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Non-discrimination

Luxembourg
2021
including summary



*Justice
and Consumers*

EUROPEAN COMMISSION

Directorate-General for Justice and Consumers
Directorate D — Equality and Union citizenship
Unit D.1 Non-discrimination and Roma coordination

*European Commission
B-1049 Brussels*

Country report

Non-discrimination

Transposition and implementation at national level of
Council Directives 2000/43 and 2000/78

Luxembourg

Tania Hoffmann

Reporting period 1 January 2020 – 31 December 2020

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Luxembourg: Publications Office of the European Union, 2021

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PDF ISBN 978-92-76-35920-3

ISSN 2599-9176

doi:10.2838/964190

DS-BB-21-021-EN-N



Universiteit Utrecht

CONTENTS

EXECUTIVE SUMMARY	5
INTRODUCTION	10
1 GENERAL LEGAL FRAMEWORK	12
2 THE DEFINITION OF DISCRIMINATION	13
2.1 Grounds of unlawful discrimination explicitly covered	13
2.1.1 Definition of the grounds of unlawful discrimination within the directives	13
2.1.2 Multiple discrimination	14
2.1.3 Assumed and associated discrimination	14
2.2 Direct discrimination (Article 2(2)(a))	14
2.3 Indirect discrimination (Article 2(2)(b))	15
2.3.1 Statistical evidence	15
2.4 Harassment (Article 2(3))	16
2.5 Instructions to discriminate (Article 2(4))	17
2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)	17
3 PERSONAL AND MATERIAL SCOPE	20
3.1 Personal scope	20
3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2), Directive 2000/43 and Recital 12 and Article 3(2), Directive 2000/78)	20
3.1.2 Natural and legal persons (Recital 16, Directive 2000/43)	20
3.1.3 Private and public sector including public bodies (Article 3(1))	20
3.2 Material scope	20
3.2.1 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))	20
3.2.2 Employment and working conditions, including pay and dismissals (Article 3(1)(c))	21
3.2.3 Access to all types and all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))	21
3.2.4 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 (Article 3(1)(d))	21
3.2.5 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)	22
3.2.6 Social advantages (Article 3(1)(f) Directive 2000/43)	22
3.2.7 Education (Article 3(1)(g) Directive 2000/43)	22
3.2.8 Access to and supply of goods and services that are available to the public (Article 3(1)(h) Directive 2000/43)	22
3.2.9 Housing (Article 3(1)(h) Directive 2000/43)	23
4 EXCEPTIONS	24
4.1 Genuine and determining occupational requirements (Article 4)	24
4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)	24
4.3 Armed forces and other specific occupations (Article 3(4) and Recitals 18 and 19, Directive 2000/78)	24
4.4 Nationality discrimination (Article 3(2))	24
4.5 Health and safety (Article 7(2) Directive 2000/78)	25
4.6 Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)	25
4.6.1 Direct discrimination	25
4.6.2 Special conditions for younger or older workers	26

4.6.3	Minimum and maximum age requirements	26
4.6.4	Retirement.....	26
4.6.5	Redundancy	28
4.7	Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5) Directive 2000/78)	28
4.8	Any other exceptions.....	28
5	POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78).....	29
6	REMEDIES AND ENFORCEMENT.....	30
6.1	Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)	30
6.2	Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78).....	31
6.3	Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)..	33
6.4	Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78).....	33
6.5	Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78).....	33
7	BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43).....	35
8	IMPLEMENTATION ISSUES.....	38
8.1	Dissemination of information, dialogue with NGOs and between social partners	38
8.2	Measures to ensure compliance with the principle of equal treatment (Article 14 Directive 2000/43, Article 16 Directive 2000/78).....	39
9	COORDINATION AT NATIONAL LEVEL.....	40
10	CURRENT BEST PRACTICES.....	42
11	SENSITIVE OR CONTROVERSIAL ISSUES	43
11.1	Potential breaches of the directives at the national level	43
11.2	Other issues of concern	43
12	LATEST DEVELOPMENTS IN 2020.....	44
12.1	Legislative amendments	44
12.2	Case law.....	44
	ANNEX 1: MAIN TRANSPOSITION AND ANTI-DISCRIMINATION LEGISLATION	45
	ANNEX 2: INTERNATIONAL INSTRUMENTS.....	47

EXECUTIVE SUMMARY

1. Introduction

The Grand Duchy of Luxembourg is characterised by cultural diversity and the common use of several languages. Its population is quite homogeneous, with the vast majority of foreigners being European Union citizens, most of whom are Catholics by religion.

The Grand Duchy of Luxembourg has one of the highest proportions of foreigners in Europe – 48 % on average. In Luxembourg City, the capital, over 70.8 % of all inhabitants are foreigners. The countries with the highest number of immigrants in Luxembourg are Portugal, France, Italy, Belgium and Germany. Portuguese is the second-largest ethnic group in the country, behind Luxembourgers, with a population of about 95 100 and comprising 15.6 % of the population. This group is followed by French (7.6 %), Italian (3.7 %), Belgian (3.3 %) and German (2.1%). Over 7.7 % of Luxembourg residents are from other European Union nations, and 7.7 % of residents are from non-EU nations¹.

In general, relations between different ethnic and racial groups are smooth; incidents of racism and discrimination are, in the author's opinion, rather low. Nonetheless, intolerance does indeed exist, although violent xenophobic incidents are rare.

In institutional terms, Luxembourg is a constitutional monarchy, in which the Grand Duke has only very limited powers, as conferred by the Constitution. There is a unicameral Parliament, known as the *Chambre des Députés*, which votes on draft bills. All bills must be submitted to the Council of State for its opinion, as well as to the professional chambers. These chambers are public institutions. Their mission is to defend the concerns of a specific professional category (employees, farmers, the self-employed, civil servants and so on).

For a bill to be passed, the Council of State may exempt the Parliament from the second constitutional vote. Usually, a bill has to be adopted a second time by the Parliament at a second reading at least three months later, unless the Council of State does not formally oppose the wording of the draft bill.

2. Main legislation

Luxembourg has signed and ratified the European Convention on Human Rights, Article 14 of which prohibits discrimination on any ground, such as sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. Article 14 is directly applicable to court cases examined under Luxembourg law. Protocol 12 on discrimination has also been ratified and is directly applicable.

In 2011, a law ratified the UN Convention on the Rights of Persons with Disabilities as well as the Optional Protocol to the Convention on the Rights of Persons with Disabilities, which had already been signed in 2007.

Other international instruments have been ratified by the Luxembourg Government, including the Universal Declaration of Human Rights, the International Convention on the Elimination of all Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. Convention 111 of the International Labour Organization, concerning discrimination in employment and occupation, was ratified by Luxembourg in 2000 and is directly applicable in internal law.

On a national level, the principle of equal treatment can be found in the general legal principle found in Article 10-*bis* of the Constitution, according to which 'all Luxembourgers

¹ See: <https://luxembourg.public.lu/fr/societe-et-culture/population/demographie.html>.

are equal before the Law'. However, strictly speaking, this principle applies only to Luxembourg nationals and not to foreign citizens. Although it is understood to be a general principle of law, implying equality for all persons, it clearly is not sufficient to guarantee in all situations and in all court cases that any breach of the principle of equality will be punished. The same is true for Article 111 of the Constitution, which grants protection to foreigners and to their property, unless the law provides for an exception.

One can find penal provisions against discrimination on the grounds of religion, race and ethnic origin, disability, sexual orientation and age in the Criminal Code, in Articles 454 to 457. Individual and collective discrimination are thus prohibited and can lead to a fine or imprisonment of up to two years.

The Law of 28 November 2006 (general discrimination law) and the Law of 29 November 2006 (on public service) have strengthened the existing legislation against direct discrimination and have introduced new tools in civil law to fight different forms of discrimination, such as indirect discrimination, harassment or instructions to discriminate. The Law of 28 November 2006 also amended other legal provisions, including criminal law and labour law

Regarding labour law, a mechanism for protection against victimisation was introduced to the Labour Code by law in 2006.

The Law of 28 November 2006 covers the entire scope of Directive 2000/43 in criminal law, for all the grounds apart from belief (including race and ethnic origin in the field of non-public sector employment) and the Law of 29 November 2006 covers all public employees and employers (in the state administration, municipalities etc.) and all grounds covered by both directives.

In both laws of November 2006, the legislature has gone further than the strict requirements of the directives, by including the prohibition of discrimination on the grounds of religion or belief, disability, age and sexual orientation, as well as race and ethnic origin for all fields included in the scope of both directives, thus forbidding all discrimination in relations between persons.

3. Main principles and definitions

The provisions against discrimination can be found in the Laws of 28 and 29 November 2006. The two laws use the same definitions as found in the relevant directives. They thus introduce the concept of equal treatment as required by the directives. Direct discrimination, indirect discrimination and harassment are defined adequately in the laws, as well as instruction to discriminate.

All the prohibited grounds in the directives (i.e. religion or belief, age, disability, sexual orientation and race and ethnic origin) are covered within and outside the employment field by the civil law provisions.

As far as victimisation is concerned, all fields are covered. In employment matters, the provisions include a special procedure against dismissals based on discrimination and declare void any discriminatory clauses in contracts or collective work agreements. Protection against retaliation is also provided for.

As far as exceptions and exemptions are concerned, the Law of 28 November 2006 contains provisions on genuine and determining occupational requirements as allowed by Directive 2000/78/EC, based on the nature of the particular occupational activities concerned or on the context in which they are carried out, but only within the sphere of employment. The law also provides for an exception based on the ethos of a church or a religious group in relation to employment.

The law also provides for possible exemptions based on age, if they are appropriate and necessary and if they are objectively and reasonably justified by a legitimate aim. There is an exception for insurance contracts from the prohibition of discrimination on the grounds of age and disability, on the condition that the exception is objectively and reasonably justified.

Provisions on reasonable accommodation for disabled persons have also been incorporated in law by amending the Law of 12 September 2003 on disabled persons. Positive action is recognised as being valid, meaning that it is not considered as discrimination.

There is no legal measure nor case law in relation to cases of multiple discrimination or discrimination by association.

4. Material scope

As far as civil law is concerned, including employment law, the Law of 28 November 2006 has incorporated the full scope of Article 3 of Directive 2000/43 and thus is applicable to:

- 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;
- access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
- employment and working conditions, including dismissals and pay;
- 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;
- social protection, including social security and healthcare, social advantages, education and access to and supply of goods and services which are available to the public, including housing.

