



European network of legal experts in
gender equality and non-discrimination

A comparative analysis of non-discrimination law in Europe 2024



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A comparative analysis of non-discrimination law in Europe 2024

The 27 EU Member States compared

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

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Introduction

More than 20 years ago, a major and unprecedented development occurred in the European Union with the adoption in 2000 of two pieces of EU legislation in the field of anti-discrimination: the Racial Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC). The transposition and implementation of these legal provisions into the national legal systems of the 27 Member States is described in a series of annually updated country reports produced by the European network of legal experts in gender equality and non-discrimination.

The European network of legal experts in gender equality and non-discrimination was created in 2014, through a call for tenders from the European Commission to create a new single network following the work completed by the European network of legal experts in the non-discrimination field (managed by the Migration Policy Group and Human European Consultancy) and the European network of legal experts in the field of gender equality (managed by Utrecht University). The current network is managed by the Human European Consultancy, the Migration Policy Group and Utrecht University. The network reports annually on the national legal frameworks of the 27 EU Member States compared with the anti-discrimination standards set by the EU.

The national reports are written by independent national experts in each country, based on a template that closely follows the provisions of the two directives. The 27 reports cover national law, the establishment of enforcement mechanisms, case law and the adoption of other measures. They contain information current as of 1 January 2024.¹ As such, they are a valuable source of information on national anti-discrimination law and can be found on the network's website at: www.equalitylaw.eu.

This comparative analysis, drafted by Isabelle Chopin and Catharina Germaine (Migration Policy Group), compares and analyses the information set out in the country reports relating to 2023 for the 27 EU Member States and draws some conclusions from the information contained in them. The report further presents the general trends in European anti-discrimination policy and points out some of the remaining discrepancies in the application of anti-discrimination legislation. It gives an overview of the main substantive issues in both directives: the grounds of discrimination, the definition of grounds and scope, exceptions to the principle of equal treatment and positive action, access to justice and effective enforcement, and equality bodies.

All Member States were required to review and amend their existing legislation to comply with the requirements of the directives. The Racial Equality Directive and the Employment Equality Directive had to be transposed into national law by 19 July 2003 and 2 December 2003 respectively in the (then) 15 EU Member States. Countries acceding the EU after this date had to transpose both directives by the date of their accession: 1 May 2004 for 10 new Member States, 1 January 2007 for Bulgaria and Romania, and finally 1 July 2013 for Croatia. It goes beyond the scope of this report to assess the extent to which Member States have fully complied with the directives or to assess the legislative impact of the European directives on the laws of all the countries examined. However, the report could potentially be used as one of the instruments for making such an assessment. During the transposition process, it became apparent that judicial interpretation might be necessary to provide further clarity of some key concepts and provisions. Twenty-four years after the adoption

¹ Where major changes in legislation have been adopted at national level after the cut-off date of 1 January 2024, they have been included and this has been indicated accordingly.

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of the directives, both national courts and the Court of Justice of the EU have provided some interpretation to this effect, as will be further developed below.

1 Protected grounds of discrimination

1.1 Introduction to the transposition of the anti-discrimination directives

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

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

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

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

Under Article 258 TFEU (ex-Article 226 TEC), the European Commission can launch infringement proceedings against Member States that it considers to have failed to fulfil their Treaty obligations, for instance by failing to transpose the Racial Equality Directive or the Employment Equality Directive. The Commission may initiate proceedings for non-communication of transposition or for non-conformity where the transposition, or eventually the implementation, is incomplete or incorrect. Since the deadline for transposition, the Commission has scrutinised the compliance of national law to this end and has initiated infringement proceedings against a number of Member States for non-conformity with one or both of the directives. In several cases, these proceedings led to judgments of the CJEU finding that the Member States were indeed in breach of EU law. In 2023 there were four ongoing infringement proceedings; against **Czechia, Hungary** and **Slovakia** concerning

discrimination against Roma children in education,² and, also against **Hungary**, for breaches of the Racial Equality and Employment Equality Directives due to newly adopted legislation on sanctions for discrimination in education and vocational training.³

In March 2021, the European Commission published its third report on the state of implementation of both the Racial Equality Directive and the Employment Equality Directive in the EU Member States.⁴ The report focused on a series of challenges, whether specific to one of the directives or common to both, linking them in particular to the severe under-reporting of discrimination. In this regard, the report listed several possible follow-up means of action, highlighting notably the overall important role of equality bodies.⁵

1.2 Grounds of discrimination

The Racial Equality Directive requires Member States to prohibit discrimination on the ground of racial or ethnic origin in the fields of employment, social protection including social security and healthcare, social advantages, education, and supply of and/or access to goods and services available to the public, including housing. In addition, the Employment Equality Directive requires the prohibition of discrimination to be extended in the field of employment and occupation to the grounds of religion or belief, disability, age and sexual orientation. While neither directive contains definitions of any of the grounds, the Court of Justice of the EU has provided guidance regarding some of them. This section examines how the Member States, candidate countries and EEA countries have incorporated the different grounds of discrimination into national law.

Most countries have chosen not to define the grounds of discrimination in their implementing legislation (for instance, **Belgium, Croatia, France, Hungary, Italy, Latvia, Lithuania, Luxembourg, Poland, Portugal, Romania, Slovakia** and **Slovenia**). A small group of countries have included definitions of at least some of the grounds, either within the legislation itself or in accompanying documentation, such as an explanatory memorandum. This group includes **Bulgaria, Czechia, Denmark, Estonia, Finland, Germany, Greece, Ireland, the Netherlands** and **Sweden**. In many countries, definitions or guidelines for definitions have subsequently been provided by national court rulings, including in **Austria, Cyprus, Denmark, France, Germany, Ireland, Italy** and the **Netherlands**.

All EU Member States have included the general principle of equal treatment or specific grounds of discrimination in their constitution. Constitutional provisions are generally either not directly applicable or they have vertical effect only in litigation involving the state as the respondent. However, constitutional provisions

² See European Commission, Infringement Nos (2014)2174 (Czechia), (2015)2025 (Slovakia) and (2015)2206 (Hungary).

³ See European Commission, Infringement No. (2021)2073.

⁴ European Commission (2021), *Report from the Commission to the European Parliament and the Council on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('the Racial Equality Directive') and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation ('the Employment Equality Directive')*, Brussels, 19.03.2021, COM(2021) 139 final.

⁵ For further information, notably regarding the Staff Working Document attached to the implementation report, see below Section 5. See also the adoption in May 2024 (after the cut-off date for this report) of the two directives on standards for equality bodies: Council Directive (EU) 2024/1499 of 7 May 2024 on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in matters of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and amending Directives 2000/43/EC and 2004/113/EC and Directive (EU) 2024/1500 of the European Parliament and of the Council of 14 May 2024 on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and amending Directives 2006/54/EC and 2010/41/EU.

are deemed to be applicable to horizontal relations as well in **Bulgaria, Cyprus, Estonia, Finland, Greece, Luxembourg, the Netherlands, Portugal, Slovenia** and **Spain**. Horizontal direct effect remains theoretical or largely debatable in a minority of countries (for instance, **Belgium, Hungary** and **Italy**). In **France**, constitutional provisions can be invoked in judicial proceedings against private parties to challenge legislation by way of the ‘exception of constitutionality’ procedure requesting a referral to the Constitutional Council.

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

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

Several countries have also put in place processes for evaluating and/or reviewing the national non-discrimination frameworks. Such processes can be statutory, as in **Belgium**, where a detailed evaluation by national experts in the field is provided for by the non-discrimination legislation adopted in 2007 and has taken the form of two analytical reports. More recently, in 2021, **Ireland** initiated the first comprehensive review of the national non-discrimination framework, based notably on public consultations. In the context of a vigorous public debate on issues related to discrimination and intolerance in the **Netherlands**, a Parliamentary Investigation Committee completed a similar review process in 2022, with the aim of exploring available legislative means of combating discrimination. The Committee presented recommendations to guide the legislature in avoiding unintended discriminatory effects of legislation, and the recommendations were endorsed by the Government in 2023.

In all 27 Member States, national anti-discrimination law includes other prohibited grounds in addition to those required by the directives. The table below shows the variety of grounds that have been introduced at the national level (including the five grounds mentioned in the two directives) in general anti-discrimination legislation.

Table 1. Grounds protected in national general anti-discrimination legislation⁶ (at federal level)

Country	Grounds of discrimination protected in general anti-discrimination legislation
AUSTRIA	Gender, ethnic affiliation, religion, belief, age, sexual orientation. ⁷

⁶ When one of the grounds covered by the directives is not covered by the general anti-discrimination legislation but by some other national legislation, this is indicated specifically.

⁷ In addition, disability is covered by the Act on the Employment of Persons with Disabilities and the Federal Disability Equality Act.

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(Equal Treatment Act; Federal Equal Treatment Act)	
BELGIUM (Racial Equality Federal Act; General Anti-Discrimination Federal Act)	Alleged race, ⁸ colour, descent, ethnic or national origin, nationality, age, sexual orientation, civil status, birth, property, religious or philosophical belief, state of health, ⁹ disability, physical or genetic features, political opinion, language, social origin or condition, trade union opinion.
BULGARIA (Protection Against Discrimination Act)	Sex, race, national origin, ethnicity, human genome, nationality, origin, religion or faith, education, beliefs, political affiliation, personal or social status, disability, age, sexual orientation, family status, property status, or any other ground provided for by law or an international treaty to which Bulgaria is a party.
CROATIA (Anti-discrimination Act)	Race or ethnic origin or colour, gender, language, religion, political or other belief, national or social origin, property, trade union membership, education, social status, marital or family status, ¹⁰ age, health condition, ¹¹ disability, genetic heritage, gender identity and expression, ¹² sexual orientation.
CYPRUS (Equal Treatment in Employment and Occupation Law; Equal nt Treatme (Racial or Ethnic Origin) Law)	Racial and ethnic origin religion or belief, age, sexual orientation. ¹³
CZECHIA (Anti-Discrimination Act)	Race, ethnic origin, nationality (<i>národnost</i>), sex, sexual orientation, age, disability, religion or belief. ¹⁴

⁸ The Belgian legislature refers to 'alleged race' to avoid giving the impression that it subscribes to the idea that there are indeed different races.

⁹ Until the entry into force of the Law of 20 July 2022, the law referred to 'actual or future' state of health.

¹⁰ It protects all persons discriminated against on the basis of their marital/family status, including same-sex families.

¹¹ The aim of the separate ground 'health condition' is to protect persons with certain health conditions that do not constitute disability (e.g. persons infected with HIV).

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

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

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

<p>DENMARK</p> <p>(Act on the Prohibition of Discrimination in the Labour Market etc; Act on Ethnic Equal Treatment)</p>	<p>Race, ethnic origin, age, disability, skin colour, religion, belief, sexual orientation, political opinion, national, social or ethnic origin, gender identity, gender expression or gender characteristics.</p>
<p>ESTONIA</p> <p>(Equal Treatment Act)</p>	<p>Ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation.¹⁵</p>
<p>FINLAND</p> <p>(Non-Discrimination Act)</p>	<p>Origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics.</p>
<p>FRANCE</p> <p>(Law relating to the adaptation of National Law to Community Law in matters of discrimination)¹⁶</p>	<p>Mores, sexual orientation, sex, pregnancy, gender identity, origin, belonging, whether real or supposed, to an ethnic origin, a nation, a race or a specific religion, physical appearance, place of residence or banking residence, last name, family situation, trade union activities, political opinions, age, health, disability, loss of autonomy, genetic characteristics, capacity to express oneself in a language other than French, apparent economic vulnerability, loss of autonomy.</p>
<p>GERMANY</p> <p>(General Act on Equal Treatment)</p>	<p>Sex, race or ethnic origin, religion or belief,¹⁷ disability, age, sexual identity.¹⁸</p>
<p>GREECE</p> <p>(Equal Treatment Law)¹⁹</p>	<p>Racial or ethnic origin, descent, colour, language, religious or other beliefs, disability or chronic illness, age, family or social status, sexual orientation, gender identity or characteristics.</p>

¹⁵ In addition, Art. 2(3) of the Equal Treatment Act stipulates that any ground not listed here, in particular the grounds of family-related duties, social status, representation of the interests of employees or membership of an organisation of employees, level of language proficiency or duty to serve in defence forces, may be the subject of 'requirements of equal treatment' in labour relations only.

¹⁶ Law No. 2008-496 of 27 May 2008.

¹⁷ In Germany, 'belief' is not an explicitly protected ground in civil law.

¹⁸ The term 'sexual identity' is considered to have the same meaning as 'sexual orientation' (AGG, Explanatory Report, *Bundestagsdrucksache* BT-Drs. 15/4538, p. 28; Däubler/Beck, *Allgemeines Gleichbehandlungsgesetz*, 5th ed. 2022, Section 1 para 99 with further references).

¹⁹ Law 4443/2016 on the transposition of Directive 43/2000/EC on the application of the principle of equal treatment irrespective of race and ethnic origin, and the transposition of Directive 78/2000/EC on the configuration of the general framework of equal treatment in employment and work.

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<p>HUNGARY</p> <p>(Equal Treatment Act)</p>	<p>Sex, racial affiliation, colour of skin, nationality (not in the sense of citizenship), belonging to a national minority, mother tongue, disability, health condition, religion or belief, political or other opinion, family status, maternity (pregnancy) or paternity, sexual orientation, gender identity, age, social origin, financial status, 'part-time nature of employment legal relation or other legal relation aimed at labour, or determined period thereof', belonging to an interest representation organisation, any other situation, attribution or condition of a person or group.</p>
<p>IRELAND</p> <p>(Employment Equality Acts;²⁰ Equal Status Acts)²¹</p>	<p>Gender, age, race,²² religion, civil status, family status, disability, sexual orientation, membership of the Traveller community, housing assistance.</p>
<p>ITALY</p> <p>(Legislative Decree implementing Directive 2000/43/EC on equality of treatment between persons irrespective of racial or ethnic origin;²³ Legislative Decree Implementing Directive 2000/78/EC for equal treatment in employment and occupation)²⁴</p>	<p>Race and ethnic origin, religion or belief, disability, age, sexual orientation, nationality.</p>
<p>LATVIA</p>	<p>_25</p>
<p>LITHUANIA</p> <p>(Law on Equal Treatment)</p>	<p>gender, race, nationality,²⁶ citizenship,²⁷ language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin, religion.</p>
<p>LUXEMBOURG</p> <p>(General Anti-Discrimination Law;²⁸ Public Sector Law)²⁹</p>	<p>Race or ethnic origin, religion or belief, age, disability, sexual orientation, nationality.</p>

²⁰ Employment Equality Acts 1998-2021 of 18 June 1998.

²¹ Equal Status Acts 2000-2018 of 26-04-2000.

²² Section 6(2)(h) of the Employment Equality Act and Section 3(2)(h) of the Equal Status Act stipulate that the ground of race includes 'nationality' and ethnic or national origin.

²³ Legislative Decree No. 215/2003 of 09.07.2003.

²⁴ Legislative Decree No. 216/2003 of 09.07.2003.

²⁵ There is no general anti-discrimination legislation in Latvia. The grounds covered by the directives are however covered notably by the Labour Law of 20.06.2001, the Law on Prohibition of Discrimination of Natural Persons-Parties to Legal Transactions of 19.12.2012, the Law on Social Security of 07.09.1995, the Education Law of 29.10.1998 and the Consumer Rights Protection Law of 18.03.1999.

²⁶ The term used in the Equal Treatment Act is '*tautybė*', which refers to belonging to a national minority and is not used in the meaning of 'citizenship'.

²⁷ Citizenship is a protected ground only for citizens of EU Member States and of EEA countries, as well as their family members.

²⁸ Law of 28 November 2006.

²⁹ Law of 29 November 2006.

MALTA (Equal Treatment in Employment Regulations; Equal Treatment of Persons Order)	Racial or ethnic origin, disability, sex, sexual orientation, pregnancy or maternity leave, gender reassignment, age, religion or religious belief.
NETHERLANDS (General Equal Treatment Act)	Sex, race, religion, belief, political opinion, nationality, heterosexual or homosexual orientation, civil (or marital) status. ³⁰
POLAND (Equal Treatment Act)	Gender, race, ethnic origin, nationality, citizenship, ³¹ religion, belief, political opinion, disability, age, sexual orientation.
PORTUGAL (Law establishing the legal regime for the prevention, prohibition and combating of discrimination on the grounds of racial and ethnic origin, colour, nationality, ancestry and territory of origin) ³²	Racial and ethnic origin, colour, nationality, ancestry, territory of origin. ³³
ROMANIA (Ordinance regarding the prevention and punishment of all forms of discrimination) ³⁴	Race, nationality, ethnic origin, language, religion, social status, beliefs, sex, sexual orientation, age, disability, non-contagious chronic disease, HIV-positive status, belonging to a disadvantaged group, any other criterion.
SLOVAKIA (Anti-discrimination Act)	Sex, religion or belief, race, affiliation with a nationality (<i>národnosť</i>) or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status, or the reason of reporting criminality or other anti-social activity.
SLOVENIA	Gender, ethnicity, race or ethnic origin, language, religion or belief, disability, age, sexual orientation, gender identity or gender expression, social standing, economic situation, education, any other personal characteristic.

³⁰ In addition, disability is covered by the Disability Discrimination Act, while age is covered by the Age Discrimination Act.

³¹ Since the entry into force of the Act of 29 April 2016, which transposed EU Directive 2014/54/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers, 'citizenship' is included in the Equal Treatment Act for limited categories of people only.

³² Law No. 93/2017 of 23.08.2017.

³³ In addition, religion or belief, age, disability and sexual orientation are covered by the Labour Code of 12.02.2009.

³⁴ The 'Anti-discrimination Law', i.e., Government Ordinance 137/2000 of 31.08.2000.

(Protection Against Discrimination Act)	
SPAIN (Law on Fiscal, Administrative and Social Measures)	Racial or ethnic origin, religion or belief, age, disability, sexual orientation.
SWEDEN (Discrimination Act)	Sex, transgender identity or expression, ³⁵ ethnicity, religion and other belief, disability, sexual orientation, age.

1.2.1 Racial or ethnic origin

While the Racial Equality Directive requires Member States to prohibit discrimination on the ground of ‘racial or ethnic origin’, national anti-discrimination law in many countries uses slightly different terminology such as ‘ethnicity’ or ‘ethnic affiliation’.

Recital 6 of the Racial Equality Directive declares:

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

There have been debates around the use of the term ‘race’ within anti-discrimination legislation. Despite the clear statement made in Recital 6 of the directive, some countries have taken the view that including the terms ‘race’ or ‘racial origin’ in anti-discrimination legislation reinforces the perception that humans can be distinguished according to ‘race’. For this reason, they have avoided using these terms altogether in transposing legislation. For example, the **Swedish** Discrimination Act defines ‘ethnicity’ (Chapter 1, Section 5(3)), as ‘national or ethnic origin, skin colour or similar circumstance’. In **Finland**, the Non-Discrimination Act refers to ‘origin’, which is defined in the Government proposal as including ethnic origin, national origin, societal origin, race and colour of skin.³⁶ **German** anti-discrimination legislation includes the term ‘race’ but its inclusion generated heated criticism and opposition. Since 2020, an amendment to remove the word ‘race’ has been pending. **Belgian** law refers to ‘alleged race’, while in **France**, various legal provisions refer to ‘real or assumed’ (*vraie ou supposée*) race or ethnic origin, in an attempt to underline the non-acceptance of the concept of ‘race’.³⁷

³⁵ Transgender identity or expression is a direct translation of the term used in the Swedish legislation. It can generally be considered as equivalent to the term ‘gender identity’ in English.
³⁶ Finland, Government Proposal on the Non-Discrimination Act 19/2014, p. 66.
³⁷ See the discussion of amendment No. 15 to Article L122-45 of the French Labour Code (now re-codified as Article L1132-1 of the Labour Code), during the adoption of Law No. 2001-1066 of 16.11.2001.

One of the areas in the Racial Equality Directive where judicial interpretation was needed was the extent to which characteristics such as colour, national origin, membership of a national minority, language or social origin might fall within the scope of 'racial or ethnic origin'. This can be the case when national laws implementing the Racial Equality Directive list such characteristics as separate grounds of discrimination. For instance, the **Hungarian** Fundamental Law refers to 'race' and 'colour', while the Equal Treatment Act also mentions 'racial affiliation', 'belonging to a national minority' and 'nationality' (not in the sense of citizenship). It is also often unclear whether the concepts of ethnic/national minority found within specific laws regulating the protection of national minorities will be relied upon when national courts interpret anti-discrimination legislation in countries such as **Austria, Poland** and **Slovenia**. In **Ireland**, the race ground under the Employment Equality Acts and the Equal Status Acts covers individuals who are of 'different race, colour, nationality or ethnic or national origins'. According to case law, 'national origin' is 'acquired by a person at the time of birth and connects that person with one or more groups of people who can be described as a "nation"'. Moreover, Travellers are formally recognised as an ethnic group,³⁸ meaning that they are covered by the race ground as well as by the separate ground of being a member of the 'Traveller community'.³⁹

Some guidance in this regard has been provided by the Court of Justice, notably in the *CHEZ* judgment of 2015 where the Court stated that 'the concept of ethnicity (...) has its origin in the idea of societal groups marked in particular by common nationality, religious faith, language, cultural and traditional origins and backgrounds'.⁴⁰ The Court thus followed closely the guidance already provided by the European Court of Human Rights.⁴¹

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

The following examples show how some Member States are dealing with this close interconnection between race and religion. Due to the historical background of Nazi ideology in **Germany**, antisemitism is regarded as discrimination on the grounds of race and not of religion. In **Sweden**, national courts are not required to specify whether the relevant ground in a specific case is religion or ethnicity, considering that the scope of protection is the same for both grounds. This was further underlined by the Government Bill for the Discrimination Act, which stated that together, these two grounds 'cover a broad area and it can be assumed that in practice it is of subordinate importance which of the discrimination grounds is referred to in e.g. a negotiation or before a court'.⁴²

³⁸ Ireland (2017), 941(1) *Dáil Éireann Debates* 461-463 (Traveller Ethnicity: Statements), 1 March 2017.

³⁹ See for instance Ireland, Workplace Relations Commission, *O'Donoghue v. The Minister for Social Protection*, DEC-S2018-014, of 5 June 2018.

⁴⁰ CJEU, Judgment of 16 July 2015, *CHEZ*, C-83/14, ECLI:EU:C:2015:480, para 46.

⁴¹ European Court of Human Rights (ECtHR), *Timishev v. Russia*, Nos. 55762/00 and 55974/00 of 13 December 2005, paragraph 55.

⁴² Sweden, Government Bill No. 2007/08:95, *A stronger protection against discrimination*, p. 122.

***Jyske Finans*: ethnic origin cannot be determined on the basis of a single criterion⁴³**

The case concerned the practice of a Danish credit institution that imposed additional identification requirements on customers whose driving licence mentioned a country of birth that is not an EU or EFTA Member State.

The Danish Board of Equal Treatment considered that this practice amounted to indirect discrimination on the basis of ethnic origin. The Danish court upheld this decision, finding however that the practice amounted to direct rather than indirect discrimination. The decision was appealed against. The Court of Appeal requested a preliminary ruling from the CJEU on the interpretation of the Racial Equality Directive.

