding the European Union legal requirements in relation to remedies. In particular, as noted by the Court in its ruling in *Asociația Accept* in 2013,⁵⁰⁵ the ‘severity of the sanctions must be commensurate to the seriousness of the breaches for which they are imposed, in particular by ensuring a genuinely dissuasive effect (...), while respecting the general principle of proportionality.’⁵⁰⁶ It further noted that ‘a purely symbolic sanction cannot be regarded as being compatible with the correct and effective implementation of Directive 2000/78’. Thus, in the case of discriminatory dismissal, the remedy (or remedies) granted must in all cases include either reinstatement or compensation. Furthermore, where compensation is chosen as a remedy it must fully make good the damage.⁵⁰⁷ Upper limits are not acceptable, except for situations where the damage was not caused through discrimination alone.⁵⁰⁸

There appear to be no limits either in relation to pecuniary or non-pecuniary damages in the national laws of **Albania, Belgium, Bulgaria,**⁵⁰⁹ **Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany,**⁵¹⁰ **Greece, Iceland, Italy, Liechtenstein, Lithuania, Luxembourg, Montenegro, the Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, Serbia, Slovakia,**⁵¹¹ **Spain, Sweden** and the **United Kingdom**. In **Poland**, there is a *minimum* level of compensation, which is linked to the minimum wage. In **Malta** however, statutory upper limits on compensation for non-pecuniary damages apply for disability cases only (EUR 2 500).⁵¹² Although there are no statutory limits on compensation for damages in **Croatia**, in 2002 the Supreme Court published guiding criteria for non-pecuniary damages, which the courts are using as guidelines to determine levels of compensation, without necessarily taking into account the effectiveness, proportionality and dissuasiveness of the sanction. In **Slovenia**, the Protection Against Discrimination Act stipulates the right of victims of discrimination to claim compensation of between EUR 500 and EUR 5 000. However, it is not clear how these provisions relate to the general rules of tort law, which contains no upper limit on the compensation. In **France**,

505 CJEU, Case C-81/12, *Asociația Accept v. Consiliul Național pentru Combaterea Discriminării*, judgment of 25.04.2013, ECLI:EU:C:2013:275.

506 With regard to the ‘genuinely dissuasive effect’ of sanctions, the Court cited Case C383/92 *Commission v United Kingdom*, 8.06.1994, ECLI:EU:C:1994:234 and Case C180/95 *Draehmpaehl*, 22.04.1997, ECLI:EU:C:1997:208. With regard to the general principle of proportionality in relation to sanctions, the Court cited Case C101/01 *Lindqvist*, 6.11.2003, ECLI:EU:C:2003:596, and Case C430/05 *Ntounik and Pikoulas*, 5.07.2007, ECLI:EU:C:2007:410.

507 CJEU, Case C-271/91, *Marshall v Southampton and South West Hampshire Area Health Authority*, judgment of 2.08.1993 (‘Marshall II’), paras 25-26.

508 CJEU, Case C-180/95, *Draehmpaehl v. Urania Immobilienservice*, judgment of 22.04.1997, ECLI:EU:C:1997:208.

509 In Bulgaria, according to settled case law (not specific to non-discrimination law), legal persons cannot claim compensation for non-material damage. See for instance, Sofia City Court, Decision No. 5103 of 11.07.2018 in case No. 1693/2016.

510 It is specified that the compensation for non-material damage in civil law and in labour law must also be appropriate. If the discrimination was not a causal factor in the decision not to recruit an individual, the compensation for non-material loss is limited to a maximum of three months’ salary (General Equal Treatment Act (AGG), Section 15.2, sentence 2).

511 The Slovakian Labour Code provides however for an upper limit to claims of salary compensation in cases of illegal dismissals (Section 79(2)), confirmed by the Supreme Court to be applicable also in anti-discrimination proceedings.

512 Malta, Equal Opportunities (Persons with Disability) Act, as amended by Act II of 2012, Article 34.

since 2017, the Labour Code has provided for mandatory scales and ceilings regarding the damages awarded in relation to the dismissal of an employee. However, the mandatory scale does not apply when the judge finds that the dismissal is null and void because it breaches a fundamental right or constitutes harassment or discrimination prohibited by law.

Upper limit for unpaid salary damages under the Hungarian Labour Code

Under Article 82 of the Labour Code, if discrimination is manifested in the unlawful termination of employment, the employer must compensate the employee for the damage suffered. Paragraph (2), however, provides that, if the claimant demands lost income as an element of damages, no more than twelve months' salary may be claimed by the employee under this heading. The reason for this provision (which means a significant change to the previous situation as no such cap existed) was that protracted lawsuits put employers into very difficult situations if after several years they had to pay the unlawfully dismissed employee's unpaid salary in full if he/she did not find a new job during that time. The change has a very detrimental effect on employees, as it introduces a maximum 'penalty' that employers have to pay for an unlawful dismissal, which may dissuade them from trying to reach a friendly settlement instead of making the case as long as possible through appealing the subsequent judicial decisions (since delaying tactics will no longer have an impact on how much they have to pay in the end).

However, Article 83 of the Labour Code allows an unlawfully dismissed employee to request the courts to order his/her reinstatement. In this case the employment has to be regarded as continuous, which means that the employee receives his/her lost income as 'unpaid salary' and not as 'damages', and so the cap does not apply.

In **Latvia**, there is no maximum amount for damages under civil law, but the Reparation of Damages caused by State Administrative Institutions Act sets maximum amounts of damages for material harm at EUR 7 000, or EUR 10 000 in cases of grave non-pecuniary damage, and EUR 30 000 if life has been endangered or grievous harm has been caused to health. The maximum amount of damages for non-pecuniary harm is set at EUR 4 269 or EUR 7 115 in cases of grave non-pecuniary harm and EUR 28 457 if harm has been caused to life or grave harm has been caused to health. **Austrian** law specifies an upper limit of EUR 500 for non-pecuniary damages in cases of non-recruitment or non-promotion if the employer proves that the victim would not have been recruited or promoted anyway. Of the countries where limits do exist, **Ireland** is particularly interesting because there are no comparable statutory limits on compensation for discrimination on grounds of sex.

French Court of Cassation states that the level of compensation varies according to the ground of discrimination⁵¹³

The social chamber of the Court of Cassation has stated for the first time that the calculation of compensation awarded could vary according to the ground of discrimination at issue. The court decided that the scope of the compensation changes according to whether or not the discrimination infringes upon a fundamental right or freedom protected by the French Constitution. The case at hand concerned the discriminatory dismissal of the claimant on the basis of his age. The dismissal was declared to be null and void, and the Court of Cassation was called upon to determine the relevant consequences of that nullity. In this specific case, the court decided that since the principle of non-discrimination on the ground of age is not a fundamental freedom protected by the French Constitution, the compensation awarded would be limited to the loss of salary less the revenue of substitution received by the claimant between his dismissal and his reinstatement. If the dismissal had been based upon a personal characteristic that is protected by the French Constitution, the amount of any revenues of substitution would supposedly not have been deducted from the final compensation awarded.

513 France, Social Chamber of the Court of Cassation, Judgment No. 16-14.281 of 15 November 2017. Available at: <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000036053048&fastReqId=387503508&fastPos=1>.

The practice of courts with regards to sanctions in general and the award of compensation in particular varies considerably. There are several countries where some worrying trends can be noted in this regard. In **France** and the **Netherlands** for instance, courts are generally reluctant to award substantial amounts when calculating pecuniary loss, and the amounts awarded remain rather low. In **Greece**, on the other hand, there are no known cases on any ground where compensation has been awarded. Low levels of compensation coupled with the length of time it can take to obtain a decision casts doubt on the effectiveness of remedies. Their dissuasiveness is also questionable, in particular as far as larger employers are concerned. In this regard, **Spanish** and **Portuguese** legislation present an interesting approach, as company turnover can in some cases be used to determine the level of penalties.

5 Equality bodies

Article 13, Racial Equality Directive:

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

In June 2018, the European Commission issued a Recommendation on standards for equality bodies, encouraging Member States to ensure greater independence, extended competences and adequate resources for their national specialised bodies, among other things. Although the Recommendation is not binding, it is noteworthy that it calls for the ‘independence’ of equality bodies, although the Directive only requires the independent exercise of their functions.⁵¹⁴

All EU Member States have now designated a specialised body for the promotion of equal treatment irrespective of racial or ethnic origin, as required by Article 13 of the Racial Equality Directive. All the candidate countries covered by this report have also set up such ‘specialised bodies’, as have the three EEA countries. The organisation and mandate of the **Norwegian** equality bodies were amended in 2017, with effect from 1 January 2018. The new structure comprises two separate bodies, the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal (a quasi-judicial institution), in charge of the promotion of equal treatment irrespective of racial or ethnic origin. The mandate of **Liechtenstein’s** Association for Human Rights does not list specific grounds of discrimination, but it covers the general protection of human rights including non-discrimination. As of 1 September 2018, the **Icelandic** Centre for Equality is no longer only covers gender equality, but also deals with all the grounds covered by the two EU anti-discrimination directives.

When transposing Article 13 of the Racial Equality Directive, some Member States opted to set up completely new bodies such as **France**,⁵¹⁵ **Germany**, **Greece**, **Hungary**, **Italy**, **Romania**, **Slovenia** and **Spain**.⁵¹⁶ Bodies that already existed but which were given the functions designated by Article 13 include the **Cypriot** Ombudsman,⁵¹⁷ the **Estonian** Chancellor of Justice and Commissioner for Gender Equality and Equal Treatment, the **Lithuanian** Equal Opportunities Ombudsperson, the **Maltese** National Commission for the Promotion of Equality, the **Slovak** National Centre for Human Rights and the **Croatian** Ombudsman.

In the past 10 years, a trend has arisen of merging existing institutions into one single body to exercise different responsibilities in a variety of areas. For instance, the **French** Equal Opportunities and Anti-discrimination Commission was merged in 2011 with several other statutory authorities to become the Defender of Rights. In the **Netherlands**, a new law created the Human Rights Institute in November 2011,⁵¹⁸ replacing the Equal Treatment Commission. Similarly, in 2014, the **Irish** Equality Authority and the Human Rights Commission were merged into the Irish Human Rights and Equality Commission.⁵¹⁹ The

514 European Commission (2018) Commission Recommendation of 22.06.2018 on standards for equality bodies, C(2018) 3850 final, Brussels.

515 The French Equal Opportunities and Anti-discrimination Commission (HALDE) was set up by law on 30 December 2004. The HALDE was incorporated into a new institution named the Defender of Rights, with effect from 1 May 2011 (Act No 2011-333 of 29 March 2011 creating the Defender of Rights).

516 Since 2014, the Spanish equality body is called the Council for the Elimination of Racial or Ethnic Discrimination.

517 The Cypriot Ombudsman was appointed as the national specialised body and was divided into two separate authorities: the Equality Authority that dealt with employment issues and the Anti-discrimination Authority that dealt with discrimination beyond employment. Since the current ombudsman took office in May 2017, the two departments ceased functioning. Since then all complaints are handled in the office’s capacity as Ombudsman drawing on administrative law rather than on equality law.

518 Netherlands, Act of 24 November 2011 on the establishment of the Netherlands Institute for Human Rights, Staatsblad 2011, 573.

519 Ireland, Irish Human Rights and Equality Commission Act 2014, adopted on 27 July 2014, available at: <http://www.irishstatutebook.ie/pdf/2014/en.act.2014.0025.pdf>.

Swedish Equality Ombudsman was created in 2009 through the merger of four pre-existing ombudsmen institutions working with different grounds of discrimination: sex, ethnic origin and religion; disability and sexual orientation.⁵²⁰

5.1 Grounds covered

The minimum requirement on Member States is to have one or more bodies for the promotion of equality irrespective of racial or ethnic origin. A large number of states went further than the directive's wording, either in terms of the grounds of discrimination that specialised bodies are mandated to deal with, or in terms of the powers that they have to combat discrimination. The directive left Member States with a wide degree of discretion with regard to how to set up their specialised bodies. As a result, there are significant differences between the equality bodies established in the Member States in terms of their mandate, competences, structures, resources and operational functioning. There are undeniable advantages with instituting multiple-ground bodies, such as facilitating access for complainants, cost-effectiveness and capacity to deal with intersectionality and multiple discrimination. Such bodies may also face challenges however, such as implementing different standards of protection for different grounds of discrimination and ensuring balanced visibility for and relevance to all grounds covered by their mandate. Interpretations given by national courts of concepts may differ between the grounds protected.

Table 11: Relevant specialised bodies dealing with racial/ethnic origin, and the grounds covered by their mandates

| Country | Relevant specialised body dealing with race/ethnic origin | Grounds explicitly covered by the mandate of the specialised body |
|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ALBANIA | Commissioner for Protection from Discrimination (Law on Protection from Discrimination, Art. 21-33) | Gender, race, colour, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, education or social situation, pregnancy, parentage, parental responsibility, age, family or marital condition, civil status, residence, health status, genetic predispositions, disability, affiliation with a particular group or for any other ground. |
| AUSTRIA | Equal Treatment Commission – ETC ⁵²¹ (Act on the Equal Treatment Commission and the National Equality Body, §§ 1, 2, 11-14) | Gender, ethnic affiliation, religion, belief, age, sexual orientation |
| | National Equality Body – NEB (Act on the Equal Treatment Commission and the National Equality Body, §§ 3-5) | Gender, ethnic affiliation, religion, belief, age, sexual orientation |
| BELGIUM | Inter-federal Centre for Equal Opportunities and Opposition to Racism and Discrimination (Unia) (Cooperation Agreement between the Federal State, the Regions and the Communities creating the Inter-federal Centre for Equal Opportunities and Opposition to Racism and Discrimination, Art. 2) | Alleged race, colour, descent, national or ethnic origin, nationality, age, sexual orientation, civil status, birth, wealth/income (in French: <i>fortune</i>), religious or philosophical belief, actual or future state of health, disability, physical characteristic, political opinion, trade union opinion (<i>conviction syndicale</i>), genetic characteristic and social origin |

⁵²⁰ Sweden, Equality Ombudsman Act (2008:568).

⁵²¹ This body exercises tribunal-like functions.

| Country | Relevant specialised body dealing with race/ethnic origin | Grounds explicitly covered by the mandate of the specialised body |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| BULGARIA | Protection Against Discrimination Commission (Protection Against Discrimination Act, Arts. 4 (1), 40 (1-2), 47) | Race, ethnicity, gender, national origin, human genome, nationality, origin, religion or faith, education, beliefs, political affiliation, personal or social status, disability, age, sexual orientation, family status, property status, or any other ground provided for by law or by international treaty Bulgaria is a party to. |
| CROATIA | People's Ombudsperson ⁵²² (Anti-discrimination Act, Art. 12(1)) | Race or ethnic origin or colour, language, religion, political or other belief, national or social origin, property, trade union membership, education, social status, age, health condition, genetic heritage. |
| CYPRUS | Equality Authority and Anti-discrimination Authority ⁵²³ (The Combating of Racial and other forms of Discrimination (Commissioner) Law N. 42(I)/2001), Arts. 5 and 7) | Race/ethnic origin, community, language, religion, age, sexual orientation, disability, colour, political or other beliefs, ethnic or national origin, special needs, any ground whatsoever, all rights guaranteed in ECHR and all its protocols, in the International Convention for the Elimination of All forms of Discrimination, in the Convention against Torture and other Forms of Inhumane or Humiliating Treatment, in the International Covenant on Civil and Political Rights and in the Framework Convention on the Protection of National Minorities ⁵²⁴ |
| CZECH REPUBLIC | Public Defender of Rights (Act No. 349/1999 on the Public Defender of Rights, Art. 21(b)) | Sex, race, ethnic origin, sexual orientation, age, disability, religion, belief or other conviction, 'nationality' (in Czech: <i>národnost</i>) |
| DENMARK | Institute for Human Rights – National Human Rights Institute of Denmark (Act No. 553 of 18 June 2012) | Race, ethnic origin, gender, disability |
| | Board of Equal Treatment ⁵²⁵ (Act on the Board of Equal Treatment) | Protected grounds in employment: gender, race, skin colour, religion or belief, political opinion, sexual orientation, age, disability, national origin, social origin, ethnic origin Protected grounds outside employment: gender, disability, race and ethnic origin |

522 The People's Ombudsman is competent for all the grounds covered by the Anti-discrimination Act except those grounds that are the responsibility of a special ombudsman. The ground of disability is covered by the Ombudsman for Persons with Disabilities and the grounds of gender, gender identity and expression and sexual orientation are covered by the Gender Equality Ombudsman. When the victim of discrimination is a child, it falls within the competence of the Ombudsperson for children.

523 The two bodies composing the equality body in Cyprus were created under the 'umbrella' of the Ombudsman. Since 2017 however, these two bodies no longer function in practice.

524 The law on the equality body explicitly set out the following list of grounds: race, community, language, colour, religion, political or other beliefs, ethnic or national origin (which is equated with nationality), special needs, age, sexual orientation, national origin, all rights guaranteed in ECHR and all its protocols (including Article 1(1) of Protocol 12 to the ECHR), in the International Convention for the Elimination of All forms of Discrimination, in the Convention against Torture and other Forms of Inhumane or Humiliating Treatment, in the International Covenant on Civil and Political Rights and in the Framework Convention on the Protection of National Minorities. Other grounds in the table are inferred from other instruments, including the Constitution.