As far as criminal law is concerned, Article 455 of the Criminal Code, which was amended by the Law of 26 November 2006, is applicable to discrimination in relation to:

- the refusal to supply or allow enjoyment of goods;
- the refusal to supply a service;
- the restriction of the supply of goods or services on grounds of ethnic or racial discrimination or the exercising of any other form of discrimination at the time of supply;
- the indication in any advertisement of the intention to refuse goods or services or to practise discrimination at the time of supplying goods and services;
- the restriction of the normal exercise of any economic activity;
- the refusal to employ an individual, the sanctioning or dismissal of a person;
- the making of access to work, vocational training or working conditions, or the membership of and involvement in an organisation of workers or employers, subject to a discriminatory condition.

The public sector is covered by the Law of 29 November 2006 on the relations between public employees and the administration (the state and municipalities).

5. Enforcing the law

An individual may, acting alone, lodge a criminal complaint in court. The state prosecutor will, however, decide whether it is worthwhile proceeding with the case.

The Law of 6 May 1999 on penal mediation enables the state prosecutor to use mediation where it appears that such a remedy is likely to ensure that compensation or damages will be paid to the victim.

The victim may also apply directly to the examining judge (*juge d'instruction*) if he or she claims to have suffered discrimination; in such cases it is up to the victim to estimate the extent of the loss and claim damages in criminal proceedings. The judge will often require the claimant to pay a guarantee to cover the costs of the procedure.

The victim may claim damages in a civil court, with or without the assistance of associations.

The Laws of 28 and 29 November 2006 give associations and trade unions or professional associations the ability to assist victims in court or to act in support of victims. Associations and trade unions or professional associations cannot act on behalf of victims.

Article 5 of the general discrimination Law of 28 November 2006 introduced a mechanism for shifting the burden of proof in civil and administrative procedures in the same way as provided for by the directives.

The shifting of the burden of proof is excluded in criminal proceedings according to Article 253-2(2) of the Labour Code.

The labour court may be used in a case of discrimination at work, through a special summary procedure, and in a case of dismissal, the reinstatement of a worker may be requested. A person may also ask that any discriminatory clause in a contract or a collective convention be declared void.

In the employment field, a complaint can also be lodged with the Labour Inspectorate, which is in charge of monitoring the application of employment law in general.

As there is no existing case law, it is difficult to say whether the available sanctions are effective, proportionate and dissuasive. The use of testing and statistical evidence is not provided for by the laws.

6. Equality bodies

The Laws of 28 and 29 November 2006 created a Centre for Equal Treatment (Centre pour l'Égalité de Traitement – CET), which is also competent to deal with discrimination cases relating to the public sector.

It took a long time to set up the Centre for Equal Treatment, but it was eventually established in 2008 and is now fully operational. Unfortunately, its decisions are not binding and most of its recommendations are not followed by the legislature and other institutions.

The CET is a body made up of five members, including a chairperson, who are appointed for five years by the Grand Duke, having been nominated by the Parliament. Once a year, a report must be submitted to the Government and to Parliament. The CET is funded by the state.

The CET publishes independent reports, issues opinions and recommendations, conducts surveys on all questions linked to discrimination and provides information and assistance to victims of discrimination.

It deals with issues relating to discrimination based on race, ethnic origin, gender, religion or belief, disability, age and sexual orientation.

The Law of 28 November 2006 underlines the full independence of the Centre for Equal Treatment. This independence may in theory be curtailed by the fact that the CET's budget has decreased over the last few years.

The CET does not have the ability to support victims in court or to submit claims directly to the courts. In addition, it has no quasi-judicial powers.

Since 2008, the CET has been working in the field of anti-discrimination by organising conferences, registering claims of discrimination and by trying to mediate in cases of alleged discrimination. Since 2012 its activities have been regularly covered by the national newspapers, television and radio

7. Key issues

There is still very little case law on discrimination. According to the results of a TNS Ilres² investigation presented on 1 December 2020, only 10 % of victims of discrimination had filed a complaint with the police. Two possible explanations are that victims do not have the financial means to bring a case to court, and that many people are unaware of anti-discrimination laws.

The possibilities for action by the CET are limited, as it has only limited financial means.

The CET does not have the ability to support victims in court or to submit claims to the courts directly. In addition, it has no quasi-judicial powers and its recommendations are not binding. For many years, the CET has been asking the Government to reinforce its investigatory powers as it has no power to force institutions, private persons or employers to collaborate with its investigations.

According to the CET, several people reported that complaints that they lodged with the police were discontinued after reaching the Attorney General's Office, although there is no evidence to confirm that. The CET assumes that a lack of resources is the source of the rejection of discrimination lawsuits and has recommended an increase in resources for the prosecutor's services.

On the reasonable accommodation duty, only people who have a 30 % disability and have been officially recognised as such are entitled to claim a reasonable accommodation. This provision should apply to both private and public sector employers. This might not be compatible with the approach of the CJEU to the definition of disability, which seems broader and more flexible.

² TNS Ilres (Institut luxembourgeois de recherches sociales et d'études de marches) is the Luxembourg institute for opinion polls and studies.

INTRODUCTION

The national legal system

Luxembourg is a unitary and indivisible state. It is a constitutional monarchy, in which the Grand Duke has only very limited powers, as conferred by the Constitution.

The Government or members of Parliament propose pieces of legislation. Luxembourg has a unicameral Parliament, the Chambre des Députés, which votes on draft bills. A statement of grounds originally accompanies these draft bills.

All bills must be submitted to the Council of State (Conseil d'Etat) for its opinion, as well as to the professional chambers. For a bill to be passed, the Council of State may exempt the Parliament from the second constitutional vote. If the Council of State formally opposes the draft, a second vote must be taken in Parliament to pass the bill. This vote cannot be held less than three months after the refusal of the Council of State to exempt the Parliament from the second vote.

Secondary legislation is exercised by grand ducal regulations. In practice, a regulation is a mechanism to provide further details and/or procedures for the implementation of a particular law and is only used in relation to areas that are not reserved to the legislative power by the Constitution. The Government, through the minister in charge of the area concerned, is responsible for drafting the regulation, which is submitted to the Council of State for its opinion, adopted by Parliament and then signed by the Grand Duke, who does not have the power to oppose it.

There are a few basic codes of law, including the Civil Code (dating from the times of Napoleon Bonaparte, at the beginning of the 19th century, when Luxembourg belonged to France), the Criminal Code, the Code of Commerce, the new Code of Civil Procedure (which entered into force on 16 September 1998), the Code of Criminal Procedure, the Code of Social Security and the Labour Code (which was enacted in 2006). The Labour Code is basically a compilation of former texts, with a new numbering of paragraphs.

In the public sector, there is a compilation of laws relating to the administration called the Administrative Code, in which the general statute of civil servants sets out the rules relating to the relationship between civil servants and the administration, including the central Government administration and the local administration, mainly the municipalities (known as communes).

Some laws apply both to the private sector and the public sector, such as the Law of 8 December 1981 on equality of treatment between men and women in the field of employment, which has been incorporated formally into the Labour Code.

List of main legislation transposing and implementing the directives

Law of 28 November 2006³ (general discrimination law). This law covers the entire scope of both directives excepting public employment, which is covered by the public sector law.

³ Law of 28 November 2006 (general discrimination law):

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.'

<http://www.legilux.public.lu/eli/etat/leg/loi/2006/11/28/n1/jo>.

Law of 29 November 2006 (public sector law). This law explicitly covers all grounds covered by the directives and governs all public employees and employers (in the state administration, municipalities etc.).⁴

⁴ Law of 29 November 2006 which amends:
1. the amended Law of 16 April 1979 establishing the general statute of state civil servants;
2. the amended Law of 24 December 1985 establishing the general statute of municipal civil servants.
<http://www.legilux.public.lu/eli/etat/leg/loi/2006/11/29/n1/jo>.

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

The Constitution of Luxembourg includes the following articles dealing with non-discrimination:

Article 10-*bis*: contains a general legal principle, which states that all Luxembourgers are equal before the law. However, strictly speaking, this principle applies only to Luxembourg nationals and not to foreign citizens. Nevertheless, the question has not yet been discussed by the courts.

Article 19: guarantees freedom of worship in all its forms.

Article 20: guarantees freedom of conscience and provides for the liberty not to take part in any religious ceremony, to respect any religious festival or to respect any day of rest.

Article 111: states that:

‘Any foreigner on the territory of the Grand Duchy shall enjoy the protection accorded to persons and property, without prejudice to exceptions established by law.’

These provisions do not apply to all areas covered by the directives. Their material scope is not broader than those of the directives.

These provisions are directly applicable if they include fundamental rights that are self-explanatory.

These provisions can be enforced against private individuals as well as against the state with the limitations that the provision must be clear enough and not too broad.

2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination explicitly covered

The following grounds of discrimination are explicitly prohibited in the main legislation (as listed in the Introduction) transposing and implementing the two EU anti-discrimination directives: racial or ethnic origin (actual or supposed), skin colour, sex, sexual orientation, family situation, age, state of health, disability, customs, political or philosophical opinions, trade union activities, nationality, religion or belief.

2.1.1 Definition of the grounds of unlawful discrimination within the directives

All the grounds covered by both directives are also covered by both the Law of 28 November 2006 (general discrimination law) and the Law of 29 November 2006 (public sector law), i.e. religion or belief, disability, age, sexual orientation, race or ethnic origin. Therefore, outside the scope of criminal law, discrimination based on belief is explicitly forbidden, for example, in civil or commercial cases, administrative conflicts or in respect of work relations.

Luxembourg legislation does not provide a definition of the grounds of discrimination covered by the directives. Thus far, the courts have not defined these concepts.

a) Racial or ethnic origin

National law refers to 'belonging to a race or an ethnic origin'. These terms are not defined in Luxembourg law, but as Luxembourg has ratified the ICERD, the definition in the Convention could be used in disputes.

b) Religion and belief

Religion and belief are not defined.⁵

c) Disability

The term 'disability' is not defined in the laws transposing the directives. Article 1 of the Law of 12 September 2003 on disabled workers provides a definition of disability, but it relates only to the specific purpose of claiming reasonable accommodation. It stipulates that only persons who have a 30 % disability and have been officially recognised as such are entitled to claim under the duty to provide reasonable accommodation. If a person is claiming for protection on the basis of non-discrimination law, the judge should in principle not apply the restrictive definition in the Law of 12 September 2003. In this case, the jurisprudence would be compatible with *Ring and Skouboe Werge*. However, judicial interpretation is required.

d) Age

Age is not defined by the law.