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

In the present case, the country of birth was the only criterion that led the national court to find that the practice in question constituted discrimination on the basis of ethnic origin. However, the CJEU noted that the use of this criterion amounted to neither direct nor indirect discrimination on this ground and was thus not precluded by the Racial Equality Directive.⁴⁴

In 2021, the Court of Justice confirmed further that a difference in treatment between third-country nationals who are long-term residents, on the one hand, and Austrian nationals, on the other, does not cause a disadvantage to third-country nationals of a particular ethnic origin. The Racial Equality Directive is therefore not applicable to a case involving such a difference in treatment.⁴⁵

In the **Netherlands**, the equality body NIHR (Netherlands Institute for Human Rights) has explicitly stated that its interpretation of the ground ‘race’ protected by Dutch law is broader than the definition of ‘racial or ethnic origin’ provided by the CJEU in the *Jyske Finans* case. Applying the CJEU interpretation would, in the view of the equality body, imply a significant lowering of the level of protection provided by Dutch law.⁴⁶

1.2.2 Religion or belief

No state has attempted to provide a comprehensive definition of ‘religion or belief’ within anti-discrimination legislation (e.g. an exhaustive inventory of protected religions or a general conceptual definition), nor has it ever been defined at the international level. In 2017 however, the Court of Justice of the EU provided some guidance

⁴³ CJEU, Judgment of 6 April 2017, *Jyske Finans A/s v. Ligebehandlingsnævnet*, C-668/15, ECLI:EU:C:2017:278.

⁴⁴ Following the CJEU preliminary ruling, the Danish Board of Equal Treatment reopened the case in 2018, repealing its previous decision and concluding that the applicant had experienced neither direct nor indirect discrimination (decision No 9559 of 21 June 2018). Also see: Farkas, L. (2018), ‘[Throwing the babies out with the bathwater: the CJEU, xenophobia and equality bodies after Jyske Finans](#)’ in *European Equality Law Review* 2018/1.

⁴⁵ CJEU, Judgment of 10 June 2021, *Land Oberösterreich v KV*, C-94/20, ECLI:EU:C:2021:477.

⁴⁶ Netherlands Institute for Human Rights, Opinion No. 2017-67 of 6 June 2017, available at: www.mensenrechten.nl.

in its seminal *Achbita* ruling, confirming that the concept of religion ‘should be interpreted as covering both the *forum internum*, that is the fact of having a belief, and the *forum externum*, that is the manifestation of religious faith in public.’⁴⁷

Some countries (for example, **Czechia** and **Spain**) provide guidance as to what religion is not, through legislation regulating the freedom of religion. Further guidance on the meaning of ‘religion or belief’ is provided in some states by explanatory documentation accompanying legislation or by court rulings, such as in **Austria**, **Denmark**, **Estonia**, **France**, **Germany**, **Ireland**, the **Netherlands**,⁴⁸ and **Slovenia**.

With regard to the concept of ‘belief’, the European Commission has clarified that it should be read in the context of ‘religion or belief’ and that it refers to a belief or a philosophical conviction that does not need to be of a religious nature, but it does not cover political opinion.⁴⁹ It is interesting to note that the approaches among the Member States vary with regard to the protection against discrimination on the ground of (non-religious) beliefs. First, it should be noted that **Ireland** has failed to transpose the directive with regards to non-religious beliefs. However, in many other Member States, the types of such beliefs that are (or are not) protected have been clarified through case law. In **Cyprus**, for instance, a court held in 2019 that an individual’s statement as to his beliefs is sufficient to prove them, without any further elements of proof being required.⁵⁰ In **Italy**, the Supreme Court has held that the definition of ‘religion’ encompasses both atheist and agnostic beliefs,⁵¹ while ‘belief’ as a protected ground covers, for instance, trade union affiliation⁵² as well as the personal belief that one should refuse to carry arms, in the case of conscientious objectors.⁵³ In **Sweden**, the wording of the Discrimination Act indicates that only beliefs related somehow to religion (including the belief that no God exists, for instance) are covered, while political and ethical beliefs would be excluded.⁵⁴ In **Lithuania**, ‘belief, convictions or views and religion’ are listed among the protected grounds. A broad spectrum of non-religious beliefs is arguably covered in Lithuania, given that the Constitutional Court has interpreted the term ‘convictions’ as a broad concept including, notably, ‘political, economic convictions, religious feelings, cultural disposition, ethical and esthetical views etc’.⁵⁵ Finally, in **Spain**, the 2003 legislation that initially transposed the directives uses the wording ‘religion or belief’, while legislation adopted in 2022 to complement (but not replace) the pre-existing legal framework, refers to ‘religion, conviction or opinion’. It remains to be seen whether this new wording leads to any practical change in protection.

⁴⁷ CJEU, Judgment of 14 March 2017, *Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV*, C-157/15, ECLI:EU:C:2017:203, para 28.

⁴⁸ Dutch anti-discrimination law refers to the term *levensovertuiging* (philosophy of life) as this had already been interpreted through case law. It includes broad philosophies, such as humanism, but it does not extend to every view of society. In addition to *levensovertuiging*, the Dutch General Equal Treatment Act (GETA) also covers *godsdiens* (religion).

⁴⁹ European Commission (2014), 2: Report from the Commission to the European Parliament and the Council - Joint Report on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (‘Racial Equality Directive’) and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (‘Employment Equality Directive’), SWD (2014) 5 final accompanying COM (2014) 2 final, 17 January 2014.

⁵⁰ Cyprus, District Court of Larnaca, *Voroklini Community Council v. XXXX Zarifis et al*, No. 1243/2018, 25 January 2019.

⁵¹ Italy, Supreme Court, Judgment of 17 April 2020, *UAAR (Unione degli atei e degli agnostici razionalisti) v. Comune di Verona*, No. 7893.

⁵² Italy, Supreme Court, Judgment of 2 January 2020, *S.L.A.I. COBAS v F.C.A. Italy S.P.A.*, No. 1.

⁵³ Italy, Tribunal of Ferrara, 15 April 2022, *FP-CGIL, XX v. Comune di Ferrara*, No. 506/2021.

⁵⁴ Sweden, Government bill No. 2007/08:95, pp.120-122.

⁵⁵ Lithuania, Constitutional Court, Judgment No. 23/98 of 13 June 2000.

CJEU guidance on the concept of 'religion or belief'⁵⁶

The case of *L.F. v SCRL*, decided by the Court of Justice in 2022, concerned a Belgian employer's ban on employees manifesting, in particular through their clothing, their religious, philosophical or political beliefs. In this case, the Court was called upon to interpret the concept of 'religion or belief', and thus recalled that these terms constitute a single ground of discrimination, covering both religious and philosophical or spiritual belief, but excluding political, trade union or other beliefs or preferences. It further noted that the regulation under consideration prohibited *any* visible sign of political, philosophical or religious belief, which does not amount to direct discrimination on the ground of religion or belief provided that it is applied in a general and undifferentiated way.

The Court also clarified that the degree of discretion enjoyed by the Member States when introducing or maintaining more favourable provisions on the protection of the principle of equal treatment than those of the Directive, as referred to in Article 8(1), 'cannot go so far as to enable [the Member States] or their national courts to split one of the grounds of discrimination exhaustively listed in Article 1 of Directive 2000/78 into several grounds without calling into question the wording, the context and the intended purpose of that ground and undermining the effectiveness of the general framework for equal treatment in employment and occupation introduced by that directive,' as this would lead, according to the Court, to the creation of subgroups of workers. The Court further specified that 'the existence of a single criterion, encompassing religion and belief, does not prevent comparisons between workers motivated by religious belief, on the one hand, and those motivated by other beliefs, on the other; nor does it prevent comparisons between workers motivated by different religious beliefs.' It is notable that the Advocate General had reached a different conclusion, finding that Member States are indeed allowed to recognise the protection of religion and religious beliefs as an autonomous ground of discrimination.⁵⁷

The Court thus concluded that the Directive must be interpreted as precluding national provisions transposing that Directive into national law that are construed as meaning that religious belief and philosophical belief constitute two separate grounds of discrimination, from being taken into account as more favourable provisions for the protection of the principle of equal treatment than those of the Directive for the purposes of Article 8(1).

One of the key issues in the practical implementation of the directives with regard to religion or belief has been the manifestation of religious belief through dress or symbols. The group most affected by far by any limitations to such manifestations is Muslim women wearing Islamic headscarves (hijabs).

When such limitations arise in the public sphere such as public employment or education, issues related to such limitations are very closely linked to the principles of secularity and neutrality of the state. For this reason, states vary greatly in their approach to this topic. In **Germany**, the Federal German Constitutional Court has ruled on a number of such cases, attempting to balance the interests of religious freedom on the one hand and public interests such as integration and neutrality of the state on the other.⁵⁸ In **Austria**, the 2019 amendment to the School Education Act prohibiting children below the age of 10 from wearing 'clothing that is influenced

⁵⁶ CJEU, Judgment of 13 October 2022, *L.F. v SCRL*, C-344/20, ECLI:EU:C:2022:774.

⁵⁷ Opinion of Advocate General Medina of 28 April 2022, *L.F. v SCRL*, C-344/20, ECLI:EU:C:2022:328.

⁵⁸ See for instance German Federal Constitutional Court, Judgment No. 1 BvR 471/10 of 27 January 2015 and Judgment No. 1 BvR 354/11 of 18 October 2016.

by belief or religion and which encompasses a covering of the head' was struck down in 2020 by the Constitutional Court for being clearly discriminatory.⁵⁹ Similarly, the **Swedish** Supreme Administrative Court ruled in two separate cases in 2022 that municipalities cannot prohibit the wearing of hijabs or other religious clothing in preschools and primary schools, whether by children or by staff.⁶⁰ In **Belgium**, it was ruled in 2021 that higher education establishments cannot simply prohibit all religious symbols by their internal regulations but that such provisions must be established through a decree.⁶¹ In contrast, in **France**, where hijabs have been prohibited in schools since 2004, the Council of State confirmed in 2023 the right of the Minister of Education to define, by Ministerial Instruction, abayas and qamis as types of religious clothing that are prohibited in all public elementary and secondary schools.⁶²

In the private sphere, many employers impose dress codes, which sometimes refer to religious neutrality, thereby prohibiting employees from wearing religious symbols or dress. Since 2017, the CJEU has dealt with several cases that involved employees having been dismissed due to their refusals to comply with such dress codes, discussed below.

Secularity and neutrality of private employers – the CJEU headscarf cases

The 2017 cases *Achbita*⁶³ and *Bouagnaoui*⁶⁴ as well as the 2021 cases *Wabe and Müller*⁶⁵ all concerned the ability of private employers to prohibit employees from wearing conspicuous religious dress or symbols. In 2023, the *Commune d'Ans* decision⁶⁶ complemented this body of case law with regard to public employment.

In *Achbita*, the Court found that an internal company rule of religious neutrality does not constitute direct discrimination based on religion or belief. It may however constitute indirect discrimination if it puts persons adhering to a particular religion or belief at a particular disadvantage, unless it is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. In this case, the Ghent Labour Appeal Court finally ruled that the neutrality policy did not amount to indirect discrimination as it did not disadvantage Muslim women more than others.⁶⁷

In *Bouagnaoui*, the CJEU concluded that 'the willingness of an employer to take account of the wishes of a customer no longer to have the services of that employer provided by a worker wearing an Islamic headscarf cannot be considered a genuine and determining occupational requirement'. In this case, the Court of Cassation also followed the reasoning of the CJEU and stated that the decision to dismiss the claimant, because of her refusal to remove her veil when demanded by clients, constituted direct discrimination. The court concluded

⁵⁹ Austria, Constitutional Court, Decision No. G4/2020-27 of 11 December 2020.

⁶⁰ Sweden, Supreme Administrative Court, judgments of 8 December 2022 in cases No. 4120-21 and No. 4266-21.

⁶¹ Belgium, Brussels Court of First Instance, decision of 24 November 2021.

⁶² France, Council of State (Supreme Administrative Court, *Conseil d'État*), [decision of 7 September 2023 in case No. 487891](#).

⁶³ CJEU, Judgment of 14 March 2017, *Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v. G4S Secure Solutions NV*, C-157/15, ECLI:EU:C:2017:203. See also the Opinion of Advocate General Kokott delivered on 31 May 2016.

⁶⁴ CJEU, Judgment of 14 March 2017, *Asma Bouagnaoui and Association de défense des droits de l'homme (ADDH) v. Micropole SA*, C-188/15, ECLI:EU:C:2017:204. See also the Opinion of Advocate General Sharpston delivered on 13 July 2016.

⁶⁵ CJEU, Judgment of 15 July 2021, joined cases *IX v Wabe eV*, C-804/18, and *MH Müller Handels GmbH v MJ*, C-341/19, ECLI:EU:C:2021:594.

⁶⁶ CJEU, Grand Chamber judgment of 28 November 2023, *OP v Commune d'Ans*, C-148/22, ECLI:EU:C:2023:924.

⁶⁷ Belgium, Labour Court of Appeal of Ghent, Judgment No. 2019/AG/55 of 12 October 2020.

that there was no neutrality rule justifying disciplinary action, but an ad hoc rule targeting a specific religious sign.⁶⁸

In the *Wabe* case, in the context of determining whether an employer's neutrality policy amounts to indirect discrimination, the Court found that it must be determined whether the policy pursues a legitimate aim. In this regard, the employer must demonstrate that the policy at hand meets a 'genuine need' and is pursued in a consistent and systematic manner.

In the *Müller* case, the Court noted that a prohibition imposed by an employer on its workers wearing conspicuous, large-sized signs of political, philosophical or religious beliefs may amount to direct, rather than indirect, discrimination on the grounds of religion or belief, where the criterion of wearing such signs is inextricably linked to one or more specific religions or beliefs.

The standing jurisprudence of the Court from these cases was further confirmed and reinforced in the 2022 case of *L.F. v SCRL*, which concerned a Belgian employer's ban on employees manifesting *any* political, philosophical or religious beliefs.⁶⁹

The 2023 case of *Commune d'Ans* concerned a municipal employee who performed mainly 'back-office' functions without contact with the public. The Court again underlined the margin of discretion afforded to Member States in transposing the Employment Equality Directive and in regulating the principle of neutrality of the state. Member States – and, as was the case here, their infra-state bodies – may thus impose 'exclusive neutrality' upon all their employees, even those who do not enter into contact with the public.

1.2.3 Disability

In 2010, the EU ratified the UN Convention on the Rights of Persons with Disabilities and all legislation, policies and programmes at EU level must thus comply with its provisions on disability rights, within the limits of EU responsibilities. All EU Member States have also ratified the Convention and should therefore take action in areas such as access to education, employment, transport, infrastructure and buildings open to the public.

In 2006, the CJEU provided its first decision on the meaning of 'disability' in the case of *Chacón Navas*, distinguishing disability from sickness.⁷⁰ In 2013, the CJEU rendered another landmark decision, referring explicitly to the obligations of EU Member States following the ratification by the EU of the UN CRPD and determining that 'disability' must be understood as:

a limitation which results in particular from physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers. (Paragraph 38)⁷¹

⁶⁸ France, Court of Cassation, Social Chamber, *Asma Bougnaoui, ADDH v. Micropole SA*, No. 13-19855 of 22 November 2017.

⁶⁹ CJEU, Judgment of 13 October 2022, *L.F. v SCRL*, C-344/20, ECLI:EU:C:2022:774. See also textbox above, p. 20.

⁷⁰ CJEU, Judgment of 11 July 2006, *Chacón Navas v. Eures Colectividades SA*, C-13/05, ECLI:EU:C:2006:456, Paras. 43-45. See commentary by Lisa Waddington (2007), *Common Market Law Review* 44 (2), p. 487.

⁷¹ CJEU, Judgment of 11 April 2013, *HK Danmark, acting on behalf of Jette Ring v. Dansk almennyttigt Boligselskab and HK Danmark, acting on behalf of Lone Skouboe Werge v. Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S*, joined cases C-335/11 and C-337/11, ECLI:EU:C:2013:222. Commentary by Lisa Waddington (2013) in *European Anti-discrimination Law Review*, Issue 17, p. 11.

The Court also noted that the impairment must be ‘long-term’ and that a curable or incurable illness only falls within the concept of ‘disability’ if it leads to the required degree of limitation.⁷² Over subsequent years, the CJEU has refined its interpretation of the concept of disability through several rulings related notably to specific provisions of **Spanish** labour law.⁷³

In many Member States, national legislation contains several examples of definitions of disability (e.g. **Austria, Belgium, Bulgaria, Croatia, Cyprus, Estonia, France, Germany, Greece, Hungary, Lithuania, Portugal, Slovakia, Slovenia** and **Spain**) but these often stem from the context of social security legislation rather than anti-discrimination law.

A tentative assessment of national definitions of disability as compared with the CJEU’s *HK Danmark* ruling indicates that the definitions of disability applied in most of the EU Member States for the purpose of anti-discrimination appear a priori in line with the ruling. In contrast, the definitions of disability in a number of countries fail to refer to the interaction with various barriers and only focus on the limitations and impairments of the person concerned. These countries’ definitions would thereby not be fully consistent with the case law of the CJEU and with Article 1 of the UN CRPD (**Austria, Cyprus, Czechia, Estonia, Ireland, Latvia, Poland, Romania** and **Sweden**).⁷⁴ In contrast, an **Austrian** court found in 2023 that the stigmatisation of a person infected with HIV amounted to such a barrier to the full participation of the person in social life that they were considered to have a disability, even though the illness was not a disability in and of itself.⁷⁵ The court thus clearly adopted a social approach to the concept of disability. In **Denmark**, despite a landmark decision of the Supreme Court from 2017, which confirmed that the claimant’s condition does not need to be caused by a medically diagnosed illness, but must be evaluated based on all the circumstances of the case,⁷⁶ courts still rely heavily on medical information.⁷⁷ In **Romania**, the National Council for Combating Discrimination discussed the concept of disability and opted for an inclusive use of the term – an approach that might be interpreted as being partially in line with CJEU case law.⁷⁸ In **Germany**, the definition of disability that has applied since 1 January 2018⁷⁹ seeks to ensure compliance with the case law of the CJEU and Article 1 of the UN CRPD. In **Latvia**, where the statutory definition is not compatible with the UN CRPD, the Supreme Court held in 2021 that the UN CRPD definition can apply even in cases where the person does not have an officially confirmed disability in line with national legislation.⁸⁰ In contrast, in **Greece**, despite a statutory definition of disability that appears to be in line with the CJEU jurisprudence, courts generally require claimants to produce medical

⁷² CJEU, Judgment of 11 April 2013, *HK Danmark*, joined cases C-335/11 and C-337/11, ECLI:EU:C:2013:222, Paras. 39-42.

⁷³ See for instance CJEU, Judgment of 18 January 2018, *Carlos Enrique Ruiz Conejero v. Ferroservicios Auxiliares SA and Ministerio Fiscal*, C-270/16, ECLI:EU:C:2018:17; and Judgment of 11 September 2019, *D.W. v Nobel Plásticos Ibérica SA*, C-397/18, ECLI:EU:C:2019:703.

⁷⁴ However, in Sweden, although the definition is not compatible with the social model of disability per se, it is irrelevant in practice as Swedish courts consider whether the alleged discriminator believed that the person who was allegedly discriminated against did or did not have a disability, rather than examining whether the elements of the definition are fulfilled or not.

⁷⁵ Austria, Viennese Provincial Court on Civil Matters, [decision No. 64 R 42/23h of 29 June 2023](#).

⁷⁶ Denmark, Supreme Court decision No. 305/2016 of 22 November 2017, printed in U2018.853H.

⁷⁷ See, for instance, Denmark, Western High Court, judgment of 6 November 2020, printed in U.2021.974.VL; and Board of Equal Treatment decision No. 9274 of 14 March 2023.

⁷⁸ Romania, National Council for Combating Discrimination, Decision 509, file no. 433/2012, *FEDRA v. SC SECOM SRL*, 26 November 2012.

⁷⁹ Germany, Act on Strengthening the Participation and Self-Determination of Persons with Disabilities (‘Federal Participation Act’), 23 December 2016, in force as of 1 January 2018.

⁸⁰ Latvia, Supreme Court Senate Administrative Case Department, case No. SKA-452/2021, *A v Ministry of Finance*, 9 November 2021.

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certificates to establish their disability.⁸¹ The same situation can be found in **Bulgaria**,⁸² where the law also defines ‘persons with long-term disabilities’, by referring to a medically certified disability of at least 50 %.⁸³ In **Lithuania**, the previous definition of disability, which was very focused on the individual’s impairments, was replaced as of 1 January 2024 by a new definition that is fully in line with the CJEU interpretation of the concept.⁸⁴ However, the new law also introduces a definition of ‘person with a disability’ as a person whose level of capacity for participation is established at less than 55 %.

Some countries, including **Estonia, Hungary, Lithuania** and **Malta** go beyond the employment field by defining disability in a way that refers to everyday activities or all aspects of social life. Likewise, **Bulgaria** and **Sweden** do not restrict the scope of relevant impairment to professional activities only.

The CJEU’s requirement for it to be probable that the impairment will last is echoed in various definitions of disability in national law. For example, in both **Austria**⁸⁵ and **Germany**,⁸⁶ impairments must be likely to last for more than six months in order to amount to disabilities, while other states require the impairment to be indefinite in duration (**Cyprus**⁸⁷ and **Sweden**⁸⁸). In **Denmark**, the Supreme Court has held that whatever constitutes ‘long term’ needs to be based on a specific assessment of the individual case.⁸⁹ In **Ireland** however, the Labour Court confirmed in 2023 that the national definition of disability is ‘broader’ than that adopted by the CJEU, in that persons on sick leave for relatively short periods of time may be recognised as having a disability.⁹⁰ In this regard, the Court referred to the long-standing practice of national courts and thus to the non-regression principles set out in the Directive.

It is not yet clear whether the Court regards the interpretation provided in *Chacón Navas* and *HK Danmark* as an exhaustive definition of disability. In particular, this definition leaves no space for the protection of those assumed to have a disability or likely to have a future disability. These scenarios are anticipated in some national legislation. For instance, **Irish** legislation covers discrimination on the basis of an existing disability, one which previously existed or may exist in the future, or is imputed to a person.⁹¹ The **Slovak** Anti-discrimination Act states that ‘discrimination on the ground of previous disability, or discrimination against a person in a case in which it could be, based on external symptoms, possible to presume that she or he is a person with a disability, shall be deemed to be discrimination on the ground of disability’.⁹² **Swedish** law does not consider the claimant’s specific abilities themselves, but rather the discriminator’s perception of these

⁸¹ See, for instance, Greece, Court of Appeal of Piraeus, [decision No. 447/2022](#) of 18 July 2022.

⁸² See, for instance, Bulgaria, Supreme Administrative Court, Decision No. 10238 of 14 November 2022 in case No. 5088/22, and Supreme Court of Cassation, Ruling No 50935 of 12 December 2022 in case No. 2739/2022.

⁸³ Bulgaria, People with Disabilities Act, Paras 1.1 and 1.2, Additional Provisions.

⁸⁴ Lithuania, [Law No. XIVP-2014\(2\) on Amendments to the Law on Social Integration of Persons with Disabilities No. I-2044](#), of 20 December 2022.

⁸⁵ Austria, Act on the Employment of Persons with Disabilities, BGBl 22/1970, Para. 3, among others.

⁸⁶ Germany, Social Code IX, 2016, Section 2.1 and Federal Disability Equality Act, 2002, Section 3.

⁸⁷ Cyprus, Law on Persons with Disabilities, No. 127(I)/2000.