525 The Board of Equal Treatment adjudicates individual complaints of discrimination in the labour market regarding all the grounds mentioned above. For complaints outside the labour market, the Board of Equal Treatment only deals with the grounds of race, ethnic origin or gender. This body exercises tribunal-like functions.

| Country | Relevant specialised body dealing with race/ethnic origin | Grounds explicitly covered by the mandate of the specialised body |
|----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ESTONIA | Commissioner for Gender Equality and Equal Treatment (Equal Treatment Act, Arts. 15-22) | Sex, ethnic origin, race, colour, religion or other beliefs, age, disability and sexual orientation |
| | Chancellor of Justice (Chancellor of Justice Act, Art. 19-35 ⁵²⁶) | Public sector: any ground Private sector: sex, race, ethnic origin, colour, language, origin, religious, political or other belief, property or social status, age, disability, sexual orientation or other ground of discrimination provided for by the law |
| FINLAND | Non-Discrimination Ombudsman (Act of the Non-Discrimination Ombudsman, Section 1) | Origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics. |
| | National Non-Discrimination and Equality Tribunal ⁵²⁶ (Act on National Non-Discrimination and Equality Tribunal) | Gender, gender identity, origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics |
| FRANCE | Defender of Rights (Organic Law no 2011-333 of 29 March 2011 creating the Defender of Rights, Art. 4(3)) | Any ground protected by national law ⁵²⁷ and international conventions ratified by France |
| GERMANY | Federal Anti-discrimination Agency (General Act on Equal Treatment, Sec. 25) | Race or ethnic origin, sex, religion or belief ⁵²⁸ (<i>Weltanschauung</i>), disability, age, sexual identity |
| GREECE | Greek Ombudsman (Law 2477/1997, Art. 1 and Equal Treatment Law 4443/2016, Art. 14) | Racial or ethnic origin, descent, colour, language, religious or other beliefs, disability, chronic illness, age, family or social status, sexual orientation, gender identity or characteristics |
| HUNGARY | Equal Treatment Authority (Act CXXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities; Arts. 8 and 14-17D) | Sex, racial affiliation, colour of skin, nationality (not in the sense of citizenship), belonging to a national or ethnic minority, mother tongue, disability, health condition, religion or belief, political or other opinion, family status, maternity (pregnancy) or paternity, sexual orientation, sexual identity, age, social origin, financial status, part-time nature of employment legal relationship or other legal relationship connected with labour, or determined period thereof, belonging to an interest representation organisation, other situation, attribute or condition of a person or group. |
| ICELAND | Centre for Equality (Act on Equal Treatment irrespective of Race or Ethnic Origin, Art. 5 and Act on Equal Treatment in the Labour Market, Art. 5) | Gender, race, ethnic origin, religion, belief, disability, reduced capacity to work, age, sexual orientation, gender identity, gender expression and gender characteristics |

⁵²⁶ This body exercises tribunal-like functions.

⁵²⁷ In French legislation, the protected grounds are: mores, sexual orientation, sex, pregnancy, gender identity, belonging, whether real or supposed, to an ethnic origin, a nation, a race or a determined religion, physical appearance, last name, family situation, union activities, political and philosophical opinions, age, health, disability, genetic characteristics, loss of autonomy, place of residence, capacity to express oneself in a language other than French, economic vulnerability, refusal to be victim of bullying, banking residence. Grounds covered by national jurisprudence (such as condition of wealth (*fortune*), birth, property, language) are also included.

⁵²⁸ Not for Civil law.

| Country | Relevant specialised body dealing with race/ethnic origin | Grounds explicitly covered by the mandate of the specialised body |
|------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| IRELAND | Irish Human Rights and Equality Commission (Irish Human Rights and Equality Commission Act 2014, Sec. 9 and 44) | Gender, age, race, religion, family status, disability, civil status, sexual orientation, membership of the Traveller community, housing assistance |
| ITALY | National Office against Racial Discrimination UNAR (Legislative Decree No. 215/2003 Implementing Directive 2000/43/EC, Art. 7) | Race, ethnic origin, sex, religion or personal belief, disability, age and sexual orientation |
| LATVIA | Ombudsman (Law on Ombudsman, Art. 11 (2)) | Grounds not specified, hence any ground |
| LIECHTENSTEIN | Association for Human Rights in Liechtenstein (Act on the Association for Human Rights in Liechtenstein, Art.4) | Human Rights ⁵²⁹ |
| LITHUANIA | Equal Opportunities Ombudsperson (Law on Equal Treatment, Arts. 14-30) | Gender, race, nationality, citizenship, origin, age, sexual orientation, disability, ethnic origin, language, social status, religion, belief, convictions, views |
| LUXEMBOURG | Centre for Equal Treatment (General Anti-Discrimination Law of 28 November 2006, Art. 8) | Race, ethnic origin, religion or belief, disability, age, gender, sexual orientation, nationality |
| MALTA | National Commission for the Promotion of Equality for Men and Women ⁵³⁰ (Equality of Men and Women Act, Art. 11) | Sex, family responsibilities, sexual orientation, age, religion or belief, racial and ethnic origin, gender identity, gender expression, sex characteristics, actual or potential pregnancy, childbirth |
| MONTENEGRO | Protector of Human Rights and Freedoms (Law on the Protector of Human Rights and Freedoms, Art. 27(1) and Law on the Prohibition of Discrimination, Art.21.) | Race, skin colour, national affiliation, social or ethnic origin, affiliation to the minority nation or minority national community, language, religion or belief, political or other opinion, sex, sex change, gender identity, sexual orientation and/or intersex characteristics, health conditions, disability, age, material status, marital or family status, membership or assumed membership of a group, political party or other organisation, other personal characteristics |
| NETHERLANDS | Netherlands Institute for Human Rights (Netherlands Institute for Human Rights Act, Arts. 9-13) | Race, religion and belief, political opinion, hetero- or homosexual orientation, sex, nationality, civil (or marital) status, disability, age, working time and type of labour contract |
| | Local anti-discrimination bureaux (NGO Art.1) (Local Anti-discrimination Bureaux Act, Art. 1) | Race, religion and belief, political opinion, hetero- or homosexual orientation, sex, nationality, civil (or marital) status, disability, age |
| NORTH MACEDONIA | Commission for Protection against Discrimination (Law on Prevention and Protection Against Discrimination, Arts. 16-24) | Sex, race, colour, gender, belonging to a marginalised group, ethnic affiliation, language, citizenship, social origin, religion or religious belief, other beliefs, education, political belonging, personal or social status, 'mental or physical impairment', age, family or marital status, property status, health condition, any other ground prescribed by law or ratified international treaty. |

529 The Act on the Association for Human Rights in Liechtenstein does not provide a list of grounds. The mandate is generally held and refers to human rights. It can therefore be assumed that the 'main grounds', i.e. race, language, national origin, ethnicity, religion or belief, gender, disability, age or sexual orientation, are covered by the mandate of the Association.

530 In practice, the commission is generally referred to as the National Commission for the Promotion of Equality.

| Country | Relevant specialised body dealing with race/ethnic origin | Grounds explicitly covered by the mandate of the specialised body |
|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| NORWAY | Equality and Anti-discrimination Ombud (Act on the Equality and Anti-discrimination Ombud and the Anti-discrimination Tribunal, Arts. 1 and 5) | Gender, pregnancy, leave in connection with childbirth or adoption, care responsibilities, ethnicity, religion, belief, disability, sexual orientation, gender identity, gender expression, age, membership of a trade union, political affiliation, or combination of these factors. |
| | Equality and Anti-discrimination Tribunal (Act on the Equality and Anti-discrimination Ombud and the Equality and Anti-discrimination Tribunal, Art. 1) ⁵³¹ | Gender, pregnancy, leave in connection with childbirth or adoption, care responsibilities, ethnicity, religion, belief, disability, sexual orientation, gender identity, gender expression, age, membership of a trade union, political affiliation, or combination of these factors. |
| POLAND | Commissioner for Human Rights (‘Ombudsman’) (Act on the Commissioner for Human Rights, Art. 1) | Grounds not specified, hence any ground |
| PORTUGAL | High Commission for Migrations ⁵³² (Decree-law 31/2014, Art. 1) | Race and ethnic origin, skin colour, nationality, religion, ancestry and territory of origin ⁵³³ |
| ROMANIA | National Council for Combating Discrimination (Ordinance (GO) 137/2000 regarding the prevention and the punishment of all forms of discrimination, Art. 16 and following) | Race, nationality, ethnic origin, language, religion, social status, beliefs, sex, sexual orientation, age, disability, non-contagious chronic disease, HIV positive status, belonging to a disadvantaged group, any other criterion |
| SERBIA | Commissioner for the Protection of Equality (Law on Prohibition of Discrimination Art. 1(2)) | Race, skin colour, ancestry, citizenship, language, religious or political beliefs, gender, gender identity, sexual orientation, financial position, birth, genetic characteristics, health, disability, marital and family status, previous convictions, age, appearance, membership of political, trade union and other organisations. |
| SLOVAKIA | Slovak National Centre for Human Rights (Act on the Establishment of the Slovak National Centre for Human Rights, Sec. 1, paras 2a, e, f, g, h and Sec. 1 (3) and (4)) | Sex, religion or belief, race, affiliation to a nationality (<i>národnosť</i>) or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender, unfavourable health condition, family duties, membership of or involvement in a political party or a political movement, a trade union or another association, the reason of reporting criminality or other anti-social activity, or other status |
| SLOVENIA | Advocate of the Principle of Equality (Protection Against Discrimination Act, Arts. 19-32) | Gender, language, ethnicity, race, religion or belief, disability, age, sexual orientation, gender identity, gender expression, social standing, economic situation, education, any other personal characteristic |
| SPAIN | Council for the Elimination of Racial or Ethnic Discrimination (Law on Fiscal, Administrative and Social Measures, Art. 33) | Racial and ethnic origin |

531 This body exercises tribunal-like functions.

532 Within the High Commission for Migrations, the Commission for Equality and Against Racial Discrimination exercises the equality body mandate, while the High Commission has a broader mandate.

533 The High Commission for Migrations has a mandate to deal with skin colour, nationality, ethnic origin and religion. Within this body, the Commission on Equality and Against Racial Discrimination has a mandate to deal with the grounds of race, ethnic origin, colour, nationality, ancestry and territory of origin.

| Country | Relevant specialised body dealing with race/ethnic origin | Grounds explicitly covered by the mandate of the specialised body |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| SWEDEN | Equality Ombudsman (The entire Equality Ombudsman Act) | Sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation, age |
| TURKEY | The Human Rights and Equality Institution (Law on the Human Rights and Equality Institution of Turkey, Arts. 8-14) | Race and ethnic origin, sex, colour, language, religion, belief, denomination, philosophical and political opinion, wealth, birth, marital status, health, disability and age |
| UNITED KINGDOM | Great Britain: Equality and Human Rights Commission (Equality Act 2006, Sec. 1-43) | Age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. |
| | Northern Ireland: Equality Commission for Northern Ireland (Northern Ireland Act, Sec. 73-74) | Age, disability, race, religion and political opinion, sex and sexual orientation. |

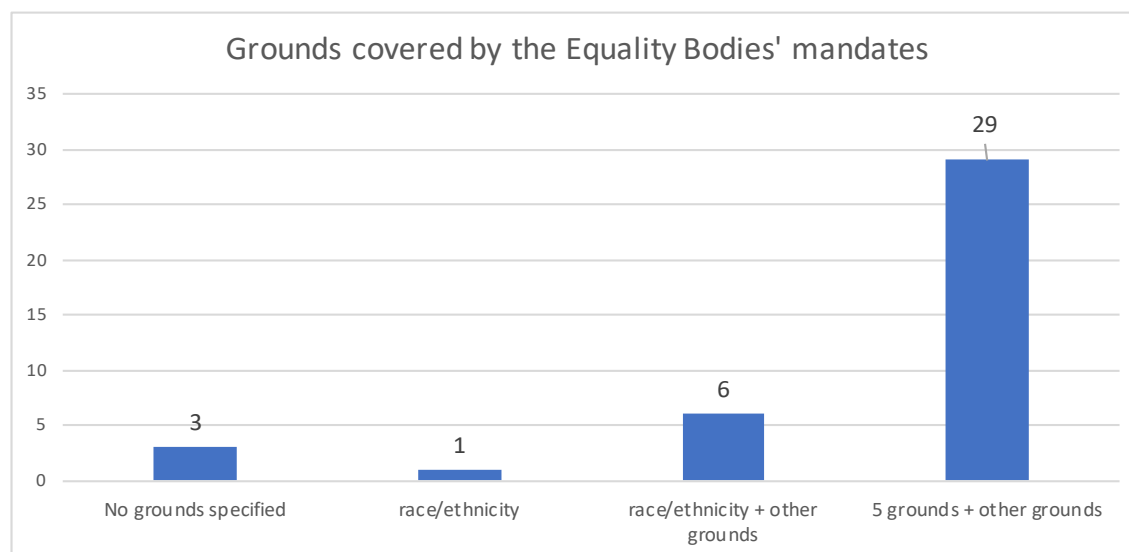
All 36 countries included in this report have a specialised body that at least deals with race and ethnicity. Three countries (**Estonia**, the **Netherlands** and the **United Kingdom**) have two specialised bodies. In **Cyprus**, there is only one specialised body, which is officially divided into two departments with distinct duties: the Anti-Discrimination Authority (dealing with fields beyond employment) and the Equality Authority (dealing only with employment issues). However, since the current ombudsman took office in May 2017, the two departments ceased to function. Since then, all complaints are handled in the office's capacity as ombudsman, drawing on administrative law rather than equality law. This makes a total of 39 bodies relevant for the purposes of examining the competencies according to Article 13 of the Racial Equality Directive.

In **Austria**, **Denmark**, **Finland** and **Norway** there is another institution in addition to the equality body, exercising tribunal-like functions, namely the Equal Treatment Commission in **Austria**, the Board of Equal Treatment in **Denmark**, the National Non-Discrimination and Equality Tribunal in **Finland** and the Equality and Anti-discrimination Tribunal in **Norway**.⁵³⁴ These institutions are included in the table above, but as their tasks do not fall within the competences of equality bodies as stipulated by the directive, they are not counted for the purposes of the analysis regarding the grounds covered and the competencies of the equality bodies. Moreover, in the **Netherlands**, there are the anti-discrimination bureaux at local level that have the task of assisting victims of discrimination and monitoring their situation. In **Estonia**, the Chancellor of Justice has some obligations relating to the promotion of the principles of equality and non-discrimination.

Of the 39 relevant bodies, the **Spanish** specialised body is the only one dealing exclusively with race and ethnicity. In **Austria**, **Croatia**, **Denmark**, **Malta**, **Portugal** and **Turkey** the grounds protected include race/ethnicity and one or more other grounds that are not necessarily identical to the other four protected by the Employment Equality Directive. In **Austria**, **Croatia** and **Malta** the ground of disability is covered by separate structures. It is interesting to note that some countries have chosen an open-ended list of grounds, for example **Albania**, **Finland**, **Hungary**, **Montenegro**, **Romania** and **Slovenia**. **North Macedonia** has opted for a list of grounds that does not mention sexual orientation but does specify any other ground prescribed by law or ratified international treaty. Similar provisions, referring to any other ground as prescribed by law, apply in **Bulgaria**, **Estonia** and **France**. In 26 countries, 29 bodies

⁵³⁴ For the purposes of this report, only one specialised body has been counted on the national level for these five countries. Similarly, in **Iceland** the mandate of the quasi-judicial Equality Complaints Committee was extended in 2018 to cover the non-discrimination grounds in addition to gender. As of the cut-off date of this report however, no cases had yet been dealt with regarding these grounds, and this body is therefore not included in the present analysis.

deal with the five grounds protected by the two anti-discrimination directives and other grounds.⁵³⁵ In **Liechtenstein**,⁵³⁶ **Latvia** and **Poland** no grounds are specified under the competencies of the body.



5.2 Competencies of equality bodies

Overall, the majority of countries comply with the requirements of the Racial Equality Directive and have provided the relevant equality bodies with a mandate to exercise all four competencies listed under Article 13. However, this does not mean that all of them exercise the full range of their competencies in practice. Priorities and focus points may change over time, but budget and staff concerns can also impact the effectiveness of equality bodies.

In terms of the specific powers of specialised bodies, it is notable that the relevant bodies support victims of discrimination in a variety of ways. Some specialised bodies provide support in taking legal action – for example the **Belgian, British, Bulgarian, Croatian, Finnish, Hungarian, Irish, Italian, Montenegrin, Northern Irish, Serbian** and **Swedish** bodies. Others give their opinion on complaints submitted to them, e.g. the **Austrian** Equal Treatment Commission, the **Bulgarian** Protection Against Discrimination Commission, the **Netherlands** Institute for Human Rights, the **Danish** Board of Equal Treatment, the **Latvian** Ombudsman's Office, the **Greek** Ombudsman, the **Norwegian** Equality and Non-discrimination Tribunal and the **Slovenian** Advocate of the Principle of Equality. Such proceedings do not preclude the victim from subsequently taking legal action before the courts with a view to obtaining a binding remedy. Furthermore, in a number of countries, the specialised body has legal standing to bring discrimination complaints on behalf and/or in support of the victims. This is the case for instance of the **Slovak** National Centre for Human Rights which may bring complaints on behalf or not of identified victims and join civil court proceedings as an intervening party. Some specialised bodies also have legal standing to initiate strategic litigation, such as the cases that have been initiated by the **Serbian** equality body concerning Roma discrimination.