There is no relevant jurisprudence.

e) Sexual orientation

⁵ Although there is no official state religion, a 2015 law formally approved the conventions between religious communities and the state. Official recognition is granted to six religious communities: Anglican, Catholic, Jewish, Muslim, Orthodox and Protestant.

Sexual orientation is not defined in the law or in the preparatory works. There is on-going academic discussion on the definition of sexual orientation. The CET uses the definition in the Yogyakarta principles to define sexual orientation.⁶

There is no case law dealing with issues relating to sexual orientation.

2.1.2 Multiple discrimination

In Luxembourg, multiple discrimination is not prohibited in law.

Since 2009, the Centre for Equal Treatment has recommended the inclusion of the prohibition of multiple discrimination in law, but so far this recommendation has not been followed up.

In Luxembourg, there is no case law dealing with multiple discrimination.

2.1.3 Assumed and associated discrimination

a) Discrimination by assumption

In Luxembourg, discrimination based on a perception or assumption of a person's characteristics is prohibited in national law.

Article 454 of the Criminal Code prohibits discrimination based on ethnic origin or belonging to a nationality, race or specific religion (actual or supposed). Therefore, any discrimination based on the false assumption of the ethnic origin, nationality race or specific religion of a person is forbidden and punishable.

Such discrimination is also prohibited under Article 1 of the general anti-discrimination Law of 28 November 2006 and Article 3 of the public sector Law of 29 November 2006 in relation to ethnic origin or belonging to a race (actual or supposed).

There is no such prohibition for other grounds, such as age, sexual orientation or disability, as the abovementioned article uses the words 'their belonging or non-belonging – true or assumed' only for the grounds of ethnic origin, nationality, race or specific religion.

b) Discrimination by association

In Luxembourg, discrimination based on association with persons with particular characteristics is not prohibited in national law.

2.2 Direct discrimination (Article 2(2)(a))

a) Prohibition and definition of direct discrimination

In Luxembourg, direct discrimination is prohibited in national law. It is defined.

Both laws transposing Directives 2000/43/EC and 2000/78/EC for the private sphere and for public service use the definition in the directives and introduce the concept of equality of treatment as required by those directives, including the definition of direct discrimination.

The definition used in Articles 1(a) and 18 (introducing Article L.251-1 in the Labour Code) of the general anti-discrimination Law of 28 November 2006, and in Article 1(3) (introducing Article 1-*bis* of the general statute of civil servants) of the public sector Law of 29 November 2006, is:

⁶ See: <http://cet.lu/en/faq/>.

'Direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of...'

There is no case law on the definition of direct discrimination.

b) Justification for direct discrimination

In Luxembourg, national law provides for specific exception(s) for direct discrimination on the ground of age.

2.3 Indirect discrimination (Article 2(2)(b))

a) Prohibition and definition of indirect discrimination

In Luxembourg, indirect discrimination is prohibited in national law.

According to Articles 1b and 18 of the general discrimination Law of 28 November 2006 and according to Articles 1(3) and 2(3) of the public sector Law of 29 November 2006 indirect discrimination occurs when an apparently neutral provision, criterion or practice is likely to result in a particular disadvantage for people of a nationality, who belong (or not), whether in reality or supposedly, to a given race or are of a particular ethnic origin, or on the basis of sex, sexual orientation, religion or belief, a handicap or age, relative to other people, unless this provision, criterion or practice can be objectively justified and that the means to carry out this objective are appropriate and necessary.

Indirect discrimination applies only in civil cases (including employment law) and is not punishable by criminal law.

Indirect discrimination for employment purposes is defined in Articles 1b and 18 of the general discrimination Law of 28 November 2006 (private relations) and in Articles 1(3) and 2(3) of the public sector Law of 29 November 2006 (public services). The definition in both laws is identical.

b) Justification test for indirect discrimination

The two anti-discrimination laws of 28 and 29 November 2006 use the same definitions as found in the relevant directives.

The justification test would be the one provided for in the directives, namely that any provision, criterion or practice must be objectively justified by a legitimate aim and that the means of achieving that aim should be appropriate and necessary.

Legitimate aims that satisfy those elements should be accepted by courts, but as yet, there have been no judgements on the issue.

It remains to be seen what measures might be considered as appropriate and necessary to pursue a legitimate aim. There is no case law.

2.3.1 Statistical evidence

a) Legal framework

In Luxembourg, there is legislation regulating the collection of personal data.

The Law of 1 August 2018 on the organisation of the National Data Protection Commission and the general data protection framework⁷ repeals the previous act on data protection (amended Act of 2 August 2002) and fulfils the General Data Protection Regulation at the national level.

Article 1 of the Law of 1 August 2018 refers to the provisions of the General Data Protection Regulation 2016/679 so that all data considered as sensitive in the EU regulation is also considered as sensitive data in Luxembourg law.

Data considered as sensitive data are data relating to racial or ethnic origin; political opinions; religious or philosophical belief; or belonging to a trade union, as well as the processing of personal data about health or a natural person's sex life or sexual orientation, including genetic information.

In Luxembourg the law does not refer to the use of statistical evidence to establish indirect discrimination. Statistical evidence may be admitted under national law in order to establish discrimination, but judicial interpretation would be required for clarification.

b) Practice

In Luxembourg, statistical evidence is not used in practice in order to establish indirect discrimination.

2.4 Harassment (Article 2(3))

a) Prohibition and definition of harassment

In Luxembourg, harassment is prohibited in national law.

The laws of 28 and 29 November 2006 transposing the directives use the definitions of both directives concerning harassment, so that the provisions are applicable in civil cases and labour cases and, for example, in administrative or commercial cases and cover the full material scope for all grounds.

According to Articles 1(3) and 18 of the general discrimination Law of 28 November 2006 and Article 1(5) of the public sector Law of 29 November 2006, harassment is considered to be discrimination when:

'An unwanted conduct related to religion or belief, disability, age, sexual orientation, race or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.'

The general statute of civil service contains a definition of moral harassment, which is any conduct that, by its repetition or systematisation, harms a person's dignity or physical integrity (Article 10-2).

On 25 June 2009, a collective agreement was signed between the Luxembourg association of employers (Union des Entreprises Luxembourgeoises), and the two main trade unions, OGB-L and LCGB, relating to harassment and violence at work. The agreement was

⁷ Law of 1 August 2018 (*Loi du 1er août 2018 portant organisation de la Commission nationale pour la protection des données et mise en oeuvre du règlement (UE) 2016/679 du Parlement européen et du Conseil du 27 avril 2016 relatif à la protection des personnes physiques à l'égard du traitement des données à caractère personnel et à la libre circulation de ces données, et abrogeant la directive 95/46/CE (règlement général sur la protection des données), portant modification du Code du travail et de la loi modifiée du 25 mars 2015 fixant le régime des traitements et les conditions et modalités d'avancement des fonctionnaires de l'État*), <http://legilux.public.lu/eli/etat/leg/loi/2018/08/01/a686/jo>.

declared to be mandatory for all employers and employees by a grand-ducal regulation of 15 December 2009.

In Luxembourg, harassment explicitly constitutes a form of discrimination.

Harassment is forbidden and defined as a type of discrimination by Articles 1(3) and 18 (introducing Article L-251-1(3) of the Labour Code) of the anti-discrimination Law of 28 November 2006, and by Articles 1(5) (introducing Article 10(c), paragraph 6 in the amended Law of 16 April 1979, establishing the general statute of state civil servants) and 2(5) (introducing Article 12(c), paragraph 5 in the amended Law of 24 December 1985 establishing the general statute of municipal civil servants) of the anti-discrimination Law of 29 November 2006.

b) Scope of liability for harassment

Where harassment is perpetrated by an employee, the employer and the employee may be liable. The employer may be responsible under Article 1384(3) of the Civil Code, which provides that the employer is responsible for damage caused by their employees carried out during the course of their functions.

2.5 Instructions to discriminate (Article 2(4))

a) Prohibition of instructions to discriminate

In Luxembourg, instructions to discriminate are prohibited in national law. Instructions are defined as the behaviour of enjoining somebody to practise discrimination against another person. A hierarchical relationship is not required.

The relevant articles are Articles 1(4) and 18 (introducing Article 251-1(4) in the Labour Code) of the Law of 28 November 2006 and Articles 1(3) (introducing Article 1-*bis* (1)(b) in the amended Law of 16 April 1979 establishing the general statute of state civil servants) and 2(3) (introducing Article 1-*bis* (1)(b) in the amended Law of 24 December 1985 establishing the general statute of municipal civil servants) of the Law of 29 November 2006, which provide that discrimination is considered as any behaviour consisting in ordering someone to discriminate against people for one of the following motives: religion or belief, disability, age, sexual orientation, race or ethnic origin. The prohibition of instruction to discriminate covers all the fields in the directive.

In Luxembourg, instructions explicitly constitute a form of discrimination.

b) Scope of liability for instructions to discriminate

In Luxembourg, the instructor and the discriminator are equally liable.

The relevant articles are Articles 1 and 18 (introducing Article 251-1(4) in the Labour Code) of the Law of 28 November 2006 and Articles 1(3) (introducing Article 1-*bis* (1)(b) in the amended Law of 16 April 1979 establishing the general statute of state civil servants) and 2(3) (introducing Article 1-*bis* (1)(b) in the amended Law of 24 December 1985 establishing the general statute of municipal civil servants) of the Law of 29 November 2006.

2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)

a) Implementation of the duty to provide reasonable accommodation for people with disabilities in the area of employment

In Luxembourg, the duty to provide reasonable accommodation is included in the law and is defined.

The definition can be found in Article 20 of the general discrimination Law of 28 November 2006. This article also amended and completed Article 8 of the Law on Disabled Persons of 12 September 2003. The wording of the general discrimination Law of 28 November 2006 transposing Directive 2000/78/EC is almost identical to that of the directive itself; this particularly applies to the definition of reasonable accommodation for disabled persons, which amends Article 8 of the Law of 12 September 2003:

‘Employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer.’