⁸⁸ Sweden, Discrimination Act, 2008:567, Chapter 1, Section 5(4). The Swedish term ‘*varaktig*’ has been translated in the Government’s unofficial translation as ‘permanent’. The term permanent should here be read as meaning long term or durable; in other words, it is probable that the impairment *will* last.

⁸⁹ Denmark, Supreme Court, judgment of 23 June 2015, case No. 25/2014, printed in U2015.3301H.

⁹⁰ Ireland, Labour Court, [Phibsboro Cat Rescue v. Davis](#), EDA2334, 7 September 2023.

⁹¹ Ireland, Employment Equality Acts 1998-2021, Section 2(1).

⁹² Slovakia, Act on equal treatment in certain areas and on protection against discrimination and on amending and supplementing certain acts, as amended, No 365/2004, Section 2a(11)(d).

abilities. Therefore, it is irrelevant for the outcome of a case whether the claimant experiences any symptoms or not.⁹³

1.2.3.1 Specific provisions on disability – the reasonable accommodation duty

One of the most significant innovations within the Employment Equality Directive is the duty of employers to ‘take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer’.⁹⁴ This provision has been implemented very unevenly across the Member States. In its landmark decision in *HK Danmark*, the CJEU provided further clarification on the concept of reasonable accommodation, holding that the directive must be interpreted in accordance with the UN CRPD as ‘referring to the elimination of the various barriers that hinder the full and effective participation of persons with disabilities in professional life on an equal basis with other workers’.⁹⁵ Reasonable accommodation may therefore include both material and organisational measures such as adapted working hours.

In many countries, judicial interpretation is still scarce or lacking regarding the limits and scope of the duty to provide reasonable accommodation. The following states have legal provisions that approximate to the reasonable accommodation duty found within the directive: **Austria, Belgium, Bulgaria, Croatia,**⁹⁶ **Cyprus, Czechia, Denmark, Estonia, Finland, France, Greece, Hungary, Ireland, Italy,**⁹⁷ **Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia and Spain.** These vary considerably, from states that provide a basic duty with little elaboration on how this should be implemented or how a disproportionate burden must be assessed (e.g. **Croatia**) to states with more extensive guidance on the practical application of the reasonable accommodation duty. In several Member States, the duty to provide reasonable accommodation applies to other fields in addition to employment, such as the **Netherlands** (education and access to goods and services⁹⁸), **Bulgaria** (education), **Belgium** (education, access to goods and services, social protection and social advantages) and **Cyprus** (a wide range of areas). In **Sweden**, the Discrimination Act prohibits ‘inadequate accessibility’ as a separate form of discrimination. This provision protects persons with disabilities from being ‘disadvantaged through a failure to take measures for accessibility to enable the person to come into a situation comparable with that of persons without this disability where such measures are reasonable on the basis of accessibility requirements in laws and other statutes, and with consideration to the financial and practical conditions, the duration and nature of the relationship or contact between the operator and the individual, and other circumstances of relevance’.⁹⁹ In **Slovenia**, the legal framework is particularly fragmented and unclear with regard to the duty to provide reasonable accommodation, making further judicial interpretation necessary to determine its scope and limitations.

⁹³ See, for example, Swedish Labour Court, *Sveriges Civilingenjörsförbund and MKv. T&N Management AB*, Judgment No. 32, of 30 March 2005.

⁹⁴ Directive 2000/78/EC, Article 5.

⁹⁵ CJEU, Judgment of 11 April 2013, *HK Danmark (Ring and Skouboe Werge)*, joined cases C-335/11 and C-337/11, ECLI:EU:C:2013:222, Para 54.

⁹⁶ The law does not specify whether a formal proof of disability is necessary to trigger the duty of reasonable accommodation. In practice, the existence of the claimant’s disability is, in most cases, not disputed by the respondent but, when it is disputed, a formal proof of disability can be requested.

⁹⁷ The Italian legislation states that public employers ‘shall apply this provision without any additional burden and with human, financial and instrumental resources already available’.

⁹⁸ Some specific restrictions still apply to public transport (Article 7 DDA) and housing (Articles 6a-c DDA).

⁹⁹ Sweden, Discrimination Act, as amended by Act 2014:958, of 8 July 2014, Chapter 1, Section 4(3).

There are concerns regarding the extent of the duty to provide reasonable accommodation in several countries. In **France**,¹⁰⁰ the duty to provide reasonable accommodation has not been transposed, for instance, to cover magistrates and officials working in the Parliament, who can only rely on the direct application of the Employment Equality Directive on the basis of domestic case law. In **Hungary**, the duty to provide reasonable accommodation has not been implemented entirely. Concerns are particularly serious with regard to access to employment as the law does not seem to prescribe that reasonable effort should be made to adapt the workplace to special needs with a view to enabling a job applicant with a disability to do the work. Furthermore, the duty is *stricto sensu* limited to physical adaptations of the workplace.¹⁰¹ In **Germany**, it is considered that the provision of reasonable accommodation falls under the contractual obligation of employers to take proper care of the legitimate needs of their employees.¹⁰² However, there is no general regulation of reasonable accommodation that covers all areas within the material scope of the directive, including, among others, job applicants. **Romanian** law imposes, in general terms, duties to facilitate access to various public and private services and facilities and in labour relations, but does not provide for reasonable accommodation as a specific duty for employers. In **Italy**, the relevant provision does not *define* reasonable accommodation or offer employers any guidance, but states that when public employers provide reasonable accommodation, they 'shall apply this provision without any additional burden and with human, financial and instrumental resources already available'.¹⁰³ In **Bulgaria**, the reasonable accommodation duty established by the Protection Against Discrimination Act applies to employees and successful job applicants, while duties established by the People with Disabilities Act appear to apply to successful job applicants only. Therefore, unsuccessful job applicants appear not to be covered. Although **Portuguese** law provides a duty to provide reasonable accommodation which is in line with EU law, its application in practice does not appear to be in line with the approach taken by the CJEU. In this regard, a case decided in 2022 is noteworthy: the claimant had a recognised occupational disease and was refused different accommodation measures, however, the case was examined as potential harassment, and in the end the claims were rejected.¹⁰⁴

Italy: Reasonable accommodation for employee with a disability on prolonged sick leave

In March 2023, the Italian Supreme Court ruled that an employer who had dismissed an employee with a disability due to prolonged periods of sick leave, was liable for indirect disability discrimination.¹⁰⁵ The court concluded that the limit on the amount of sick leave required to justify dismissal should have been adapted due to the disability of the employee, given that a worker with disability is, in comparison with other workers, exposed to a greater risk of absence due to an illness linked to their disability and is therefore more exposed to the risk of dismissal on the ground of excessive sick leave. Given the objective nature of the prohibition of discrimination, it was irrelevant that the employer applied the sick leave limit fixed by collective agreement and that they did not have knowledge of the specific illness that gave rise to the absence. Instead, the decisive

¹⁰⁰ See France, Administrative Supreme Court (*Conseil d'État*) decisions in the *Perreux* case of 30 October 2009 and the *Bleitrach* case of 30 October 2010.

¹⁰¹ Hungary, Act XXCI of 1998 on the rights of persons with disabilities and the guaranteeing of their equal opportunities, Article 15(2).

¹⁰² Germany, Civil Code, Section 241.2.

¹⁰³ Italy, Legislative Decree of 28 June 2013 No. 76, then converted into Law No. 99 of 9 August 2013 on preliminary urgent measures for the promotion of employment, in particular of young people, the promotion of social cohesion, and other urgent financial measures.

¹⁰⁴ Portugal, Porto Court of Appeal, decision of 13 July 2022 in case No. 3444/20.8T8MAI.P1.

¹⁰⁵ Italy, Supreme Court, *A. Spa v. LC*, decision of 31 March 2023 in case No. 9095.

factor was the lack of distinction between absences due to illness and absences induced by disability-related pathologies.¹⁰⁶

Whilst the definition of the duty varies, it is commonly subject to the limitation that it should not create a 'disproportionate' or 'unreasonable' burden for the employer (in **Austria, Belgium, Croatia, Cyprus, Czechia, Denmark, Estonia, France, Germany, Greece, Ireland, Italy** (public employers), **Latvia, Lithuania, Luxembourg, Malta**, the **Netherlands, Poland, Portugal, Slovakia, Slovenia** and **Spain**). In **Bulgaria**, the Protection Against Discrimination Act limits the duty when 'costs are unfoundedly large and would seriously hinder' the employer (Article 16). In addition, however, the People with Disabilities Act establishes entitlements for persons with disabilities to 'reasonable facilitations' in employment that are absolute, i.e. there is no 'unreasonable' or 'disproportionate' burden limit. In **France**, the Labour Code refers to 'disproportionate costs' rather than a 'disproportionate burden', and employers are required to establish that they had applied for funding to implement the reasonable accommodation needed, before being able to argue that the costs would indeed have been disproportionate.¹⁰⁷ In **Malta**, a specific board is set up for the purpose of determining the reasonableness of, *inter alia*, reasonable accommodation measures. The board will have regard to whether such measures could be undertaken 'without unjustifiable hardship'. In **Belgium**, a court decision from 2023 illustrated that accommodating the individual needs of a nurse with a disability by adjusting her tasks would amount to a disproportionate burden for the employer where the entire staff unit was based on the principle of all staff being able to carry out all tasks independently.¹⁰⁸

The preamble to the Employment Equality Directive provides an indication of the criteria to be taken into account in determining the reasonableness of a particular accommodation, in countries where such limits do exist. Recital 21 identifies three issues to consider in particular, and these are often included in national legislation or case law:

- the financial and other costs entailed: **Bulgaria, Czechia, Estonia, Finland, France, Germany, Ireland, Malta, Slovenia, Spain** and **Sweden**;
- the scale and financial resources of the organisation or undertaking: **Austria, Belgium, Denmark, Estonia, Finland, Ireland, Malta, Slovakia, Slovenia, Spain** and **Sweden**; and
- the possibility of obtaining public funding or any other assistance: **Austria, Belgium, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Malta**, the **Netherlands, Poland, Portugal, Slovakia, Spain** and **Sweden**.

In **Denmark**, although the statutory definition of the duty to provide reasonable accommodation is vague, there have been many court and equality body decisions specifying the limits of this duty. This rich body of case law shows that the employer needs to prove that such accommodation would impose a disproportionate burden,¹⁰⁹ that it is only if the employer knows or ought to know about the employee's disability that the duty can apply,¹¹⁰ and that the size of the employer's business is relevant for assessing the reasonableness of accommodations.¹¹¹ Furthermore, the employee needs to be competent, suitable and available to perform the job, which can only

¹⁰⁶ After the cut-off date for this publication, on 4 January 2024, the Tribunal of Ravenna referred a similar case to the Court of Justice of the EU for a preliminary ruling [C-5/24, \(Pauni\)](#).

¹⁰⁷ See for instance France, Caen Administrative Court, decision No. 0802480 of 1 October 2009.

¹⁰⁸ Belgium, Labour Court of Hainaut, [decision of 21 April 2023](#).

¹⁰⁹ See, for instance, Denmark, Maritime and Commercial Court, judgment of 29 April 2015 in case No. F-9-12.

¹¹⁰ See, for instance, Danish Supreme Court, judgment of 11 August 2015 in case No. 104/2014. Printed in U2015.3827H.

¹¹¹ See, for instance, Danish Supreme Court, decision of 6 September 2022 in case No. BS-26753/2021-HJR .

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be determined when reasonable accommodation has been put in place or attempted.¹¹² Similarly, in the **Netherlands**, the aim of providing reasonable accommodation is to enable persons with a disability to fulfil the tasks pertaining to their job, but does not require employers to change the content or nature of those tasks.¹¹³

In February 2022, the CJEU delivered its ruling in *HR Rail*, concluding that reassignment to another position, when the employee has been declared unfit to perform the duties of their original position, can be a form of reasonable accommodation.¹¹⁴ The same issue has also been discussed and decided by different courts in several EU Member States in recent years, with varying findings. In **Italy**, for example, the Supreme Court has found that employers do not have a duty to reassign employees with disabilities to another role that they would have the capability to perform.¹¹⁵ By contrast, a **Hungarian** court found in 2023 that the duty to provide reasonable accommodation may include a duty to reassign an employee with a disability to another position when they had been declared incapable of exercising the functions of their original position.¹¹⁶ Similar findings have been made by the Supreme Court in **Czechia**¹¹⁷ and the Court of Cassation in **France**,¹¹⁸ although the same duty would not apply in **France** if the employer had to create a new position to accommodate the employee.¹¹⁹ On a similar note, in **Ireland**, courts have found that employers are not required to create an entirely new position where there are no suitable vacancies,¹²⁰ although the Workplace Relations Commission confirmed in 2023 that employers are required to reassign the employee to a different position, including, for instance, a position that they had previously held.¹²¹ In **Slovenia**, on the other hand, employers have a statutory obligation to offer an alternative position to employees with disabilities whose contracts have been terminated due to their incapacity to carry out their tasks.¹²²

National legislation is often ambiguous about whether failure to provide reasonable accommodation is to be treated as a form of unlawful discrimination (e.g. **Hungary, Slovenia**). In some countries, there is still no case law that could lead to the conclusion that such an approach is being taken (e.g. **Estonia, Luxembourg**). In **Cyprus**, no reasonable accommodation case has ever been tried in the courts, but the Code of Conduct on Disability Discrimination in the workplace issued by the equality body in 2010 explicitly provides that an employer's failure to adopt reasonable accommodation measures amounts to unlawful discrimination.¹²³ In a majority of Member States however, failure to meet the duty to provide reasonable accommodation amounts to discrimination, whether direct (**Greece**,¹²⁴ **Malta**¹²⁵ and **Spain**), indirect (**Austria, Czechia** and **Denmark**),

¹¹² Denmark, Board of Equal Treatment, decision No. 10024 of 22 November 2023.

¹¹³ See, notably, Netherlands Institute for Human Rights, Opinion No. 2020-109, of 8 December 2020.

¹¹⁴ CJEU, Judgment of 10 February 2022, *XXX v. HR RAIL S.A.*, C-485/20, ECLI:EU:C:2022:85.

¹¹⁵ Italy, Supreme Court, decision of 9 March 2021 in case No. 6497.

¹¹⁶ Hungary, Budapest Appeals Court, judgment No. 1.Mf.31.023/2023/7 of 11 May 2023.

¹¹⁷ Czechia, Supreme Court, No. 21 Cdo 916/2022-291, decision of 27 July 2022.

¹¹⁸ France, Court of Cassation, Social Chamber, decision No. 18-21993 of 3 June 2020.

¹¹⁹ France, Court of Appeal of Versailles, decision of 30 January 2020 in case No. 18/01698.

¹²⁰ Ireland, Supreme Court, *Nano Nagle School v Daly*, decision No. [2019] IESC 63 of 31 July 2019. See also Workplace Relations Commission, *Dunne v J & G Agencies Tilemarket*, Case No. ADJ-00037162 of 13 December 2022.

¹²¹ Ireland, Workplace Relations Commission, *Kinsella v. Health Service Executive*, ADJ-00038938, 28 June 2023.

¹²² Slovenia, Vocational Rehabilitation and Employment of Disabled Persons Act, Article 40.

¹²³ Cyprus, Equality Authority of the office of the Commissioner for Administration (Ombudsman) (2010), 'Disability discrimination at the workplace'.

¹²⁴ Greece, *Explanatory Report to Law 4488/2017*, pp. 25-26.

¹²⁵ Malta, Paragraph 1(2)(d) of Part B of the Fourth Schedule to the United Nations Convention on the Rights of Persons with Disabilities Act 2021.

or an unspecified form of discrimination (**Croatia, France, Latvia, Lithuania, Poland** and **Portugal**).¹²⁶ Finally, in **Slovakia**, failure to provide reasonable accommodation constitutes a violation of the principle of equal treatment (which is broader than the prohibition of discrimination and also encompasses the duty to adopt measures to prevent discrimination), and in **Sweden**, amounts to ‘inadequate accessibility,’ which constitutes a separate form of discrimination. Similarly, in **Belgium, Finland** and **Ireland**,¹²⁷ failure to provide reasonable accommodation is defined as a specific form of discrimination, and in the **Netherlands** as a prohibited form of making a distinction,¹²⁸ although it is not specified whether this would be direct discrimination, indirect discrimination or a third form of prohibited distinction. In **Bulgaria**, failure to provide reasonable accommodation does not amount to discrimination in any form.

Finally, there are concerns in some countries with regard to the practical implementation of the provisions establishing the duty to provide reasonable accommodation. For instance, in **Croatia**, the Disability Ombudsperson noted that in 2023, as in previous years, complaints relating to a failure to provide reasonable accommodation remain the most common form of discrimination faced by persons with disabilities. It also noted that negative attitudes towards employees with disabilities requesting reasonable accommodation are still very common among employers, and that the burden of recognising and realising the right to reasonable accommodation rests entirely on the individuals needing such accommodation.¹²⁹

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

Country	Legislation	Failure to provide RA counts as discrimination
AUSTRIA	Act on the Employment of Persons with Disabilities, Sections 6, 7c/4-7	Yes
BELGIUM	General Anti-discrimination Federal Act, Arts. 4(12) and 14	Yes
BULGARIA ¹³⁰	Protection Against Discrimination Act, Art. 16	No ¹³¹
	People with Disabilities Act, Arts. 5(2.4), 29(6.5), 29(9.6)	No

¹²⁶ In Portugal, this is not explicitly stipulated but rather suggested by the wording of Law 46/2006.

¹²⁷ Through judicial interpretation since the decision of the Equality Tribunal in *O’Sullivan v Siemens Business Services Ltd*, DEC-E2006-058, of 22 November 2006.

¹²⁸ See: Netherlands, Equal Treatment Commission (Commissie Gelijke Behandeling (CGB)), ETC 2004-140, where it held: ‘It concerns a sui generis form of (making a) distinction, which does not yet occur in the other equal treatment laws’.

¹²⁹ Croatia, Ombudsperson for Persons with Disabilities (2024), *Report for 2023*.

¹³⁰ Protection can also be found in the Labour Code, Article 314; Civil Servant Act, Article 30; and the Healthy and Safe Working Conditions Act, Article 16(1.4).

¹³¹ Although case law in 2018 did so (SAC, Decision No. 5302 of 24 April 2018 in Case No. 11143/2016).

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CROATIA	Anti-discrimination Act, Art. 4(2)	Yes
	Act on professional rehabilitation and employment of persons with disability, Art. 7(2)	No ¹³²
CYPRUS	Law on Persons with Disabilities, Art. 5(1A)	No ¹³³
CZECHIA	Anti-Discrimination Act, Sec. 3(2)	Yes
DENMARK	Act on Prohibition of Discrimination in the Labour Market etc, Sec. 2(a)	Yes
ESTONIA	Equal Treatment Act, Art. 11	No ¹³⁴
FINLAND	Non-Discrimination Act, Sec. 15	Yes
FRANCE ¹³⁵	Labour Code, Art. L5213-6 ¹³⁶	Yes
	Law relating to the adaptation of National Law to Community Law in matters of discrimination, Art. 2 para 5	Yes
GERMANY	Social Code IX, Sec. 164.4	Yes
GREECE	Equal Treatment Law, Art. 5	Yes

¹³² Although failure to meet the duty of reasonable accommodation for persons with disabilities is not included in the law, it can be noted that the Ombudsperson for Persons with Disabilities in annual reports continuously points out that the failure to meet the duty of reasonable accommodation counts as discrimination.

¹³³ Although the law does not expressly provide that failure to meet the duty of reasonable accommodation amounts to discrimination, this may be inferred from the wording of the law, which stipulates that, in order to comply with the principle of equal treatment, reasonable accommodation is anticipated and for this purpose the employer must take all necessary measures so as the person with disability may have access to a job position, may exercise his profession or may attend training, provided the burden is not unreasonable. Article 5(1A) of the Law on Persons with Disabilities.

¹³⁴ Judicial interpretation is required, but national legislation does not stipulate that a failure to provide reasonable accommodation would amount to discrimination.

¹³⁵ Non-registered persons with disabilities, non-salaried workers with disabilities and persons with disabilities who are members of liberal professions, magistrates who are not considered as civil servants and are covered by Ordinance No. 58-1270 of 22 December 1958, public agents working in Parliament, contractual public agents who hold one of the various statuses which are excluded from the application of Law No. 84-16 of 11 November 1984 on the status of contractual public agents in Article 3, para. 5, are not covered by the above-mentioned texts implementing reasonable accommodation into French Law (Articles 24 IV and 32 of Law No. 2005-102 for equal rights and opportunities, participation and citizenship of persons with disabilities, of 11 February 2005).

¹³⁶ Law No. 2005-102 for equal rights and opportunities, participation and citizenship of persons with disabilities of 11 February 2005, as last amended in 2016, Articles 24 V (creating Article L5213-6 of the Labour Code) and 32.

Protected grounds of discrimination

HUNGARY	Act on the Rights of Persons with Disabilities and the Guaranteeing of their Equal Opportunities, Art. 15 ¹³⁷	Yes ¹³⁸
	Act on the Labour Code, Art. 51	Yes ¹³⁹
IRELAND	Employment Equality Acts 1998-2021, Secs. 16(3)(a), 16(3)(b) and 16(4)	Yes ¹⁴⁰
ITALY	Legislative Decree 216/2003 Implementing Directive 2000/78/EC, Art. 3(3-bis)	Yes
LATVIA	Labour Law, Art. 7(3)	No ¹⁴¹
LITHUANIA	Law on Equal Treatment, Art. 7(9)	Yes
	Labour Code, Art. 26(2)	Yes
LUXEMBOURG	General Anti-Discrimination Law, Art. 20	No
	Law on persons with disabilities, Art. 8	No
MALTA	United Nations Convention on the Rights of Persons with Disabilities Act 2021, Part B of Fourth Schedule, Paragraph 1(2d) and 1(5)	Yes
	Equal Treatment in Employment Regulations, Art. 4A	Yes
NETHERLANDS	Disability Discrimination Act, Art. 2	Yes

¹³⁷ The disability law clearly imposes a duty to provide reasonable accommodation regarding the physical conditions of the recruitment process; regarding all other aspects of employment and access to employment, judicial interpretation is still required.

¹³⁸ In Hungary, a finding of discrimination in the form of failure to provide reasonable accommodation would be based on interpretation of the Equal Treatment Act.

¹³⁹ In Hungary, a finding of discrimination in the form of failure to provide reasonable accommodation would be based on interpretation of the Equal Treatment Act.

¹⁴⁰ Although Irish legislation does not define denial of reasonable accommodation as discrimination, case law has established that it is a free-standing form of discrimination. This interpretive approach has been adopted in a line of cases dating to 2006 and is aimed at securing compliance with Directive 2000/78/EC.

¹⁴¹ Case law confirmed that in accordance with the CRPD Article 2, discrimination on the grounds of disability includes all forms of discrimination, including refusal to provide reasonable accommodation. Supreme Court Senate Administrative Case Department, Case No. SKA-452/2021, A v Ministry of Finance, 9 November 2021.