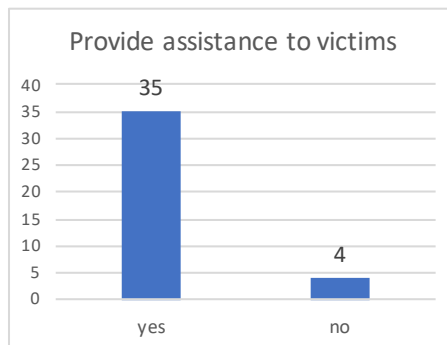
⁵³⁵ The 29 bodies are Albania, Belgium, Bulgaria, Cyprus, the Czech Republic, Estonia (both the Commissioner for Gender Equality and Equal Treatment and the Chancellor of Justice), Finland, France, Germany, Greece, Hungary (Equal Treatment Authority), Iceland, Ireland, Italy, Lithuania, Luxembourg, Montenegro, the Netherlands (both the Netherlands Institute for Human Rights and the NGO Art. 1), North Macedonia, Norway, Romania, Serbia, Slovakia, Slovenia, Sweden and the United Kingdom (the Equality and Human Rights Commission and the Equality and Human Rights Commission for Northern Ireland).

⁵³⁶ The Act on the Association for Human Rights does not list explicitly the grounds, but says in a more general way that the purpose of the association is the protection and promotion of human rights in Liechtenstein.

Article 13, Racial Equality Directive:

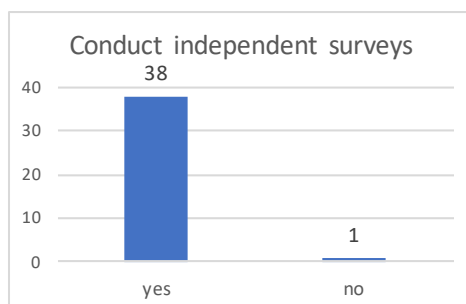
‘Member States shall ensure that the competences of these bodies include:

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



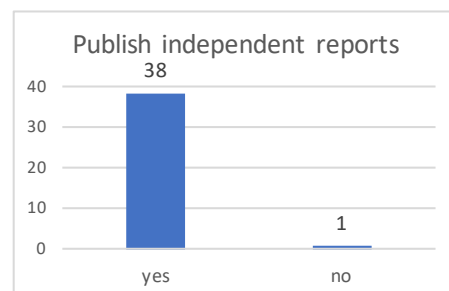
Out of the 39 specialised bodies, 35 have a mandate to provide independent assistance to victims and four do not. The countries where the relevant bodies do not officially have a mandate to provide such assistance include: **Estonia** (the Chancellor of Justice, which nevertheless does so in practice), **Iceland** (the Centre for Equality),⁵³⁷ **Lithuania** and the **Netherlands** (the Netherlands Institute for Human Rights). In **Poland**, the mandate of the Ombud is restricted with regards to providing assistance to victims of discrimination when the alleged discriminator is another private party. In such cases, the Ombud can only provide information on the victim's rights

and possible means of action, without intervening in any way. The mandate of the **Lithuanian** Ombudsperson covers the provision of ‘independent consultations’, which could eventually be interpreted to include some form of independent assistance to victims. In practice, to some extent the Ombudsperson advises applicants on available judicial and administrative procedures to pursue justice. Similarly, the **Cypriot** body has a mandate to issue reports containing recommendations in response to victims' complaints, which could be interpreted as ‘independent assistance’. In **Spain**, it is worth noting that the Network of Centres of Assistance for Victims of Racial or Ethnic Discrimination handles cases for possible victims of discrimination and involves NGOs that follow a formal protocol of the Spanish equality body.



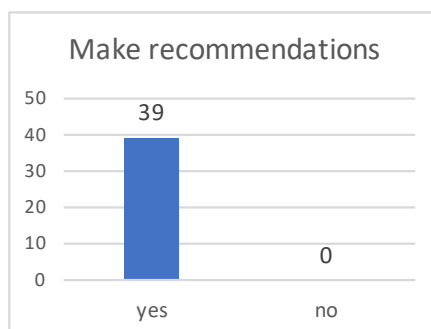
Of the 39 specialised bodies, 38 have a mandate to conduct independent surveys while only the **Estonian** Chancellor of Justice does not.

Almost all specialised bodies have a mandate to publish independent reports, with the exception of the **Estonian** Chancellor of Justice.⁵³⁸ However, the independent nature of the surveys and reports published by the equality bodies is often questionable in practice (see below for more on the independence of equality bodies).



537 The Icelandic Centre for Equality has a mandate to mediate cases of discrimination, which could be seen as a form of assistance to victims.

538 Although the Chancellor of Justice does not have a mandate to publish independent reports, it does draft annual reports which may include information about complaints and related opinions on equality and discrimination-related issues.



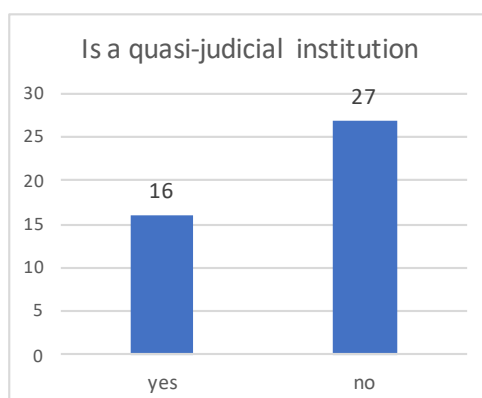
Specialised bodies should also have a mandate to make recommendations on discrimination issues. This is the only one of the four duties set out by the directive for which all 39 specialised bodies have been mandated.

Extension of the mandate of the Icelandic Centre for (Gender) Equality to cover all grounds

Since 1 September 2018, the Centre for Equality (formerly the Centre for Gender Equality) has been charged with the implementation of the two equality acts adopted in 2018 (the Racial Equality Act and the Labour Equality Act) as well as the pre-existing Gender Equality Act. The grounds covered by the extended mandate are race or ethnic origin, religion or belief, disability, reduced capacity to work, age, sexual orientation and gender identity, gender expression and gender characteristics. Although the Centre's mandate includes most of the competences laid down by the Racial Equality Directive, the legislation does not explicitly set out that the Centre shall provide independent assistance to victims.

As the Centre has traditionally been underfunded and previously only had expertise in gender equality, it remains to be seen how the extended mandate will be exercised. It is noteworthy that the explanatory notes to the 2018 equality acts deemed the additional costs to the state budget stemming from the new legislation to be insignificant. This would appear to imply that the additional resources that are necessary for the Centre to adequately take on its new tasks are not readily available.

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

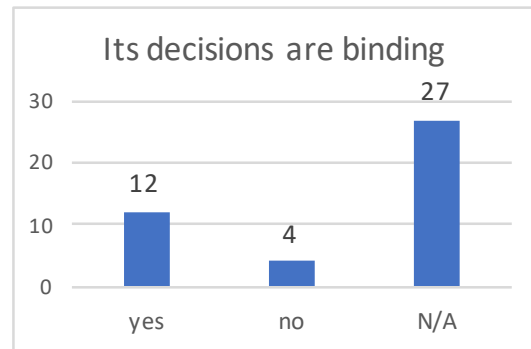


Although this is not required by the Racial Equality Directive, some specialised bodies are also quasi-judicial institutions, the decisions of which are ultimately binding. Tribunal-like, quasi-judicial bodies exist parallel to the specialised bodies in **Austria**, **Denmark**, **Finland** and **Norway** and they are also included in the analysis of this section, making a total of 43 bodies. Only 16 of these 43 bodies are quasi-judicial institutions: in **Albania** (the Commissioner for Protection from Discrimination), **Austria** (the Equal Treatment Commission), **Bulgaria** (the Protection Against Discrimination Commission), **Cyprus** (the Ombudsman), **Denmark** (the Board of Equal Treatment), **Estonia** (the Chancellor of Justice),⁵³⁹ **Hungary** (the Equal Treatment

Authority), **Lithuania** (the Equal Opportunities Ombudsperson), the **Netherlands** (the Netherlands Institute for Human Rights), **North Macedonia** (the Commission for Protection against Discrimination), **Norway** (the Equality and Anti-Discrimination Tribunal), **Romania** (the National Council on Combating Discrimination), **Serbia** (the Commissioner for the Protection of Equality) and **Slovenia** (the Advocate of the Principle of Equality). In **Finland**, the National Non-Discrimination and Equality Body is an independent and impartial judicial body whose decisions are binding and can be appealed against. In addition, the **Slovak** National Centre for Human Rights is considered to be a quasi-judicial institution, although that is a matter of interpretation.

⁵³⁹ Only in conciliation procedures.

Among these 16 bodies, 12 can issue binding decisions.⁵⁴⁰ This is the case for the **Albanian, Bulgarian, Cypriot,⁵⁴¹ Danish,⁵⁴² Estonian,⁵⁴³ Finnish, Hungarian, Lithuanian,⁵⁴⁴ Norwegian, Romanian, Serbian** and **Slovenian** bodies. Nevertheless, in the **Netherlands**, the decisions of the Netherlands Institute for Human Rights are very much respected by both parties due to the long experience, expertise and practice of the equality body.⁵⁴⁵ In **Norway**, the Equality and Anti-Discrimination Tribunal's decisions are binding only in relation to private parties, but not in relation to public entities. In **Slovenia**, the equality body has the power to issue binding decisions, but it lacks the instruments to implement them. In **Serbia**, the equality body's decisions are binding, but perpetrators who fail to respect them cannot be punished.



Whether or not the specialised bodies are quasi-judicial institutions, a large majority of them deal with complaints of discrimination brought to them by victims for attention or advice. A massive amount of information is consequently available to these bodies regarding who is or feels discriminated against and what grounds or fields are at issue. It is therefore of interest to know whether they record the number of complaints received and/or dealt with, or the decisions taken, whether they have data on at least the ground of discrimination concerned in complaints/decisions and also whether such data are available to the public through the body's website or annual report. Keeping such data and making it available to the public is extremely important both for gaining a better understanding of the issues at stake in fighting discrimination as a matter of societal information but also as a clear signal indicating what is or is not lawful according to national anti-discrimination legislation.

Some 39 bodies in 32 countries officially keep a record of complaints/decisions. The details and the accuracy of the information provided by these bodies regarding the number of complaints/decisions can differ. However, the data is usually broken down at least by grounds of discrimination and the information often also indicates the field of discrimination. However, no such data are collected in **Ireland, Spain** or in the **United Kingdom**, as none of these bodies receives and processes complaints as such.⁵⁴⁶ In the **Netherlands**, the NIHR monitors the follow-up of its opinions and reports in its annual reports and in its more detailed annual 'Monitor Discrimination Cases'.⁵⁴⁷ In **Finland**, the Non-Discrimination Ombudsman registers the total number of inquiries and complaints of discrimination it receives every year. The data are also available to the public through yearly reports published on the website of the Ombudsman.⁵⁴⁸ It remains to be seen whether the **Icelandic** Centre for Equality, the mandate of which was recently extended to cover grounds other than gender, will register complaints and/or publish data.

540 In addition, although the Portuguese High Commission for Migration is not a quasi-judicial body, it can issue binding decisions and impose administrative sanctions. Similarly, the Turkish Human Rights and Equality Institution can issue binding decisions and impose fines, but it does not do so in practice.

541 In practice, the Cypriot equality body does not issue decisions but prefers recommendations or mediation. Its recommendations are generally taken seriously into consideration by the private and public sector with the exception of the police and immigration authorities, which have the lowest rate of compliance.

542 The Board of Equal Treatment.

543 The Chancellor of Justice only in conciliation procedures.

544 The Equal Opportunities Ombudsperson can only issue binding decisions to stop discriminatory advertisement campaigns. All other decisions by the Ombudsperson are non-binding.

545 Further information regarding sanctions imposed by equality bodies can be found in section 4.5 above.

546 In Spain however, data is collected and made public on the number of complaints handled by the Network of assistance centres. In Ireland, data is published on the complaints where the Irish Human Rights and Equality Commission has acted, i.e. where it has provided assistance to victims.

547 For the 2017 report see: <https://www.mensenrechten.nl/en/publicatie/38427>.

548 See: <https://www.oikeusasiamies.fi/en>.

In principle, all the bodies that keep such records provide some kind of public information on complaints or decisions.⁵⁴⁹ The sources of information can vary: usually they are available through the body's website and/or in its annual reports and also upon request by individuals. In **Germany** however, although the equality body keeps a record of the complaints and decisions by ground, field and type of discrimination, these data are only partially, rather than systematically, available to the public. In **Latvia**, comprehensive data are only provided upon request.

Some specialised bodies have specific responsibilities or powers that are not necessarily listed in Article 13(2) of the Racial Equality Directive.

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

- The **French** Defender of Rights can submit its observations on cases under adjudication before the criminal, civil and administrative courts, on its own initiative or upon the court's request.
- In the case of an investigation of a complaint which results in a finding of direct intentional discrimination (a criminal offence), the **French** Defender of Rights can propose a *transaction pénale* – a kind of negotiated criminal sanction – to a perpetrator, who can either accept or reject it. This could be a fine or publication (for instance a press release). If the proposed negotiated criminal sanction is rejected, or having been accepted there is a subsequent failure to comply with it, the Defender of Rights can initiate a criminal prosecution, in place of the public prosecutor, before a criminal court.
- The **Netherlands** Institute for Human Rights has the power to advise organisations (including governmental bodies) whether their employment practices contravene non-discrimination law.
- The **Hungarian** Equal Treatment Authority may initiate an *actio popularis* with a view to protecting the rights of persons and groups whose rights have been violated.
- In **Sweden**, when the Equality Ombudsman represents a claimant victim of discrimination in court, it may order the alleged discriminator to provide information, allow access to the workplace or enter into discussions with the Ombudsman, subject to a financial penalty.
- In **Estonia**, the Commissioner for Gender Equality and Equal Treatment and the Chancellor of Justice have the power to 'analyse the effect of the implementation of legislation to the condition of the members of the society'.
- In **Austria**, the National Equality Body can initiate administrative and penal proceedings before local administrative departments regarding the duty to advertise jobs and housing without discrimination. The National Equality Body is also involved in the assessment process of proposed legislation and in awareness raising activities through workshops and events.
- In **Finland**, the Ombudsman can act as the legal assistant for the victim in the court. The Ombudsman can also promote information exchange, education and training on equal treatment and non-discrimination. It is often invited to give lectures and presentations on its work and is regularly consulted by the ministries when preparing legislation.
- In **Ireland**, the Irish Human Rights and Equality Commission has the competence to prepare draft codes of practice for the elimination of discrimination and the promotion of equality of opportunity. The equality body can also undertake, sponsor, commission or provide financial or other assistance for educational activities. Furthermore, it may serve a 'substantive notice' following an equality review or the preparation of an equality action plan. Where it appears to the body that there is failure to comply with an equality action plan the substantive notice may outline steps that should be taken to implement the plan. Non-compliance with the notice may result in prosecution for a criminal offence.

⁵⁴⁹ It should be noted however that the Cypriot body is no longer publishing separate data regarding non-discrimination cases, as all its activities are now exercised under the umbrella of the Ombudsman mandate rather than in the specific role of equality body.

By contrast, some concerns can be highlighted in relation to the equality bodies in particular countries. There is concern for instance that some specialised bodies are too close to Government, thereby jeopardising the independence of their work. For instance, the independence of the **Portuguese** equality body is not stipulated in law, and it may be argued that it cannot exercise its competences independently due to its close links with the Prime Minister under whose authority its duties are carried out. Similarly, the **Italian** National Office against Racial Discrimination operates as a ministerial department and it is fully dependent on the Department for Equal Opportunities and reports to the Prime Minister. Moreover, there is a general lack of interest regarding the equality body and bodies dealing with human rights. There is an increasing hostility against the equality body as confirmed from the recurring questions asked by Members of Parliament to the Government in order to close UNAR or reduce its remit only to race and ethnic origin as required by Legislative Decree No. 215/2003. The **Spanish** Council for the Elimination of Racial or Ethnic Discrimination is attached to the Ministry of the Presidency, Relations with Parliament and Equality, although it is not part of the ministry's hierarchical structure. However, representatives of all ministries with responsibilities in the areas referred to in Article 3(1) of the Racial Equality Directive have a seat on the council.⁵⁵⁰ Since 2014, the act defining the functions of the council has stated that it must exercise its functions 'with independence', although it is difficult to assess this *de facto*, given the large number of Government representatives. In **Slovakia**, there have been concerns over the independence of the equality body and in 2018, the Ministry of Justice published a draft amendment to the legal framework for the Slovak National Centre for Human Rights, to ensure that the Centre fully complies with the Paris principles. There has been an escalating concern on the part of human rights activists and civil society representatives about the independence of the Commission for Protection against Discrimination (CPAD) in **North Macedonia**, following the most recent appointment of members to the Commission.⁵⁵¹ In **Poland**, the Ombud has been facing increasing challenges as some political parties as well as a prominent legal think tank have attacked the Ombud's activities in support of the LGBTI community. In **Belgium**, in November 2017, the Minister for Equal Opportunities of Flanders asked for an independent study on Unia's functioning and neutrality, claiming that the equality body is not impartial.⁵⁵² The equality body refused to abide by a request from the minister to have direct access to its complaints database, referring to the fact that it is under the control of the Parliament and not the Government.⁵⁵³ In **Cyprus**, the independence of the equality body is undermined by the fact that the ombudsman is selected by the executive. The appointment in 2017 of a new ombudsman with no prior relevant experience and qualifications in non-discrimination law has led to a decrease in all the equality body's main activities. Since then, no equality reports have been issued and all the complaints received have been examined without citing equality law. As a result, the number of complaints has dropped significantly, as vulnerable groups and NGOs have lost faith in the institution. In **Bulgaria**, although both Parliament and the President adopted rules in 2017 on the nomination of candidates for the equality body, the President's decision-making process remains discretionary and non-transparent under these rules. In **Poland**, there is evidence that the budget cutbacks on the equality body are disproportionate compared to other public bodies and may undermine the work of the body.