Article 5 of the UN Convention on the Rights of Persons with Disabilities is relevant in this context, given that Luxembourg approved the convention in the Law of 28 July 2011. Individuals can rely directly on the UNCRPD before Luxembourg courts.

A mandatory duty to provide reasonable accommodation has not been explicitly imposed on the public employer, i.e. the state or other administrations, in the public sector law of 29 November 2006, probably because the Law of 12 September 2003 is directed at all employers, both private and public.

The national law does not define what a disproportionate burden would be for employers.

Such a burden would not be considered disproportionate when sufficiently remedied by the financial support measures contained in Article 26 of the grand ducal regulation of 7 October 2004.

Article 26 of the grand ducal regulation of 7 October 2004 provides for financial measures to support the adjustment of working environments and access to a place of work, for the purchase of professional equipment and for reimbursements of transport costs to the workplace.

Only people who have a 30 % disability and have been officially recognised as such are entitled to claim a reasonable accommodation. The provision applies to both private and public employers.

b) Case law

There is no available information or case law.

c) Definition of disability and non-discrimination protection

According to Article 1 of the Law on Disabled Persons of 12 September 2003, the definition of a disability for the purpose of claiming a reasonable accommodation is more restrictive than for claiming protection from discrimination in general, as only people who have a 30 % disability and have been officially recognised as such are entitled to claim under the duty to provide reasonable accommodation. This could be a breach of Directive 2000/78 in terms of personal scope.

d) Failure to meet the duty of reasonable accommodation for people with disabilities

In Luxembourg, failure to meet the duty of reasonable accommodation in employment for people with disabilities is not explicitly recognised as a form of discrimination by the law.

Nevertheless, the interpretation of the laws should require that, if the laws are not respected, it will be deemed to be a case of discrimination. However, as yet there is no case law.

The comments made in Parliament on the Law of 22 July 2008⁸ concerning access for disabled persons with trained dogs indicate that refusing access to a disabled person with a trained dog to a building open to the public is indirect discrimination.

Neither the anti-discrimination Law of 28 November nor the Criminal Code provides a specific sanction in case of failure to provide reasonable accommodation. Sanctions would therefore only be administrative or civil sanctions in such cases.

e) Duties to provide reasonable accommodation in areas other than employment for people with disabilities

In Luxembourg, the law provides only a limited duty to provide reasonable accommodation for people with disabilities outside employment.

Article 2-5 of the Law of 15 July 2011 on access to school and professional qualifications of pupils with special educational needs provides for a reasonable accommodation to be made in school, including high school. The law does not refer to university but to adult education. However, the law makes no reference to 'disproportionate burden' and for the moment no case law exists in that respect.

Article 5 of the UN Convention on the Rights of Persons with Disabilities is also relevant in this context, but as yet there is no case law.

f) Duties to provide reasonable accommodation in respect of other grounds

In Luxembourg, there is no legal duty to provide reasonable accommodation in respect of other grounds in the public and/or the private sector

⁸ Bill on access for disabled persons with trained dogs, (*Projet de loi relatif à l'accessibilité des lieux ouverts au public aux personnes handicapées accompagnées de chiens d'assistance*), 5 July 2017; see the commentary on the articles, available at: [http://www.chd.lu/wps/PA_RoleDesAffaires/FTSByteServletImpl?path=EB95A6C0645B277B149A619BC9EF1FF22EA0041C425EB89B3F0E4ECC10BB449C105C75BE032C2DA1B6723D37C409F09F\\$60AAD4E3F8F7F81C28C4FC639480FDB5](http://www.chd.lu/wps/PA_RoleDesAffaires/FTSByteServletImpl?path=EB95A6C0645B277B149A619BC9EF1FF22EA0041C425EB89B3F0E4ECC10BB449C105C75BE032C2DA1B6723D37C409F09F$60AAD4E3F8F7F81C28C4FC639480FDB5).

3 PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2), Directive 2000/43 and Recital 12 and Article 3(2), Directive 2000/78)

In Luxembourg, there are no residence or citizenship/nationality requirements for protection under the relevant national laws transposing the directives. Undocumented individuals would therefore also be protected under national law.

3.1.2 Natural and legal persons (Recital 16, Directive 2000/43)

a) Protection against discrimination

In Luxembourg, according to Article 2 of the general discrimination Law of 28 November 2006, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of protection against discrimination.

b) Liability for discrimination

In Luxembourg, according to Article 2 of the general discrimination Law of 28 November 2006, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of liability for discrimination.

3.1.3 Private and public sector including public bodies (Article 3(1))

a) Protection against discrimination

In Luxembourg, the personal scope of national law covers private and public sector including public bodies for the purpose of protection against discrimination.

The provisions can be found in Article 2 of the general discrimination Law of 28 November 2006 and Articles 1(2) and 2(2) of the public sector law of 29 November 2006.

b) Liability for discrimination

In Luxembourg, the personal scope of national law covers private and public sector including public bodies for the purpose of liability for discrimination.

The provisions can be found in Article 2 of the general discrimination Law of 28 November 2006 and Articles 1(2) and 2(2) of the public sector Law of 29 November 2006.

3.2 Material scope

3.2.1 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))

In Luxembourg, national legislation prohibits discrimination in relation to conditions for access to employment, self-employment or occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy, for the five grounds and in both private and public sectors, as described in the directives.

The provisions in relation to the private sector can be found in Article 2(1)(a) of the Law of 28 November 2006, which has the same wording as Article 3(1)(a) of the directive. Regarding self-employment, the Law of 28 November 2006 provides only that the law is also applicable to self-employment.

As far as public service is concerned, the areas in which discrimination is prohibited have not been named, so there is a difference of wording. However, as the anti-discrimination legislation covers the employment rules for civil servants and public employees, including trainees, under the public sector Law of 29 November 2006, access to public service is also covered, although this is through a complicated reference to articles of the general statute of civil servants.

Nevertheless, access to public employment is expressly exempted from the Law of 28 November 2006. Access to public employment is covered by the public sector law of 29 November 2006 on public service, although the wording is so complicated that one has to refer to the Opinion of the Council of State of July 2006 on the draft bill in order to confirm the meaning of the aforementioned articles.

3.2.2 Employment and working conditions, including pay and dismissals (Article 3(1)(c))

In Luxembourg, national legislation prohibits discrimination in working conditions, including pay and dismissals, for all five grounds and for both private and public employment.

The provisions in relation to the private sector can be found in Article 2(1)(c) of the Law of 28 November 2006.

Working conditions in the public service are covered by the Law of 29 November 2006 through a complicated reference to articles of the general statute of civil servants, including such conditions as provided in the general statute of civil servants.

3.2.3 Access to all types and all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))

In Luxembourg, national legislation prohibits discrimination in vocational training outside the employment relationship, such as adult lifelong learning courses or vocational training provided by technical schools or universities.

The provisions can be found in Article 2(1)(b) of the Law of 28 November 2006 and apply to the private and public sectors.

3.2.4 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 (Article 3(1)(d))

In Luxembourg, national legislation prohibits discrimination in relation to membership of, and involvement in, workers' or employers' organisations as formulated in the directives for all five grounds and for both private and public employment.

The provisions can be found in Article 2(1)(d) of the Law of 28 November 2006, and they apply to the private and public sectors.

3.2.5 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)

In Luxembourg, national legislation prohibits discrimination in social protection, including social security and healthcare, as formulated in the Racial Equality Directive.

The provisions can be found in Article 2(1)(e) of the Law of 28 November 2006. Luxembourg law reaches further than Directive 2000/43 and covers all grounds including those covered by Directive 2000/78/EC.

a) Article 3(3) exception (Directive 2000/78)

Article 3 of the general anti-discrimination Law of 28 November 2006 excludes payments of any kind made by state schemes or similar, including state social security or social protection schemes, from the scope of the anti-discrimination protection, for the grounds covered by Directive 2000/78/EC. Discrimination is, however, forbidden on grounds of racial or ethnic origin as far as such payments or social schemes are concerned.

3.2.6 Social advantages (Article 3(1)(f) Directive 2000/43)

In Luxembourg, national legislation prohibits discrimination in social advantages as formulated in the Racial Equality Directive. This should also include social housing.

The provisions can be found in Article 2(1)(f) of the Law of 28 November 2006. Luxembourg law reaches further than Directive 2000/43 and covers all grounds including those covered also by Directive 2000/78/EC.

3.2.7 Education (Article 3(1)(g) Directive 2000/43)

In Luxembourg, national legislation prohibits discrimination in education as formulated in the Racial Equality Directive.

The provisions can be found in Article 2(1)(g) of the Law of 28 November 2006. The grounds that are covered are religion and belief, age, disability, sexual orientation, race and ethnic origin.

In Luxembourg, the general approach to education for pupils with disabilities does not give rise to problems. Where possible, pupils with disabilities are educated in mainstream education. According to the Ministry of Education, only 1 % of pupils with special needs are educated in special institutions.⁹

There are no special provisions regarding higher education.

a) Trends and patterns regarding Roma pupils

In Luxembourg, there is no data available on specific trends and/or patterns (whether legal or societal) in education regarding Roma pupils. This seems to be due to the small number of Roma in Luxembourg.

3.2.8 Access to and supply of goods and services that are available to the public (Article 3(1)(h) Directive 2000/43)

In Luxembourg, national legislation prohibits discrimination in access to and the supply of goods and services as formulated in the Racial Equality Directive.

⁹ See: <https://men.public.lu/fr/themes-transversaux/eleves-besoins-specifiques.html>.

The provisions can be found in Article 2(1)(h) of the Law of 28 November 2006. The grounds that are covered are religion and belief, age, disability, sexual orientation, race and ethnic origin.

The provisions do not apply to insurance contracts with regard to age and disability, under condition that the dispensation is both objectively and reasonably justified.

There is no provision in the laws as to whether the failure to adapt goods or a service to meet the needs of a person with a disability is a form of discrimination.

a) Distinction between goods and services available publicly or privately

In Luxembourg, national law does not distinguish between goods and services available to the public (e.g. in shops, restaurants and banks) and those available only privately (e.g. restricted to members of a private association).

The provisions can be found in Article 2(1)(h) of the Law of 28 November 2006.