POLAND	Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities, Art. 23a (1-3)	Yes
PORTUGAL	Labour Code, Arts. 85-88	Yes ¹⁴²
	Law prohibiting and punishing discrimination based on disability and on a pre-existing risk to health, Art. 5(4)	Yes ¹⁴³
ROMANIA	Law on the protection and promotion of the rights of persons with a handicap, Art. 5(4) ¹⁴⁴	No ¹⁴⁵
SLOVAKIA	Anti-discrimination Act, Sec. 7	Yes
SLOVENIA	Act on Equal Opportunities of Persons with Disabilities, Art. 3(3) ¹⁴⁶	No ¹⁴⁷
SPAIN	General Law on the Rights of Persons with Disabilities and their Social Inclusion, Art. 2(m)	No ¹⁴⁸
SWEDEN	Discrimination Act, Ch. 1 Sec. 4(3), in conjunction with Ch. 2 Sec. 1	Yes ¹⁴⁹

1.2.3.2 Specific provisions on disability – health and safety at work

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

In other countries, there is no explicit provision under the anti-discrimination legislation, but exceptions can be found under other pieces of legislation. In **Portugal**, it is the employer who assesses the measures that are needed to protect the health and safety of employees with disabilities and the Labour Code allows employers

¹⁴² Failure to meet the duty to provide reasonable accommodation in employment for persons with disabilities is not explicitly recognised by law as a form of discrimination, but it is implied.

¹⁴³ Failure to meet the duty to provide reasonable accommodation in employment for persons with disabilities is not explicitly recognised by law as a form of discrimination, but it is implied.

¹⁴⁴ Reasonable accommodation is framed as a facility for the employee but not as a duty for the employer.

¹⁴⁵ While failure to meet the duty to provide reasonable accommodation is not explicitly stipulated as amounting to discrimination, it is considered as such in practice by the national equality body and by the courts. See notably: National Council for Combating Discrimination, Decision *M.E.R. v. Dr PG and Mayoralty of V.*, 17.10.2007.

¹⁴⁶ The material scope of the provision is restricted and refers mainly to areas outside employment. Judicial interpretation is therefore required.

¹⁴⁷ Judicial interpretation is required.

¹⁴⁸ A failure to provide reasonable accommodation does not explicitly amount to discrimination per se, but to a violation of the right to equal opportunities.

¹⁴⁹ In Sweden, failure to provide reasonable accommodation amounts to a specific form of discrimination, i.e. inadequate accessibility.

to exclude a person with a disability if the work will pose a risk to that person's health and safety. However, a person with a disability can challenge this decision before the labour courts. In **Bulgaria**, employers have a duty to assign to their employees only tasks that are compatible with their capabilities.¹⁵⁰ Furthermore, in view of the specific dangers for employees with a reduced work capability¹⁵¹ and under a number of other laws and pieces of secondary legislation governing specific fields, health requirements exist for access to employment in those fields, such as transportation (including aviation) and other risk-intensive occupations.

Lastly, some countries do not provide specific exceptions in relation to disability in the context of the health and safety provisions of the directive, but consider that a general exception with a legitimate aim is relevant in these situations. This is the case, for instance, in **Romania** and **Sweden**, where the general exception for genuine and determining occupational requirements could be applicable.

1.2.4 Sexual orientation

The introduction of legal protection against discrimination for the first time on the ground of sexual orientation proved to be controversial and was challenging for many of the states. Very few countries have defined sexual orientation within anti-discrimination legislation. In **Bulgaria**, sexual orientation is defined under the Protection Against Discrimination Act as 'heterosexual, homosexual or bisexual orientation'.¹⁵² A similar approach is adopted in **Finland, Ireland** and **Sweden**. Similarly, in **Austria** 'sexual orientation' is generally considered to cover heterosexuality, homosexuality and bisexuality. In the **Netherlands**, non-discrimination legislation refers to 'hetero- or homosexual orientation', which is considered also to include bisexuality.¹⁵³ Since its amendment in 2023 however, the Dutch Constitution refers to 'sexual orientation', which is considered to be a more inclusive term more in line with international law.¹⁵⁴ In **Spain**, since 2023, 'sexual orientation' has been defined by law as 'physical, sexual or affective attraction to a person', where it is heterosexual if such attraction 'is felt only towards people of "different sexes"'; homosexual if it is felt only towards people of the same sex; and bisexual if it is felt towards people of 'different sexes', 'not necessarily at the same time, in the same way, to the same degree or with the same intensity'. It goes on to state: 'Homosexual people may be gay if they are men, and lesbian if they are women.'¹⁵⁵ Although **Belgian** anti-discrimination legislation does not contain a definition of sexual orientation, it is worth mentioning that the 2013 Inter-federal plan to fight homophobic and transphobic violence, defines sexual orientation as 'heterosexuality, homosexuality and bisexuality'. It further specifies that '[s]exual orientation is not a choice. Sexual orientation is defined on the basis of the gender of individuals for whom an individual has attraction and affection, whether physical or emotional'.¹⁵⁶ In **Denmark**, sexual orientation is defined as including 'a person's persistent sexual attraction pattern based on which gender one falls in love with and is sexually attracted to'.¹⁵⁷ The 2006 **German** General Equal Treatment Act adopts the

¹⁵⁰ Bulgaria, Healthy and Safe Working Conditions Act, Article 16 (1.2a).

¹⁵¹ Bulgaria, Healthy and Safe Working Conditions Act, Article 16 (1.3).

¹⁵² Bulgaria, Protection Against Discrimination Act, Section 1.10 Additional Provisions.

¹⁵³ Netherlands, Tweede Kamer 1991-1992, 22 014, No. 10, p. 12.

¹⁵⁴ There are plans to replace the terms 'hetero- or homosexual orientation' with 'sexual orientation' in the General Anti-Discrimination Act as well.

¹⁵⁵ Spain, Law 4/2023, of 28 February, for real and effective equality of transgender people and for the guarantee of LGBTBI rights, Article 3h.

¹⁵⁶ Belgium (2013), *Inter-federal plan to fight homophobic and transphobic violence*, 31 January 2013. The new federal action plan for 2021-2024 does not contain any definition of sexual orientation. See *For a LGBTQI+ friendly Belgium*, Federal Action Plan 2021-2024. The 2013 definition is thus still considered relevant.

¹⁵⁷ Denmark, *Preparatory works to Bill No. 18 (2021/1)*, adopted as Amendment Act No. 2591 of 28 December 2021, entry into force 1 January 2022.

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term 'sexual identity' while the Federal German Constitutional Court refers to both sexual identity and sexual orientation as being part of each individual's autonomous personality. This is understood to go beyond sexual orientation and also encompasses protection against discrimination for transsexual people.¹⁵⁸

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

Clarifying the scope of the term 'sexual orientation' is challenging as in many states, there are few or no examples of cases of discrimination on the grounds of sexual orientation being brought before the courts. Issues around confidentiality or fear of victimisation may deter some individual victims from initiating proceedings. Moreover, in some states the wider political climate remains unfriendly or openly hostile to equality for lesbian, gay and bisexual people (e.g. **Hungary**,¹⁵⁹ and **Lithuania**¹⁶⁰).¹⁶¹

1.2.5 Age¹⁶²

Age is generally assumed to be an objective characteristic with a natural meaning and hence it is rarely defined. The **Swedish** Discrimination Act defines age as the 'length of life to date' and includes all ages, ensuring that the young and the old are protected. Likewise, most states have not restricted the scope of the legislation, but the **Irish** Employment Equality Acts 1998-2021 limit their application to 'persons above the maximum age at which a person is statutorily obliged to attend school',¹⁶³ while the protection in the field of access to goods and services only applies to those aged above 18.¹⁶⁴ Similarly, in **Denmark** as regards employment, payment and dismissal, persons aged below 18 are not protected against direct discrimination if differential treatment is stipulated in a collective agreement.¹⁶⁵ Moreover, the prohibition against differential treatment due to age does not apply with regard to the employment and conditions of pay and dismissal of young people under the age of 15, since their employment is not regulated by a collective agreement. In **Cyprus**, courts have ruled that retirement ages fall outside the scope of the directive and are thus exempt from judicial scrutiny.¹⁶⁶

Discrimination on the ground of age is widespread across Europe, notably in access to employment where job advertisements discriminating against or discouraging persons of certain age groups from applying for a

¹⁵⁸ German Federal Constitutional Court of 6 December 2005; 1 BvL 3/03, paragraph 48 *et seq.*

¹⁵⁹ An active anti-LGBTIQ campaign carried out by Government officials and the ruling party since 2019 led to the adoption of Act LXXIX of 23 June 2021 which, notably, banned advertisement or media content that 'promotes or portrays deviation from [gender] identity aligning with sex at birth, gender reassignment, or homosexuality' from being made available to persons under the age of 18.

¹⁶⁰ Despite a generally hostile political climate, the Lithuanian Constitutional Court declared in 2019 that the Constitution must be interpreted to prohibit discrimination on the grounds of gender identity and sexual orientation. See judgment of 11 January 2019, case No. KT3-N1/2019.

¹⁶¹ In Poland, in 2019 and 2020, the hostility of the political climate was reinforced and expressed through the adoption by municipalities throughout the country of resolutions declaring them to be 'zones free from LGBT ideology'. Following complaints submitted by the national equality body, the national courts have found all the resolutions to be invalid due to gross violations of the law. See notably Supreme Administrative Court, ruling of 11 October 2023, file No. III OSK 1527/22. Furthermore, the European Commission initiated infringement proceedings against Poland, due to a failure to provide necessary information regarding the resolutions. See INFR(2021)2115, 15 July 2021. The infringement case was closed in January 2023.

¹⁶² For a detailed analysis of the justifications for age discrimination, see Section 3.3 below.

¹⁶³ Ireland, Employment Equality Acts 1998-2021, Section 6(3)(a).

¹⁶⁴ Ireland, Equal Status Acts 2000-2018, Section 3(3)(a).

¹⁶⁵ Denmark, Act on the Prohibition of Discrimination in the Labour Market etc., Section 5(a)(4).

¹⁶⁶ Cyprus, Supreme Court, Appeal Jurisdiction, *Michael Raftopoulos v. Republic of Cyprus*, Appeal No. 3/2012, 10 October 2017.

position are particularly common. Two such cases were decided by the **Danish** Board of Equal Treatment in 2021, where both cases concerned job advertisements on social media platforms that used the platform settings to target specific age groups (i.e. persons aged below 43 and 50, respectively).¹⁶⁷ Based on different circumstances of fact, the Board found that discrimination had occurred in one of the cases, but not the other where, notably, a person aged above the specified age-limit was eventually offered the position. In a **Belgian** case decided in 2023, it was ruled that a job advertisement for digital marketing specialists requiring candidates to be 'digital natives' amounted to a difference in treatment based on age, which was not justified.¹⁶⁸

1.3 Assumed and associated discrimination¹⁶⁹

Discrimination can sometimes occur because of an assumption about another person, which may or may not be factually correct, e.g. that the person has a disability. Alternatively, a person may face discrimination because they associate with persons of a particular characteristic, e.g. a non-Roma man accompanied by Roma friends. In many countries, the application of discrimination law to such scenarios is neither stipulated nor expressly prohibited, and only future judicial interpretation will clarify this issue. This is the case for instance in **Estonia, Germany,**¹⁷⁰ **Italy, Latvia, Lithuania, Poland** and **Romania**. In **Poland**, discrimination by association has been found in two cases, both relating to employees who were dismissed due to their association with the LGBTIQ community.¹⁷¹ In **Lithuania**, discrimination by association has been recognised in a few court decisions in recent years, concerning children who were discriminated against because of their parents' disabilities.¹⁷² In **Cyprus**, the Law on persons with disability includes assumption of disability within the definition of disability,¹⁷³ while judicial interpretation is still required as regards the other grounds and discrimination by association. In **Malta**, however, discrimination by assumption is explicitly prohibited on the ground of disability, while discrimination by association could be interpreted as being prohibited on the same ground. By contrast, the **Danish** Act on Ethnic Equal Treatment prohibits assumed discrimination (through its official commentary) as well as discrimination by association only on the grounds of racial or ethnic origin,¹⁷⁴ while judicial interpretation is required for the other grounds, which are covered by the Act on the Prohibition of Discrimination in the Labour Market etc. However, the Supreme Court has found that discrimination by association with regards to the ground of disability is prohibited.¹⁷⁵ With regard to discrimination by assumption on the ground of disability, another landmark Supreme Court ruling seems to leave substantial room for it to be covered under anti-discrimination law.¹⁷⁶ At the same time however, a series of decisions by the Board of Equal Treatment and by the courts have assessed disability from a purely medical approach, failing to examine whether the employer assumed or

¹⁶⁷ Denmark, Board of Equal Treatment, Decision No. 9134 and Decision No. 9135, both of 25 February 2021.

¹⁶⁸ Belgium, Labour Court of Antwerp, [decision of 2 August 2023](#).

¹⁶⁹ For an in-depth analysis of the concepts of discrimination by association and by assumption under EU law and across the EU Member States, please see Walsh, J. (2024), *Discrimination by Association and Discrimination by Assumption under Directives 2000/43 and 2000/78*, for the European network of legal experts in gender equality and non-discrimination.

¹⁷⁰ However, as for discrimination in employment, the General Equal Treatment Act (Section 7.1) contains an explicit regulation that the prohibition of discrimination extends to assumed characteristics.

¹⁷¹ See notably: Poland, District Court Warszawa Śródmieście, 9 July 2014, *PTPA on behalf of XY v. Company Z*, *sygn.* VI C 402/13 (first instance). The appeal and the second instance ruling dealt with the effectiveness, dissuasiveness and proportionality of the sanction.

¹⁷² Lithuania, Regional Administrative Court of Vilnius, judgment of 24 October 2022 in case No. e12-4079-811/2022; and Supreme Court of Lithuania, judgment of 11 October 2023 in case No. e3k-3-246-421/2023.

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

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

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

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

perceived the claimant to have a disability. Further guidance is therefore necessary in this regard in Denmark. In **France**, national law is interpreted as prohibiting discrimination by association¹⁷⁷ and explicitly prohibits discrimination based on ‘real or assumed’ belonging or not belonging to an ethnic origin, nation, race or specific religion. Similarly, **Hungarian** non-discrimination law explicitly prohibits discrimination based on ‘real or assumed characteristics’ and is interpreted, at least by the Ombudsman, to prohibit discrimination by association as well.¹⁷⁸ The courts’ jurisprudence is less consistent however, with a court decision from 2023 finding that mothers of persons with disabilities who had been disadvantaged together with their children, had been subjected to discrimination on the ground of ‘other characteristic’ rather than disability through association.¹⁷⁹

Anti-discrimination legislation in **Bulgaria, Croatia, Finland, Greece, Ireland, Portugal, Slovenia** and **Spain** explicitly prohibits both discrimination on perceived or assumed grounds and discrimination by association. Since 2023, the same is true in **Belgium**. Similarly, **Austrian** law prohibits discrimination by association as well as discrimination by assumption, as confirmed by the Supreme Court, for instance in 2013.¹⁸⁰ In **Sweden**, both discrimination by association and by assumption are considered to be prohibited due to the wording of the anti-discrimination legislation: the Swedish Discrimination Act prohibits discrimination that ‘is associated with’ the protected grounds. In **Czechia** and **Luxembourg**,¹⁸¹ discrimination on the ground of assumed characteristics - but not on the basis of association - is forbidden. In **Slovakia**, discrimination by association is prohibited only with regard to the grounds of racial or ethnic origin and religion or belief, while discrimination by assumption is prohibited for all grounds.

There are noteworthy specificities in several countries regarding the prohibition of discrimination either by association or by assumption. For instance, in **Croatia**, discrimination based on ‘misconception’¹⁸² is prohibited, although there is still no case law on discrimination based on a perception or assumption of a person’s characteristic. As mentioned earlier, in several states the legislation refers to a disability that existed in the past or which may exist in the future (e.g. **Ireland**). In **Bulgaria**, while the Protection Against Discrimination Act explicitly prohibits discrimination by assumption, courts often require that a protected ground be actual, thereby excluding assumed ones.¹⁸³

1.4 Multiple and intersectional discrimination

The EU has recognised the significance of multiple discrimination, although the Employment Equality and Racial Equality Directives only address the issue briefly in the preambles.¹⁸⁴ Explicit provisions are provided in only a few countries. This is the case for instance in **Greece, Portugal** – where multiple discrimination concerns the

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

¹⁷⁸ See, for instance, Hungary, Ombudsman, decision No. [EBF-AJBH-28/2022](#) of December 2022.

¹⁷⁹ Hungary, Court of Appeal of Budapest, decision of 12 April 2022. Overturned on appeal in Supreme Court (*Kúria*), decision of 5 April 2023 in case No. Pfv.IV.21.186/2022/10.

¹⁸⁰ Austria, Supreme Court, decision No. 9ObA40/13t of 24 July 2013.

¹⁸¹ In Luxembourg, discrimination by assumption is only prohibited on the ground of ethnic origin or belonging to a nationality, race or specific religion.

¹⁸² Croatia, Anti-discrimination Act, 2008, Article 1(3).

¹⁸³ See notably Bulgaria, Supreme Administrative Court, Decision No. 395 of 19 January 2022 in case No. 8638/2021.

¹⁸⁴ Recital 3 of the Employment Equality Directive and recital 14 of the Racial Equality Directive.

grounds of racial or ethnic origin, colour, nationality, ancestry and territory of origin¹⁸⁵ – and **Spain**, since 2022. Since a 2023 reform of **Belgian** federal anti-discrimination law, ‘cumulative’ and ‘intersectional’ discrimination are both explicitly prohibited. Furthermore, the amended legislation stipulates that the courts may decide to increase the compensation awarded in such cases, by cumulating the lump-sum amounts of damages provided for by national law for the violations based on the different grounds, individually.

In **Finland**, the preparatory works of the Non-Discrimination Act state that both multiple and intersectional discrimination are included in the concept of discrimination.¹⁸⁶ **Maltese** law refers to multiple discrimination without providing a definition, while the **Bulgarian** Protection Against Discrimination Act defines it as ‘discrimination based on more than one [protected] ground’.¹⁸⁷ It places a statutory duty on public authorities to give priority to positive action measures to the benefit of victims of multiple discrimination.¹⁸⁸ In case of multiple discrimination, the Commission for Protection against Discrimination (the equality body) holds hearings in a larger panel of five members, instead of the ordinary three-member panel.¹⁸⁹ Although none of the rulings by either the equality body or the courts have so far discussed any of the conceptual or evidentiary implications of a plurality of grounds, one court did award compensation in a case of multiple discrimination higher than the amount that would have been awarded if only one ground had been at hand.¹⁹⁰ In the **Netherlands**, the Government decided not to follow the then Equal Treatment Commission’s suggestion to include multiple discrimination in the General Equal Treatment Act.¹⁹¹ Nevertheless, this does not prevent the equality body from explicitly examining cases as involving multiple or intersectional discrimination.¹⁹² In **Germany**, Section 4 of the General Act on Equal Treatment provides that any unequal treatment on the basis of several prohibited grounds has to be justified with regard to each of those grounds. In addition, Section 27(5) states that in cases of multiple discrimination the Federal Anti-discrimination Agency and the relevant agents of the federal Government and the Parliament must co-operate. Multiple discrimination constitutes an aggravating circumstance under the **Romanian** Anti-discrimination Law,¹⁹³ while under **Austrian** law, multiple discrimination must be considered when assessing the amount of immaterial damages. While the explanatory notes in Austria further clarify that cases of discrimination based on multiple grounds need to be assessed taking an overall view and that the claims cannot be separated or cumulated by grounds, it is not entirely clear what form this ‘assessment’ takes. In a 2023 case concerning a job applicant wearing a headscarf, for instance, the court found discrimination on the ground of religion ‘connected with sex or gender’, without referring to multiple or intersectional discrimination as such, or making any direct link with the level of compensation awarded.¹⁹⁴ In **Croatia** and **Slovenia**, multiple discrimination is a ‘severe’ form of discrimination, which needs to be considered when the amount of compensation or severity of other sanctions is evaluated. In addition, the

¹⁸⁵ Portugal, Law 93/2017 establishing the legal regime of prevention, prohibition and combating of discrimination on the ground of racial and ethnic origin, colour, nationality, ancestry and territory of origin.

¹⁸⁶ Finland, Government proposal on the Non-Discrimination Act, 19/2014, p. 57.

¹⁸⁷ Bulgaria, Protection Against Discrimination Act, Additional Provisions, Article 1(11).

¹⁸⁸ Bulgaria, Protection Against Discrimination Act, Article 11(2). Under Article 11(1) authorities are placed under a general statutory duty to take positive action whenever necessary to achieve the legislation’s goals.

¹⁸⁹ Bulgaria, Protection Against Discrimination Act, Article 48(3).

¹⁹⁰ Bulgaria, Sofia City Court, Decision No. 828 of 30 January 2020 in case No. 751/ 2019.

¹⁹¹ Netherlands, Tweede Kamer, 2011-2012, 28 481, No. 16, p. 4.

¹⁹² See, for instance, Netherlands Institute for Human Rights, Opinion No. 2022-132 of 21 November 2022, concerning alleged discrimination on the intersected grounds of race and sex.

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

¹⁹⁴ Austria, Viennese Provincial Court on Civil Matters, Decision No. 34R19/23f of 21 February 2023.

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Slovenian Advocate of the Principle of Equality has found instances of intersectional discrimination, considering that this form of discrimination is also prohibited in national law.¹⁹⁵

However, all existing national provisions have had limited effects in practice and case law remains very scarce. In the few existing cases reported, no specific approach with regard to the comparator had been followed by either the courts or the equality bodies, and the plurality of grounds does not generally have a direct impact on the amounts of compensation awarded. The **Swedish** Labour Court has held that a fact pattern that constitutes two types of discrimination (sex due to a failure to invite an elderly woman to an interview and age due to the failure to employ her), does not raise the level of the discrimination award.¹⁹⁶

¹⁹⁵ See, for instance, Slovenia, Advocate of the Principle of Equality, decision No. 0700-41/2020/15 of 3 December 2021.

¹⁹⁶ Sweden, Labour Court, *The Equality Ombudsman v. State Employment Board*, Judgment No. 91/2010, of 15.12.2010.

2 Definitions and scope

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

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

2.1 Forms of discrimination

2.1.1 Direct discrimination

All the countries examined have adopted legislation that closely reflects the definition of direct discrimination found in the directives in relation to the relevant grounds.

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

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

These elements can be generally found in legislation in **Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland** (although the definition of direct discrimination given in the Labour Code is still erroneous with regard to the comparator), **Portugal, Slovakia, Slovenia, Spain**¹⁹⁷ and **Sweden**. In **French** law, the definition does not cover hypothetical comparisons.¹⁹⁸ Even when the definition of direct discrimination complies with the directives, it does not necessarily apply to the full material scope required by the directives and may coexist with other legislation containing different definitions of direct discrimination. Although different from the definitions proposed by Directive 2000/43/EC and Directive 2000/78/EC, the **Romanian** Anti-discrimination

¹⁹⁷ Until the entry into force of the comprehensive equality law No. 15/2022 in July 2022, Spanish law did not determine whether past and hypothetical comparators were covered.

¹⁹⁸ However, French courts use hypothetical comparisons, see for example in a case relating to discrimination on the ground of origin, Court of Cassation, Social Chamber, 3 November 2011, No. 10-20765, *Dos Santos*.