Independence, but also effectiveness is greatly affected by the available budget for equality bodies. In the past, the budget cuts following the economic crisis have had an impact, for instance, in **Greece, Ireland, Hungary, Latvia** and the **United Kingdom**. In the **United Kingdom**, a 2017 report published by the Equality and Human Rights Commission, measured the equality impact of the Government's policy of austerity. The findings show that individuals who share certain protected characteristics will be significantly

550 Spain, Royal Decree 1262/2007 (modified by Royal Decree 1044/2009) details the composition of the Council.

551 For more details, please consult the 2019 country report on the non-discrimination directives for the Republic of North Macedonia, notably Section 7.d.

552 Sudinfo (2017), 'Unia: la majorité flamande veut une étude indépendante, après une nouvelle polémique avec Homans', 17 November 2017, available at : <http://www.sudinfo.be/1990792/article/2017-11-17/unia-la-majorite-flamande-veut-une-etude-independante-apres-une-nouvelle-polemie>.

553 Interview with Patrick Charlier, co-Director of Unia, 24 January 2018.

adversely impacted by reforms to the tax and welfare system.⁵⁵⁴ In **Cyprus**, the national equality body has been constantly under-equipped and understaffed since its creation. In **Romania**, although the budget of the equality body has been increasing, out of the 89 posts that are needed only 64 are actually occupied.⁵⁵⁵ In **Austria**, the Ombuds at the National Equality Body do not consider the resources they have adequate for fulfilling their mandate. In **Finland**, the resources available to the Ombudsman have remained at the same level despite the dramatic rise in complaints. As a consequence, the Ombudsman has fewer resources to investigate the increasing number of discrimination cases. Finally, in **Iceland**, the mandate of the Centre for Equality was significantly expanded in 2018 as it is now competent to deal with not only gender but also the five grounds covered by the EU non-discrimination directives as well as some additional grounds. It is cause for concern that the resources required to develop the expertise and activities of the Centre have not yet been provided.

554 Equality and Human Rights Commission (2017), *Impact of tax and welfare reforms between 2010 and 2017: interim report*, 17 November 2017. Available at: <https://www.equalityhumanrights.com/en/publication-download/impact-tax-and-welfare-reforms-between-2010-and-2017-interim-report>.

555 National Council for Combating Discrimination (2019), *Raportul de activitate al Consiliului Național pentru Combaterea Discriminării 2018* (2018 annual report).

6 Implementation and compliance

6.1 Dissemination of information and social and civil dialogue

Article 10, Racial Equality Directive; Article 12, Employment Equality Directive

'Dissemination of information

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

Article 11, Racial Equality Directive; Article 13, Employment Equality Directive

'Social dialogue

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

2. Where consistent with national traditions and practice, Member States shall encourage the two sides of the industry without prejudice to their autonomy to conclude, at the appropriate level, agreements laying down anti-discrimination rules in the fields referred to in Article 3 which fall within the scope of collective bargaining. These agreements shall respect the minimum requirements laid down by this Directive and the relevant national implementing measures.'

Article 12, Racial Equality Directive; Article 14, Employment Equality Directive

'Dialogue with non-governmental organisations

Member States shall encourage dialogue with appropriate non-governmental organisations which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on grounds of [racial and ethnic origin, religion or belief, disability, age or sexual orientation] with a view to promoting the principle of equal treatment.'

Of all the directives' articles, it is those on the dissemination of information and social and civil dialogue that have seen the least formal implementation by Member States and candidate countries and probably the most varied response. To some extent, this is due to the formulation of these articles and the interpretation by some Governments that they are only bound to take some steps towards achieving the objectives of these articles. The provisions seem to do not seem to be very well implemented in at least **Bulgaria, Cyprus, the Czech Republic, Luxembourg, Slovenia, and Turkey**, and, with particular regard to Directive 2000/78/EC, **Italy**. More generally, it seems that the duty to disseminate information and establish mechanisms for dialogue is not a high priority at the national level.

6.1.1 Dissemination of information and awareness-raising

In general, activities organised by the Member States and candidate countries aimed at disseminating information about the anti-discrimination legal framework and available means of redress are very rare. In some countries, such activities are organised by Government ministries, through for instance the publication of basic information on the principle of equal treatment or information campaigns through the media and the organisation of seminars (for example in **Germany, Malta and Sweden**). In **Slovakia**, the Ministry of Labour, Social Affairs and Family runs a website that provides a wide range of information for

the general public concerning discrimination.⁵⁵⁶ In **Latvia**, the Society Integration Fund runs a 'Promoting diversity' campaign (2018-2022) to raise awareness and provide training, in particular for employers.

In most countries however, the dissemination of information about anti-discrimination law is mainly carried out by the national equality body. Therefore, the mandates of specialised bodies in most countries include awareness-raising activities, for instance in **Albania, Denmark, Estonia, France, Germany, Greece, Lithuania, Malta**, the **Netherlands, Norway, Romania, Slovenia, Sweden** and the **United Kingdom**. The **Romanian** National Council on Combating Discrimination has carried out national awareness-raising campaigns, cultural events, summer schools, courses and training, round tables discussing public policies, and affirmative measures targeting children, students, teachers, civil servants, police officers, gendarmes, judges, lawyers, NGO representatives, medical doctors and healthcare workers. In **Greece**, the Ombudsman published various pieces of information material in 2018 to raise awareness of the legal framework on discrimination and presented them at a press conference. The **Serbian** Commissioner for Protection of Equality publishes brochures and handbooks for different professionals and the wider public to inform them about discrimination and to explain the available remedies if discrimination takes place. It actively works on the visibility of the institution, appears in the media and organises a moot court for law students. In **France**, in 2017, the Defender of Rights published a guide to provide employers with a general framework for the implementation of the duty to make reasonable accommodations.⁵⁵⁷ The guide clarifies the scope of the obligation, its constraints and interaction with other applicable legal provisions. Where the equality body only has powers relating to race and ethnic origin however, other arrangements must be made for the grounds of religion and belief, age, disability and sexual orientation. This is a shortcoming for example in **Italy**, where the particular measures related to grounds other than racial or ethnic origin are almost non-existent, despite the creation in 2018 of a consultative committee on LGBT issues.⁵⁵⁸

In **Poland**, the Office of the Government Plenipotentiary for Equal Treatment has a mandate to promote and disseminate issues of equal treatment, although its activities have decreased in this regard since it was merged with the Office of the Plenipotentiary for Civil Society in 2016.⁵⁵⁹

A small number of Member States, including **Poland** and **Portugal**, have included in their legislation an obligation on employers to inform employees of discrimination laws. In **Poland**, the National Labour Inspectorate is responsible for monitoring the implementation of the obligation on employers. In **France**, the Law on equality and citizenship of 2017 has introduced an obligation on all hiring committees of organisations of more than 300 employees to undertake training to correct discriminatory biases and implement transparent processes.⁵⁶⁰

However, in the vast majority of countries, serious concerns still persist around perception and awareness, as individuals are often not informed of their rights to protection against discrimination and of protection mechanisms.

⁵⁵⁶ The website is available in Slovak at <http://www.gender.gov.sk/diskriminacia/>.

⁵⁵⁷ Défenseur des Droits (2017), *Emploi des personnes en situation de handicap et aménagement raisonnable : L'obligation d'aménagement raisonnable comme garantie de l'égalité de traitement dans l'emploi*, December 2017. Available at : https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/guide_-_emploi_des_personnes_en_situation_de_handicap_et_aménagement_raisonnable.pdf.

⁵⁵⁸ Italy, Decree establishing the permanent consultative committee for the promotion of rights and the protection of LGBT people, 18.09.2018, see: <http://www.unar.it/bandi/costituzione-del-tavolo-di-consultazione-permanente-per-la-promozione-dei-diritti-e-la-tutela-delle-persone-lgbt/>.

⁵⁵⁹ Poland, Regulation of 5 January 2016, announced on 7 January 2016.

⁵⁶⁰ France, Law No. 2017- 86 of 27 January 2017 on equality and citizenship, Art. 61 bis. Available at: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000033934948&dateTexte=20180831>.

6.1.2 Social and civil dialogue

Few countries have put in place permanent structures specifically for dialogue with civil society and the social partners on equality issues. For instance, in **Slovakia**, the Council of the Government of the Slovak Republic for Human Rights, National Minorities and Gender Equality was set up in 2010 as a permanent expert, coordinating and consultative advisory body to the Government.⁵⁶¹ Similarly, **Slovenian** law requires the Government and competent ministries to co-operate with NGOs that are active in the field of equal treatment and with the social partners.⁵⁶² In **Belgium**, a specific taskforce has operated within the Federal Public Service (Ministry) of Employment since July 2001, with the active cooperation of the equality body Unia, in order to establish more systematic links with the social partners. In **France**, the National Consultative Commission on Human Rights reports to the Prime Minister and is composed of representatives of all the major human rights and anti-racism NGOs, trade unions and branches of the public sector. It is consulted on all legislative reforms affecting human rights and provides advice and recommendations to the Government. In 2012, the **Croatian** Ombudsman's Office signed cooperation agreements with five independent NGOs, making them the contact points of the Ombudsman's Office at regional level. In 2017, the agreement was extended to 11 civil society organisations selected as members of the new anti-discrimination contact point network. The network aims to exchange information and plan joint initiatives to combat inequality and promote equal treatment. In **Finland**, following the reform of anti-discrimination legislation, an Advisory Board on Non-Discrimination was established⁵⁶³ in January 2016 for a three-year period to facilitate communication and dialogue, including key ministries, social partners and NGOs representing all grounds of discrimination in the Ombudsman's sphere of activity. In **Ireland**, the equality body fosters dialogue with NGOs in implementing its mandate, which is underpinned by several statutory provisions that enable it to consult with 'relevant agencies and civil society'. In **Greece**, the anti-discrimination legislation set up the National Council against Racism and Intolerance, which includes NGOs, the Ombudsman and the National Human Rights Commission, to ensure better dialogue in the formulation of the national strategy to combat racism.⁵⁶⁴

There appear to be more instances of structured dialogue for disability than for the other grounds of discrimination. The **Latvian** National Council for the Affairs of Disabled Persons brings together representatives of NGOs and state institutions to promote the full integration of disabled people in political, economic and social life based on the principle of equality. In **Spain**, structures for dialogue include the National Disability Council, which represents disabled people's associations of various kinds. Its functions include issuing reports on draft regulations on equal opportunities, non-discrimination and universal accessibility. The **French** Disability Act of 2005 created a National Consultative Council of Disabled Persons as well as local counterparts, which are competent for all decisions relating to the support of disabled people. The same law creates an obligation on the social partners to hold annual negotiations on measures necessary for the professional integration of people with disabilities.

Generating dialogue with social partners and civil society is also often the role of the specialised equality bodies. This is the case for the **Greek** Ombudsman, the **Spanish** Council for the Elimination of Racial or Ethnic Discrimination and the **Belgian** Unia. In 2016, Unia launched an awareness-raising initiative, which offers free online training on anti-discrimination law, providing employers with practical situations and solutions to enhance diversity within workplaces.⁵⁶⁵ In its annual report published in 2016, Unia stressed the success of this tool, which has more than 3 000 registered users.⁵⁶⁶

561 Slovakia, Act on the Organisation of the Activities of the Government and on the Organisation of the Central State Administration, Section 2(3). The website of the Council of the Government: www.radavladyp.gov.sk/.

562 Slovenia, Protection Against Discrimination Act, Article 15.

563 Finland, Government Decree on the Advisory Board on Non-Discrimination (39/2016) <https://www.edilex.fi/saadoks/kokoelma/20160039.pdf>.

564 Greece, Law 4356/2015 on civil partnership, exercise of rights, penal and other provisions, Article 15.

565 For more details on this initiative, see the Unia website: www.UNIA.be/en.

566 Belgium, Unia (2016) Annual Report 2015 (Discrimination – Diversity), p. 35.

General structures for social dialogue may be used for dialogue on equality issues in the **Czech Republic, Denmark, Latvia, Malta, Montenegro, Norway, Poland, Portugal, and Sweden**. However, there is significant variation in their effectiveness in practice. The **United Kingdom** has a good record of governmental agencies and ministerial departments co-operating with non-governmental organisations.

Specific structures dealing with Roma have emerged over the past decade. For instance, in 2013, the **French** Government gave a specific mandate to the Inter-ministerial Delegation on Emergency Accommodation and Access to Housing to establish the conditions for a programme on access to rights (including health, education, employment, accommodation and housing) and integration of foreign Roma and Travellers. It has published programmes, including good practices for local authorities and coordination of public policy, and has a further mandate to coordinate the implementation of integration policies targeting the Roma. In **Finland**, the Advisory Board on Romani Affairs was established in 1956, with the tasks of enhancing the equal participation of the Roma population in Finnish society, improving their living conditions and socio-economic status, and promoting their culture. **Spanish** Royal Decree 891/2005 set up a collegiate participatory and advisory body (the National Roma Council), the overriding purpose of which is to promote the participation and cooperation of Roma associations in the development of general policy and the promotion of equal opportunities and treatment for the Roma population. Of its 40 members, half come from the central government and the other half are representatives of Roma associations. In **Norway**, the Roma National Association is used as a dialogue point for organised interaction with the Equality Ombud and key ministries. In the context of the development of a National Strategy for Roma Integration, the **Austrian** Federal Chancellery set up a National Contact Point for Roma Integration in 2012. This contact point mainly coordinates governmental activities regarding the Roma strategy and supports a corresponding 'dialogue platform', which also maintains contacts with NGOs. The **Swedish** Government has adopted a National Strategy for Roma Inclusion 2012-2032, with the aim of eliminating the differences in living standards between the Roma minority and the majority with regard to housing, education, and employment etc. The **Hungarian** Government established a Consultation Council for Roma Affairs in 2013, chaired by the Prime Minister and co-chaired by the President of the National Roma Self-Government.⁵⁶⁷ In **Latvia**, the action plan on the implementation of the guidelines for 2017-2018 includes several activities to promote Roma integration, such as actions to prevent early school leaving, support measures for Roma youth, women, and Roma NGOs, and the promotion of tolerance and intercultural dialogue activities. In May 2016, the **Belgian** National Roma Platform was launched, with the aim of triggering a dialogue with all stakeholders and Roma communities in Belgium. The platform is supervised by a pilot committee of staff of the federal and regional administrations, NGOs active at the local level and the equality body Unia. In 2018, the **Greek** Ministry of Labour, Social Security and Social Solidarity implemented a number of different measures for the social integration of Roma, notably the creation of so-called 'multi-centres' located close to Roma schools and settlements, to provide services to facilitate integration, in particular of Roma children.

6.2 Ensuring compliance

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

⁵⁶⁷ Hungary, Resolution 1048/2013 of 12 February 2013.

Few countries have systematically ensured that all existing legal texts are in line with the principle of equal treatment. In transposing the two directives, only the relevant ministries in **Finland** seem to have reviewed legislation in their respective administrative fields. They did not find any discriminatory laws, regulations or rules, and it was therefore deemed unnecessary to abolish any laws. In the **United Kingdom**, government departments reviewed the legislation for which they were responsible to ensure that any legislation that was contrary to the directives' principles of equal treatment in relation to disability, religion or belief and sexual orientation, and most recently age, was repealed or amended. In **Bulgaria**, the Protection Against Discrimination Act requires all public authorities, including local government, to respect the aim of not allowing any direct or indirect discrimination when drafting legislation, as well as when applying it.⁵⁶⁸ In addition to this general mainstreaming duty, all public authorities have a duty to take all possible and necessary measures to achieve the aims of the act.⁵⁶⁹ However, in practice the public authorities do not implement these provisions.

In most countries therefore, discriminatory laws are likely to be repealed following a complaint before the courts. In most countries, the constitutional equality guarantee already acts as a filter for discriminatory laws, with the constitutional court having the power to set aside any unconstitutional provisions. However, proceedings before constitutional courts for this purpose can be lengthy, requiring the prior exhaustion of all other remedies. On this basis, it is questionable whether this is sufficient to fulfil this provision of the directives. Aside from constitutional clauses, there are often clauses in primary legislation that allow lower courts to declare void laws that are in breach of the principle of equal treatment. For example, in **France**, the Constitution, Civil Code and Labour Code all ensure that provisions and clauses that breach the principle of equality are void. In **Romania**, as the principle of equality is clearly guaranteed in the Constitution, any contrary provisions would be unconstitutional and illegal under the Anti-discrimination Law as *lex specialis*. However, due to the limitations established by the Constitutional Court, neither the NCCD⁵⁷⁰ nor the civil courts⁵⁷¹ can set aside discriminatory legal provisions.