3.2.9 Housing (Article 3(1)(h) Directive 2000/43)

In Luxembourg, national legislation prohibits discrimination in housing as formulated in the Racial Equality Directive.

The provisions can be found in Article 2(1)(h) of the Law of 28 November 2006. The grounds that are covered are religion and belief, age, disability, sexual orientation, race and ethnic origin.

a) Trends and patterns regarding housing segregation for Roma

In Luxembourg, there is no available data on patterns of housing segregation and discrimination against the Roma.

This seems to be due to the small number of Roma.

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

In Luxembourg, national legislation provides for an exception for genuine and determining occupational requirements in accordance with the directive.

The provisions can be found in Article 18 (introducing Article L-252-1(1) in the Labour Code) of the Law of 28 November 2006 and are formulated in the exact wording of the directive.

For the public sector, the relevant articles are: Article 1-3(3) of the public sector law of 29 November 2006 on civil service, introducing Article 1-*bis* (3) to the amended Law of 16 April 1979 establishing the general statute of state civil servants; and Article 2-3(3) of the public sector law of 29 November 2006, introducing Article 1-*bis* (3) in the amended Law of 24 December 1985 establishing the general statute of municipal civil servants.

There is no case law on this issue.

4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)

In Luxembourg, Article 18 of the Law of 28 November 2006 introducing Article L-251-1 in the Labour Code and Article 1-3(3) of the Law of 29 November 2006 (introducing Article 1-*bis* (3) to the amended Law of 16 April 1979 establishing the general statute of state civil servants) provide for an exception for employers with an ethos based on religion or belief.

The wording of the exception is in line with the directive. There is no case law.

4.3 Armed forces and other specific occupations (Article 3(4) and Recitals 18 and 19, Directive 2000/78)

In Luxembourg, national legislation does not provide for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78).

4.4 Nationality discrimination (Article 3(2))

a) Discrimination on the ground of nationality

In Luxembourg, nationality (as in citizenship) is explicitly mentioned as a protected ground in national anti-discrimination law. The relevant articles are Articles 1(1) and 18 of the Law of 28 November 2006 and Article 1-*bis* (1) of the Law of 29 November 2006.

National law includes exceptions relating to difference of treatment based on nationality only for third-country nationals and stateless persons.

The relevant article is Article 2(2) of the Law of 28 November 2006, which provides that the law does not cover difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons on the national territory, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.

b) Relationship between nationality and 'racial or ethnic origin'

There is no case law on discrimination matters but it seems conceivable that discrimination based on nationality may be considered as indirect discrimination based on the ethnic or

racial background of the discriminated person, and thus enter the scope of the Law of 28 November 2006.

4.5 Health and safety (Article 7(2) Directive 2000/78)

In Luxembourg, there are exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78).

The relevant articles are: Article 18 (introducing Article L-252-3 of the Labour Code) of the general discrimination Law of 28 November 2006 and, Article 1-3(2) of the public sector Law of 29 November 2006 on civil service, (introducing Article 1-*bis* (2) in the amended Law of 16 April 1979, establishing the general statute of state civil servants) and Article 2-3(2) of the public sector Law of 29 November 2006, (introducing Article 1-*bis* (2) in the amended Law of 24 December 1985, establishing the general statute of municipal civil servants).

According to these articles, provisions on the protection of health and safety at work or measures aimed to create or maintain provisions or facilities for safeguarding or promoting disabled people in the working environment are not considered as direct or indirect discrimination.

4.6 Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)

4.6.1 Direct discrimination

a) Exceptions to the prohibition of direct discrimination on grounds of age

In Luxembourg, national law provides for specific exception(s) for direct discrimination on the ground of age.

Article 18 of the general discrimination Law of 28 November 2006, introducing Article L-252-2 of the Labour Code has transposed the exception of Article 6 of Directive 2000/78.

Article 1-3(4) of the public sector Law of 29 November 2006 on civil service, introducing Article 1-*bis* (4) in the amended Law of 16 April 1979 establishing the general statute of state civil servants; and Article 2-3(4) of the public sector Law of 29 November 2006, introducing Article 1-*bis* (4) in the amended Law of 24 December 1985 establishing the general statute of municipal civil servants, provide for the same exception.

b) Justification of direct discrimination on the ground of age

In Luxembourg, national law provides for justifications for direct discrimination on the ground of age.

Article 18 of the general discrimination Law of 28 November 2006, introducing Article L-252-2 of the Labour Code justifies, in specified circumstances direct discrimination on the ground of age, for example in employment policy and for the purposes of labour market and vocational training objectives.

The test should, in theory, be compliant with the ECJ case law in *Mangold* (C-144/04) and *Küçükdeveci* (C-555/07), but it will be up to the courts to decide in practice. At the moment, there is no case law in Luxembourg.

c) Permitted differences of treatment based on age

In Luxembourg, national law permits differences of treatment based on age for activities within the material scope of Directive 2000/78 only in general terms.

d) Fixing of ages for admission to occupational pension schemes

In Luxembourg, national law does not allow occupational pension schemes to fix ages for admission to the scheme, taking up the possibility provided for by Article 6(2).

In Luxembourg, the law does not allow for the use of age criteria in any actuarial calculations.

4.6.2 Special conditions for younger or older workers

In Luxembourg, there are special conditions set by law for older or younger workers in order to promote their vocational integration.

The Law of 23 March 2001 protects young workers (basically those under 18), children and adolescents as far as working conditions are concerned. This law has since been incorporated in the Labour Code, in Articles L-341-1 to L-345-2.

The Law of 31 July 2012, amending Article L-523-1(2) of the Labour Code, introduces special conditions for unemployed people who are over 50 years old.

Article L-524-2 of the Labour Code provides for special conditions for the employment of applicants who are over 45 years old.

Article L-541-1 to 541-4 of the Labour Code provides aids for the recruitment of older unemployed workers and the long-term unemployed.

4.6.3 Minimum and maximum age requirements

In Luxembourg, there are exceptions permitting minimum and/or maximum age requirements in relation to access to employment and training.

At the level of the municipalities, a grand ducal regulation of 20 December 1990 provides for the general rule that applicants must be a minimum of 18 years old and a maximum of 35 years old at the moment of their provisional appointment. Other exceptions provided by the grand ducal regulation are as follows:

- for some positions, the minimum age is set at 17 years;
- for the job of concierge, the minimum age is 25 years;
- for the job of firefighter, the applicant must be no more than 28 years old.

There are also other laws providing exceptions:

- for the job of judge, the minimum age is 25 (Law of 7 March 1980);
- for the job of prosecutor, the minimum age is 25 (Law of 7 March 1980);
- for the job of notary, the minimum age is 25 (Law of 9 December 1976).

4.6.4 Retirement

a) State pension age

In Luxembourg, the state pension age is 65.

If an individual wishes to work beyond the state pension age, the pension cannot be deferred.

An individual can collect a pension and still work.

The relevant provisions are Articles 182 to 237 of the Social Security Code.

b) Occupational pension schemes

In Luxembourg, there is no standard age at which people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements.

If an individual wishes to work for longer, payments from such occupational pension schemes cannot be deferred.

There is nothing in the law regarding the deferral of occupational pension schemes.

An individual can collect a pension and still work.

The Law on Occupational Pension Schemes of 8 June 1999¹⁰ does not provide for a standard age at which to begin receiving such occupational pension payments. This law does not alter the other legal rules relating to pension age.

c) State-imposed mandatory retirement ages

In Luxembourg, there is no state-imposed mandatory retirement age in the private sector.

In the public sector, the retirement age is 65 years. In exceptional circumstances, a civil servant can remain in office until the age of 68 on request. The employer has to give consent and has no obligation to maintain the civil servant in office.

For officers and non-commissioned officers in the army, the retirement age is 55 years. For the police forces and members of the gendarmerie, the retirement age is 60 years.

The relevant provisions can be found in Article 2, along with Article 8 of the Law of 26 May 1954 governing the pensions of state civil servants.

d) Retirement ages imposed by employers

In Luxembourg, national law does not permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract and/or collective bargaining and/or unilaterally.

e) Employment rights applicable to all workers irrespective of age

The law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, even if they remain in employment after attaining pensionable age or any other age.

¹⁰ Law on Occupational Pension Schemes, amending different previous laws (*Loi du 8 juin 1999 relative aux régimes complémentaires de pension et portant modification a) de la loi modifiée du 4 décembre 1967 concernant l'impôt sur le revenu, b) de la loi modifiée du 24 mai 1989 sur le contrat de travail, c) de la loi modifiée du 18 mai 1979 portant réforme des délégations du personnel et d) de la loi modifiée du 6 mai 1974 instituant des comités mixtes dans les entreprises du secteur privé et organisant la représentation des salariés dans les sociétés anonymes*), 8 June 1999; Mem. A 074 du 17.06.1999, p. 1644.

f) Compliance of national law with CJEU case law

In Luxembourg, national legislation should be in line with the CJEU case law on age regarding mandatory retirement; however, there is no case law in Luxembourg as yet.

4.6.5 Redundancy

a) Age and seniority taken into account for redundancy selection

In Luxembourg, national law does not permit age or seniority to be taken into account in selecting workers for redundancy.

b) Age taken into account for redundancy compensation

In Luxembourg, national law provides compensation for redundancy. Such compensation is affected by the age of the worker.

Article L-124-6 and 124-12 of the Labour Code (Law of 31 July 2006) provides compensation for redundancy.

Article L-124-7(1) of the Labour Code grants severance pay to employees who have been in the service of the same employer for a minimum of five years, but this compensation will not be paid to them if they can benefit from a normal old-age pension.

Consequently, this measure deprives certain workers of the right to compensation for redundancy, only for the reason that they can claim a normal old-age pension.

4.7 Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5) Directive 2000/78)

In Luxembourg, national law does not include exceptions that seek to rely on Article 2(5) of the Employment Equality Directive.

4.8 Any other exceptions

In Luxembourg, other exceptions to the prohibition of discrimination (on any ground covered by this report) provided in national law are the following: Insurance contracts were taken out of the scope of Article 2(1) of the Law of 28 November 2006. Insurance contracts are now excluded from the prohibition of discrimination and thus are not covered by the category of 'access to and supply of goods and services which are available to the public'.

5 POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)

a) Scope for positive action measures

In Luxembourg, positive action is permitted in national law in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation but there are no requirements set down in law which must be met in order for positive action to be implemented.