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

Irish Workplace Relations Commission finds direct discrimination due to refused promotion

The complainant had been employed by the Irish police force (An Garda Síochána) for 16 years, with accommodation for her disabilities including working from home. When she applied for a promotion to the rank of sergeant, she was deemed eligible along with approximately 200 colleagues. Contrary to almost all the other applicants, she was not promoted and was informed that promotions would be to 'frontline' roles only and that her promotion was 'held up because of medical grounds'. The respondent claimed that the complainant remained eligible for promotion but argued that there were 'grave concerns' regarding her psychological health, invoking notably alleged suicidal ideation supposedly expressed in a conversation with a chief superintendent. The Workplace Relations Commission noted, however, that if such a conversation had taken place it would have constituted a threat to the public and would thus undoubtedly have been acted upon at the time. Furthermore, a medical report from 2023 had concluded that the complainant was fit for non-confrontational duties with reasonable accommodation measures in place. It thus upheld the complaint of direct, ongoing disability discrimination, finding that a *prima facie* case of discrimination was established by the complainant's evidence and was not rebutted by the respondent. The respondent was ordered to pay EUR 50 000 in compensation and to provide equal treatment in considering the complainant's promotion to sergeant.¹⁹⁹

It is worrying that in a few countries, direct discrimination may be generally justified under certain circumstances, in addition to the specific exceptions stipulated by the directives (further examined in Chapter 3 below). In **Hungary**, a general objective justification for direct discrimination applies to the grounds covered by the Employment Equality Directive notably when the act or activity is 'found by objective consideration to have a reasonable ground directly related to the relevant legal relationship' (if the act concerns no fundamental right other than the right to non-discrimination). However, it is unclear whether this exemption applies in the field of employment.²⁰⁰ In **Finland**, differential treatment on the ground of ethnic origin is allowed in fields such as education and 'when using public power or performing public administrative tasks', when the treatment is based on legislation, has an acceptable aim and the means used are in due proportion for achieving that aim.²⁰¹ In 2022, the Supreme Administrative Court examined a case of racial profiling where the police invoked this justification. The Court held, however, that the means used were not in due proportion to the aims of combating street prostitution and human trafficking, and thus amounted to unjustified discrimination.²⁰² In **Cyprus**, although a series of Supreme Court decisions held that discrimination that is 'reasonable' is lawful,²⁰³ more recent Supreme Court decisions have recalled both that exceptions to the principle of equality and non-discrimination must be interpreted narrowly,²⁰⁴ and that discrimination is permitted only where the individuals concerned are in dissimilar and non-comparable situations.²⁰⁵ Similarly, in **Bulgaria**, several court decisions in

¹⁹⁹ Ireland, Workplace Relations Commission, *Kenny v. An Garda Síochána*, ADJ-00030391, 21 June 2023.

²⁰⁰ Hungary, Equal Treatment Act, Article 7(2).

²⁰¹ Finland, Non-Discrimination Act, Section 11(1).

²⁰² Finland, Supreme Administrative Court, judgment of 8 September 2022, ECLI:FI:KHO:2022:106.

²⁰³ Cyprus, Supreme Court, *George Mattheou v. The Republic of Cyprus through the Chief of Police and the Minister of Justice and Public Order*, No 1497/2008, 30 April 2012. In this case the court rejected a claim for discrimination because it was not proven that the differential treatment was not premised upon 'reasonable discrimination'.

²⁰⁴ See Cyprus, Supreme Court, Review Jurisdiction, *Petros Michaelides v. The Republic of Cyprus through the Minister of Labour and Social Insurance*, case No. 2005/2012, 27 January 2016.

²⁰⁵ Cyprus, Supreme Court, Appeal Jurisdiction, *Michael Raftopoulos v. Republic of Cyprus*, Appeal No. 3/2012, 10 October 2017.

recent years have made rulings that could arguably be considered as contrary to the definition of direct discrimination contained in the directives. Such rulings include a requirement that the differential treatment be intentional²⁰⁶ or a refusal to accept a hypothetical comparator.²⁰⁷ Although the **Latvian** definition of direct discrimination appears to be in line with the directives, the general justification – applicable in fields such as education, access to and provision of goods and services, social protection and social advantages – does not distinguish between direct and indirect discrimination.

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

Country	Legislation	Defined	Definition equivalent to the directives
AUSTRIA	Federal Equal Treatment Act, Sec. 13	Yes	Yes
	Equal Treatment Act, Sections 17/1, 18, 31/1, 36	Yes	Yes
	Act on the Employment of Persons with Disabilities, Sec. 7b/1	Yes	Yes
	Federal Disability Equality Act, Sec. 4/1	Yes	Yes
BELGIUM	Racial Equality Federal Act, Art. 12	Yes	Yes
	General Anti-Discrimination Federal Act, Art. 14	Yes	Yes
BULGARIA	Protection Against Discrimination Act, Art. 4(1)	Yes	Yes
CROATIA ²⁰⁸	Anti-discrimination Act, Art. 2(1)	Yes	Yes
CYPRUS	Equal Treatment in Employment and Occupation Law, Art. 6(1)(a)	Yes	Yes
	Equal Treatment (Racial or Ethnic origin) Law, Art. 5(1)	Yes	Yes

²⁰⁶ See for instance, Bulgaria, Supreme Court of Cassation, Ruling No. 245 of 29 March 2021 in case No. 336/2021.

²⁰⁷ See for instance, Bulgaria, Supreme Administrative Court, Decision No. 6202 of 12 June 2023 in case No. 10010/2022.

²⁰⁸ The Labour Code and the Same-sex Life Partnership Act also prohibit direct discrimination, with limited scopes of application.

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	Law on Persons with Disabilities, Art. 3(1)	Yes	Yes
CZECHIA	Anti-Discrimination Act, Sec. 2(3)	Yes	Yes
DENMARK	Act on Prohibition of Discrimination in the Labour Market etc., Sec. 1(2)	Yes	Yes
	Act on Ethnic Equal Treatment, Sec. 3(2)	Yes	Yes
	Act on the Prohibition of Discrimination due to Disability, Sec. 5(2)	Yes	Yes
ESTONIA	Equal Treatment Act, Art. 3(2)	Yes	Yes
FINLAND	Non-Discrimination Act, Sec. 8	Yes	Yes
FRANCE	Law relating to the adaptation of National Law to Community Law in matters of discrimination, Art. 1	Yes	No
GERMANY ²⁰⁹	General Act on Equal Treatment, Sec. 3.1	Yes	Yes
GREECE	Equal Treatment Law, Art. 2(2)(a)	Yes	Yes
HUNGARY	Equal Treatment Act, Art. 8	Yes	Yes
IRELAND	Employment Equality Acts 1998-2021, Sec. 6(1)	Yes	Yes
	Equal Status Acts 2000-2018, Sec. 3(1)	Yes	Yes
ITALY	Legislative Decree No 215/2003 Implementing Directive 2000/43/EC, Art. 2(1)(a)	Yes	Yes
	Legislative Decree No 216/2003 Implementing Directive 2000/78/EC, Art. 2(1)(a)	Yes	Yes

²⁰⁹ The Equal Opportunities for Persons with Disabilities Act, 27 April 2002, Art. 7(1) also prohibits and defines direct discrimination on the ground of disability.

	Law 67/2006 on Measures for the Judicial Protection of Persons with Disabilities who are Victims of Discrimination, Art. 2	Yes	Yes
LATVIA	Labour Law, Art. 29(1) and (5)	Yes	Yes
	Law on Education, Article 3 ¹ (8)	Yes	Yes
	Law on Prohibition of Discrimination against Natural Persons – Parties to Legal Transactions, Arts. 2(1) and 4(2)	Yes	Yes
	Consumer Rights Protection Law, Art. 3. ¹ (1, 6)	Yes	Yes
	Law on Social Security, Art. 2. ¹ (1, 3)	Yes	Yes
LITHUANIA	Law on Equal Treatment, Art. 2(9)	Yes	Yes
LUXEMBOURG	General Anti-Discrimination Law, ²¹⁰ Arts. 1a and 18	Yes	Yes
MALTA	Equal Treatment in Employment Regulations, Art. 3(2)(a)	Yes	Yes
	Equal Treatment of Persons Order, Art. 2(2)	Yes	Yes
	United Nations Convention on the Rights of Persons with Disabilities Act, Part A of Fourth Schedule	No	No
NETHERLANDS	General Equal Treatment Act, Art. 1.a and b	Yes	Yes
	Disability Discrimination Act, Art. 1.a and b	Yes	Yes
	Age Discrimination Act, Art. 1.a and b	Yes	Yes
POLAND ²¹¹	Equal Treatment Act, Arts. 3(1) and 6	Yes	Yes

²¹⁰ In addition, the Public Sector Law of 29 November 2006 prohibits direct discrimination in the public sector.

²¹¹ The Labour Code also prohibits direct discrimination, but only in the field of employment.

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PORTUGAL	Law establishing the legal regime for the prevention, prohibition and combating of discrimination on the ground of racial or ethnic origin, colour, nationality, ancestry and territory of origin, Art. 3(1)(b)	Yes	Yes
	Law which prohibits and punishes discrimination based on disability and on a pre-existing risk to health, Art. 3(a)	Yes	Yes
	Labour Code, Art. 23(1)(a)	Yes	Yes
	Law prohibiting any discrimination in access to and exercise of self-employment and transposing into national law Directives 2000/43/EC, 2000/78/EC and Directive 2006/54/EC, Art. 5(2)(a)	Yes	Yes
ROMANIA	Ordinance (GO) 137/2000 regarding the prevention and the punishment of all forms of discrimination, Art. 2(1)	Yes	Yes
SLOVAKIA	Anti-discrimination Act, Secs. 2a(2) ²¹²	Yes	Yes
SLOVENIA	Protection Against Discrimination Act, Arts. 6(1) and 4(2)	Yes	Yes
	Employment Relationship Act, Art. 6(3)	Yes	Yes
	Act on Equal Opportunities of Persons with Disabilities, Art. 3	Yes	Yes
SPAIN	Law on Fiscal, Administrative and Social Measures, Art. 28.1.b	Yes	No ²¹³
	General Law on the Rights of Persons with Disabilities and their Social Inclusion, Art. 2.c	Yes	No ²¹⁴
	Law 15/2022, of 12 July, comprehensive for equal treatment and non-discrimination, Art. 2	Yes	Yes
SWEDEN	Discrimination Act, Ch. 1 Sec. 4(1)	Yes	Yes

²¹² In conjunction with Section 2(1).

²¹³ Although the definition is not equivalent to that of the directives, it is interpreted as such by the jurisprudence.

²¹⁴ Although the definition is not equivalent to that of the directives, it is interpreted as such by the jurisprudence.

2.1.2 Indirect discrimination

A large proportion of states have introduced a definition of indirect discrimination that generally reflects the definition adopted in the directives.²¹⁵ This includes **Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain** and **Sweden**.

The directives envisage a comparison between the effect of a measure on persons with a particular characteristic and its impact on other persons. National law varies in the comparison required for establishing indirect discrimination. In **Slovenia**, the law requires the individual complainant to be in an ‘equal or similar situation and conditions’ to the comparator for indirect discrimination to be established.²¹⁶

The concept of indirect discrimination is not necessarily well understood in all countries, and courts do not always apply the law in full compliance with the directives. For instance, in **Belgium**, there is confusion in some court decisions between disguised direct discrimination and indirect discrimination, leading to incorrect conclusions regarding intent.²¹⁷ This can be illustrated notably by some aspects of the national court decision that followed the CJEU ruling in *Achbita*.²¹⁸ The case law on indirect discrimination has also been contradictory in **Bulgaria**, where the courts have sometimes held that indirect discrimination is defined by a covert discriminatory aim.²¹⁹ In other instances, they have failed to examine cases that could arguably amount to indirect racial discrimination due to a disparate impact on Roma. One such case decided by the Supreme Administrative Court in 2022 concerned financial assistance provided to new mothers with (at least) secondary education, aged at least 18 and who have not left a child in the care of the state. The Court found direct discrimination on the grounds of age and education level, but did not examine potential indirect discrimination on the ground of racial or ethnic origin.²²⁰

The Netherlands: Alleged religious discrimination due to benefits related to schooling abroad

The case concerned parents who sent two of their children to be educated in Talmud (Jewish) schools in the United Kingdom and Israel. Their request for special social assistance benefits to cover school costs, travel costs and computer equipment was denied because such benefits cannot be awarded for costs that are not made in, or connected to, the Netherlands (the ‘territoriality principle’). The applicants claimed discrimination on the

²¹⁵ For an in-depth analysis of the definitions and prohibitions of indirect discrimination across the 27 EU Member States, see Tobler, C. (2022), *Indirect discrimination under Directives 2000/43 and 2000/78*, European network of legal experts in gender equality and non-discrimination.

²¹⁶ Slovenia, Protection Against Discrimination Act, Article 6(2).

²¹⁷ See notably Commission d’évaluation de la législation fédérale relative à la lutte contre les discriminations (2017), *Premier rapport d’évaluation 2017*, para. 66. A new version of this report was published on 17 June 2022.

²¹⁸ Belgium, Ghent Labour Court of Appeal, Judgment No. 2019/AG/55 of 12 October 2020. See also Van Drooghenbroeck, S. (2024), *Country report Non-discrimination Belgium 2024*, European network of legal experts in gender equality and non-discrimination, p. 67.

²¹⁹ See, for instance, Bulgaria, Supreme Court of Cassation, Ruling No. 60827 of 25 November 2021 in case No. 2146/2021.

²²⁰ Bulgaria, Supreme Administrative Court, Decision No. 3849 of 20 April 2022 in case No. 11488/2021.

ground of religion, because parents with different (or no) religious beliefs would not be compelled to send their children abroad to be educated in accordance with their faith, and therefore would not be denied benefits.

The Central Appeals Tribunal used a twofold test to determine whether a presumption of indirect discrimination could be established. First, it stated that the group of orthodox Jews, to which the applicants belonged, was not overrepresented within the total group of Amsterdam residents who were excluded from special social assistance benefits because their children were educated abroad. Secondly, the Tribunal held that there existed no ground to presume, *a priori*, that orthodox Jews would be particularly affected by the territoriality principle. In this regard, the Tribunal considered that Jewish orthodox religious schools did exist in Amsterdam, while on the other hand parents could have a variety of reasons other than (Jewish orthodox) religious beliefs to send their children to schools abroad. Hence, there was no reason to assume that the territoriality principle specifically affected Jewish orthodox families and a presumption of discrimination was not established.²²¹

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

Country	Legislation	Defined	Definition equivalent to the directives
AUSTRIA	Federal Equal Treatment Act, Sec. 13	Yes	Yes
	Equal Treatment Act, Sections 17/1, 18, 31/1	Yes	Yes
	Act on the Employment of Persons with Disabilities, Sec. 7b/1	Yes	Yes
	Federal Disability Equality Act, Sec. 4/1	Yes	Yes
BELGIUM	Racial Equality Federal Act, Art. 12	Yes	Yes
	General Anti-Discrimination Federal Act, Art. 14	Yes	Yes
BULGARIA	Protection Against Discrimination Act, Art. 4(1)	Yes	Yes
CROATIA ²²²	Anti-discrimination Act, Arts. 2(2)	Yes	Yes

²²¹ The Netherlands, Central Appeals Tribunal, [decision of 13 June 2023](#), ECLI:NL:CRVB:2023:1095.

²²² The Labour Code and the Same-sex Life Partnership Act also prohibit indirect discrimination, with limited scopes of application.

CYPRUS	Equal Treatment in Employment and Occupation Law, Art. 6(1)(b)	Yes	Yes
	Equal Treatment (Racial or Ethnic origin) Law, Art. 5	Yes	Yes
	Law on Persons with Disabilities, Art. 3(1)	Yes	Yes
CZECHIA	Anti-Discrimination Act, Secs. 1(3) and 2(2)	Yes	Yes
DENMARK	Act on Prohibition of Discrimination in the Labour Market etc, Sec. 1(3)	Yes	Yes
	Act on Ethnic Equal Treatment, Sec. 3(3)	Yes	Yes
	Act on the Prohibition of Discrimination due to Disability, Sec. 5(3)	Yes	Yes
ESTONIA	Equal Treatment Act, Art. 3(4)	Yes	Yes
FINLAND	Non-Discrimination Act, Sec. 8	Yes	Yes
FRANCE	Law relating to the adaptation of National Law to Community Law in matters of discrimination, Art. 1	Yes	Yes
GERMANY²²³	General Act on Equal Treatment, Sec. 3.2	Yes	Yes
GREECE	Equal Treatment Law, Art. 2(2)(b)	Yes	Yes
HUNGARY	Equal Treatment Act, Art. 9	Yes	No ²²⁴
IRELAND	Employment Equality Acts 1998-2021, Sec. 22 and 31	Yes	Yes
	Equal Status Acts 2000-2018, Sec. 3(1)(c)	Yes	Yes

²²³ The Equal Opportunities for Persons with Disabilities Act, 27 April 2002, Art. 7(1) also prohibits and defines indirect discrimination on the ground of disability.

²²⁴ Not fully, due to an exemption clause.

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ITALY	Legislative Decree No 215/2003 Implementing Directive 2000/43/EC, Art. 2(1)(b)	Yes	Yes
	Legislative Decree No 216/2003 Implementing Directive 2000/78/EC, Art. 2(1)(b)	Yes	Yes
	Law 67/2006 on Measures for the Judicial Protection of Persons with Disabilities who are Victims of Discriminations, Art. 2	Yes	Yes
LATVIA	Labour Law, Art. 29(1) and (6)	Yes	Yes
	Law on Prohibition of Discrimination against Natural Persons – Parties to Legal Transactions, Art. 2(1) and 4(2)	Yes	Yes
	Consumer Rights Protection Law, Art. 3. ¹ (1) and (6)	Yes	Yes
	Law on Social Security, Art. 2. ¹ (1) and (4)	Yes	Yes
	Law on Education, Article 3 ¹ (8)	Yes	Yes
LITHUANIA	Law on Equal Treatment, Art. 2(5)	Yes	Yes
LUXEMBOURG	General Anti-Discrimination Law, ²²⁵ Arts. 1b and 18	Yes	Yes
MALTA	Equal Treatment in Employment Regulations, Art. 3(2)(b)	Yes	Yes
	Equal Treatment of Persons Order, Art. 2	Yes	Yes
	United Nations Convention on the Rights of Persons with Disabilities Act, Part A of Fourth Schedule	No	No
NETHERLANDS	General Equal Treatment Act, Art. 1. a and c	Yes	Yes
	Disability Discrimination Act, Art. 1. a and c	Yes	Yes

²²⁵ The Public Sector Law of 29 November 2006 also prohibits indirect discrimination, in the public sector.

	Age Discrimination Act, Art. 1.a and c	Yes	Yes
POLAND ²²⁶	Equal Treatment Act, Arts. 3(2), 4,6, 7 and 8	Yes	Yes
PORTUGAL	Law establishing the legal regime for the prevention, prohibition and combating of discrimination on the grounds of racial and ethnic origin, colour, nationality, ancestry and territory of origin, Art. 3(1)(c)	Yes	Yes
	Law which prohibits and punishes discrimination based on disability and on a pre-existing risk to health, Art. 3(b)	Yes	Yes
	Labour Code, Art. 23(1)(b)	Yes	Yes
	Law prohibiting any discrimination in access to and exercise of self-employment and transposing into national law Directives 2000/43/EC, 2000/78/EC and Directive 2006/54/EC, Art. 5(2)(b)	Yes	Yes
ROMANIA	Ordinance (GO) 137/2000 regarding the prevention and the punishment of all forms of discrimination, Art. 2(3)	Yes	Yes
SLOVAKIA	Anti-discrimination Act, Sec. 2a(3) ²²⁷	Yes	Yes
SLOVENIA	Protection Against Discrimination Act, Arts. 6(2) and 4(2)	Yes	Yes
	Employment Relationship Act, Art. 6(3)	Yes	No ²²⁸
	Act on Equal Opportunities of Persons with Disabilities, Art. 3	Yes	No ²²⁹
SPAIN	Law on Fiscal, Administrative and Social Measures, Art. 28.1.c	Yes	No ²³⁰

²²⁶ The Labour Code also prohibits indirect discrimination, but only in the field of employment.

²²⁷ In conjunction with Section 2(1).

²²⁸ Judicial interpretation is required.

²²⁹ Judicial interpretation is required.

²³⁰ Although the definition is not equivalent to that of the directives, it is interpreted as such by the jurisprudence.

	General Law on the Rights of Persons with Disabilities and their Social Inclusion, Art. 2.d	Yes	No ²³¹
	Law 15/2022, of 12 July, comprehensive for equal treatment and non-discrimination, Art. 6.1.b	Yes	Yes
SWEDEN	Discrimination Act, Ch. 1 Sec. 4(2)	Yes	Yes

2.1.3 Harassment

The concept of harassment, in particular sexual harassment, was developed in the 1990s from EU gender equality legislation. Harassment in the anti-discrimination directives does not differ much from the established baseline and is defined as unwanted conduct relating to racial or ethnic origin, religion or belief, disability, age, or sexual orientation with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.²³² The majority of states have adopted definitions of harassment that appear in line with that contained in the directives. This includes **Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain**²³³ and **Sweden**. However, in several Member States, including in **Denmark, France, Hungary, the Netherlands, Slovakia** and **Sweden**, the definition does not explicitly require the conduct to be unwanted. In **Austria**, the definition refers to conduct that is ‘unacceptable, undesirable and offensive (indecent)’. While the **Lithuanian** definition of harassment is in line with EU law, it was only in 2022 that the material scope of protection against harassment was extended to cover access to goods and services.²³⁴

In the remaining countries, there is some ambiguity concerning the definition of harassment. In **Romania**, the definition of harassment does not cover conduct with the purpose of violating a person’s dignity but without the effect of generating an intimidating, hostile or degrading or offensive environment. Similarly, in **Sweden**, the definition does not require that the behaviour creates any specific type of environment, but only that it violates the dignity of a person. During the preparation of the Swedish Discrimination Act, this specific point raised some discussion although it was finally concluded by the Government that the effects - rather than the intention - of the conduct are decisive.²³⁵ By contrast, it appears that the **Belgian** Constitutional Court requires an intention to harass on behalf of the respondent,²³⁶ which could raise an issue of compliance with EU law. In addition, the definition of harassment under the Belgian Act on the welfare of workers requires ‘several acts’

²³¹ Although the definition is not equivalent to that of the directives, it is interpreted as such by the jurisprudence.

²³² Directives 2000/43/EC and 2000/78/EC, Article 2(3).

²³³ Until the entry into force of the comprehensive law on equality No 15/2022, the Spanish definition of harassment did not refer to ‘hostile’ and ‘degrading’ treatment, in contrast to the directives.

²³⁴ Lithuania, *Law amending the Law on Equal Treatment, No. IX-1826*, Articles 2, 4, 6, 7, 8, 9 and Annex, 19 May 2022.

²³⁵ Sweden, Government proposal (*Regeringens proposition*) No. 2007/08:95, p. 106.

²³⁶ Belgium, Constitutional Court, Decision of 12 February 2009, No. 17/2009, para. B.53.4, among others.

(i.e. a pattern of repetitive behaviour), whereas the EU equality and anti-discrimination directives do not demand such a condition to apply the definition of harassment.