CJEU preliminary ruling on the competence of the Irish Workplace Relations Commission to disapply anti-discrimination law⁵⁷²

In a case which originally concerned an upper age limit imposed upon candidates to enter into training with the police force, a reference for a preliminary ruling was submitted by the Supreme Court of Ireland in 2017. The question referred was of a procedural nature as it concerned the (then)⁵⁷³ Equality Tribunal's lack of jurisdiction to disapply a statutory instrument not in line with EU anti-discrimination law. When referring the case to the Court of Justice of the EU, the Supreme Court pointed out that as a matter of national law, a tribunal or a body, that is not a court in the constitutional sense, cannot exercise a significant power to disapply legislation.

On 4 December 2018, the Grand Chamber of the CJEU delivered its preliminary ruling, based on the fundamental principle of primacy of EU law. The Court underlined that this principle '*requires* not only the courts but all the bodies of the Member States to give *full effect* to EU rules' (paragraph 39, emphasis added), thereby imposing upon them a duty to disapply national legislation that is contrary to EU law. Focusing on the role and nature of the Workplace Relations Commission, the Court thus found that the provisions of the Employment Equality Directive which the Workplace Relations Commission was set up to apply would be rendered less effective if that body were unable to disapply conflicting provisions of national law.

⁵⁶⁸ Bulgaria, Protection Against Discrimination Act, Article 6(2).

⁵⁶⁹ Bulgaria, Protection Against Discrimination Act, Article 10.

⁵⁷⁰ Constitutional Court of Romania, Decision 997 of 7 October 2008 finding that Article 20(3) of the Anti-discrimination Act, defining the mandate of the NCCD in relation to discrimination triggered by legislative provisions, is unconstitutional.

⁵⁷¹ Constitutional Court of Romania, Decision 818, 3 July 2008, published in the Official Gazette 537 of 16 July 2008.

⁵⁷² CJEU, Judgment of 4 December 2018, Minister for Justice and Equality, Commissioner of An Garda Síochána v Workplace Relations Commission, C 378/17, ECLI:EU:C:2018:979.

⁵⁷³ The Irish Equality Tribunal was established by the Employment Equality Acts 1998-2015 but was replaced by the Workplace Relations Commission under the Workplace Relations Act 2015.

Article 23 of the **Greek** Equal Treatment Law 4443/2016 states: 'Once in force, this Act repeals any legislation or rule and abrogates any clause included in personal or collective agreements, general terms of transactions, internal enterprise regulations, charters of profit or non-profit organisations, independent professional associations and employee or employer associations opposed to the equal treatment principle defined in this Act'.

In **Cyprus**, the equality body is required to refer to the Attorney General all discriminatory laws, regulations and practices.⁵⁷⁴ The Attorney General is then obliged to advise the minister concerned and prepare the necessary amendment. However, this procedure has never resulted in discriminatory legislation being amended, despite Supreme Court case law clarifying the Attorney General's obligations in this regard.⁵⁷⁵ Moreover, national courts including the Supreme Court prefer to apply discriminatory laws rather than to disapply them, in order to not infringe the principle of separation of powers.⁵⁷⁶ In **Ireland**, there is concern that the Equal Status Acts 2000-2018 remain subordinate to other legislative enactments, because Section 14(1)(a)(i) provides that nothing in the Equal Status Act will prohibit any action taken under any other enactment.⁵⁷⁷

In some jurisdictions, an entire agreement is invalidated if it includes a discriminatory clause (e.g. **Germany**). However, legislation that can annul individual discriminatory rules in contracts or collective agreements, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations is more common among the Member States. This is the case in the **Netherlands** where the main equal treatment acts stipulate that 'agreements' that are in contravention of the equal treatment legislation are void. General labour law is relied on to this end in many countries, including **Hungary**,⁵⁷⁸ where Article 27 of the Labour Code provides that an agreement (individual or collective) that violates labour law regulations is void. If annulled or successfully contested the agreement is invalid (Article 28) and, if invalidity results in loss, compensation must be paid (Article 30). Similar general labour law provisions are found in **Italy** (Article 15 of the Workers' Act), **Latvia** (Article 6 of the Labour Law), **Poland** (Article 18(2) of the Labour Code)⁵⁷⁹ and **Estonia** (Article 4(2) of the Collective Agreements Act, which provides that the terms and conditions of a collective agreement which are 'less favourable to employees than those prescribed in a law or other legislation' are invalid, unless exceptions are explicitly permitted).

There are provisions in some Member States that specifically render discriminatory provisions in contracts or collective agreements etc. void. For example, in **Luxembourg**, the Labour Code was amended by the General Anti-Discrimination Law of 28 November 2006 to include the same wording as that of Article 16(b) of the Employment Equality Directive.⁵⁸⁰ In **Spain**, Article 17(1) of the Workers' Statute declares void any discriminatory clauses in collective agreements, individual agreements and unilateral decisions of discriminatory employers. Section 25 of the **Finnish** Non-Discrimination Act provides that a court may, in a case before it, change or ignore contractual terms that are contrary to the prohibition of discrimination if it would be unreasonable to apply the contract otherwise unaffected.

Significantly, the **Irish** Employment Equality Acts 1998-2015 provide that all employment contracts are deemed to have an equality clause that transforms any provisions of the contracts that would otherwise

574 Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(I)/ 2004, Article 39. Available at www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html.

575 Cyprus Supreme Court, *Nicoletta Charalambidou v. The Republic of Cyprus, the Finance Minister and the Attorney General*, No 1695/2009, 17 December 2014. Available at [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%*20and%2058\(%E9\)#](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201412-1695-09.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%*20and%2058(%E9)#).

576 Supreme Court of Cyprus, Appeal Jurisdiction, *Michael Raftopoulos v. Republic of Cyprus*, Appeal no. 3/2012, 10 October 2017, available at http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2017/3-201710-3-123.htm&qstring=%EC%E9%F7%E1%EB%E1%EA%2A%20and%20%F1%E1%F6%F4%EF%F0%EF%F5%EB%EF%2A.

577 For an extensive analysis of this specific exception under Irish law, please see Walsh, J. (2019) 'Primacy of national law over EU law? The application of the Irish Equal Status Act' in *European Equality Law Review* 2019/2, pp. 35-48.

578 Articles 6:95 and 6:96 of the Hungarian Civil Code also contain similar provisions applicable outside of the employment field.

579 Similar provisions are applicable outside of the employment field (Poland, Civil Code, Articles 58.1 and 58.3).

580 Luxembourg, Labour Code, Article L. 253-3, as introduced by Article 18 of the Law of 28 November 2006.

give rise to unlawful discrimination (Section 30). All discriminatory provisions in collective agreements are deemed void and it is not possible to opt out of the terms of the equality legislation (Section 9). Although it is the case that discriminatory clauses are not valid, the reality is that this fact may only be established through litigation. Where the Workplace Relations Commission holds that the clause in question is contrary to the legislation, that part of the collective agreement or contract cannot be enforced and must be modified. In **Malta**, Regulation 13 of Legal Notice 461 of 2004 provides that any provisions in individual or collective contracts or agreements, internal rules of undertakings, or rules governing registered organisations that are contrary to the principle of equal treatment, will be considered void, on entry into force of the regulations. In the **United Kingdom**, Section 142 of the Equality Act provides that a contractual term is unenforceable insofar as it ‘constitutes, promotes or provides for treatment of [a]... person that is of a description prohibited by this Act’. Collective agreements and rules of undertakings abide by the same principle in accordance with Section 145 of the act. Discrimination in the rules governing independent occupations, professions, workers’ associations or employers’ associations falls within the provisions of the same act, while similar provisions apply in Northern Ireland.⁵⁸¹ The **Belgian** General Anti-Discrimination Federal Act, which was adopted in 2007 provided for the creation of an Expert Commission for the Assessment of the Anti-discrimination Legislation, which required the adoption of a decree establishing its composition. The decree was finally adopted on 18 November 2015⁵⁸² and the Expert Commission was set up and started its work in 2016. It is composed of two representatives of the judiciary, two lawyers, four members proposed by the National Labour Council and four members proposed by the Ministry for Equal Opportunities. Its final report was submitted to the Federal Parliament in 2017, making a series of recommendations to improve the legal non-discrimination framework and its enforcement.⁵⁸³

581 In particular, Articles 68 and 68A of the Race Relations Order; Regulation 42 and Schedule 4 of the Employment Equality (Sexual Orientation) Regulations; Articles 99 and 100A of the Fair Employment and Treatment Order; Sections 16B and 16C of the Disability Discrimination Act; and Regulation 49 of the Employment Equality (Age) Regulations.

582 Belgium, Decree of 18 November 2015 establishing the composition of the Expert Commission, the appointment of the experts as well as the form and the content of the report which has to be presented according to article 52, para. 3 of Federal Act of 10 May 2007 pertaining to fight certain forms of discrimination, *M.B.*, 2.12.2015.

583 Belgium, Commission d'évaluation de la législation fédérale relative à la lutte contre les discriminations (2017), *Premier rapport d'évaluation 2017*, available at: https://www.unia.be/files/Documenten/Aanbevelingen-advies/Commission_d%C3%A9valuation_de_la_l%C3%A9gislation_f%C3%A9d%C3%A9rale_relative_%C3%A0_la_lutte_contre_les_discriminations.pdf.

7 Conclusion

Nineteen years after the adoption of the Racial Equality and Employment Equality Directives it stands without question that their transposition has immensely enhanced legal protection against discrimination on the grounds of racial or ethnic origin, religion or belief, age, disability and sexual orientation across Europe. It is also encouraging to note that a majority of Member States provide further protection compared to the requirements of EU law and that the levelling up of protection across grounds continues in a number of countries. In the past few years, most of the remaining shortcomings and gaps in national transpositions have been remedied, sometimes following the initiation of infringement proceedings by the European Commission and sometimes due to pressure from other stakeholders, such as civil society organisations representing the groups most affected by discrimination. This comparative analysis of the specific transposition, implementation and enforcement on the national level shows however that some gaps still remain in many of the Member States and candidate countries.

Transposition gaps can still be observed in several Member States with regard to the definition of different forms of discrimination. To give a few examples, in some countries hypothetical and/or past comparators are excluded from the definition of direct discrimination and in others the category of job seekers does not fall under the personal scope of the duty to provide reasonable accommodation. Gaps may also appear in the transposition of the material scope of the directives in national legislation. This is mainly visible when it comes to the areas of social protection, social advantages or with regard to public employment or the self-employed. It may be said that while there are still minor gaps in the transposition of specific aspects of certain anti-discrimination provisions in a few Member States, the main issue is the implementation of such legislation (and of both European directives) and the judicial interpretation of national courts and the CJEU.

As regards the implementation of the EU anti-discrimination directives, shortcomings remain in national legislation. For instance, in many countries, the legal conditions required to claim the right to reasonable accommodation in employment are highly restrictive and the definitions of disability are often based on a medical rather than a human rights approach. Moreover, it is not clear from the wording of several national laws whether the failure to provide reasonable accommodation would amount to discrimination. Issues can also be observed in relation to the liability of the employer for harassment of one of their employees carried out by a third party (clients, other employees, etc.). Such legal vacuums in national legislation are reducing the protection provided by the directives.

Legal vacuums in national laws can be – and sometimes have been – solved by the interpretation given by national courts. However, there are countries where leading case law is missing to the detriment of legal certainty regarding some fundamental aspects of anti-discrimination law. In that regard, the CJEU plays an increasingly important role and the number of preliminary references lodged before the CJEU continues to rise.⁵⁸⁴

In many countries however it remains to be seen how national courts and equality bodies will apply this developing body of case law. Although case law is becoming more frequent in most countries, it does not always correctly apply the principles, concepts and definitions of the directives or those developed by the Court of Justice. Exceptions and exemptions are thus interpreted too extensively in some countries,

584 In 2018, see for example: judgment delivered on 18 January 2018, *Carlos Enrique Ruiz Conejero v Ferroservicios Auxiliares SA and Ministerio Fiscal*, C-270/16, ECLI:EU:C:2018:17 (disability); judgment delivered on 28 February 2018, *Hubertus John v Freie Hansestadt Bremen*, C-46/17, ECLI:EU:C:2018:131 (age); Grand Chamber judgment delivered on 17 April 2018, *Vera Egenberger v Evangelisches Werk für Diakonie und Entwicklung eV*, C-414/16, ECLI:EU:C:2018:257 (religion or belief); Grand Chamber judgment of 11 September 2018, *IR v JQ*, C-68/17, ECLI:EU:C:2018:696 (religion or belief); judgment of 19 September 2018, *Surjit Singh Bedi v Bundesrepublik Deutschland, Bundesrepublik Deutschland in Prozessstandschaft für das Vereinigte Königreich von Großbritannien und Nordirland*, C-312/17, ECLI:EU:C:2018:734 (disability and age); judgment of 15 November 2018, *Heiko Jonny Maniero v Studienstiftung des deutschen Volkes eV*, C-457/17, ECLI:EU:C:2018:912 (racial or ethnic origin); and Grand Chamber judgment of 4 December 2018, *Minister for Justice and Equality, Commissioner of An Garda Síochána v Workplace Relations Commission*, C-378/17, ECLI:EU:C:2018:979 (all grounds).

for instance in relation to employers with an ethos based on religion or belief, although some welcome guidance was finally provided by the CJEU on this issue in 2018.⁵⁸⁵ Worrying developments can also be observed with regard to the prohibition of direct discrimination and the fact that it may under certain circumstances be generally justified.

As already expressed in previous editions of this publication, detailed and specialised legislation, and in particular, specific procedural rights as regards available remedies and enforcement provisions, could possibly fill these gaps. In relation to enforcement however, further issues of concern arise. These include the lack of (or too restrictive) legal standing of organisations and associations to engage in proceedings on behalf or in support of victims of discrimination, restrictive application of the shift of the burden of proof as well as a number of barriers to effective access to justice. Although different means of collective redress, such as class action or *actio popularis*, could go a long way towards ensuring effective access to justice for victims of discrimination, procedural barriers in many countries hinder the full development of these potentially valuable tools. Another crucial barrier to effective enforcement highlighted by the country reports is the lack of ‘effective, dissuasive and proportionate’ sanctions and remedies, in particular beyond the area of employment. In some countries, sanctions are not provided in all areas or to all grounds, while in others there are maximum limits (in the law or in practice) on compensation awarded to victims. Therefore, in some countries the impression remains of a theoretical legal framework that is in conformity with the directives but that does not work effectively in practice.

Equality bodies have played a fundamental role in the enforcement of non-discrimination legislation in the past few years. By assisting victims of discrimination, they are contributing to improve victims’ access to rights and justice. Equality bodies also perform important duties at the institutional level by providing recommendations and policy advice to Governments, supporting good practices and positive equality obligations. Lastly, they are major actors in raising awareness in society through campaigns, media work, training of professionals, etc. and providing information on the available mechanisms for claiming rights. This activity is necessary in order to reduce the discrepancy between the levels of discrimination experienced and discrimination that is being reported. However, shortcomings have been observed concerning equality bodies and the impossibility of their effectively fulfilling the role they are given by the Racial Equality Directive,⁵⁸⁶ whether it be due to insufficient resources, a restricted scope of activities or a lack of independence from Government and public authorities.

Filling these remaining gaps in anti-discrimination law and its implementation cannot merely be perceived as a technical issue. Nineteen years ago, the directives were drafted with the aim of contributing to the establishment of a more inclusive society, where everyone has equal rights and opportunities to achieve their potential. Although formal equality has been obtained in most national legislation, stronger efforts need to be made in order to achieve substantive equality. This objective continues to inspire and drive the ambitions of the European network of legal experts in gender equality and non-discrimination.

585 CJEU, Grand Chamber judgment delivered on 17 April 2018, *Vera Egenberger v Evangelisches Werk für Diakonie und Entwicklung eV*, C-414/16, ECLI:EU:C:2018:257; judgment of 11 September 2018, *IR v JQ*, C-68/17, ECLI:EU:C:2018:696.

586 Most equality bodies deal not only with race and ethnicity but with other protected grounds, including, but not only, the four protected grounds of the Employment Equality Directive (religion or belief, disability, age and sexual orientation). For more information on equality bodies, see Chapter 5 above.