As far as employment is concerned, the provisions relating to positive action can be found in:

- Article 18 (introducing Article 252-3 in the Labour Code) of the Law of 28 November 2006, which provides that:
 'In order to ensure full equality in practice the principle of equal treatment does not prevent the maintaining or adoption of specific measures to prevent or compensate for disadvantages linked to one of the grounds mentioned in Article L-251-1 paragraph (1)';
- Article: 1-3(2) (introducing Article 1-*bis* (2) in the amended Law of 16 April 1979 establishing the general statute of state civil servants;
- Article 2-3(2) (introducing Article 1-*bis* (2) in the amended Law of 24 December 1985 establishing the general statute of municipal civil servants) of the Law of 29 November 2006, which provides that:
 'In order to ensure full equality in practice the principle of equal treatment does not prevent the maintaining or adoption of specific measures to prevent or compensate for disadvantages linked to one of the grounds mentioned in section 1'.

Regarding people with disabilities, the Guidance Committee may, according to Article 8 of the Law of 12 September 2003, 'propose to the director of the Employment Administration, depending on the age of the candidate, the degree or nature of his disability, and in view of his previous and residual working capacities, measures of guidance, training, rehabilitation, integration or reintegration into employment, initiation measures or courses of adaptation or rehabilitation at work for this worker'.

There are no provisions in the law regarding positive action outside the field of employment.

b) Quotas in employment for people with disabilities

In Luxembourg, national law provides for quotas for the employment of people with disabilities.

A minimum proportion of 5 % of public sector employees must be disabled workers.

In the private sector, employers with 25 employees must employ one disabled worker; the proportion of disabled workers must be 2 % for 50 employees and 4 % for 300 employees. If the employer refuses to employ the requested numbers of disabled workers, they must pay a fine corresponding to 50 % of the social minimum salary to the Public Treasury. In practice, no sanction is applied.

According to the most recent statistics from 2016, only 3 400 disabled workers were employed: 18 % in the public sector, 40 % in the private sector and 42 % in sheltered workshops. The statistics only cover workers officially recognised as having a 30 % disability.

These are the workers who qualify for employment under the quota.

6 REMEDIES AND ENFORCEMENT

6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

- a) Available procedures for enforcing the principle of equal treatment

In Luxembourg, the following procedures exist for enforcing the principle of equal treatment: judicial and alternative dispute resolution such as mediation.

An individual, acting alone, may lodge a criminal complaint in court. The use of a lawyer is not required. However, the state prosecutor will decide whether it is worthwhile proceeding with the case (Article 23-1 of the Criminal Procedure Code). It may take a long time for the case to be brought to court. Once a criminal complaint has been lodged, individual victims of discrimination may not use a supplementary private prosecution, but they can raise a private prosecution following a decision by the state prosecutor to refuse to prosecute the case. Finding evidence is a crucial problem, which may hinder the proper prosecution of the author of discrimination.

The victim may also apply directly to the examining judge (*juge d'instruction*) if he or she claims to have suffered discrimination; in this case, it is up to the victim to estimate the extent of the loss and claim damages in criminal proceedings. Often the judge will require that the claimant pay a guarantee to cover the costs of the court fees.

The victim may also claim damages in a civil court based on the criminal offence. In this context the shift of burden of proof is applicable.

Complaints of discrimination at work can also be presented to the labour court. According to the general discrimination Law of 28 November 2006, workers' associations (i.e. trade unions) or associations of national significance fighting discrimination and approved by the Ministry of Justice may support the victim in a court case. Such a right is not granted to churches according to the law.

It must be noted that the Inspectorate of the Ministry of Labour (*l'Inspection du Travail et des Mines*), is competent to oversee compliance with labour law regulations. The Inspectorate was also given the role of a watchdog in relation to anti-discrimination legislation under Directive 2000/78/EC.

According to Article 5 of the general discrimination law, victims of discrimination can also claim damages on the basis of the general discrimination law, outside the field of employment, before the civil or the administrative courts.

The Law of 6 May 1999 on penal mediation enables the state prosecutor to use mediation, where it appears that such a remedy is likely to ensure that compensation or damages will be paid to the victim, or indeed to bring a conclusion to the disturbance resulting from the offence, or in addition contribute to the rehabilitation of the person committing the offence. However, such a procedure is non-binding and can only be used prior to any criminal investigation.

As far as the public sector is concerned, civil servants may bring a case to the administrative courts if they feel that they have been discriminated against.

Article 33 of the general statute enables civil servants to make a complaint against the behaviour of another civil servant. Such a procedure is administrative but can lead to the administrative court if the complaint is rejected by the upper hierarchy. Such a complaint can lead only to administrative or financial sanctions against the author, rather than to civil or penal sanctions.

With the exception of proceedings before the labour court and the Inspectorate of Labour and Mines, the public sector Law of 29 November 2006 introduces the same anti-discrimination procedures as for private relations: a civil servant may make use of the criminal procedure or of civil proceedings in court or even complain against other civil servants and try to obtain disciplinary sanctions against a discriminator who is also a civil servant.

b) Barriers and other deterrents faced by litigants seeking redress

Cases can be brought to the courts even after the termination of the employment contract. However, in general, the deadline for submitting a case to the labour court is restricted to three months after the end of the contract, with the possibility of extending the deadline to one year when protesting in due time against the reasons for dismissal.

The complex character of the legislation works as a deterrent to victims, who find it difficult to act in full knowledge of the complex procedures.

The proceedings before the criminal court must be filed within five years of the offence (Article 638 of the Criminal Code, as amended).

The costs of a legal procedure, due to the lawyers' fees, may cause people without sufficient financial means to renounce such lawsuits. However, the legal aid system offers the potential to ask the Bar to provide a lawyer paid for by the state due to the victim's low income.

There is currently no obligation for public authorities to make all public buildings fully accessible to disabled people. Only newly built or refurbished buildings have to be accessible to disabled people. There are no binding rules relating to the adoption of measures such as signed interpretation or the provision of information in Braille.

c) Number of discrimination cases brought to justice

In Luxembourg, statistics on the number of cases related to discrimination brought to justice are not available. The number of cases brought before the law is almost non-existent.

d) Registration of national court decisions on discrimination.

In Luxembourg, court decisions on discrimination are not registered as such by national courts.

6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)

a) Engaging in proceedings on behalf of victims of discrimination (representing them)

In Luxembourg, associations/organisations/trade unions are not entitled to act on behalf of victims of discrimination.

b) Engaging in proceedings in support of victims of discrimination (joining existing proceedings)

In Luxembourg, associations/organisations/trade unions are entitled to act in support of victims of discrimination. NGOs are not involved in such actions in practice.

According to Article 7 of the general discrimination Law of 28 November 2006, associations that are recognised by the Ministry of Justice can exercise before the law the rights given to victims of discrimination if some damage has been made to the cause that they promote. To be able to be recognised by the Ministry of Justice, associations must not only be nationally representative in the field of anti-discrimination, but must also meet two other conditions:

- the fight against discrimination must be one of their statutory goals;
- they have legally existed for five years prior to the facts under consideration.

Such associations may assist a victim of discrimination (for example, by giving legal advice) before civil, criminal and administrative courts, if some damage has been made to the cause that they promote.

In the case of collective complaints, there are no special provisions on victim consent in the law.

For individual victims, however, the consent of such a victim must be given in writing. A representative of the NGO (for example, a member of the board) may assist the victim or a lawyer acting on their behalf.

According to Article 18 of the general discrimination Law of 28 November 2006 introducing Article L-253-4 in the Labour Code, labour unions that have general national representation or representation in one particularly important sector of the economy are entitled to intervene in actions arising from a collective agreement if the action is instigated by a person bound by the collective agreement and if a solution to the dispute would be in the collective interest of its members.

c) *Actio popularis*

In Luxembourg, national law allows associations/organisations/trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (*actio popularis*).

Associations recognised by the Ministry of Justice can exercise before administrative and civil courts the rights recognised to a victim of discrimination if some direct or indirect damage has been made to the cause that they promote.

The provisions can be found in Articles 7 and 18 (introducing Article 253-4 in the Labour Code) of the Law of 28 November 2006, Article 1-6 (introducing Article 36(a) in the amended Law of 16 April 1979 establishing the general statute of state civil servants) and Article 2-6 (introducing Article 47(a) in the amended Law of 24 December 1985 establishing the general statute of municipal civil servants) of the Law of 29 November 2006.

Any kind of proceedings is open to such associations, without any difference of standing.

Associations may ask for all remedies that are provided for by the law to be applied, such as redress in the case of victimisation, the annulment of any written discriminatory document or clause or the annulment of any dismissal. They may ask for damages to be paid.

So far there has been no case where these provisions have been used in practice by associations and NGOs.

d) Class action

In Luxembourg, national law does not allow associations/organisations/trade unions to act in the interest of more than one individual victim (class action) for claims arising from the same event.

6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)

In Luxembourg, national law requires a shift of the burden of proof from the complainant to the respondent.

Articles 5 and 18, introducing Article L. 253-2 in the labour law of the general discrimination Law of 28 November 2006, has introduced the mechanism of the shifting of the burden of proof in civil and administrative procedures in the same way as provided for by the directives.

The most recent case is from 11 December 2003, when the labour court decided that according to Article L-244-3, concerning the burden of proof:

'As soon as a person who considers himself hurt by the non-compliance towards him/her with the principle of the equal treatment, establishes facts which allow the presumption of the existence of direct or indirect discrimination, the defendant must prove that there was no violation of the principle of equal treatment.'

No difference is made between different types of discrimination, so no criteria may be determined.

The partial shift in the burden of proof does not apply in reasonable accommodation cases.

The shifting of the burden of proof is excluded from criminal proceedings according to Article 253-2(2) of the Labour Code.

6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)

In Luxembourg, there are legal measures of protection against victimisation.

Articles 4 and 18 (introducing Article L-253-1 of the Labour Code) of the general discrimination Law of 28 November 2006 introduce a protection mechanism against victimisation and cover the full material scope of both directives for all grounds.

The same protection mechanism applies to civil servants, according to Articles 1(7) and 2(7) of the public sector Law of 29 November 2006 on public service.