The directives do not provide specific rules on how to determine whether conduct is such as to violate a person's dignity or to create an intimidating, hostile, degrading, humiliating or offensive environment. Several states have sought to clarify this in national legislation. For instance, in **Malta**, in the Equal Treatment of Persons Order, harassment refers to any unwelcome act, request or conduct, including spoken words, gestures or the production, display or circulation of written words, pictures or other material that any person can be subjected to. The Government proposal of the Non-Discrimination Act in **Finland** pointed out that talks, gestures, facial expressions, emails or presenting inappropriate material can all count as harassment.²³⁷ In **Ireland**, various forms of communication have been the subject of successful harassment complaints, including 'spoken words', text messages and graffiti. Moreover, case law shows that a complainant does not need to demonstrate that they fall under one of the discriminatory grounds since it is sufficient that the impugned conduct is 'related to' a ground. In **Bulgaria**, courts have found that public hate speech targeting an entire group such as Roma or persons with non-heterosexual orientation may amount to harassment as prohibited under the Protection against Discrimination Act.²³⁸ In recent cases, courts have also confirmed that the specific intent of the respondent to direct their statement at a particular individual or at all members of a group is irrelevant, insofar as the statement is of a nature to cause the unlawful result outlined in the norm defining 'harassment'.²³⁹ Similarly, the **Finnish** Anti-Discrimination Act was amended in 2022 to broaden the scope of the definition of harassment, covering groups of people rather than individuals only.²⁴⁰ In **Slovakia**, in 2023, a second instance court confirmed that the forced eviction of Roma amounted to harassment, which is a particularly harmful form of discriminatory treatment. The court also noted that a finding of harassment does not require a comparator as harassment is inappropriate in and of itself.²⁴¹

Another area left open by the directives is the responsibility of the employer for acts of harassment by other workers or by third parties such as customers. In many states, employers can be held liable for the actions of their workers to varying degrees. Some countries have chosen to place a specific duty on employers to take action to prevent and redress harassment in the workplace. For example, the 2006 **German** General Equal Treatment Act places employers under a legal duty to prevent discrimination occurring in the workplace. This includes a duty to protect employees from discrimination by third parties.²⁴² In **Ireland**, employers and service providers are liable for harassment by employees and third parties such as tenants, clients and customers,²⁴³ unless they can show that they took reasonably practicable steps to prevent harassment.²⁴⁴ In this regard, an employer who had put in place a harassment policy but failed to provide adequate training to ensure staff had an effective understanding of that policy in practice, could not avail of this defence.²⁴⁵ By contrast, the defence was applicable with regard to an employer who had conducted an investigation 'diligently' into alleged

²³⁷ Finland, Government Proposal on the Non-Discrimination Act 19/2014, p. 78.

²³⁸ See, for instance, Bulgaria, Sofia City Administrative Court, Decision No. 4631 of 6 July 2022 in case No. 12615/2021.

²³⁹ See, for instance, Bulgaria, Sofia City Administrative Court, decision No. 8064 of 21 December 2023 in case No. 9841/2023.

²⁴⁰ Finland, Act Amending the Non-Discrimination Act (1192/2022), Section 14, in force as of 1 June 2023.

²⁴¹ Slovakia, Regional Court of Košice, decision No. 9Co/21/2022 of 28 July 2023.

²⁴² Germany, General Equal Treatment Act, Section 12.4.

²⁴³ Ireland, Employment Equality Acts 1998-2021, Section 14A; Equal Status Acts 2000-2018, Section 11.

²⁴⁴ Irish Labour Court, *Dublin Bus v. McCamley*, EDA 164, 18.02.2016; *A Store v. A Worker*, EDA 163, 28.01.2016.

²⁴⁵ Ireland, Workplace Relations Commission, *A Creche Worker v. A Creche*, ADJ-00032972, 4 April 2023,

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harassment on the Traveller ground, and consequently initiated disciplinary action against the perpetrator.²⁴⁶ In **Austria**, the individual harasser can always be held liable, while the employer can also be held liable in a situation where a superior harasses a subordinate. In this regard, the Supreme Court confirmed in 2020 that the formal employment position of the harasser is of no consequence for the liability of the employer, as long as the harasser fulfils certain functions for the employer and has their mandate and consent to do so.²⁴⁷ In the **Netherlands**, employers can be held liable for harassment between colleagues or between an employee and a third party (such as a service user or patient).²⁴⁸ However, the individual harasser cannot be held liable in such cases. In contrast, harassment by colleagues or third parties in **Sweden** is not prohibited as such, although the employer can be held liable for damage caused by his/her failure to investigate and implement measures to prevent harassment between employees. This duty, however, does not extend to harassment by third parties such as clients. In **Hungary**, the Equal Treatment Act does not provide protection against harassment committed by colleagues at work (although the employer is liable under the Act for taking no action against reported harassment).

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

Country	Legislation	Defined	Definition equivalent to the directives
AUSTRIA	Federal Equal Treatment Act, Sec. 13	Yes	Yes
	Equal Treatment Act, Sections 17/1, 18, 31/1	Yes	Yes
	Act on the Employment of Persons with Disabilities, Sec. 7b/1	Yes	Yes
	Federal Disability Equality Act, Sec. 4/1	Yes	Yes
BELGIUM	Racial Equality Federal Act, Art. 12	Yes	Yes
	General Anti-Discrimination Federal Act, Art. 14	Yes	Yes
	Federal Act on the welfare of workers while carrying out their work, Art. 32 <i>ter</i> 2°	Yes	No

²⁴⁶ Ireland, Workplace Relations Commission, *Casey v. Securitas Security Services Ireland*, ADJ-00034950, 4 January 2023.

²⁴⁷ Austria, Supreme Court, Decision No. 9ObA66/20a of 29 September 2020.

²⁴⁸ See, for instance, Netherlands Institute for Human Rights, Opinions Nos 1997-82 of 17 June 1997 and 2004-128 of 5 October 2004.

BULGARIA	Protection Against Discrimination Act, Art. 5	Yes	Yes
CROATIA ²⁴⁹	Anti-discrimination Act, Art. 3(1)	Yes	Yes
CYPRUS	Equal Treatment in Employment and Occupation Law, Art. 6(1)(c)	Yes	Yes
	Equal Treatment (Racial or Ethnic origin) Law, Art. 5(2)(c)	Yes	Yes
	Law on Persons with Disabilities, Art. 3(2)(e)	Yes	Yes
CZECHIA	Anti-Discrimination Act, Secs. 1(3) and 2(2)	Yes	Yes
DENMARK	Act on Prohibition of Discrimination in the Labour Market etc., Sec. 1(4)	Yes	Yes
	Act on Ethnic Equal Treatment, Sec. 3(4)	Yes	Yes
	Act on the Prohibition of Discrimination due to Disability, Sec 5(4)	Yes	Yes
ESTONIA	Equal Treatment Act, Art. 3(3)	Yes	Yes
FINLAND	Non-Discrimination Act, Sec. 8	Yes	Yes
FRANCE	Law relating to the adaptation of National Law to Community Law in matters of discrimination, Art. 1(1))	Yes	Yes
GERMANY	General Act on Equal Treatment, Sec. 3.3	Yes	Yes
GREECE	Equal Treatment Law, Art. 2(2)(c)	Yes	Yes ²⁵⁰
HUNGARY	Equal Treatment Act, Art. 10(1)	Yes	Yes

²⁴⁹ The Labour Act also prohibits harassment, without defining it, but applies only in the field of employment.

²⁵⁰ Judicial interpretation is required in relation to the term 'unacceptable behaviour'.

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IRELAND	Employment Equality Act 1998-2021, Sec. 14A	Yes	Yes
	Equal Status Act 2000-2018, Sec. 11	Yes	Yes
ITALY	Legislative Decree No 215/2003 Implementing Directive 2000/43/EC, Art. 2(3)	Yes	Yes
	Legislative Decree No 216/2003 Implementing Directive 2000/78/EC, Art. 2(3)	Yes	Yes
	Law 67/2006 on measures for the judicial protection of persons with disabilities who are victims of discrimination, Art. 2(4)	Yes	Yes
LATVIA	Labour Law, Art. 29(1) and (4)	Yes	Yes
	Law on Prohibition of Discrimination of Natural Persons – Parties to Legal Transactions, Arts. 2(1) and 4(3)	Yes	Yes
	Consumer Rights Protection Law, Art. 3. ¹ (1, 7, 8)	Yes	Yes
	Law on Social Security, Art. 2. ¹ (1) and (5)	Yes	Yes
	Law on Education, Article 3 ¹ (8)	Yes	Yes
LITHUANIA	Law on Equal Treatment, Art 2(1) and (7)	Yes	Yes
LUXEMBOURG	General Anti-Discrimination Law, ²⁵¹ Arts. 1(3) and 18	Yes	Yes
MALTA	Equal Treatment in Employment Regulations, Art. 3(3)	Yes	Yes
	Equal Treatment of Persons Order, Arts. 2(2)(c) and 4	Yes	Yes
	United Nations Convention on the Rights of Persons with Disabilities Act, Art. 27(1)(b)	No	No

²⁵¹ The Public Sector Law of 29 November 2006 also prohibits harassment, in the public sector.

NETHERLANDS	General Equal Treatment Act, Art. 1.a	Yes	Yes
	Disability Discrimination Act, Art. 1.a	Yes	Yes
	Age Discrimination Act, Art. 2	Yes	Yes
POLAND ²⁵²	Equal Treatment Act, Arts. 3(3) and 6	Yes	Yes
PORTUGAL	Labour Code, Art. 29(1)	Yes	Yes
	Law establishing the legal regime for the prevention, prohibition and combating of discrimination on the grounds of racial and ethnic origin, colour, nationality, ancestry and territory of origin, Art. 3(1)(f)	Yes	Yes
	Law prohibiting any discrimination in access to and exercise of self-employment and transposing into national law Directives 2000/43/EC, 2000/78/EC and Directive 2006/54/EC, Art. 5(5)-(6)	Yes	Yes
ROMANIA	Ordinance (GO) regarding the prevention and the punishment of all forms of discrimination, Art. 2(5)	Yes	No
SLOVAKIA	Anti-discrimination Act, Sec. 2a(4) ²⁵³	Yes	No
SLOVENIA	Protection Against Discrimination Act, Arts. 8(1), 7, and 4(2)	Yes	Yes
	Employment Relationship Act, Art. 7	Yes	Yes
SPAIN	Law on Fiscal, Administrative and Social Measures, Art. 28(1)(d)	Yes	Yes ²⁵⁴
	General Law on the Rights of Persons with Disabilities and their Social Inclusion, Art. 2(f)	Yes	Yes

²⁵² The Labour Code also prohibits harassment, but only in the field of employment.

²⁵³ In conjunction with Section 2(1).

²⁵⁴ The words 'hostile' and 'degrading' are not included in this definition.

	Law 15/2022, of 12 July, comprehensive for equal treatment and non-discrimination, Art. 6.4	Yes	Yes
	Workers' Statute, Art. 4(2)(e)	Yes	Yes ²⁵⁵
SWEDEN	Discrimination Act, Ch. 1 Sec. 4(4)	Yes	Yes ²⁵⁶

2.1.4 Instructions to discriminate

Article 2(4) of the Racial Equality Directive and of the Employment Equality Directive stipulates that ‘an instruction to discriminate (...) shall be deemed to be discrimination’.²⁵⁷ A similar provision has been included in the national legislation of all the countries covered, although some differences are evident, notably with regards to the scope of the prohibition.

The lack of a definition of instructions to discriminate in the directives leads to some discrepancies among the countries. For example, under **Bulgarian** law, only an intentional instruction to discriminate is regarded as discrimination. In a few countries, a hierarchical relationship between the instructor and the instructed person is required. In **Denmark** the relationship between the instructor and the person receiving instructions must be of a hierarchical nature. Similarly, in **Sweden**, the definition of instructions to discriminate requires that the person receiving the instruction either is in a subordinate or dependent position relative to the instructor or has committed her/himself to performing an assignment for that person. In **Finland**, instructions, guidelines or orders that relate to or create discrimination only constitute discrimination if the one giving the instructions, guidelines or orders has a power to impose these as obligations.²⁵⁸

National law varies greatly among the countries regarding the scope of liability for instructions to discriminate. In some countries, only the instructor (and not the instructed discriminator) can be held liable for instructions to discriminate. These include **Greece**, the **Netherlands** and **Poland**. However, in a large majority of the countries, both the instructor and the discriminator can be held liable, including **Austria, Belgium, Bulgaria, Croatia, Czechia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Portugal, Romania, Slovakia, Slovenia** and **Spain**. In **Denmark**, either the instructor or the discriminator can be held liable, but not both – it is up to the victim to decide when filing a complaint to the Board of Equal Treatment or when taking the case to the courts. In **Sweden**, there are situations in the employment field where no one can be held liable due to the requirement of disadvantageous effect of the instruction towards one or more persons. In **Ireland**, employers and service providers (e.g. landlords, schools, hospitals) are legally liable for discrimination, including by instruction, carried out by their employees. The legislation specifies that anything

²⁵⁵ The words ‘hostile’ and ‘degrading’ are not included in this definition.

²⁵⁶ Some judicial interpretation is required regarding conduct with the purpose but without the effect of violating the victim’s dignity, and regarding the requirement that the harasser be aware that their conduct is offensive.

²⁵⁷ Directives 2000/43/EC and 2000/78/EC, Article 2(4).

²⁵⁸ Finland, *Government Proposal on the Non-Discrimination Act 19/2014*, p. 69.

done by a person during his or her employment will be treated as done also by that person's employer, regardless of the employer's knowledge or approval. An employer can evade liability by proving that it took such steps as were reasonably practicable to prevent the employee (a) from doing that act, or (b) from doing acts of that description in the course of his or her employment.

Slovenia: Liability for instruction to discriminate in access to rental housing

This case concerned a complaint about an advertisement for the rental of an apartment that was published on a web portal by a real estate agency. The advertisement stated that the apartment was to be rented out exclusively to Slovenian families at the owner's request. The case was brought before the Advocate of the Principle of Equality, which firstly recalled that the company that owns and operates the web portal as well as the natural and legal persons who advertise on the portal or offer apartments for rent on the market, are obliged to ensure protection against discrimination.

Regarding liability, the Advocate first found that the property owner was liable for an instruction to discriminate, i.e. an instruction which has resulted, is resulting or is likely to result in discrimination, including an instruction not to prevent or eliminate discrimination. Secondly, the Advocate found that the real estate agency uncritically followed the property owner's instruction and, despite all the notifications provided by the operator of the web portal in the general terms and conditions of use of the portal, amended the advert after the initial publication, by adding the disputed condition. The agency was therefore liable for direct discrimination. Finally, the Advocate concluded that the advertising agency managing the web portal was not liable for any violation, as it had duly complied with its obligation to review the advertisement in question prior to its first publication, when it did not contain the disputed condition. After the initial activation of the advertisement, the changes made by the real estate agency were no longer visible to the advertising agency.²⁵⁹

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

Country	Legislation	Defined
AUSTRIA	Federal Equal Treatment Act, Sec. 13	Yes
	Equal Treatment Act, Sections 17/1, 18, 31/1	Yes
	Act on the Employment of Persons with Disabilities, Sec. 7b/1	Yes
	Federal Disability Equality Act, Sec. 4/1	Yes
BELGIUM	Racial Equality Federal Act, Art. 12	Yes

²⁵⁹ Slovenia, Advocate of the Principle of Equality, [decision No. 0700-48/2022/19 of 11 September 2023](#).

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	General Anti-Discrimination Federal Act, Art. 14	Yes
BULGARIA	Protection Against Discrimination Act, Art. 5 and Additional Provisions, para 1	No
CROATIA	Anti-discrimination Act, ²⁶⁰ Art. 4(1)	No
CYPRUS	Equal Treatment in Employment and Occupation Law, Art. 6(1)(d)	No
	Equal Treatment (Racial or Ethnic origin) Law, Art. 5(2)(d)	No
	Law on Persons with Disabilities, Art. 2	No
CZECHIA	Anti-Discrimination Act, Sec. 2(2)	Yes
DENMARK	Act on Prohibition of Discrimination in the Labour Market etc., Sec. 1(5)	No
	Act on Ethnic Equal Treatment, Sec. 3(5)	No
	Act on the Prohibition of Discrimination due to Disability, Sec. 5(5)	No
ESTONIA	Equal Treatment Act, Art. 3(5)	No
FINLAND	Non-Discrimination Act, Sec. 8	No ²⁶¹
FRANCE	Law relating to the adaptation of National Law to Community Law in matters of discrimination, Art. 1(5)	Yes
GERMANY	General Act on Equal Treatment, Sec. 3.5	Yes
GREECE	Equal Treatment Law, Art. 2(2)(d)	Yes

²⁶⁰ The law prohibits 'encouragement' to discriminate, which should cover both instructions and incitement, but further judicial interpretation is needed.

²⁶¹ According to the *travaux préparatoires*, instructions, guidelines or orders that relate to or create discrimination are discrimination if those giving instructions, guidelines or orders have a power to impose these obligations. Finland, Government proposal on the Non-Discrimination Act, p. 69.

HUNGARY	Equal Treatment Act, Art. 7(1)	No
IRELAND ²⁶²	Employment Equality Acts 1998-2021, Secs. 2(1), 14	No
	Equal Status Acts 2000-2018, Sec. 13	No
ITALY	Legislative Decree No. 215/2003 Implementing Directive 2000/43/EC, Art. 2(4)	No
	Legislative Decree No. 216/2003 Implementing Directive 2000/78/EC, Art. 2(4)	No
LATVIA	Labour Law, Art. 29(1) and (4)	No
	Law on Prohibition of Discrimination against Natural Persons – Parties to Legal Transactions, Arts. 2(1) and 4(3)	No
	Consumer Rights Protection Law, Art. 3. ¹ (1) and (7)	No
	Law on Social Security, Art. 2. ¹ (1) and (2)	No
	Law on Education, Article 3 ¹ (8)	No
LITHUANIA	Law on Equal Treatment, Arts. 2(1) and 2(10)	No
LUXEMBOURG	General Anti-Discrimination Law, ²⁶³ Arts. 1(4) and 18	Yes
MALTA ²⁶⁴	Equal Treatment in Employment Regulations, Art. 3(4)	Yes
	Equal Treatment of Persons Order, Arts. 2(2)(c) and (d)	No
	General Equal Treatment Act, Art. 1.a	No

²⁶² In addition, although the Equal Status Acts 2000-2018 do not prohibit instructions to discriminate explicitly, it can be argued that the prohibition on procurement or attempted procurement of 'prohibited conduct' under Section 13 includes the issuing of instructions.

²⁶³ The Public Sector Law of 29 November 2006 also prohibits instructions to discriminate, in the public sector.

²⁶⁴ Instructions to discriminate are also prohibited in the Constitution of Malta (Article 45), Civil Code (Article 1044) and Criminal Code (Article 42).

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NETHERLANDS	Disability Discrimination Act, Art. 1.a	No
	Age Discrimination Act, Art. 1.a	No
POLAND ²⁶⁵	Equal Treatment Act, Art. 9	Yes
PORTUGAL	Law establishing the legal regime for the prevention, prohibition and combating of discrimination on the grounds of racial and ethnic origin, colour, nationality, ancestry and territory of origin, Art. 3(3)	No
	Law which prohibits and punishes discrimination based on disability and on a pre-existing risk to health, Art. 5(1)	No
	Labour Code, Art. 23(2)	Yes
	Law prohibiting any discrimination in access to and exercise of self-employment and transposing into national law Directives 2000/43/EC, 2000/78/EC and Directive 2006/54/EC, Art. 5(3)	No
ROMANIA	²⁶⁶	N/A
SLOVAKIA	Anti-discrimination Act, Secs. 2a(1) and (6) ²⁶⁷	Yes
SLOVENIA	Protection Against Discrimination Act, Arts. 9, 7, indent 2 and 4(2)	Yes
	Employment Relationship Act, Art. 6(3)	Yes
SPAIN	Law on Fiscal, Administrative and Social Measures, Art. 28.2	No
	General Law on the Rights of Persons with Disabilities and their Social Inclusion, Art. 35(7)	No
	Law 15/2022, of 12 July, comprehensive for equal treatment and non-discrimination, Art. 6.5	Yes

²⁶⁵ The Labour Code also prohibits instructions to discriminate, but only in the field of employment.

²⁶⁶ The NCCD interprets the prohibition of 'orders to discriminate' of Article 2(2) of GO 137/2000 as a prohibition of instructions to discriminate.

²⁶⁷ In conjunction with Section 2(1).

SWEDEN	Discrimination Act, Ch. 1 Sec. 4(6)	Yes
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2.2 Scope of discrimination

2.2.1 Personal scope

The Racial Equality Directive and Employment Equality Directive are applicable to all persons. This means that national anti-discrimination laws should apply to all persons on a Member State's territory, irrespective of whether they are EU or third-country nationals. On the whole, protection against discrimination in the Member States on any of the grounds included in the directives is not conditional on nationality, citizenship or residence status.²⁶⁸ Even so, some countries have included nationality in their list of protected grounds (see further information in Section 3.5 below).

Recital 16 of the Racial Equality Directive states that it is important to protect all natural persons against discrimination and that Member States should also provide, where appropriate and in accordance with their national traditions and practice, protection for legal persons where they suffer discrimination on the grounds of the racial or ethnic origin of their members. The Employment Equality Directive does not have an equivalent recital, but there is no reason why both natural and legal persons could not be understood under the term 'persons' in this directive as well. Both natural and legal persons are protected against discrimination in many countries, including **Belgium, Bulgaria, Croatia, Greece, Hungary, Italy, Lithuania, Luxembourg, Malta,**²⁶⁹ **Portugal, Romania, Slovakia, Slovenia** and **Spain**. In some countries, however, legal persons remain categorically unprotected, such as in **Czechia, Denmark,** and **Sweden,**²⁷⁰ while in **Austria** the federal anti-discrimination legislation is silent on the issue and would require judicial interpretation to determine whether or not legal persons are protected. In **Ireland**, the legal acts are also silent on the issue, but national case law has established that only natural persons are protected.²⁷¹ In **Estonia**, the Equal Treatment Act refers to the rights of persons and the local legal tradition implies that only natural persons can be victims of discrimination (unless this is challenged in the national courts). Similarly, in the **Netherlands**, it is commonly held that legal persons are not protected against discrimination. However, both the Equal Treatment Commission (former equality body) and the Netherlands Institute for Human Rights (current equality body) have held in a number of opinions that a group of natural persons that is collectively subject to discrimination, such as a religious organisation or an association of professionals, may benefit from the protection against discrimination.²⁷² In **Poland**, protection against discrimination for legal persons extends only to the grounds of race, ethnic origin and nationality of their members. In **Latvia**, legal persons are in principle protected against discrimination by the Constitution, but it is not directly applicable against private parties. In addition, the anti-discrimination

²⁶⁸ In France, for example, the principle of equality is applicable to non-nationals unless the legislature can justify a difference in treatment on the basis of public interest, cf. Constitutional Council, 22 January 1990, 296 DC, R.F.D.C. No 2 1990, obs. Favoreu.

²⁶⁹ In Malta, legal persons are not afforded protection against discrimination on the ground of disability.

²⁷⁰ In Sweden, the Discrimination Inquiry Commission has proposed protection for legal persons in several areas (but not all) covered by non-discrimination legislation. However, this proposal has not been accepted.

²⁷¹ Ireland, Equality Tribunal, *Gloria (Ireland's Lesbian & Gay Choir) v. Cork International Choral Festival Ltd.*, DEC-S2008-078, 28.10.2008.

²⁷² See for instance, Netherlands, ETC Opinions Nos. 1996-110, 1998-31 and 1998-45 as well as NIHR Opinions Nos. 2013-94 and 2014-109.

provisions of some laws (including the Labour Law, the Law on Education and the Consumer Rights Protection Law), only protect natural persons.