Annex 1. Main national specific anti-discrimination legislation

The information in these tables is based on the updated executive summaries and country reports for the European network of legal experts in gender equality and non-discrimination which contain information valid as at 1 January 2019. This is a non-exhaustive list, which contains only the main pieces of anti-discrimination legislation in each country and it does not include references to other specific legislation. Inclusion of national legislation in the tables does not imply that it complies with Directives 2000/43/EC and 2000/78/EC.¹ Dates of latest amendments refer to amendments that are of relevance for non-discrimination law.

| Country | Constitutional anti-discrimination provisions | Main specific anti-discrimination legislation | Grounds covered |
|----------------|------------------------------------------------------------------|----------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ALBANIA | Article 18 of the Constitution | Law on Protection from Discrimination adopted 4 February 2010 | Gender, race, colour, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, education or social situation, pregnancy, parentage, parental responsibility, age, family or marital condition, civil status, residence, health status, genetic predispositions, disability, affiliation with a particular group or for any other ground |
| | | Law on the Inclusion and Accessibility of Persons with Disabilities adopted 24 July 2014 | Disability |
| AUSTRIA | Article 7 Federal Constitutional Act (B-VG), Article 2 Basic Law | Federal Equal Treatment Act of 23 June 2004, as last amended in 2015 | Gender, ethnic affiliation, religion, belief, age, sexual orientation |
| | | Equal Treatment Act of 26 June 2004, as last amended in 2017 | Gender, ethnic affiliation, religion, belief, age, sexual orientation |
| | | Federal Disability Equality Act of 10 August 2005, as last amended in 2018 | Disability |
| | | Act on the Employment of People with Disabilities of 10 August 2005, as last amended in 2018 | Disability |
| | | Styrian Equal Treatment Act of 28 October 2004, as last amended in 2017 | Gender, race or ethnic origin, religion or belief, disability, disability of a relative, age, sexual orientation |
| | | Viennese Service Order of 22 September 2006, as last amended in 2018 | Race, ethnic origin, religion, belief, disability, age, sexual orientation, gender, pregnancy, maternity |
| | | Viennese Anti-discrimination Act of 8 September 2004, as last amended in 2018 | Race, ethnic origin, religion, belief, age, sexual orientation, sexual identity, gender, pregnancy, maternity |
| | | Lower Austrian Anti-discrimination Act of 26 January 2018 ² | Gender, ethnic affiliation, religion or belief, disability, age, sexual orientation |

- Please note that in most countries protection against discrimination is also granted in the Labour and Penal Codes. These have not been indicated unless there is no other protection in national law. Legislation which is specific for one single ground has been indicated in the tables where specific anti-discrimination law does not include that specific ground, and has been included in footnotes where anti-discrimination law also covers them.
- This new law replaces the previous one having the same name who was adopted in 2005.

| Country | Constitutional anti-discrimination provisions | Main specific anti-discrimination legislation | Grounds covered |
|----------------|------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| AUSTRIA | Article 7 Federal Constitutional Act (B-VG), Article 2 Basic Law | Lower Austrian Equal Treatment Act of 11 July 1997, as last amended in 2011 | Gender, ethnic affiliation, religion or belief, disability, age, sexual orientation |
| | | Carinthian Anti-discrimination Act of 28 December 2004, as last amended in 2017 | Gender, ethnic affiliation, religion or belief, disability, age, sexual orientation |
| | | Vorarlbergian Anti-discrimination Act of 19 May 2005, as last amended in 2017 | Gender, ethnic affiliation, religion, belief, disability age, sexual orientation |
| | | Upper Austrian Anti-discrimination Act of 6 May 2005, as last amended in 2018 | Gender, ethnic affiliation, religion, belief, disability age, sexual orientation |
| | | Burgenlandian Anti-discrimination Act of 5 October 2005, as last amended in 2018 | Gender, ethnic affiliation, religion, belief, disability, age, sexual orientation |
| | | Tyrolian Equal Treatment Act of 11 January 2005, as last amended in 2018 | Gender, ethnic affiliation, religion, belief, disability, age, sexual orientation |
| | | Tyrolian Anti-discrimination Act of 31 March 2005, as last amended in 2018 | Gender, ethnic affiliation, religion, belief, disability, age, sexual orientation |
| | | Salzburg Equal Treatment Act of 31 March 2006, as last amended in 2018 | Gender, racial or ethnic origin, religion, belief, disability, age, sexual orientation |
| BELGIUM | Articles 10 and 11 of the Constitution | Racial Equality Federal Act, ³ as last amended in 2013 | Alleged race, colour, origin, ethnic and national origin and nationality |
| | | General Anti-discrimination Federal Act, ⁴ as last amended by the Act of 17 August 2013 | Age, sexual orientation, civil status, birth, property, religious or philosophical belief, actual or future state of health, disability, physical characteristic, political opinion, trade union opinion (<i>conviction syndicale</i>) and language, genetic characteristic and social origin |
| | | Flemish Region / Decree on proportionate participation in the employment market of 8 May 2008 as last amended in 2010 | Gender, alleged race, ethnic origin, religion or belief, disability, age and sexual orientation |
| | | Walloon Region: Decree on the Fight Against Certain Forms of Discrimination, including discrimination between Women and Men, in the fields of Economy, Employment and Vocational Training of 6 November 2008 as last amended in 2012 | All grounds listed in Article 19 TFEU plus nationality, colour, ancestry and national or social origin, civil status (married/non-married), birth, wealth/income, political opinion, trade union opinion (<i>conviction syndicale</i>), language, present or future state of health, physical or genetic characteristics, pregnancy, childbirth, maternity leave, gender reassignment and transgender |

³ Initially Federal Act Criminalising Certain Acts inspired by Racism or Xenophobia of 30 July 1981.

⁴ Initially the Act on the Fight against Certain Forms of Discrimination of 10 May 2007.

| Country | Constitutional anti-discrimination provisions | Main specific anti-discrimination legislation | Grounds covered |
|----------------|-----------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| BELGIUM | Articles 10 and 11 of the Constitution | German-speaking Community: Decree aimed at Fighting Certain Forms of Discrimination of 19 March 2012, as last amended in 2016 | Nationality, alleged race, skin colour, origin, national or ethnic origin, age, sexual orientation, religious or philosophical belief, disability, sex, pregnancy, motherhood, childbirth, gender reassignment, civil status, birth, property, political or trade union opinion (<i>conviction syndicale</i>), language, actual or future state of health, physical or genetic characteristic, social origin |
| | | Region of Brussels-Capital: Ordinance aiming to combat discrimination and promote equal treatment of 5 October 2017 | Racial or ethnic origin, religion or belief, age, disability, sex, sexual orientation, political opinion, civil status (married/non-married), birth, wealth/income, language, state of health, physical or genetic characteristics, pregnancy, childbirth, maternity leave, transgender, nationality, colour, ancestry, national or social origin, trade union belief |
| | | Region of Brussels-Capital: Ordinance related to the Fight Against Discrimination and Equal Treatment in the Employment field of 4 September 2008 as last amended in 2017 | All grounds listed in Article 19 TFEU plus political opinion, civil status (married/non-married), birth, wealth/income, language, state of health, physical or genetic characteristics, pregnancy, childbirth, maternity leave, transgender, nationality, colour, ancestry, national or social origin, trade union opinion (<i>conviction syndicale</i>) |
| | | Region of Brussels-Capital: Ordinance related to the Promotion of Diversity and the Fight Against Discrimination in the Civil Service of the Region of Brussels-Capital of 4 September 2008 | All grounds listed in Article 19 TFEU plus political opinion, civil status (married/non-married), birth, wealth/income, language, state of health, physical or genetic characteristics, pregnancy, childbirth, maternity leave, transgender, nationality, colour, ancestry, national or social origin. |
| | | <i>Commission communautaire française</i> (COCOF): Decree on the Fight Against certain forms of discrimination and on the implementation of the principle of equal treatment of 9 July 2010 | Age, sexual orientation, civil status, birth, property, religious or philosophical belief, political or trade union opinion (<i>conviction syndicale</i>), language, actual or future state of health, disability, physical or genetic characteristic, sex, pregnancy, motherhood, childbirth, gender reassignment, nationality, alleged race, skin colour, origin and national, ethnic or social origin |
| | | <i>Commission communautaire française</i> (COCOF): Decree on Equal Treatment between Persons in Vocational Training of 22 March 2007, as last amended in 2012 | All grounds in the two directives (open list of prohibited criteria) |

| Country | Constitutional anti-discrimination provisions | Main specific anti-discrimination legislation | Grounds covered |
|----------------------------|------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| BULGARIA | Article 6 of the Constitution | Protection Against Discrimination Act of 16 September 2003, as last amended in 2018 | Sex, race, national origin, ethnicity, human genome, nationality, origin, religion or faith, education, beliefs, political affiliation, personal or social status, disability, age, sexual orientation, family status, property status, or any other ground provided for by law or by international treaty Bulgaria is a party to. |
| | | Integration of Persons with Disabilities Act of 2 September 2004, as last amended in 2018 ⁵ | Disability |
| CROATIA⁶ | Article 14 of the Constitution | Anti-discrimination Act of 9 July 2008, as last amended in 2012 | Race or ethnic origin or colour, gender, language, religion, political or other belief, national or social origin, property, trade union membership, education, social status, marital or family status, age, health condition, disability, genetic heritage, gender identity and expression, sexual orientation. |
| | | Act on Professional Rehabilitation and Employment of Persons with Disability of 13 December 2013 as last amended in 2018 | Disability |
| CYPRUS | Article 28 of the Constitution | Equal Treatment (Racial or Ethnic Origin) Law No. 59 (I)/2004, as last amended in 2006 | Racial and ethnic origin |
| | | Equal Treatment in Employment and Occupation Law No. 58 (I)/2004, as last amended in 2009 | Racial and ethnic origin, religion or belief, age, sexual orientation |
| | | Law on Persons with Disabilities No. 127(I)/2000, as last amended in 2015 | Disability |
| CZECH REPUBLIC | Article 3 of the Charter of Fundamental Rights and Freedoms (part of the Constitutional order) | Anti-discrimination Law 198/2009 of 23 April 2009, as last amended in 2017 | Race, colour, ethnic origin, 'nationality' (<i>národnost</i>), sex, sexual orientation, age, disability, religion or belief. |
| DENMARK | None ⁷ | Act on Prohibition of Discrimination due to Race etc., Act 289 of 9 June 1971, as last amended in 2000 | Race, skin colour, national or ethnic origin, belief, sexual orientation |
| | | Act on Prohibition of Discrimination in the Labour Market etc., of 24 May 1996, as last amended in 2016 | Race, skin colour, religion or belief, political opinion, sexual orientation, age, disability or national, social or ethnic origin |

5 This law was repealed on 18 December 2018. It was replaced by the People with Disabilities Act, adopted on 18 December 2018 and entered into force after the cut-off date for this report, on 1 January 2019.

6 In addition, protection against discrimination on the ground of sexual orientation is provided by the Same-sex Life Partnership Act of 15 July 2014.

7 Articles 70 and 71 are both specific clauses respectively dealing with the right to civil and political rights, and deprivation of liberty on the basis of political or religious convictions and descent.

| Country | Constitutional anti-discrimination provisions | Main specific anti-discrimination legislation | Grounds covered |
|----------------|---------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| DENMARK | None | Act on Ethnic Equal Treatment of 28 May 2003, as last amended in 2013 | Race and ethnic origin |
| | | Act on the Prohibition of Discrimination due to Disability of 8 June 2018 | Disability |
| ESTONIA | Article 12(1) of the Constitution | Chancellor of Justice Act of 25 February 1999, as last amended in 2018 | Sex, race, ethnic origin, colour, language, origin, religious, political or other belief, property or social status, age, disability, sexual orientation or other ground of discrimination provided for in the law. ⁸ |
| | | Equal Treatment Act of 11 December 2008, as last amended in 2017 | Ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation |
| FINLAND | Art. 6(1-2) of the Constitution | Non-Discrimination Act of 30 December 2014 | Origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics. |
| | | Non-Discrimination Ombudsman Act of 30 December 2014 | Origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics |
| | | Act on Non-Discrimination and Equality Tribunal of 30 December 2014 | Gender, gender identity, origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics |
| FRANCE | Preamble to the Constitution of 1946, Article 1 of the Constitution | Law No. 2008-496 of 27 May 2008 relating to the adaptation of National Law to Community Law in matters of discrimination, as last amended in 2017 | Mores, sexual orientation, sex, pregnancy, gender identity, belonging, whether real or supposed to an ethnic origin, a nation, a race or a determined religion, physical appearance, last name, family situation, union activities, political opinions, age, health, disability, genetic characteristics, place of residence, capacity to express oneself in another language than French, economic vulnerability |
| | | Law No. 2005-102 of 11 February 2005 for equal opportunities and integration of disabled persons of 11 February 2005, as last amended in 2014 | Disability |

⁸ These grounds are covered in the private sector for the conciliation procedure. For the public sector, the grounds are not specified.

| Country | Constitutional anti-discrimination provisions | Main specific anti-discrimination legislation | Grounds covered |
|----------------|-----------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| GERMANY | Articles 3 and 33.3 of the Basic Law | General Act on Equal Treatment of 14 August 2006, as last amended in 2013 | Race or ethnic origin, sex, religion or belief ⁹ (<i>Weltanschauung</i>), disability, age, sexual identity |
| | | Act on Equal Opportunities for Persons with Disabilities of 27 April 2002, as last amended in 2018 | Disability |
| GREECE | Article 5.2 of the Constitution | Act on Punishing Actions or Activities Aiming at Racial Discrimination, Act 927/1979 of 22 June 1979, as last amended in 2014 | Race or ethnic origin, religion |
| | | Law 4443/2016 'On the transposition of Directive 43/2000/EC on the application of the principle of equal treatment irrespective of racial and ethnic origin, and the transposition of Directive 78/2000/EC on the configuration of the general framework of equal treatment in employment and work' of 2 December 2016 | Racial or ethnic origin, descent, colour, language, religious or other beliefs, disability or chronic illness, age, family or social status, sexual orientation, gender identity or gender characteristics |
| | | Law 4488/2017 on provisions for pensions in the public sector and various insurance provisions, on strengthening the protection of employees, on the rights of persons with disabilities and other provisions of 13 September 2017 | Disability |
| HUNGARY | Article XV of the Fundamental Law of Hungary | Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities of 28 December 2003, as last amended in 2016 | Sex, racial affiliation, colour of skin, nationality (not in the sense of citizenship), belonging to a national or ethnic minority, mother tongue, disability, health condition, religion or belief, political or other opinion, family status, maternity (pregnancy) or paternity, sexual orientation, sexual identity, age, social origin, financial status, part-time nature of employment, legal relationship or other legal relationship relating to employment or the fixed period thereof, belonging to an interest representation organisation, any other situation, attribute or condition of a person or group. |
| | | Act XXVI of 1998 on the Rights of Persons with Disabilities and the Guaranteeing of their Equal Opportunities of 1 April 1998, as last amended in 2017 | Disability |

9 In Germany, belief is not an explicitly protected ground in civil law.

| Country | Constitutional anti-discrimination provisions | Main specific anti-discrimination legislation | Grounds covered |
|----------------|-----------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ICELAND | Article 65 of the Constitution | Act on Equal Treatment irrespective of Race or Ethnic Origin No. 85/2018 of 12 June 2018 | Race, ethnic origin |
| | | Act on Equal Treatment in the Labour Market No. 86/2018 of 12 June 2018 | Gender, race, ethnic origin, religion, belief, disability, reduced capacity to work, age, sexual orientation, gender identity, gender expression and gender characteristics |
| | | Act on the Affairs of Persons with Disabilities No 59/1992 of 2 June 1992 as last amended in 2016 ¹⁰ | Disability |
| IRELAND | Article 40.1 of the Constitution | Employment Equality Acts 1998-2015 of 18 June 1998, as last amended in 2015 | Gender, age, race, religion, family status, disability, civil status, sexual orientation, membership of the Traveller community |
| | | Equal Status Acts 2000-2018 of 26 April 2000, as last amended in 2018 | Gender, age, race, religion, family status, disability, civil status, sexual orientation, membership of the Traveller community, housing assistance |
| ITALY | Article 3 of the Constitution | Legislative Decree No. 215/2003 Implementing Directive 2000/43/EC on equality of treatment between persons irrespective of racial or ethnic origin of 9 July 2003, as last amended in 2011 | Race and ethnic origin |
| | | Legislative Decree No. 216/2003 Implementing Directive 2000/78/EC for equal treatment in employment and occupation of 9 July 2003, as last amended in 2013 | Religion or belief, age, disability and sexual orientation |
| | | Act No. 67/2006, Provisions on the Judicial Protection of Persons with Disabilities who are Victims of Discrimination of 1 March 2006, as last amended in 2011 | Disability |
| LATVIA | Article 91 of the Constitution | Labour Law of 20 June 2001, as last amended in 2018 | Race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or marital status, sexual orientation "or other circumstances" |
| | | Law on Prohibition of Discrimination against Natural Persons – Economic Operators of 19 December 2012 | Gender, age, religious, political or other conviction, sexual orientation, disability, race or ethnic origin |
| | | Law on Social Security of 7 September 1995, as last amended in 2015 | Race, colour, gender, age, disability, health condition, religious, political or other conviction, national or social origin, property or family status or other circumstances |

¹⁰ The Act on the Affairs of Persons with Disabilities was repealed on 01.10.2018.

| Country | Constitutional anti-discrimination provisions | Main specific anti-discrimination legislation | Grounds covered |
|----------------------|--------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| LATVIA | Article 91 of the Constitution | Consumer Rights Protection Law of 18 March 1999, as last amended in 2010 | Gender, race, ethnic origin, disability |
| LIECHTENSTEIN | – ¹¹ | Act on Equality of People with Disabilities of 25 October 2006, as last amended in 2016 ¹² | Disability |
| LITHUANIA | Article 29 of the Constitution | Law on Equal Treatment of 18 November 2003, as last amended in 2018 | Gender, race, nationality, citizenship, ¹³ language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion |
| | | Law on Social Integration of People with Disabilities of 28 November 1991, as last amended in 2018 | Disability |
| LUXEMBOURG | Article 10bis of the Constitution (for nationals only) | Law of 28 November 2006, ¹⁴ as last amended in 2008 | Religion or belief, disability, age, sexual orientation, race or ethnic origin |
| | | Law of 12 September 2003 on disabled persons, as last amended in 2008 | Disability |
| MALTA | Article 45 of the Constitution | Employment and Industrial Relations Act of 2 December 2002, as last amended in 2018 | Marital status, pregnancy or potential pregnancy, sex, colour, disability, religious conviction, political opinion or membership of a trade union or of an employers' association |
| | | Equal Treatment in Employment Regulations of 5 November 2004 (issued under the Employment and Industrial Relations Act), as last amended in 2014 | Religion or religious belief, disability, age, sex, sexual orientation, and racial or ethnic origin |
| | | Equality for Men and Women Act of 9 December 2003, as last amended in 2015 | Sex, family responsibilities, sexual orientation, age, religion or belief, racial or ethnic origin, gender identity, gender expression, sex characteristics, actual or potential pregnancy or childbirth |
| | | Equal Opportunities (Persons with Disabilities) Act of 10 February 2000, as last amended in 2016 | Disability |
| | | Equal Treatment of Persons Order of 3 April 2007 | Racial and ethnic origin |

11 The only anti-discrimination clause that exists in the Constitution of Liechtenstein (Art. 31) regards women and men.

12 Please note that the Penal Code also includes provisions regarding all the grounds in the two directives and additional grounds.