6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)

a) Applicable sanctions in cases of discrimination – in law and in practice

The offences referred to in the amended Article 455 of the Criminal Code are punishable by imprisonment for between eight days and two years, or a fine of EUR 250 to EUR 25 000, or both.

According to Article 456, if the discrimination is committed by a person holding public authority or responsible for public service duties in the exercise or on the occasion of exercising his/her functions or duties, the penalties are increased to imprisonment for between one month and three years, and a fine of EUR 250 to EUR 37 500, if the offence involves:

1. refusing the benefit of a right granted by law;
2. hindering the normal exercise of any business.

Furthermore, the authors of discrimination may be punished by the prohibition of exercising certain rights as provided by Article 24 of the Criminal Code (Article 457-4), such as serving as a civil servant, voting, wearing official insignias, being an expert, being a witness in court or teaching in school.

Article 6 of the general discrimination Law of 28 November 2006 uses the wording of Article 16(b) of Directive 2000/78/EC. Thereby, 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 workers' and employers' organisations, are to be declared null and void. The prohibition also applies to both non-profit and profit-making associations.

Article L-253-1 of the Labour Code introduced by the general discrimination Law of 28 November 2006 deems any dismissal on the ground of discrimination illegal, so that a dismissed worker may ask for their reinstatement in their workplace at the labour court. Summary proceedings (*procedure en référé*) may be used in such circumstances.

There are no special provisions in civil law regarding compensation in discrimination cases, but the general principles of civil law apply.

b) Compensation – maximum and average amounts

There is no maximum amount of compensation that can be awarded to the victim. There is no information available concerning the average amount of compensation awarded to victims.

c) Assessment of the sanctions

As there is no existing case law it is difficult to say whether the available sanctions are effective, proportionate and dissuasive.

7 BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)

- a) Body/bodies designated for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive

The equality body was created by Article 8 of the general discrimination Law of 28 November 2006, and is called the Centre for Equal Treatment (CET). Its remit relates to all grounds covered by both directives.

There is no other body.

- b) Political, economic and social context of the designated body

The original budget of the CET in 2008 was EUR 200 000 and this was increased to EUR 220 000 in 2009. The CET's budget for 2020 was EUR 480 842. This increase can be explained by the fact that since 2019, the budget has included the personnel costs of the CET.¹¹

- c) Institutional architecture

The main mandate of the CET is to act as a national equality body.

The CET was also designated as national independent mechanism for the promotion and monitoring of the Convention on the Rights of Persons with Disabilities by Article 2 of the Law of 28 July 2011. It exercises this duty in conjunction with the Consultative Commission on Human Rights (Commission Consultative des Droits de l'Homme – CCDH). There is no separation between the mandate of the CET as equality body and its mandate as the UNCRPD monitoring mechanism.

- d) Status of the designated body/bodies – general independence

- i) Status of the body

The Centre for Equal Treatment is under the auspices of the Chamber of Deputies. It is a separate body. According to Article 11 of the Law of 28 November 2006, the CET is governed by a body of five members, including a chairperson, who are appointed for five years by the Grand Duke on the nomination of the Parliament (Chambre des Députés) according to their skills in anti-discrimination matters. The functions of members of the CET are incompatible with the office of member of the parliament, member of the State Council or member of the Government.

Once a year, a report must be submitted to the Government and to Parliament.

Funding comes from the general state budget. Since 2018 the body has been accountable to the Parliament. The Centre for Equal Treatment has two employees. There has been no discussion on increasing financial support for the CET.

The Centre for Equal Treatment adopts its own rules of procedure, which define its internal organisation, function and working procedures.

¹¹ The personnel costs were previously paid directly by the ministry.

ii) Independence of the body

According to Article 9 of the Law of 28 November 2006, the CET carries out its functions independently. This independence exists in practice. Indeed, the CET regularly makes recommendations to the Government, and makes criticisms.

e) Grounds covered by the designated body/bodies

The designated body has a mandate to deal with the grounds of race, ethnic origin, gender, religion or belief, disability, age, sexual orientation and nationality.

Gender and disability issues have been given the most attention in the last two years and most actions promoted by the CET covered those two fields. Race is also an important issue in respect of the inquiries that the CET has dealt with in the last few years.

f) Competences of the designated body/bodies – and their independent exercise

i) Independent assistance to victims

In Luxembourg, the designated body does have the competence to provide independent assistance to victims.

According to Article 10 of the Law of 28 November 2008, the CET may provide assistance to victims by advising and signposting them in order to inform them on their rights and the legislation – including the available procedures and case law.

ii) Independent surveys and reports

According to Article 10 of the Law of 28 November 2008, the CET has the competence to conduct independent surveys and publish independent reports. In 2020, a survey on discrimination was carried out in collaboration with TNS Ilres. The report was published on 1 December 2020. According to the report, 20 % of the residents who were questioned indicated that they had been the victim of discrimination, but only 10 % of victims of discrimination had filed a complaint with the police.

The competence of the CET is effectively exercised in an independent manner.

iii) Recommendations

According to Article 10 of the Law of 28 November 2008, the CET has the competence to issue independent recommendations on discrimination issues. In 2019 and 2020, the CET made recommendations to the Government on non-discrimination issues in relation to making certain amendments to the legislation.

Unfortunately, these recommendations have not thus far been followed by the Government.

The competence of the CET is effectively exercised in an independent manner.

iv) Other competences

According to Article 9 of the Law of 28 November 2008, the function of the CET is to promote, analyse and monitor equal treatment between all persons without discrimination on the basis of race, ethnic origin, sex, sexual orientation, religion or beliefs, disability or age. The CET also carries out awareness-raising campaigns, communication and the promotion of anti-discrimination.

In 2020, the CET was a partner of ITGL (Intersex and Transgender Luxembourg) information and training days.

g) Legal standing of the designated body/bodies

In Luxembourg, the designated body (the CET) does not have legal standing to bring discrimination complaints on behalf of identified victims to the court or to intervene in legal cases concerning discrimination

h) Quasi-judicial competences

In Luxembourg, the body is not a quasi-judicial institution. It can only try to mediate or issue recommendations. It has difficulties in getting the state administrations to reply to its letters. As it cannot make binding decisions, there are no options to appeal to any superior institution.

i) Registration by the body/bodies of complaints and decisions

The CET registers the number of discrimination complaints received by group, field, type of discrimination etc.

The data is available to the public through the CET's annual report.¹²

In 2020, the CET registered 203 new cases. The grounds were: age (6), religion (8), multiple discrimination (14), sexual orientation (12), gender (39), disability (49), race or ethnic origin (44), and other (31).

The incoming files are divided into one of five fields even if they are not a discrimination case:

- access to and supply of goods and services that are available to the public, including housing: 57 cases (28 %);
- employment: 50 cases (25 %);
- education: 7 cases (3 %);
- social protection, including social security and healthcare: 6 cases (3 %);
- others: 38 cases (41 %).

j) Roma and Travellers

Due to the small number of Roma in Luxembourg, this issue is not a priority.

¹² See: https://ccdh.public.lu/content/dam/ccdh/dossiers_th%C3%A9matiques/cet/rapports/2021/Rapport-annuel-CET-2020.pdf.

8 IMPLEMENTATION ISSUES

8.1 Dissemination of information, dialogue with NGOs and between social partners

- a) Dissemination of information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

On 13 July 2018, the Luxembourg Government adopted a national action plan for the promotion of the rights of lesbians, gays, bisexual, transgender and intersex persons.

The plan is divided in eight thematic chapters:

1. education;
2. employment and work;
3. health;
4. family;
5. reception and integration;
6. discrimination, hate crimes and hate speech;
7. equal rights for transgender people;
8. equal rights of intersex persons.

Regarding implementation of the plan, and in order to promote the inclusion of lesbian, gay, bisexual, transgender and intersex (LGBTI) people in the professional environment, IMS Luxembourg (Inspiring More Sustainability) has created a guide with good practice and testimonials for companies.

This project, which aims to raise awareness and provide tools for the different audiences within the company, was financed in 2020 by the FSE and the Ministry of Family, Integration and the Greater Region.

No assessment of the plan has been undertaken as yet.

A five-year action plan (2019-2024) for the implementation of the UNCRPD was approved on 20 December 2019.

The eight topics of the plan are:

1. awareness;
2. recognition of legal personality under conditions of equality;
3. living independently and inclusion;
4. freedom of expression and opinion and access to information;
5. education;
6. health;
7. work and employment;
8. participation in political and public life.

No concrete follow-up could be identified for 2020

- b) Measures to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78)

No such measures could be identified.

- c) Measures to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice and workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)

No such measures could be identified.

- d) Addressing the situation of Roma and Travellers

As there are very few Roma and Travellers in Luxembourg, there is currently no special action to address their situation.

The Ministry of Family Affairs, Integration and the Greater Region is the national Roma contact point.

8.2 Measures to ensure compliance with the principle of equal treatment (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

- a) Compliance of national legislation (Articles 14(a) and 16(a))

National anti-discrimination law does not expressly provide for the abolition of laws that are contrary to the principle of equal treatment.

- b) Compliance of other rules/clauses (Articles 14(b) and 16(b))

Article L-253-3 of the Labour Code, as introduced by Article 18 of the Law of 28 November 2006, provides that any provisions contrary to the principle of equal treatment that are included in contracts or collective agreements, statutes of associations, internal rules of undertakings or rules governing the workers' and employers' organisations can be declared null and void.

9 COORDINATION AT NATIONAL LEVEL

The Ministry of Family is generally in charge of anti-discrimination policies. However, the Ministry of Labour and Employment is in charge of the correct use of employment law, through the Labour Inspectorate. The Ministry of Family is also in charge of putting into practice the running of the Centre for Equal Treatment.

The first five-year national action plan for integration and the fight against discrimination was made public in April 2011 by the Ministry of Family.

Through the action plan, the Luxembourg Government hoped to acknowledge the importance of continuing the work and renewing the efforts that have been made in promoting the reception, and the substantial and long-term integration, of foreigners within Luxembourg society.

Spanning a five-year period, the action plan was based on the 11 guiding principles of European integration. The principles highlight the importance of a global approach to integration. The main strategic principles set out in the plan were based on the OLAI's mandate and remit:

- reception,; that is, all the measures aimed at providing guidance to newcomers in the Grand Duchy of Luxembourg;
- the integration of foreigners in Luxembourg's social, economic, political, and cultural life;
- the fight against discrimination through information and awareness-raising measures;
- the study of migration based on specific studies and databases, reports and other statistical data.