Neither directive indicates whether it should be understood as making both natural and legal persons liable for discriminatory acts. Nor do they state exactly who should be held liable for discriminatory behaviour. The question of liability is particularly relevant in cases of discrimination in employment, as often the employer bears responsibility for the actions of his or her employees, for example, for discrimination against a client or for harassment by one employee against another. For instance, in **Ireland**,²⁷³ the **Netherlands**²⁷⁴ and **Sweden**, anti-discrimination legislation is directed at employers, and the person who actually discriminated can therefore not always be held personally liable. In **Spain**, employers or providers of goods and services are liable for the damage caused by discrimination, including harassment, when they have not complied with the duties set out in Law 15/2022 to take appropriate measures to prevent and combat discrimination.

It is less common to make employers liable for the actions of third parties, such as tenants, clients or customers who discriminate against their employees. In **Portugal**, for instance, employers and providers of services can only be held liable for actions of third parties where a special duty of care is imposed by law or where a special relationship can be established, for example subcontractors.²⁷⁵ In the **Netherlands**, employers always have a duty to ensure a 'working environment free from discrimination'. Therefore, although anti-discrimination legislation is not enforceable in the case of discrimination by a colleague or a third party, the employer is liable to take proportionate measures if they know or should have known about such discrimination.²⁷⁶ Under **Croatian** anti-discrimination law, the employer is in general liable for the damages suffered by their employees at work or in connection with work, but it is still uncertain how this provision would be applied in cases of discriminatory actions by third parties against employees.²⁷⁷ In **Romania**, according to the case law of the national equality body, employers can be held liable for actions of their employees if there is joint responsibility, but not for actions of third parties. The national equality body has used personal liability in determining the degree of responsibility of each party.

2.2.2 Material scope

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

²⁷³ Ireland, Employment Equality Acts 1998-2021. Section 8(1) prohibits discrimination by employers and employment agencies. Most of the prohibitions within the legislation are aimed at the employer, and no clear provision is made to enable actions against the person(s) who actually discriminated. The exceptions are Section 14 of the act, which refers to liability being imposed on a person responsible for procuring or attempting to procure discrimination, and Section 10 which refers to liability being imposed on a person who publishes or displays discriminatory advertising.

²⁷⁴ Dutch legislation in the field of employment is directed towards employers, employers' organisations, organisations of workers, employment offices, public job agencies, professional bodies, training institutions, schools, universities etc.

²⁷⁵ Portugal, Labour Code, Article 551(3).

²⁷⁶ Netherlands, e.g. NIHR Opinion 2020-86 of 13 October 2020; NIHR Opinion 2022-12 of 22 December 2022; and NIHR Opinion 2023-70 of 26 June.

²⁷⁷ Croatia, Labour Act, Article 111.

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

Racial Equality Directive	Employment Equality Directive
(a) conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion	(a) conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion
(b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience	(b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience
(c) employment and working conditions, including dismissals and pay	(c) employment and working conditions, including dismissals and pay
(d) membership of and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations	(d) membership of and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations
(e) social protection, including social security and healthcare	
(f) social advantages	
(g) education	
(h) access to and supply of goods and services which are available to the public, including housing	

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

In **Latvia**, national law does not clearly cover vocational training outside the employment relationship, on any of the five grounds. In **Lithuania**, it remains doubtful whether the Racial Equality Directive has been implemented correctly in certain fields of application, such as social protection and social advantages and with regards to self-employment and occupation. In **Belgium**, the division of responsibilities between the different levels of government still causes difficulties regarding the implementation of the material scope of the directives.²⁷⁸ In **Spain**, beyond the field of employment, the anti-discrimination legislation was not 'real and

²⁷⁸ For instance, difficulties persist in certain regions/communities as regards access to (public) employment.

effective' until 2022 as no sanctions were provided in the event of a violation, except in relation to the ground of disability.²⁷⁹ The entry into force of the comprehensive equality act (Law 15/2022) has filled this gap by introducing a regime of sanctions for all grounds and all fields covered by the act.

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

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

2.2.2.1 Employment

Equality must be guaranteed in all sectors of public and private employment and occupation, including contract work, self-employment, military service and statutory office, for all five grounds covered by both directives, as well as vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience. A number of countries fall short of this protection, for instance by failing to cover fully self-employment and/or occupation, as is the case in **Greece, Lithuania and Slovakia**.²⁸⁰ With regard to the specific area of (access to) self-employment, it is noteworthy that countries such as **Latvia, Malta and Portugal** have adopted specific legislation on the prohibition of discrimination in this area. In other countries, such as **Austria, Bulgaria and Ireland**, the scope of the protection is specified in anti-discrimination and/or labour law and is sometimes limited to certain aspects, such as protection against discrimination in relation to the establishment, equipment or extension of an activity or profession. In the **Netherlands**, the term 'liberal profession' has been used instead of self-employment but has at all times been interpreted broadly, in particular by the national equality body, in order to guarantee that not only are doctors, architects etc. covered, but also freelancers and entrepreneurs working in any field.

In **Germany**, the General Act on Equal Treatment covers employment and working conditions, including pay and dismissals.²⁸¹ As regards dismissals however, this act stipulates that only the existing general and particular regulations for dismissal are to be applied. The most important act in this regard is the Law on Protection against Dismissal,²⁸² which does not contain any prohibition of discrimination. Nevertheless, the Federal Labour Court has held that the General Act on Equal Treatment does apply to situations where no special rules of

²⁷⁹ Criminal sanctions might apply, depending on judicial interpretation.

²⁸⁰ In Slovakia, contract work that falls beyond the scope of the Labour Code would probably not be covered by anti-discrimination law.

²⁸¹ Germany, General Act on Equal Treatment, Section 2.1.2.

²⁸² Germany, Law on Protection against Dismissal of 25 August 1969 (BGBl. I, 1317). Last amended on 14.06.2021 (BGBl. I, 1762).

dismissal are applicable, for instance during a probation period.²⁸³ In **Belgium**, some regional or community-level legislation fails to provide complete protection against discrimination in access to employment, for example, in the public administration.

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

The extent to which volunteer work falls within the scope of employment is left open by the directives, and the approach at national level in this regard varies among the countries. While the **Irish** High Court has held that unpaid volunteers are not covered by the Employment Equality Acts,²⁸⁴ the **Danish** Board of Equal Treatment has held that a voluntary, unpaid lieutenant in the Danish Home Guard was encompassed by the Act on the Prohibition of Discrimination in the Labour Market etc.²⁸⁵

In **Portugal**, interesting legislation was adopted in 2023 to stipulate that equality and non-discrimination provisions are now applicable to decision-making based on algorithms or other artificial intelligence systems, and that employers must inform job applicants about the use of algorithms and artificial intelligence.

2.2.2.2 Social protection

Some concerns remain with regard to the transposition of the Racial Equality Directive in the area of social protection. In **Lithuania**, the Equal Treatment Act does not explicitly cover social security and healthcare but it does envisage a general duty to implement equal opportunities: ‘State and municipal institutions and agencies must, within their competence, ensure that equal rights and opportunities are enshrined in all legal acts irrespective of gender, race, nationality, citizenship,²⁸⁶ language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion’. This could be interpreted to encompass social security and healthcare as well, as these fields are not explicitly excluded. The practice of the Ombudsman indicates that the equality body considers the wording of the Equal Treatment Act regarding goods and services to be broad enough to include healthcare services, while the interpretation regarding other aspects of social protection remains unclear.²⁸⁷ In **Ireland**, the Equal Status Acts 2000-2018 do not explicitly refer to ‘social protection’ or ‘healthcare’, but do cover access to goods and services, defining the latter as a ‘service or facility of any nature which is available to the public generally or a section of the public’.²⁸⁸ However, the Equality Tribunal (now the

²⁸³ Germany, Federal Labour Court, 6 AZR 190/12, 19 December 2013, Para. 22.

²⁸⁴ Ireland, High Court, *An Garda Síochána v. Oberoi*, 30 May 2013, IEHC 267.

²⁸⁵ Denmark, Board of Equal Treatment, Decision No. 9254 of 7 March 2018.

²⁸⁶ This ground only applies to citizens of the EU and EEA countries and their family members (partners, however, are not explicitly included).

²⁸⁷ Lithuania, Equal Opportunities Ombudsperson (2010), *Annual Report for 2010*. See also, more recently, Decision of the Equal Opportunities Ombudsperson No. (21)SN-95)SP-62 of 3 October 2022.

²⁸⁸ Ireland, Equal Status Acts 2000-2018, Section 2(1).

Workplace Relations Commission) has interpreted the definition of 'service' to include social protection from the outset.²⁸⁹

Article 3(3) of the Employment Equality Directive provides that the directive's scope does not extend to 'payments of any kind made by state schemes or similar, including state social security or social protection schemes'. This exception is not found in the Racial Equality Directive, which in contrast lists 'social protection' in its scope (Article 3(1)(e)). Some Member States have sought to rely on Article 3(3) of the Employment Equality Directive in their anti-discrimination legislation, e.g. **Cyprus**, **Greece** and **Italy**. However, in **Cyprus** the mandate of the equality body covers discrimination in the field of social protection for all the grounds of the two directives.²⁹⁰

Slovenia: Sexual orientation discrimination in access to healthcare

The complainant is a Slovenian lesbian woman going through a procedure of assisted reproduction in Austria, as it is not legally available to her in Slovenia. Her gynaecologist in Slovenia refused to provide her with medical treatment because she is homosexual and undergoing assisted reproduction. The gynaecologist had lodged a conscientious objection with the Medical Chamber of Slovenia regarding the provision of all gynaecological medical services to women who are in the same situation as the complainant. The complainant lodged a complaint of sexual orientation discrimination before the Advocate of the Principle of Equal Treatment. During the procedure, the Advocate received clarifications from the Medical Chamber and its Committee on Legal-Ethical Issues that conscientious objections can be raised in respect of certain medical procedures, but not to refuse procedures exclusively for a certain group of people with a certain personal circumstance, as was the case here. The objection lodged in the present case is thus not admissible because it is discriminatory. The gynaecologist explained to the Advocate however that she was convinced that her conscientious objection was admissible, and that she had already refused to treat the complainant before receiving the decision of the competent committee on the discriminatory nature of the objection. However, she withdrew her conscientious objection after receiving the reply from the Chamber.

The Advocate found that, by lodging the discriminatory objection and by refusing to treat the complainant, the gynaecologist had interfered with the complainant's right to healthcare due to her sexual orientation, thereby infringing the prohibition of direct discrimination under the Protection Against Discrimination Act. The Advocate assessed whether such discrimination could be justified under the general exception in national law for unequal treatment based on a legitimate aim when the means of achieving that aim are appropriate, necessary and proportionate, concluding that the gynaecologist had failed to meet her burden of proof. While an admissible conscientious objection under the applicable law may be a justified exception to the prohibition of discrimination, an objection to treating all persons of homosexual orientation infringes the rights of persons solely on the basis of their sexual orientation.²⁹¹

²⁸⁹ Ireland, Equality Tribunal, *Donovan v. Donnellan* DEC-S2001-011, 17.10.2001; Applied in e.g. *McQuaid v. Department of Social Protection*, DEC-S2014-015, 02.10.2014.

²⁹⁰ Cyprus, *The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(I)/2004*, Article 6(2)(e).

²⁹¹ Slovenia, Advocate of the Principle of Equality, *decision of 21 June 2023* No. 0700-58/2022/17.

2.2.2.3 Social advantages

Protection against discrimination in social advantages is not explicitly provided in **Hungary**,²⁹² **Ireland**,²⁹³ **Lithuania**²⁹⁴ and **Portugal**. In **Austria**, the province of Upper Austria limits access to certain social advantages on the basis of residency status and German language skills. One such limitation was challenged before the national courts, which led to a CJEU decision in 2021.²⁹⁵ The Court ruled that indirect discrimination requires ‘that it is particularly persons of a given ethnic origin who are at a disadvantage because of the measure at issue,’ (paragraph 55) limiting the protection by the Racial Equality Directive against indirect discrimination when the different treatment applies to all non-(EU)citizens.

The term ‘social advantages’ is mostly left undefined in national legislation. An exception is the **Netherlands**, where the Explanatory Memorandum to the General Equal Treatment Act indicates that this notion refers to advantages of an economic and cultural nature, which may be granted by both private and public entities. These may include student grants and price concessions for public transport and cultural or other events. Advantages offered by private entities include, for example, concessionary prices for the cinema and theatre.²⁹⁶ With regard to **Slovakia**, the provision stipulating that the rates of payment of child benefit, parental care allowance and childbirth allowance are dependent on compliance with preventive measures, could be considered to be discriminatory with regard to the Roma community.²⁹⁷ The Supreme Court came to the opposite conclusion however, in 2022, ruling that no custom of any community can override the best interests of children.²⁹⁸

2.2.2.4 Education

All the analysed countries explicitly prohibit discrimination in the field of education on the grounds of racial or ethnic origin, as formulated in the Racial Equality Directive. Rather, many countries go beyond the requirements of the Directive in this area and extend protection against discrimination to all five grounds analysed in this report. For example, in **France**, protection against discrimination in the area of education extends to all grounds covered by French law, including the grounds covered by the Employment Equality Directive. Similar legal frameworks exist in **Czechia**, **Finland**, **Slovakia** and **Slovenia**, for example.

Establishing an inclusive mainstream education system remains a challenge for many countries, especially when it comes to the situation of children with disabilities and Roma children.

²⁹² Although providers of social advantages would generally fall under the personal scope of the Equal Treatment Act (Article 4), and their discriminatory acts would thereby be covered by the Act on the basis of Article 8, irrespective of the area in which they take place.

²⁹³ While the Irish Equality Tribunal upheld some discrimination complaints in this area, a circuit court judgment has cast doubt on the applicability of anti-discrimination law to social advantages provided by the public sector: Circuit Court, *Pobal v. Hoey*, unreported judgment, 14 April 2011.

²⁹⁴ The practice of the Lithuanian Ombudsman seems to indicate however that the equality body does accept complaints in the area of social advantages.

²⁹⁵ CJEU, Judgment of 10 June 2021, *Land Oberösterreich v. KV*, C-94/20, ECLI:EU:C:2021:477.

²⁹⁶ See for example CJEU, Judgment of 12 July 1984, *Castelli*, C-261/83, ECLI:EU:C:1984:280 and Judgment of 27 March 1985, *Hoekx*, C-249/83 ECLI:EU:C:1985:139, as referred to in the Dutch Explanatory Memorandum to the EC Implementation Act, Second Chamber of Parliament 2002-2003, 28 770, No 3, p. 15.

²⁹⁷ UNCRC (2016), *Concluding observations on the combined third to fifth periodic reports of Slovakia*, CRC/C/SVK/CO/3-5, 20 July 2016.

²⁹⁸ Slovakia, Supreme Court, decision No. 7 Cdo114/2020 of 27 October 2022.

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In **Czechia**, in November 2020, the Government adopted a *Strategy on Education 2030+* to modernise the Czech educational system, preparing it for new challenges and focusing on persisting problems.²⁹⁹ One of the two objectives of the strategy is to reduce inequalities in access to education and develop the potential of all children, in particular Roma pupils, children with disabilities and pupils from a disadvantaged background. Similarly, the **Slovak** Ministry of Education established an inclusive education department and adopted a specific action plan in 2020,³⁰⁰ while the Schools Act was significantly amended in 2023 to address the segregation of Roma children in education, the exclusion of children with special educational needs and the overall lack of an inclusive approach in Slovak education.³⁰¹ In a similar vein, new legislation was adopted in **Romania** in 2023 establishing diversity, inclusion, equity and respect as its key values and prohibiting school segregation, among other things.³⁰²

Children and pupils with disabilities

The situation of children with disabilities and their inclusion in mainstream education as opposed to segregated 'special' schools or classes for children with special educational needs (SEN) is an issue that arises in many countries. As a rule, although many countries declare that children with SEN should be included in mainstream education, implementation of this requirement is often lacking in practice, for instance in **Bulgaria, Greece, Hungary and Italy** - where approximately one in three schools was accessible for students with mobility disabilities in 2021/22.³⁰³ This is also the case in **Croatia**, although it still remains to be seen whether the National plan for the equalisation of opportunities for persons with disabilities for 2021 to 2027 will have a significant impact in practice.³⁰⁴ In 2023, there was, at last, a positive development in a long-running case where a pupil with a disability who had been refused reasonable accommodation was finally awarded EUR 27 000 in compensation for severe, prolonged and repeated disability discrimination.³⁰⁵ In **Lithuania**, legislation from 2020 aimed to impose an obligation upon all schools to accept children and pupils with disabilities,³⁰⁶ thus putting an end to the practice of segregation in special schools. However, before the entry into force of the law, which was planned for 1 September 2024, new amendments were discussed with the aim of delaying or even reversing this reform. In **Czechia**, the Schools Act was reformed between 2015 and 2017 to ensure inclusive education for children with special needs, although the change in the law may not always have been followed by a change in practice. Furthermore, the introduction of additional amendments in 2019-2021 as well as policy measures in 2023, all aimed at ensuring the cost-effectiveness of the system, appear to have the potential consequence of lowering rather than raising the overall standard of inclusive education.³⁰⁷ On the other hand, the Czech Constitutional Court confirmed in 2023 the fundamental principle of inclusive education and the

²⁹⁹ Czechia, Ministry of Education, Youth, and Sports (2020), *Strategy on Education 2030+*, strategy document.

³⁰⁰ Slovakia, Ministry of Education (2020) '*Inclusive education as "way of the possible"*', press release of 16 December 2020. See also the '*Zero action plan for the Strategy for inclusive approaches to education for 2021*'.

³⁰¹ Slovakia, Act No. 415/2021 amending Act No. 245/2008 on Education ('Schools Act'), Section 2 (ai). *Act No. 182/2023 amending Act No. 245/2008 on Upbringing and Education* ('Schools Act') and on amendments and additions to certain laws as subsequently amended and amending and supplementing certain laws.

³⁰² Romania, Law No. 198/2023 on Pre-university Education, 5 July 2023, Articles 2 and 79(3).

³⁰³ Italy, Istat, '*School inclusion for pupils with disabilities – School year 2021/2022*', 2 December 2022..

³⁰⁴ *Decision of the Government of the Republic of Croatia, Official Gazette 143/2021*.

³⁰⁵ Croatia, Sesvete Municipal Court, decision of 29 November 2023, No. Pn-5/2023.

³⁰⁶ Lithuania, *Law on the Amendment of Articles 5, 14, 21, 29, 30, 34 and 36 of the Law on Education and Supplementing it with Article 45-1*, No. XIII-3268, 30 September 2020.

³⁰⁷ Czechia, *Decree No. 248/2019* amending Decree No. 27/2016 on the education of pupils with special educational needs and gifted pupils, as amended, and Decree No. 72/2005 on the provision of guidance services in schools and school guidance facilities, as amended. See also Public Budget Consolidation Act No. 349/2023 of 13 December 2023, reducing the budget for non-teaching staff in 2024, as well as *Draft amendment to the Decree No. 27/2016, on the education of children with special educational needs*.

obligation of schools and public authorities to ensure equal access to education by providing appropriate support. The case concerned a student whose parents had been required to pay for their child's personal assistant in school.³⁰⁸ In **Slovakia**, the 2023 amendments to the Schools Act redefined the concept of 'special educational needs' and established a new support framework for children with such needs, including a catalogue of potential support measures.³⁰⁹ Providing eligible support measures will be obligatory from 2026.

In **Latvia**, special education institutions must implement special education programmes for pupils with 'mental development disorders' or with sight or hearing impairments, while pupils with mobility impairments, speech disorders and learning difficulties are integrated in mainstream education. In **Belgium**, the duty to provide reasonable accommodation for persons with disabilities also applies in the field of education. In practice, however, many education providers fail to meet this duty and national courts are regularly called upon to enforce the law in this area.³¹⁰ Similarly, in **Sweden**, education providers have a duty to provide 'adequate accessibility' by accommodating the needs of pupils and students with special educational needs. A series of court rulings from 2021 demonstrated the limits of this duty however, as pupils with dyslexia were refused the use of their ordinary assistance devices during the national exams. The cases were lost, as the schools based their refusal on the National Education Authority's guidelines, which were found to be proportionate.³¹¹ In 2023, the **Slovenian** equality body found in a similar case, however, that the refusal of accommodation during the end-of-school exam amounted to disability discrimination.³¹² In **France**, despite a significant increase in the individualised support provided to children and students with disabilities in recent years, a report from 2022 indicated severe deficiencies in the quality, nature and implementation of the support provided, such as delays, lack of training for staff, imprecise indications of the needs of the child, etc.³¹³ In January 2023, the Prime Minister announced a national strategy to increase resources and support for children with disabilities based on the right of each child to have a personalised educational plan and a budget increase of EUR 200 million.³¹⁴ In **Poland**, available funding for inclusive education for children with SEN, as well as knowledge about their needs, have also been found to be insufficient.³¹⁵

Children and pupils of Roma origin

Issues also arise in relation to discrimination against children from racial and ethnic minorities in education. Of particular concern is the segregation of Roma children, which constitutes one of the most widespread manifestations of discrimination against the Roma. It is notable in this regard that there are Roma in all the EU Member States, with the apparent exception of **Malta**.³¹⁶ This issue seems to have constituted one of the European Commission's priorities in recent years, as infringement proceedings have been launched against

³⁰⁸ Czechia, Constitutional Court, [decision No. III. ÚS 1068/22 of 15 November 2023](#).

³⁰⁹ Slovakia, Schools Act No. 245/2008 as amended, Sections 2(i) and 145(a).

³¹⁰ See Belgium, Antwerp Court of First Instance, Judgment of 7 November 2018.

³¹¹ See, notably, Sweden, Solna District Court, *LK v Sweden through the Chancellor of Justice*, decision of 22 December 2021 in case No. FT 10318-20.

³¹² Slovenia, Advocate of the Principle of Equality, [decision of 20 June 2023 No. 0700-34/2023/17](#).

³¹³ France, Defender of Rights (2022), [The human support given to disabled children at school](#).

³¹⁴ France, Prime Minister (2023) 'Education Day 2023: What progress for students with disabilities?', 31 January 2023.

³¹⁵ Poland, Ombud (2023), [Support for students with disabilities by co-teachers, teacher aides and a personal assistant for students with special educational needs](#).

³¹⁶ For further information regarding the Roma population in Europe, see references in European Commission (2020), *A Union of Equality: EU Roma strategic framework for equality, inclusion and participation*, COM(2020) 620 final, Brussels, 7 October 2020, p.1.