13 This ground only applies to citizens of the EU and EEA countries and their family members.

14 Full title of the law: Law of 28 November 2006, (1) transposing Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, (2) transposing Council Directive 2000/78/EC of the Council of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, (3) amending the Labour Code and introducing in Book II a new title V on equality of treatment in the area of employment and work, (4) amending articles 454 and 455 of the Criminal Code, (5) amending the law of 12 September 2003 on disabled persons.

| Country | Constitutional anti-discrimination provisions | Main specific anti-discrimination legislation | Grounds covered |
|------------------------|-----------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| MONTENEGRO | Articles 7, 8 and 25 of the Constitution | Law on the Prohibition of Discrimination of 6 August 2010, as last amended in 2017 | Race, skin colour, national affiliation, social or ethnic origin, affiliation to the minority nation or minority national community, language, religion or belief, political or other opinion, sex, sex change, gender identity, sexual orientation and/or intersex characteristics, health conditions, disability, age, material status, marital or family status, membership or assumed membership of a group, political party or other organisation, other personal characteristics |
| | | Law on Prohibition of Discrimination of Persons with Disabilities of 26 June 2015, as last amended in 2015 | Disability |
| NETHERLANDS | Article 1 of the Constitution | General Equal Treatment Act of 2 March 1994, as last amended in 2015 | Race, religion and belief, political opinion, hetero or homosexual orientation, sex, nationality and civil (or marital) status |
| | | Disability Discrimination Act of 3 April 2003, as last amended in 2016 | Disability and chronic disease. |
| | | Age Discrimination Act of 17 December 2003, as last amended in 2014 | Age |
| NORTH MACEDONIA | Articles 9 and 54 of the Constitution | Law on Prevention and Protection Against Discrimination of 8 April 2010, as last amended in 2018 | Sex, race, colour of skin, gender, belonging to a marginalised group, ethnicity, language, citizenship, social origin, religion or religious belief, other sorts of belief, education, political affiliation, personal or social status, 'mental or physical disability', age, family or marital status, property, health condition, or any other ground stipulated by law or ratified international treaty. |
| NORWAY | Article 98 of the Constitution. | Equality and Anti-Discrimination Act of 16 June 2017 | Gender, pregnancy, leave in connection with childbirth or adoption, care responsibilities, ethnicity, religion, belief, disability, sexual orientation, gender identity, gender expression, age or combinations of these factors. |
| | | Working Environment Act of 17 June 2005, as last amended in 2014 | Age, political affiliation, membership of a trade union, part-time/temporary work |
| POLAND | Article 32 of the Constitution | Act on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment of 3 December 2010, ¹⁵ as last amended in 2016 | Gender, race, ethnic origin, nationality, citizenship, ¹⁶ religion, belief, political opinion, disability, age and sexual orientation |

15 Referred to in this report as the 'Equal Treatment Act'.

16 Citizenship is only protected for workers exercising their freedom of movement under EU law.

| Country | Constitutional anti-discrimination provisions | Main specific anti-discrimination legislation | Grounds covered |
|-----------------|-----------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| PORTUGAL | Article 13(2) of the Constitution | Law 93/2017 establishing the legal regime for the prevention, prohibition and fight against discrimination on the grounds of race/ethnic origin, nationality, ancestry and territory of origin of 23 August 2017 | Race/ethnic origin, nationality, ancestry and territory of origin |
| | | Law 7/2009 Labour Code, as last amended in 2018 | Ancestry, age, gender, sexual orientation, gender identity, civil status, family situation, economic situation, instruction, origin or social condition, genetic heritage, reduced work capacity, disability, chronic disease, nationality, ethnic origin or race, territory of origin, language, religion, political or ideological convictions or trade union affiliation |
| | | Law 46/2006 which prohibits and punishes discrimination based on disability and on a pre-existing risk to health | Disability and pre-existing risk to health |
| ROMANIA | Articles 4 and 16 of the Constitution | Ordinance (GO) 137/2000 regarding the prevention and the punishment of all forms of discrimination of 31 August 2000, as last amended in 2013 | Race, nationality, ethnic origin, language, religion, social status, beliefs, gender, sexual orientation, age, disability, non-contagious chronic disease, HIV positive status, belonging to a disadvantaged group or any other criterion. |
| | | Law 448/2006 on the protection and promotion of the rights of persons with a handicap of 6 December 2006, as last amended in 2018 | Disability |
| SERBIA | Article 21(3) of the Constitution | Law on the Prohibition of Discrimination of 26 March 2009 | Race, skin colour, ancestry, citizenship, national affiliation or ethnic origin, language, religious or political beliefs, gender, gender identity, sexual orientation, financial position, birth, genetic characteristics, health, disability, marital and family status, previous convictions, age, appearance, membership of political, trade union and other organisations, other real or presumed personal characteristic |
| | | Law on the Prevention of Discrimination against Persons with Disabilities of 17 April 2006, as last amended in 2016 | Disability |

| Country | Constitutional anti-discrimination provisions | Main specific anti-discrimination legislation | Grounds covered |
|-----------------|---------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| SLOVAKIA | Article 12(1) of the Constitution | Act No. 365/2004 on Equal Treatment in Certain Areas and Protection Against Discrimination (Anti-discrimination Act) of 20 May 2004, as last amended in 2015 | Sex, religion or belief, race, affiliation with a nationality (<i>národnosť</i>) or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act (as well as some other grounds contained in some other acts, mainly trade union involvement and unfavourable state of health, contained, for example, in the Labour Code) |
| SLOVENIA | Article 14 of the Constitution | Protection Against Discrimination Act of 21 April 2016 | Gender, ethnicity, race or ethnic origin, language, religion or belief, disability, age, sexual orientation, gender identity or gender expression, social standing, economic situation, education or any other personal characteristic |
| | | Employment Relationship Act of 5 March 2013 | Ethnicity, race or ethnic origin, national and social origin, gender, skin colour, health condition, disability, religion or belief, age, sexual orientation, family status, membership in a trade union, financial situation or other personal circumstance. |
| | | Act on Equal Opportunities of People with Disabilities of 16 November 2010, as last amended in 2017 | Disability |
| SPAIN | Arts. 14 and 16 of the Constitution | Law 62/2003, on Fiscal, Administrative and Social measures, of 30 December 2003 | Racial or ethnic origin, religion or beliefs, disability, age, sexual orientation |
| | | RDL 1/2013, General Law on the Rights of Persons with Disabilities and their Social Inclusion of 29 November 2013 | Disability |
| SWEDEN | Chapter 1, S. 2 and Chapter 2, S. 12-13 of the Instrument of Government ¹⁷ | Discrimination Act (2008:567) of 5 June 2008, as last amended in 2017 | Sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation, age. |
| TURKEY | Art. 10 of the Constitution | Law on the Human Rights and Equality Institution of Turkey (no. 6701) of 6 April 2016 | Sex, race, colour, language, religion, belief, denomination, philosophical and political opinion, ethnic origin, wealth, birth, marital status, health, disability and age. |
| | | Law on Persons with Disabilities No 5378 of 1 July 2005, as last amended in 2014 | Disability |

17 In Sweden, four separate Acts are considered to form the Constitution, including the Instrument of Government (IG). Due to its anti-discrimination provisions, the IG is of relevance here.

| Country | Constitutional anti-discrimination provisions | Main specific anti-discrimination legislation | Grounds covered |
|-----------------------|-----------------------------------------------|--------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| UNITED KINGDOM | No written constitution | UK: Equality Act of 16 February 2006, as last amended in 2010 ¹⁸ | Sex (incl. gender reassignment, married/ civilly partnered status, pregnancy), race, colour, nationality (including citizenship), ethnic origins, national origins, disability, sexual orientation, religion or belief, age |
| | | UK: Equality Act of 8 April 2010 ¹⁹ | Sex (incl. gender reassignment, married/ civilly partnered status, pregnancy), race, colour, nationality (including citizenship), ethnic origins, national origins, disability, sexual orientation, religion or belief, age |
| | | Northern Ireland: Race Relations Order of 19 March 1997, as last amended in 2012 | Racial grounds including race, ethnic origins, colour, nationality, national origins, belonging to the Irish Traveller Community |
| | | Northern Ireland: Disability Discrimination Act of 8 November 1995, as last amended in 2011 | Disability |
| | | Northern Ireland: Employment Equality (Sexual Orientation) Regulations of 1 December 2003 | Sexual orientation |
| | | Northern Ireland: Fair Employment and Treatment Order of 16 December 1998 | Religion, belief, political opinion |
| | | Northern Ireland: Employment Equality (Age) Regulations of 14 June 2006, as last amended in 2011 | Age |

18 The 2006 Equality Act created the Equality and Human Rights Commission (EHRC) in Great Britain, and in the UK prohibited religious discrimination outside employment and created a basis for secondary legislation to do the same in relation to sexual orientation. Since the adoption of the Equality Act 2010, the previous act is mainly relevant as regards the provisions regulating the EHRC.

19 The 2006 Equality Act created the Equality and Human Rights Commission in Great Britain, and in the UK prohibited religious discrimination outside employment and created a basis for secondary legislation to do the same in relation to sexual orientation. The 2010 Act for Great Britain consolidates all the grounds and amends the 2006 provisions in relation to sexual orientation, religion and belief beyond employment in Great Britain.

Annex 2. Signature/ratification of international conventions

| -: not signed, not ratified /: signed X: ratified | European Convention on Human Rights | Protocol 12, ECHR | Revised European Social Charter | International Covenant on Civil and Political Rights | Framework Convention on the Protection of National Minorities | International Convention on Economic, Social and Cultural Rights | Convention on the Elimination of All Forms of Racial Discrimination | ILO Convention No 111 on Discrimination | Convention on the Rights of the Child | Convention on the Rights of Persons with Disabilities |
|---------------------------------------------------------|-------------------------------------|-------------------|---------------------------------|------------------------------------------------------|---------------------------------------------------------------|------------------------------------------------------------------|---------------------------------------------------------------------|-----------------------------------------|---------------------------------------|-------------------------------------------------------|
| ALBANIA | X | X | X | X | X | X | X | X | X | X |
| AUSTRIA | X | / | X | X | X | X | X | X | X | X |
| BELGIUM | X | / | X | X | / | X | X | X | X | X |
| BULGARIA | X | - | X | X | X | X | X | X | X | X |
| CROATIA | X | X | / | X | X | X | X | X | X | X |
| CYPRUS | X | X | X | X | X | X | X | X | X | X |
| CZECH REPUBLIC | X | / | / | X | X | X | X | X | X | X |
| DENMARK | X | - | / | X | X | X | X | X | X | X |
| ESTONIA | X | / | X | X | X | X | X | X | X | X |
| FINLAND | X | X | X | X | X | X | X | X | X | x |
| FRANCE | X | / | X | X | - | X | X | X | X | X |
| GERMANY | X | / | / | X | X | X | X | X | X | X |
| GREECE | X | / | X | X | / | X | X | X | X | X |
| HUNGARY | X | / | X | X | X | X | X | X | X | X |
| ICELAND | X | / | / | X | / | X | X | X | X | X |
| IRELAND | X | / | X | X | X | X | X | X | X | X |
| ITALY | X | / | X | X | X | X | X | X | X | X |
| LATVIA | X | / | X | X | X | X | X | X | X | X |
| LIECHTENSTEIN | X | / | - | X | X | X | X | ⁻¹ | X | - |
| LITHUANIA | X | - | X | X | X | X | X | X | X | X |
| LUXEMBOURG | X | X | / | X | / | X | X | X | X | X |
| MALTA | X | X | X | X | X | X | X | X | X | X |
| MONTENEGRO | X | X | X | X | X | X | X | X | X | X |
| NETHERLANDS | X | X | X | X | X | X | X | X | X | X |
| NORTH MACEDONIA | X | X | X | X | X | X | X | X | X | X |
| NORWAY | X | - | X | X | X | X | X | X | X | X |
| POLAND | X | - | / | X | X | X | X | X | X | X |
| PORTUGAL | X | X | X | X | X | X | X | X | X | X |
| ROMANIA | X | X | X | X | X | X | X | X | X | X |
| SERBIA | X | X | X | X | X | X | X | X | X | X |
| SLOVAKIA | X | / | X | X | X | X | X | X | X | X |

1 Liechtenstein is not an ILO member.

| -: not signed, not ratified /: signed X: ratified | European Convention on Human Rights | Protocol 12, ECHR | Revised European Social Charter | International Covenant on Civil and Political Rights | Framework Convention on the Protection of National Minorities | International Convention on Economic, Social and Cultural Rights | Convention on the Elimination of All Forms of Racial Discrimination | ILO Convention No 111 on Discrimination | Convention on the Rights of the Child | Convention on the Rights of Persons with Disabilities |
|-----------------------------------------------------------------|-------------------------------------|-------------------|---------------------------------|------------------------------------------------------|---------------------------------------------------------------|------------------------------------------------------------------|---------------------------------------------------------------------|-----------------------------------------|---------------------------------------|-------------------------------------------------------|
| SLOVENIA | X | X | X | X | X | X | X | X | X | X |
| SPAIN | X | X | / | X | X | X | X | X | X | X |
| SWEDEN | X | - | X | X | X | X | X | X | X | X |
| TURKEY | X | / | X | X | - | X | X | X | X | X |
| UNITED KINGDOM | X | - | / | X | X | X | X | X | X | X |

Annex 3. National specialised bodies

| Country | Specialised body designated by law in compliance with Article 13 | Grounds covered other than racial or ethnic origin | Provides independent assistance to victims | Conducts independent surveys | Publishes independent reports | Issues recommendations | Is a quasi-judicial body | Its decisions are binding |
|----------------|---------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|------------------------------|-------------------------------|------------------------|--------------------------|---------------------------|
| ALBANIA | Commissioner for Protection from Discrimination (Law on Protection from Discrimination, Art. 21-33) | Gender, colour, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, education or social situation, pregnancy, parentage, parental responsibility, age, family or marital condition, civil status, residence, health status, genetic predispositions, disability, affiliation with a particular group or for any other ground. | Yes | Yes | Yes | Yes | Yes | Yes |
| AUSTRIA | Equal Treatment Commission –ETC (Act on the Equal Treatment Commission and the National Equality Body, Art. §§ 1, 2, 11-14) | Gender, ethnic affiliation, religion, belief, age, sexual orientation | No | No | No ¹ | Yes | Yes | No |
| | National Equality Body –NEB (Act on the Equal Treatment Commission and the National Equality Body, §§ 3-5) | Gender, ethnic affiliation, religion, belief, age, sexual orientation | Yes | Yes | Yes | Yes | No | N/A |

¹ The Equal Treatment Commission(s) also publish reports about their work and summarise the general situation, but this is not part of their mandate by law.

| Country | Specialised body designated by law in compliance with Article 13 | Grounds covered other than racial or ethnic origin | Provides independent assistance to victims | Conducts independent surveys | Publishes independent reports | Issues recommendations | Is a quasi-judicial body | Its decisions are binding |
|-----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|------------------------------|-------------------------------|------------------------|--------------------------|---------------------------|
| BELGIUM | Inter-federal Centre for Equal Opportunities and Opposition to Racism and Discrimination (Unia) (Cooperation Agreement between the Federal State, the Regions and the Communities creating the Inter-federal Centre for Equal Opportunities and Opposition to Racism and Discrimination, Art. 2) | Alleged race, colour, descent, national origin, nationality, age, sexual orientation, civil status, birth, wealth/income (in French: <i>fortune</i>), religious or philosophical belief, actual or future state of health, disability, physical characteristic, political opinion, trade union opinion (<i>conviction syndicale</i>), genetic characteristic and social origin (not sex and language). | Yes | Yes | Yes | Yes | No | N/A |
| BULGARIA | Protection Against Discrimination Commission, (Protection Against Discrimination Act, Arts. 4 (1), 40 (1-2), 47) | Race, ethnicity, gender, national origin, human genome, nationality, origin, religion or faith, education, beliefs, political affiliation, personal or social status, disability, age, sexual orientation, family status, property status, or any other ground provided for by law or by international treaty Bulgaria is a party to. | Yes | Yes | Yes | Yes | Yes | Yes |
| CROATIA | People's Ombudsperson² (Anti-discrimination Act, Art. 12(1)) | Race or ethnic origin or colour, language, religion, political or other belief, national or social origin, property, trade union membership, education, social status, age, health condition, genetic heritage | Yes | Yes | Yes | Yes | No | N/A |

2 The People's Ombudsperson is competent for all the grounds covered by the Anti-discrimination Act except those grounds that are the responsibility of a special ombudsman. The ground of disability is covered by the Ombudsman for Persons with Disabilities and the grounds of gender, gender identity and expression and sexual orientation are covered by the Gender Equality Ombudsman.