The plan enabled the implementation of important integration tools, including the reception and integration contract (CAI) and the accompanied integration pathway (PIA).

The pluriannual action plan for integration and the fight against discrimination was suspended due to the high amount of applicants for international protection. As the context for integration has changed, the new challenges are to be integrated into the next multiannual action plan, which was due to be finalised in 2017.

In 2018, a new pluriannual national action plan was finally adopted, but it focuses only on integration.

The plan is based on two areas:

- reception and social support for applicants for international protection
- the integration of all non-Luxembourgers residing on the territory

These two areas are complemented by cross-cutting areas:

- Access to information and interaction
- Quality of services
- National and international cooperation and coordination

On 13 July 2018, the Luxembourg Government adopted a national action plan for the promotion of the rights of lesbians, gays, bisexual, transgender and intersex persons.

The plan is divided in eight thematic chapters:

1. education;

2. employment and work;
3. health;
4. family;
5. reception and integration;
6. discrimination, hate crimes and hate speech;
7. equal rights for transgender people;
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A five-year action plan (2019-2024) for the implementation of the UNCRPD was approved on 20 December 2019.

The eight topics in the plan are:

1. awareness;
2. recognition of legal personality under conditions of equality;
3. living independently and inclusion;
4. freedom of expression and opinion and access to information;
5. education;
6. health;
7. work and employment;
8. participation in political and public life.

10 CURRENT BEST PRACTICES

On 20 December 2019, the Government approved a new five-year action plan, covering the period 2019-2024, for the implementation of the UNCRPD.

This plan was developed by the Ministry of Integration and Family, in close consultation with other ministerial departments, associations and various other actors concerned as well as with the Higher Council for People with Disabilities (CSPH) and the Action Plan Steering Group.

The choice of subjects was made by the CSPH together with the steering group, as these two consultative bodies are mainly composed of people with disabilities and representatives of associations from and for people with disabilities.

The two bodies decided to focus on eight themes considered as priorities:

- awareness;
- recognition of legal personality under the condition of equality;
- living independently and inclusion in society;
- freedom of expression and opinion and access to information;
- education;
- health;
- work and employment;
- participation in political and public life.

No best practices could be identified in relation to the use of artificial intelligence (AI)

11 SENSITIVE OR CONTROVERSIAL ISSUES

11.1 Potential breaches of the directives at the national level

In Luxembourg, only people who have a 30 % disability and have been officially recognised as such are entitled to claim the reasonable accommodation duty. The provision applies to both private and public employers.

This might not be compatible with the CJEU's approach to the definition of disability, which seems broader and more flexible.

11.2 Other issues of concern

There is still very little case law on discrimination. Two possible explanations are that victims do not have the financial means to bring a case to court, and that many people are unaware of anti-discrimination laws.

Since the end of 2018, the CET budget has been controlled by the Parliament. Nevertheless, the main problem remains: the budget of the centre is very low, so its possibilities for action are limited.

The CET does not have the ability to support victims in court or to submit claims to the courts directly. In addition, it has no quasi-judicial powers and its recommendations are not binding. For the past few years, the CET has asked the Government to enforce its investigatory powers, as the centre has no power to force institutions, private persons or employers to collaborate with its investigations. The fact that the CET does not have legal standing might constitute a barrier to effective litigation.

Another issue is that NGOs cannot act on behalf of victims.

The lack of case law prevents any assessment as to whether sanctions are effective, proportionate and dissuasive.

During the pandemic, the CET registered a certain number of complaints regarding measures that could lead to discrimination. In the author's view, the only real issue was that forms relating to Covid testing were not gender-neutral.

12 LATEST DEVELOPMENTS IN 2020

12.1 Legislative amendments

There were no legislative amendments in 2019.

12.2 Case law

Relevant discrimination ground(s): Race, ethnic origin

Name of the court: Tribunal d'Arrondissement

Date of decision: 28.01.2020

Name of the parties: X/Ministère public

Reference number: No. 299/2020, No. JUDOC 100068923

Link: [20200128-TALux9-299a-accessible.pdf \(public.lu\)](#)

Brief summary: The accused was charged with having committed an offence against Article 457-1(1) of the Penal Code by publishing hate speech on social media against people of Syrian origin. As a comment on an article, the accused wrote: 'Syrian people should go back where the bombs are falling' and that he was 'a racist and happy to be one'

The Court restated that in order for an offence to be established, it is not necessary for the messages to contain an exhortation to hatred, violence or discrimination. It is sufficient, for the offence to be constituted, that the messages are likely to arouse these feelings.

As a result of those findings, the Court decided that the comments were likely to elicit feelings and reactions of hostility among the population and contempt for the Syrian people, and sentenced the defendant to a fine of EUR 1 500.

Relevant discrimination ground(s): Race, ethnic origin

Name of the court: Tribunal d'Arrondissement

Date of decision: 25.03.2020

Name of the parties: X/Ministère public

Reference number: No. 1015/2020, No. JUDOC 1100069381

Link: [20200325-TALux9_1015a-accessible.pdf \(public.lu\)](#)

Brief summary: The accused was charged with having committed an offence against Article 457-1(1) of the Penal Code by publishing hate speech on social media against people of French origin.

As a comment on an article, the accused wrote in summary that 'fucking French come to Luxembourg every day to steal the work and money from Luxemburgish people', and that 'trees have been cut down to make five parking spaces and who uses the parking? French people! And you are not allowed to say anything.'

The Court restated that in order for an offence to be established, it is not necessary for the messages to contain an exhortation to hatred, violence or discrimination. It is sufficient, for the offence to be constituted, that the messages are likely to arouse these feelings.

As a result of those findings, the Court decided that the comments on the article were likely to elicit feelings and reactions of hostility among the population and contempt for French people and therefore considered that the conditions of Article 457-1 of the Penal Code had been met.

The Court sentenced the defendant to a fine of EUR 2 000.

ANNEX 1: MAIN TRANSPOSITION AND ANTI-DISCRIMINATION LEGISLATION

Country: Luxembourg
Date: 31 December 2020

Title of 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

Abbreviation: general anti-discrimination law

Date of adoption: 28 November 2006

Entry into force: 9 December 2006

Latest amendments: Law of 13 May 2008

Grounds covered: religion or belief, disability, age, sexual orientation, race or ethnic origin

Civil/administrative/criminal law

Material scope: Full scope of both directives

Principal content: prohibition of direct and indirect discrimination, of harassment and instruction to discriminate, provisions of defence of rights and victimisation, creation of an equality body

Title of law: Law of 29 November 2006

1. the amended law of 16 April 1979 establishing the general statute of state civil servants
2. the amended law of 24 December 1985 establishing the general statute of municipal civil servants

Abbreviation: Public sector law

Date of adoption: 29 November 2006

Entry into force: 1 January 2007

Latest amendments: None

<http://www.legilux.public.lu/eli/etat/leg/loi/2006/11/29/n1/jo>

Grounds covered: religion or belief, disability, age, sexual orientation, race or ethnic origin

Administrative law

Material scope: public employment

Principal content: prohibition of direct and indirect discrimination, of harassment and instruction to discriminate, provisions of defence of rights and victimisation

Title of the law: Law of 19 July 1997 completing the Criminal Code by amending the incrimination of racism and by introducing incrimination of revisionism and other actions based on illegal discriminations

Abbreviation: -

Date of adoption: 19 July 1997

Entry into force 10 August 1997

Latest amendments: Law of 28 November 2006

<http://www.legilux.public.lu/eli/etat/leg/loi/1997/07/19/n1/jo>

Grounds covered: racial or ethnic origin, skin colour, sex, sexual orientation, family situation, state of health, disability, customs, political or philosophical opinions, trade union activities, their membership, actual or supposed, of an ethnic origin, nationality, race or specific religion

Criminal law

Material scope: access to goods or services, employment

Principal content: individual and collective discrimination is forbidden

Title of law: Law of 12 September 2003 on disabled persons

Abbreviation: -

Date of adoption: 12 September 2003

Entry into force 1 June 2004

Latest amendments: 26 May 2008

<http://www.legilux.public.lu/eli/etat/leg/loi/2003/09/12/n1/jo>

Grounds covered: disability

Civil/administrative/criminal law

Material scope: employment

Principal content: obligation to employ disabled persons for employers and financial assistance for assisting people with disabilities

Title of law: Law of 15 July 2011 on access to school and professional qualifications of pupils with special educational needs amending

a) the amended Law of 14 March 1973 creating institutes and differentiated educational services

b) the amended Law of 25 June 2004 organising secondary and technical education

Abbreviation: -

Date of adoption: 15 July 2011

Entry into force: school year 2011/2012

Latest amendments: None

<http://www.legilux.public.lu/eli/etat/leg/loi/2011/07/15/n1/jo>

Grounds covered: disability

Administrative law

Material scope: education

Principal content: reasonable accommodation in school

ANNEX 2: INTERNATIONAL INSTRUMENTS

Country: Luxembourg
Date: 31 December 2020

Instrument	Date of signature	Date of ratification	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)	4.11.1950	3.9.1953	No	Yes	Yes
Protocol 12, ECHR	4.11.2000	1.7.2006	No	Yes	Yes
Revised European Social Charter	11.2.1998	No	/	Ratified collective complaints protocol? No	/
International Covenant on Civil and Political Rights	26.11.1974	18.8.1983	No	Yes ¹³	No
Framework Convention for the Protection of National Minorities	20.7.1995	No	/	/	No
International Covenant on Economic, Social and Cultural Rights	26.11.1974	18.8.1983	No	Yes	No
Convention on the Elimination of All Forms of Racial Discrimination	12.12.1967	1.5.1978	No	Yes	No
ILO Convention No. 111 on Discrimination	25.6.1958	22.12.2000	No	Yes	Yes

¹³ Under the condition that the Covenant shall not consider any communications from an individual unless it has ascertained that the same matter is not being examined or has not already been examined under another procedure of international investigation or settlement.

Instrument	Date of signature	Date of ratification	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
Convention on the Rights of the Child	21.3.1990	7.3.1994	No	Yes	Some articles only
Convention on the Rights of Persons with Disabilities	30.7.2007	28.7.2011	No	Yes	Yes

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