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|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|------------------------------|-------------------------------|------------------------|--------------------------|---------------------------|
| CYPRUS | Equality Authority and Anti-discrimination Authority³ (Combating of Racial and other forms of Discrimination (Commissioner) Law N. 42(I)/2001), Arts. 5 and 7) | Race, community, language, colour, religion, political or other beliefs, ethnic or national origin (which is equated with nationality), special needs, age, sexual orientation, national origin, all rights guaranteed in ECHR and all its protocols (including article 1(1) of Protocol 12 to the ECHR), in the International Convention for the Elimination of All forms of Discrimination, in the Convention against Torture and other Forms of Inhumane or Humiliating Treatment, in the International Covenant on Civil and Political Rights and in the Framework Convention on the Protection of National Minorities | Yes ⁴ | Yes | Yes | Yes | Yes | Yes ⁵ |
| CZECH REPUBLIC | Public Defender of Rights (Act No. 349/1999, on the Public Defender of Rights, Art. 21(b)) | Sex, race, ethnic origin, sexual orientation, age, disability, religion, belief or other conviction, 'nationality' (<i>národnost</i>) ⁶ | Yes | Yes | Yes | Yes | No | N/A |
| DENMARK | Institute for Human Rights – The National Human Rights Institute of Denmark (Act No. 553 of 18 June 2012) | Race, ethnic origin, gender, disability | Yes | Yes | Yes | Yes | No | N/A |

3 The two bodies were created as part of the Ombudsman institution. Since 2017 however, they no longer function in practice.

4 Judicial interpretation may be required to determine whether the mandate of the Cypriot body to issue reports containing recommendations in response to victims' complaints can constitute 'independent assistance'.

5 Although the law entitles it to issue binding decisions, the sanctions foreseen are marginal and the equality body chooses to use its mediation function instead.

6 In addition, the Anti-discrimination Act contains a reference to Regulation (EU) No. 492/2011. In situations relating to the free movement of workers where the said regulation applies, EU citizenship is also deemed a discrimination ground.

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|----------------|---------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|------------------------------|-------------------------------|------------------------|--------------------------|---------------------------|
| DENMARK | Board of Equal Treatment (Act on the Board of Equal Treatment) | Protected grounds in employment: gender, race, skin colour, religion or belief, political opinion, sexual orientation, age, disability, national origin, social origin, ethnic origin Protected grounds outside employment: gender, disability, race and ethnic origin | No | No | No | No | Yes | Yes |
| ESTONIA | Commissioner for Gender Equality and Equal Treatment (Equal Treatment Act, Arts. 15-22) | Sex, ethnic origin, race, colour, religion or other beliefs, age, disability and sexual orientation | Yes | Yes | Yes | Yes | No | N/A |
| | Chancellor of Justice (Chancellor of Justice Act, Art. 19-35 ¹⁶) | Public sector: any ground. Private sector: sex, race, ethnic origin, colour, language, origin, religious, political or other belief, property or social status, age, disability, sexual orientation or other ground of discrimination provided for by the law | No | No | No | Yes | Yes ⁷ | Yes ⁸ |
| FINLAND | Non-Discrimination Ombudsman (Act on the Non-Discrimination Ombudsman, Section 1) | Origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics. | Yes | Yes | Yes | Yes ⁹ | No | N/A |

7 In conciliation procedures.

8 In conciliation procedures.

9 Limited in employment.

| Country | Specialised body designated by law in compliance with Article 13 | Grounds covered other than racial or ethnic origin | Provides independent assistance to victims | Conducts independent surveys | Publishes independent reports | Issues recommendations | Is a quasi-judicial body | Its decisions are binding |
|----------------|--------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|------------------------------|-------------------------------|------------------------|--------------------------|---------------------------|
| FINLAND | National Non-Discrimination and Equality Tribunal ¹⁰ (Act on National Non-Discrimination and Equality Tribunal) | Gender, gender identity, origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics | No | No | No | No | Yes | Yes |
| FRANCE | Defender of Rights (Organic Law No. 2011-333 of 29 March 2011 creating the Defender of Rights, Art. 4(3)) | Any ground protected by national law ¹¹ and international conventions ratified by France | Yes | Yes | Yes | Yes | No | N/A |
| GERMANY | Federal Anti-discrimination Agency (General Act on Equal Treatment, Art. 25) | Race or ethnic origin, sex, religion or belief ¹² (<i>Weltanschauung</i>), disability, age, sexual identity | Yes | Yes | Yes | Yes | No | N/A |
| GREECE | Greek Ombudsman (Law 2477/1997, Art. 1 and Equal Treatment Law 4443/2016, Art. 14) | Racial or ethnic origin, descent, colour, language, religious or other beliefs, disability or chronic illness, age, family or social status, sexual orientation, gender identity or characteristics | Yes | Yes | Yes | Yes | No | N/A |

¹⁰ This body exercises tribunal-like functions.

¹¹ In French legislation, the protected grounds are: mores, sexual orientation, sex, pregnancy, gender identity, belonging, whether real or supposed to an ethnic origin, a nation, a race or a determined religion, physical appearance, last name, family situation, philosophical convictions, union activities, political opinions, age, health, disability, genetic characteristics, place of residence, capacity to express oneself in another language than French, economic vulnerability, philosophical opinions. Grounds covered by national jurisprudence (such as condition of fortune, birth, property, language) are also included.

¹² Not for civil law.

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|----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|------------------------------|-------------------------------|------------------------|--------------------------|---------------------------|
| HUNGARY | Equal Treatment Authority (Act CXXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities; Arts. 8 and 14-17D) | Sex, racial affiliation, colour of skin, nationality, belonging to a national or ethnic minority, mother tongue, disability, health condition, religion or belief, political or other opinion, family status, maternity (pregnancy) or paternity, sexual orientation, sexual identity, age, social origin, financial status, part-time nature of employment legal relationship or other legal relationship connected with labour, or determined period thereof, belonging to an interest representation organisation, other situation, attribute or condition of a person or group | Yes ¹³ | Yes | Yes | Yes | Yes | Yes |
| ICELAND | Centre for Equality (Act on Equal Treatment irrespective of Race or Ethnic Origin, Art. 5 and Act on Equal Treatment in the Labour Market, Art. 5) | Gender, race, ethnic origin, religion, belief, disability, reduced capacity to work, age, sexual orientation, gender identity, gender expression and gender characteristics | No ¹⁴ | Yes | Yes | Yes | No | N/A |
| IRELAND | Irish Human Rights and Equality Commission (Irish Human Rights and Equality Commission Act 2014, Secs. 9 and 44) | Gender, age, race, religion, family status, disability, civil status, sexual orientation, membership of the Traveller Community, housing assistance | Yes | Yes | Yes | Yes | No | N/A |

¹³ However, the Equal Treatment Authority focuses on its quasi-judicial function.

¹⁴ At the time of writing it remains to be seen whether the Centre for Equality will provide some assistance to victims of discrimination in practice.

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|----------------------|--------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|------------------------------|-------------------------------|------------------------|--------------------------|---------------------------|
| ITALY | National Office against Racial Discrimination – UNAR (Legislative Decree No. 215/2003 Implementing Directive 2000/43/EC, Art. 7) | Race, ethnic origin, sex, religion or personal belief, disability, age and sexual orientation | Yes ¹⁵ | Yes | Yes | Yes | No | N/A |
| LATVIA | Ombudsman (Law on Ombudsman, Art. 11(2)) | Grounds not specified, hence any ground | Yes | Yes | Yes | Yes | No | N/A |
| LIECHTENSTEIN | Association for Human Rights in Liechtenstein (Law on the Association for Human Rights in Liechtenstein, Art.4) | Human Rights ¹⁶ | Yes | Yes | Yes | Yes | No | N/A |
| LITHUANIA | Equal Opportunities Ombudsperson (Law on Equal Treatment, Arts. 14-30) | Gender, race, citizenship, nationality, origin, age, sexual orientation, disability, ethnic origin, language, social status, religion, belief, convictions, views | No ¹⁷ | Yes | Yes | Yes | Yes | Yes ¹⁸ |
| LUXEMBOURG | Centre for Equal Treatment (Law of 28 November 2006, Art. 8) | Race, ethnic origin, religion or belief, disability, age, gender, sexual orientation | Yes | Yes | Yes | Yes | No | N/A |

15 As the equality body is set up as an office within the structure of the state administration, it cannot be affirmed that the body can exercise its competencies independently.

16 The law on the Association for Human Rights in Liechtenstein does not provide for a list of grounds. The mandate is generally held and refers to human rights. It can therefore be assumed that the 'main grounds', i.e. race, language, national origin, ethnicity, religion or belief, gender, disability, age or sexual orientation, are covered by the mandate of the Association.

17 In practice, the Ombudsperson is doing consultancy work, and, possibly advising the applicants with regard to which procedural ways to pursue justice.

18 The Ombudsperson's administrative sanctions are binding but not her/his recommendations.

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|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|------------------------------|-------------------------------|------------------------|--------------------------|---------------------------|
| MALTA | National Commission for the Promotion of Equality for Men and Women ¹⁹ (Equality for Men and Women Act, Art. 11) | Sex, family responsibilities, sexual orientation, age, religion or belief, racial and ethnic origin, gender identity, gender expression, sex characteristics, actual or potential pregnancy, childbirth | Yes | Yes | Yes | Yes | No | N/A |
| MONTENEGRO | Protector of Human Rights and Freedoms (Law on the Protector of Human Rights and Freedoms, Art. 27(1) and Law on the Prohibition of Discrimination, Art. 21) | Race, skin colour, national affiliation, social or ethnic origin, affiliation to the minority nation or minority national community, language, religion or belief, political or other opinion, sex, sex change, gender identity, sexual orientation and/or intersex characteristics, health conditions, disability, age, material status, marital or family status, membership or assumed membership of a group, political party or other organisation, other personal characteristics | Yes | Yes | Yes | Yes | No | N/A |
| NETHERLANDS | Netherlands Institute for Human Rights (Netherlands Institute for Human Rights Act, Arts. 9-13) | Racial/ethnic origin, religion and belief, political opinion, hetero- or homosexual orientation, sex, nationality, civil (or marital) status, disability, age, working time and type of labour contract | No | Yes | Yes | Yes | Yes | No |
| | The NGO 'Art. 1' ²⁰ (Local Anti-discrimination Bureaux Act, Art. 2a) | Racial/ethnic origin, religion and belief, political opinion, hetero- or homosexual orientation, sex, nationality, civil (or marital) status, disability, age | Yes | No | No | No | No | N/A |

19 In practice the Commission is generally referred to as the National Commission for the Promotion of Equality.

20 This organisation includes around 430 local anti-discrimination bureaux.

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|------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|------------------------------|-------------------------------|------------------------|--------------------------|---------------------------|
| NORTH MACEDONIA | Commission for Protection against Discrimination (Law on Prevention and Protection Against Discrimination, Arts. 16–33) ²¹ | Sex, race, colour, gender, belonging to a marginalised group, ethnic affiliation, language, citizenship, social origin, religion or religious belief, other beliefs, education, political belonging, personal or social status, 'mental or physical impairment', age, family or marital status, property status, health condition, any other ground prescribed by law or ratified international treaty. | Yes | Yes | Yes | Yes | Yes | No |
| NORWAY | Equality and Anti-discrimination Ombud (Act on the Equality and Anti-discrimination Ombud and the Equality and Anti-discrimination Tribunal, Art. 1) | gender, pregnancy, leave in connection with childbirth or adoption, care responsibilities, ethnicity, religion, belief, disability, sexual orientation, gender identity, gender expression, age, membership of a trade union, political affiliation or combinations of these factors. | Yes | Yes | Yes | Yes | No | N/A |
| | Equality and Anti-discrimination Tribunal (Act on the Equality and Anti-discrimination Ombud and the Equality and Anti-discrimination Tribunal, Art. 1) ²² | gender, pregnancy, leave in connection with childbirth or adoption, care responsibilities, ethnicity, religion, belief, disability, sexual orientation, gender identity, gender expression, age membership of a trade union, political affiliation or combinations of these factors. | No | No | No | No | Yes | Yes ²³ |

21 The Ombudsman also plays a role against discrimination on the grounds of sex, race, colour, national, ethnic and social origin, political affiliation, religious and cultural background, language, property, social background, disability and origin.

22 This body exercises tribunal-like functions.

23 Only in relation to private parties, not in relation to public entities.

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|-----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|------------------------------|-------------------------------|------------------------|--------------------------|---------------------------|
| POLAND | Commissioner for Human Rights ('Ombudsman') (Act on the Commissioner for Human Rights, Art. 1) | The Act on the Commissioner for Human Rights does not specify any protected grounds | Yes ²⁴ | Yes | Yes | Yes | No | N/A |
| PORTUGAL | High Commission for Migrations (Decree-law 31/2014, Art. 1) | Race and ethnic origin, skin colour, nationality, religion, ancestry and territory of origin ²⁵ | Yes ²⁶ | Yes | Yes | Yes | No | N/A ²⁷ |
| ROMANIA | National Council for Combating Discrimination (Ordinance (GO) 137/2000 regarding the prevention and the punishment of all forms of discrimination, Art. 16 and following) | Race, nationality, ethnic origin, language, religion, social status, beliefs, sex, sexual orientation, age, disability, non-contagious chronic disease, HIV positive status, belonging to a disadvantaged group or any other criterion | Yes | Yes | Yes | Yes | Yes | Yes |
| SERBIA | Commissioner for the Protection of Equality (Law on Prohibition of Discrimination, Art. 1(2)) | Race, skin colour, ancestry, citizenship, language, religious or political beliefs, gender, gender identity, sexual orientation, financial position, birth, genetic characteristics, health, disability, marital and family status, previous convictions, age, appearance, membership of political, trade union and other organisations, and other real or presumed personal characteristics. | Yes | Yes | Yes | Yes | Yes | Yes |

24 Judicial interpretation is required as under the Polish Constitution and the law, the competences of the Ombudsman are limited regarding conflicts between private parties.

25 The High Commission for Migrations has a mandate to deal with skin colour, nationality, ethnic origin and religion. Within this body, the Commission on Equality and Against Racial Discrimination is competent to deal with the grounds of race, ethnic origin, colour, nationality, ancestry and territory of origin.

26 As the independence of the equality body is not stipulated in law, due to the potential political influence, it cannot be affirmed that the body can exercise its competencies independently.

27 Although the equality body is not considered to be a quasi-judicial institution, it can issue binding decisions and impose sanctions.

| Country | Specialised body designated by law in compliance with Article 13 | Grounds covered other than racial or ethnic origin | Provides independent assistance to victims | Conducts independent surveys | Publishes independent reports | Issues recommendations | Is a quasi-judicial body | Its decisions are binding |
|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|------------------------------|-------------------------------|------------------------|--------------------------|---------------------------|
| SLOVAKIA | Slovak National Centre for Human Rights (Act No 308/1993 on Establishing the Slovak National Centre for Human Rights, Sec. 1, paras 2a, e, f, g, h and Sec. 1(3) and (4)) | Sex, religion or belief, race, affiliation to a nationality or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/ gender, unfavourable health condition, family duties, membership or involvement in a political party or a political movement, a trade union or another association, the reason of reporting criminality or other anti-social activity, or other status. | Yes | Yes | Yes | Yes | Yes | No |
| SLOVENIA | Advocate of the Principle of Equality (Protection Against Discrimination Act, Arts. 19-32) | Gender, language, ethnicity, race or ethnic origin, religion or belief, disability, age, sexual orientation, gender identity, gender expression, social standing, economic situation, education, any other personal characteristic | Yes | Yes | Yes | Yes | Yes | Yes |
| SPAIN | Council for the Elimination of Racial or Ethnic Discrimination (Law on Fiscal, Administrative and Social Measures, Art. 33) | Racial and ethnic origin | Yes ²⁸ | Yes | Yes | Yes | No | N/A |
| SWEDEN | Equality Ombudsman (The entire Equality Ombudsman Act) | Sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation, age | Yes | Yes | Yes | Yes | No | N/A |

²⁸ The Spanish body has the competence to provide assistance to victims, conduct surveys and reports and issue recommendations but the independence of these functions is not certain due to the status of the body.

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|-----------------------|----------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|------------------------------|-------------------------------|------------------------|--------------------------|---------------------------|
| TURKEY | The Human Rights and Equality Institution (Law on the Human Rights and Equality Institution of Turkey, Arts. 8-14) | Race and ethnic origin, sex, colour, language, religion, belief, denomination, philosophical and political opinion, wealth, birth, marital status, health, disability and age | Yes | Yes | Yes | Yes | No | N/A ²⁹ |
| UNITED KINGDOM | Great Britain: Equality and Human Rights Commission (UK Equality Act 2006, Secs. 1-43) | Age, disability, gender, gender reassignment, race, religion or belief and sexual orientation. | Yes | Yes | Yes | Yes | No | N/A |
| | Northern Ireland: Equality Commission for Northern Ireland (Northern Ireland Act, Secs. 73-74) | Religious belief, political opinion, racial group, age, marital status or sexual orientation, men and women, disability and persons with dependents. | Yes | Yes | Yes | Yes | No | N/A |

29 Although the equality body is not considered to be a quasi-judicial institution, it can issue binding decisions and impose sanctions.

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