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several countries for failure to correctly transpose and/or implement the Racial Equality Directive in this regard.³¹⁷

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

First, a disproportionate number of Roma children attend remedial 'special' schools for children with intellectual disabilities and are thereby separated from the mainstream school system and receive an inferior level of education, which affects their life chances, in **Bulgaria, Czechia, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia**. All three infringement proceedings that are currently pending in this area concern, among other things, this form of segregation in **Czechia, Hungary and Slovakia**. Following the initiation of the procedure against **Hungary** in 2016, amendments to national legislation were introduced and Hungarian courts have found violations of national law in several misdiagnosis cases concerning Roma pupils.³¹⁸ In **Czechia**, where the infringement procedure was initiated in 2014, the Schools Act was subsequently amended not only to ensure inclusive education for pupils with disabilities but also to eradicate school segregation of Roma children. Despite these measures, segregation of Roma pupils remains an issue of serious concern in Czechia, where approximately 26 % of all students enrolled in 'special' education for students with mild mental disabilities in 2023 were of Roma ethnicity.³¹⁹ Finally, the infringement procedure against **Slovakia** has been ongoing since 2015. Following several legislative and policy developments since then, the Commission referred Slovakia to the Court of Justice of the EU in 2023 due to the country's failure to effectively tackle the segregation of Roma children in education, with regard to both special and mainstream schools.³²⁰ Targeting specifically the issue of misdiagnosis and disproportionate placement of Roma children in special schools, the Slovak Schools Act was amended in 2021-2022, reforming the counselling and prevention facilities responsible for school diagnostics.³²¹ In addition to this reform, which entered into force on 1 January 2023, the Ministry of Education adopted new diagnostics standards for the procedures and principles to be used by psychologists and special educators.³²² These standards entered into force on 1 September 2023 and require that the socioeconomic and family background of the child be taken into account when interpreting the diagnostic results. For foreign children and those from socially disadvantaged backgrounds, culturally independent and generally non-verbal methods are to be used. These developments were further accompanied by the work of the State School Inspectorate which published in 2023 both a thematic report on Roma children in special

³¹⁷ Proceedings have been brought against Czechia (2014), Slovakia (2015) and Hungary (2016).

³¹⁸ Hungary, Debrecen Appeals Court, decision of 24 September 2020 in case No. 2.Pf.1.20.214/2020/10.

³¹⁹ Czechia, Public Defender of Rights (2023), 'According to the rules for students with mild mental disabilities, more Roma children are still learning than corresponds to the representation of Roma among all students', [press release of 4 September 2023](#).

³²⁰ European Commission (2023), 'The European Commission decides to refer Slovakia to the Court of Justice of the European Union for not sufficiently addressing discrimination against Roma children in school', [press release of 19 April 2023](#).

³²¹ Slovakia, Amendment of the Schools Act by Act No. 415/2021 adopted on 20 October 2021 with relevant provisions effective from 1 January 2023; Decree on counselling and prevention facilities 24/2022; Government Regulation No. 489/2022 Coll. of Laws

³²² *Obsahové štandardy pre diagnostickú činnosť - diagnostika v zariadeniach - poradenstva a prevencie a v prostredí škôl* (Content standards for diagnostic activities - diagnostics in institutions for counselling and prevention and in the school environment (2023) Adopted by the Ministry of Education, Science, Research and Sport of the Slovak Republic on 24 August 2023.

schools³²³ and a specific inspection report examining 30 individual diagnostic reports. It recommended a re-examination for 13 of the 30 pupils.³²⁴ In practice, some courts have found in recent years that segregation of Roma children in ‘special’ schools has amounted to discrimination, and, exceptionally, that the state may be partly responsible for such discrimination.³²⁵

Secondly, Roma segregation also occurs in some mainstream schools through the existence of segregated classes. This is the case in **Croatia, Czechia, Greece, Hungary, Romania and Slovakia**. Similarly, there are concerns in **Ireland** about the disproportionate use of reduced timetables for Roma and Traveller children.³²⁶ In **Croatia**, in the school year 2023/24, some 85 Roma-only classes existed in 9 elementary schools, with a total of 1 759 children. There were also (almost) fully ethnically segregated schools. While most of these classes/schools were located in the same county, which is where the largest Roma population lives, the People’s Ombudsperson has also noted that some of them cannot be explained by the proportion of Roma pupils residing in the relevant catchment areas.³²⁷ In **Hungary**, research seems to suggest that segregation in mainstream education has been on the rise in recent years.³²⁸ In **Slovakia**, where a significant proportion of Roma children and pupils from ‘socially disadvantaged environments’ have been segregated in separate schools or classes for many years,³²⁹ the Schools Act was amended in 2023 to include the following definition of segregation: an ‘act or omission to act which is contrary to the principle of equal treatment under [the Anti-Discrimination Act] and which results or is likely to result in the spatial, organisational, physical or social exclusion or separation of a group of children, pupils, learners or participants in upbringing and education without a reason arising from this Act.’³³⁰ In addition, the Ministry of Education published a methodological guide to desegregation in December 2023.³³¹

There are only a few instances where segregated Roma classes have been challenged under national legal systems, for instance in **Bulgaria, Croatia, Greece, Hungary, Romania and Slovakia**. However, complaints of allegedly segregated classes are often dismissed, for instance in previous years in **Slovakia** where *actio popularis* complaints have been submitted against the practices of schools and local or state authorities. There has been a significant shift in case law in recent years however, as discussed in further detail below.³³² In **Hungary**, the case of Gyöngyöspata has received particular attention in recent years. The case concerned a primary school where each grade was composed of one class for Roma pupils and one class for non-Roma pupils. After several years of judicial proceedings before different instances, the Supreme Court (*Kúria*) delivered

³²³ Slovakia, State School Inspectorate (2023), *Pupil enrolment status to special primary school and their equal access to education in school year 2022/2023 in the Slovak Republic*.

³²⁴ Slovakia, State School Inspectorate (2023), *Status of the provision of professional activities in counselling and prevention facilities in the school year 2022/2023 in the Slovak Republic*.

³²⁵ See Prešov Regional Court, decision No. 20Co/21/2022- 680 of 28 February 2023. See also textbox below, p. XXX.

³²⁶ See, notably, UN Committee on the Rights of the Child (2023), *Concluding observations on the combined fifth and sixth periodic reports of Ireland*, 28 February 2023, CRC/C/IRL/CO/5-6, at Para. 37(f). See also Department of Education (2023), *Reduced School Days Report - 2022/23 School Year*.

³²⁷ Croatia, People’s Ombudsperson (2024), *Report for 2023*.

³²⁸ Hajdu, T., Hermann, Z., Horn, D. and Varga, J. (2019), *The indicator system of public education 2019*, p. 181. See also Hungarian Commissioner for Fundamental Rights (2022), *Report on the activities of the Commissioner for Fundamental Rights and his Deputies 2021*, pp. 137-138 and Commissioner for Fundamental Rights (2024), *Report on the activities of the Commissioner for Fundamental Rights and his Deputies 2023*, pp. 193-194.

³²⁹ See, for instance, Slovakia, Ministry of Finance (2019), *Revision of expenses for groups threatened by poverty and social exclusion: Interim report*, January 2019, pp. 42 – 48; and State School Inspectorate (2023), *Report on the state and level of education in schools and the school facilities in the school year 2022/2023*, December 2023, pp. 4 and 96.

³³⁰ Slovakia, Schools Act, 245/2008, Section 2(ah).

³³¹ Slovakia, Ministry of Education (2023), *Methodical guide – desegregation in upbringing and education*, December 2023.

³³² See textbox below, p. 72.

the final ruling in May 2020, concluding that unlawful segregation had taken place and awarding compensation for non-pecuniary damage to the 60 claimants.³³³

Thirdly, in a large number of countries (e.g. **Bulgaria, Croatia, Cyprus, Czechia, Hungary** and **Slovakia**), residence patterns also lead to a high concentration of Roma children in certain schools, resulting in ‘ghetto schools’. In **Czechia**, for instance, 49 % of Roma children were educated in segregated schools and facilities in 2022; that is 20 % more than in 2016.³³⁴ In **Slovakia**, several *actio popularis* claims invoking such segregation have been heard in recent years by national courts. This body of case law is discussed immediately below.

Slovakia: Two years of case law on state liability for Roma segregation in education

In Slovakia, where segregation of Roma children in education has been a long-standing issue in both ‘special’ and mainstream schools, there is a rich body of case law going back many years. Most cases are litigated by NGOs, notably as *actio popularis* claims or by legally representing individual claimants in court proceedings. However, a significant shift has been noted since 2022, when courts finally started recognising and upholding the rights of Roma children. Most importantly, the Supreme Court has clearly confirmed in several judgments not only that segregation amounts to prohibited discrimination but also that state authorities may be liable for such discrimination. This has been confirmed in several cases in relation to mainstream schools located near marginalised Roma communities and attended solely by their residents.³³⁵ The Supreme Court has specified that state authorities are responsible for segregation caused by the definition of the relevant school catchment areas and also for the failure to put in place effective measures to prevent and eliminate existing segregation.³³⁶

In addition, court decisions have repeatedly confirmed in the past two years that the misdiagnosis of Roma children and their placement in special schools for children with mild mental disabilities also constitutes segregation amounting to illegal ethnic discrimination for which state authorities are responsible.³³⁷

Despite these important developments in case law, segregation remains a crucial issue of concern in practice, and the European Commission thus decided in April 2023 to refer Slovakia to the Court of Justice of the EU for failing to effectively tackle this issue.³³⁸

In addition, in many states, including **Belgium, Croatia, Cyprus, Finland, France, Greece, Italy, Lithuania, Poland** and **Slovenia**, school absenteeism and disproportionately high drop-out rates are serious issues among the Roma, Sinti and Traveller communities. For instance, in **Slovenia**, the share of Roma pupils who complete the school year decreases significantly with each grade, and only 21 % of Roma pupils successfully complete primary school (ninth grade).³³⁹

³³³ Hungary, Supreme Court (*Kúria*), Judgment No. Pfv.IV.21.556/2019/22 of 12 May 2020.

³³⁴ FRA (2022), [Roma in 10 European countries: Main results](#) – report.

³³⁵ Slovakia, see for instance, Supreme Court, decision No. 5 Cdo/102/2020 of 15 December 2022; and decision No. 5Cdo/220/2022 of 12 July 2023.

³³⁶ Slovakia, Supreme Court, resolution No. 4Cdo/112/2021 of 28 March 2023.

³³⁷ Slovakia, see for instance, District Court in Prešov, decision No. 15 C 14/2016- 557 of 24 November 2021 and Regional Court in Prešov, decision No. 20Co/21/2022-680 of 28 February 2023.

³³⁸ European Commission (2023) [‘The European Commission decides to refer Slovakia to the Court of Justice of the European Union for not sufficiently addressing discrimination against Roma children in school’](#), press release, 19 April 2023.

³³⁹ Slovenia, Institute for Ethnic Studies (2022), [Performance of Roma pupils in primary schools in Slovenia in the period 2016/17-2021/22](#).

There have been attempts by Governments to address the segregation of Roma pupils in other Member States as well. In **Bulgaria**, the Pre-School and School Education Act bans the segregation of children of ‘a different’ ethnicity in separate groups or classes, but it does not prevent segregation in different kindergartens and schools.³⁴⁰ Furthermore, the legal definition of segregation requires the state of separation to be forced, thus implying that children may waive their right not to be segregated (or that their parents may waive it for them).

2.2.2.5 Access to and supply of goods and services

The Racial Equality Directive prohibits discrimination concerning access to and supply of goods and services, including housing, that are available to the public. The boundaries of this prohibition have generated debate in many countries, including for instance a decision from the **Danish** Board of Equal Treatment finding that the private sale of a car via social media was not ‘available to the public’ within the meaning of the anti-discrimination legislation.³⁴¹ Overall, however, 10 of the countries examined do not restrict protection to publicly available goods and services (**Bulgaria, Croatia, Finland, France, Ireland, Italy, Latvia, Lithuania,**³⁴² **Luxembourg** and **Romania**).

A few legislatures have provided definitions to delineate the circumstances in which discrimination is prohibited. **Swedish** law prohibits discrimination in the supply of goods and services, including housing, which are provided ‘outside the private or family sphere’, and thus the law does not apply to private transactions (similar provisions apply in **Finland**). In the field of housing, this limitation implies that private persons selling or renting out their property ‘on sporadic occasions’ are not covered by the Discrimination Act. By contrast, there is some concern over the exception from the material scope of the provision of goods and services under **German** law for all transactions concerning a special relationship of trust and proximity between the parties or their families, including the letting of flats. A 2019 legal opinion on anti-discrimination law in the area of housing commissioned by the German equality body, the Federal Anti-Discrimination Agency, recommended that this exception should be modified.³⁴³ In **Austria**, case law has clarified the meaning of the terms ‘available to the public’, stating that offers of goods and services are excluded from the principle of equal treatment only when they are ‘directed towards a close circle of family and friends’.³⁴⁴ In **Latvia**, the personal scope of non-discrimination law was extended in 2021 to cover physical persons purchasing or selling goods and services, to ensure full compliance with EU law.³⁴⁵

As with education, access to housing is another area where Roma face serious barriers and difficulties in many states. In recent years, there have been many reports of forced expulsions and segregation (e.g. in **Belgium, Bulgaria, Greece, Italy, Romania** and **Slovakia**) or issues in relation to campsites and stopping places for

³⁴⁰ Bulgaria, Pre-School and School Education Act, adopted 13 October 2015, entered into force 1 August 2016, Article 62(4) and Article 99(4) and (6).

³⁴¹ Denmark, Board of Equal Treatment, decision No. 9842 of 20 September 2023.

³⁴² Note that religious communities or associations, as well as associations founded by these religious communities or their members, are not obliged to comply with the Equal Treatment Act while providing goods and services, when the purpose of this provision is of a religious character.

³⁴³ Thüsing, G. and Vianden (2019), *A legal vacuum? The transposition of the EU Anti-Racism Directive in the area of housing*, Federal Anti-Discrimination Agency, Berlin, p. 39.

³⁴⁴ Austria, Viennese Court of Commerce, decision 1R 129/10g, 19 January 2011.

³⁴⁵ Latvia, *Amendments to the Law on the Prohibition of Discrimination of Natural Persons-Parties to a Legal Transaction*, 23 September 2021. The aim of the amendment was to ensure compliance with EU gender equality law, following infringement proceedings initiated in 2020. See European Commission Infringement No. (2014)2241.

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Roma and Travellers (e.g. in **Belgium** and **France**). Although these issues do not necessarily fall within the scope of the Directive, they cause serious concern for the Roma and Traveller populations on the national level across Europe. In **France** for instance, the Government has been systematically evicting Travellers and Roma from illegally occupied land since 2012. Despite a Ministerial Instruction in January 2018 to revise this eviction policy,³⁴⁶ more than 1 100 such evictions took place in 2023, often without applying the diagnostic, social integration and shelter principles set out in the 2018 ministerial instruction.³⁴⁷ Some 95 % of the evictions were executed without ensuring basic housing rights and shelter.³⁴⁸ In 2019, the two highest courts of the French legal order delivered contradictory rulings in similar cases challenging such evictions. While the Council of State held that, in the absence of imminent necessity, evacuation cannot be ordered without securing the rights of the (illegal) Roma occupants,³⁴⁹ the Court of Cassation held that the right of the landowners to their property prevails over the various rights of the illegal occupants.³⁵⁰ In 2021, a **Romanian** Court of Appeal confirmed the illegal conditions of the eviction of approximately 200 Roma, due to the failure of the authorities to take into account the specific, vulnerable situation of the Roma by adopting positive measures preceding the eviction.³⁵¹ Similarly, a **Slovakian** court held in 2022 that the forced eviction of Roma individuals, under the pretext of waste removal, amounted to discrimination and an interference with the dignity of the claimants, notably due to the authorities' failure to propose alternative accommodation.³⁵² The decision was confirmed in appeal in 2023.³⁵³ In **Italy**, initiatives have been put in place in several municipalities, leading to an overall improvement in the housing situation of many Roma in recent years.³⁵⁴ In **Croatia**, continuous measures are undertaken to legalise illegal Roma settlements and to improve the living conditions for its residents.

Some countries have chosen to go beyond the scope of the directives in the area of services available to the public. For example, in the **Netherlands**, national anti-discrimination law is used to prevent Roma and Travellers from ending up with a shortage of stopping sites, which is considered to constitute discrimination under national law.³⁵⁵ In this regard, the Minister of the Interior and Kingdom Relations issued a policy framework in 2018 with the aim of ensuring Roma cultural rights and legal security in the area of housing.³⁵⁶ Five years later, the shortage of stopping sites persists

2.2.2.6 Beyond the directives

Many states have maintained the diverging scope of the two directives, only expressly outlawing discrimination in social protection, social advantages, education and goods and services available to the public in relation to

³⁴⁶ France, [Instruction of Government supporting a renewed policy for the suppression of slums and illegal camps](#), No. NOR: TERL1736127, 25 January 2018.

³⁴⁷ Observatoire des lieux de vie informels (Observatory of informal campsites) (2023) [Report on evictions from 1 November 2022 to 31 October 2023](#).

³⁴⁸ CNDH Romeurope (2022), [Observatory of evictions from informal housing, annual report](#).

³⁴⁹ France, Council of State, decision of 13 February 2019 No. 427423.

³⁵⁰ France, Court of Cassation, Third Civil Chamber, decision of 4 July 2019, No. 18-17119; [and decision of 28 November 2019](#), No. 17-22810.

³⁵¹ Romania, Bucharest Court of Appeal Civil Decision No. 1293 of 25 November 2020, in case No. 4/57/2019 ECLI:RO:CAB:2020:177.001.001293, *Consiliul local al Municipiului Alba Iulia, UAT Municipiul Alba Iulia v. CNCD si Asociatia Partida Romilor Pro Europa*.

³⁵² Slovakia, District Court Košice II, decision No. 15C/190/2014-650 of 21 January 2022.

³⁵³ Slovakia, Regional Court Košice II, decision No. 9Co/21/2022 of 28 June 2023.

³⁵⁴ Italy, Istat-UNAR (2021), [Survey on housing transitions for Roma, Sinti and Caminanti](#)'.

³⁵⁵ In this regard, see Ombudsman (2017), [Trailer resident seeks trailer site. An investigation into the reliability of the public authorities for trailer inhabitants](#).

³⁵⁶ Netherlands Ministry of the Interior and Kingdom Relations (2018), [Policy framework on municipal trailer and camping sites](#)'.

racial and ethnic discrimination. However, a number of states provide the same protection for other grounds of discrimination as well, if not all grounds, and thus go beyond the requirements of the directives.

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

- Whereas in **Austrian** federal legislation the distinction between the scope of the two directives is maintained, in all provincial legislations it is levelled up.
- In **Bulgaria**, the Protection Against Discrimination Act provides comprehensive protection and prohibits discrimination within a universal material scope.
- In **Croatia**, the Anti-discrimination Act applies to housing in general without any exceptions and covers racial or ethnic origin, gender, language, religion, political or other belief, national or social origin, property, trade union membership, education, social status, marital or family status, age, health condition, disability, genetic heritage, gender identity and expression and sexual orientation.
- **Denmark** extends the prohibition of discrimination on the grounds of religion or belief and sexual orientation to the fields of education and access to goods and services including housing. Furthermore, discrimination on the ground of disability is prohibited in all areas covered by the Racial Equality Directive.
- The **Finnish** Non-Discrimination Act of 2014 prohibits discrimination in all public and private activities (excluding only private life, family life and practice of religion), on the grounds of origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics.
- In **France**, protection against discrimination in the areas of education, social protection, social advantages and access to and supply of goods and services extends to a long list of grounds including all grounds covered by EU law.³⁵⁷
- **Hungarian** law has practically unlimited material scope, treating all grounds of discrimination equally.
- **Italian** anti-discrimination law offers protection against discrimination based on race and ethnic origin, religion or belief, age, disability, sexual orientation and nationality in the areas of employment, social advantages and housing.
- In **Luxembourg**, the General Anti-Discrimination Law prohibits discrimination on all the grounds covered by both directives, as well as nationality, in all the fields covered by the Racial Equality Directive, levelling up the protection on all grounds.
- In **Malta**, the UN Convention on the Rights of Persons with Disabilities Act provides protection against discrimination on the grounds of disability in the fields of social protection, education and access to and supply of goods and services.
- **Romanian** anti-discrimination legislation applies to a large number of criteria going beyond those provided by the directives, and the scope of the Anti-discrimination Law is applicable to areas beyond those spelled out in the directives.
- In **Slovakian** law, the right to healthcare is guaranteed equally to every person irrespective of a large number of personal characteristics, and discrimination in housing is prohibited on the same grounds.
- In **Slovenia**, protection is enjoyed with regard to all of the grounds listed in the directives and other grounds of discrimination in the fields of social protection, social advantages, education and goods and services.
- In **Sweden**, discrimination is prohibited on the grounds of sex, transgender identity or expression, ethnic origin, religion or other belief, disability, age and sexual orientation in essentially all areas of society, ranging from working life, education and social security and healthcare, including social services, state grants for education, social insurance and related benefit systems, to the provision of goods, services and housing.

³⁵⁷ It should however be noted that French law covers 'belonging or not belonging, real or assumed, to a specific religion' as well as 'political and philosophical opinions' as opposed to 'religion or belief' as covered by the Employment Equality Directive.

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

The directives are based on a dichotomy between direct discrimination, which cannot be justified, and indirect discrimination, which is open to objective justification. Most countries have complied with this approach, although there are some states where it may be argued that national law continues to permit the justification of direct discrimination (e.g. **Finland**, **Latvia**,³⁵⁸ and **Slovenia** with regard to the ground of race and ethnicity).

Justification of direct discrimination in Slovenia

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

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

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

3.1 Genuine and determining occupational requirements

Article 4 of the Racial Equality Directive and Article 4(1) of the Employment Equality Directive

'Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to [racial or ethnic origin, religion or belief, age, disability or sexual orientation] shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.'³⁵⁹

All countries surveyed have chosen to include an exception for genuine and determining occupational requirements within their national legislation. The **Netherlands** takes an interesting approach by specifying

³⁵⁸ Latvian legislation in fields such as social security, education and access to goods and services does not distinguish between direct and indirect discrimination, thereby causing confusion regarding the limits of the possibility of justifying (indirect) discrimination. See for instance Article 2¹(1) of the Law on Social Security.

³⁵⁹ The Court of Justice has interpreted this provision in several rulings, recalling notably that it must be interpreted strictly as it provides an exception to the prohibition of discrimination. See, among other decisions, CJEU, Judgment of 13 September 2011, *Reinhard Prigge and Others v Deutsche Lufthansa AG*, C-447/09, ECLI:EU:C:2011:573; and CJEU Judgment of 21 October 2021, *TC and UB v Komisija za zashtita ot diskriminatsia and VA*, C-824/19, ECLI:EU:C:2021:862.

that only *external racial appearances* may constitute a genuine occupational requirement.³⁶⁰ This means that 'race' per se is not regarded as a permissible ground for a given distinction; only physical features (skin colour, hair type, etc.) may form the basis for a distinction, to the exclusion of sociological differences. There is no exception relying specifically on Article 4 of the directives in relation to any other ground.

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

3.2 Employers with an ethos based on religion or belief

Article 4(2) Employment Equality Directive:

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

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

The Employment Equality Directive only allows for differential treatment on the grounds of religion or belief under the provision in Article 4(2), and it cannot be used to justify discrimination on another ground, for example sexual orientation. In 2018, the Court of Justice of the EU was finally provided with the opportunity to silence some of the controversy surrounding this exception, through the Grand Chamber rulings in the cases of

³⁶⁰ Netherlands, General Equal Treatment Act, Article 2(4)(b), as inserted by the 2004 EC Implementation Act.

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*Egenberger*³⁶¹ and *I.R. v. J.Q.*³⁶² Both cases originated in Germany and the Court of Justice essentially concluded that national courts must, in such cases, balance the right of autonomy of churches, which is highly protected in **Germany**, with the right of workers not to be discriminated against on the ground of religion or belief. The courts must thus determine whether the requirement is necessary and objectively dictated – having regard to the ethos of the employer – by the nature of the occupational activity in question or the circumstances in which it is carried out.³⁶³

Not all countries chose to explicitly include the Article 4(2) exception: this is the case in **Finland, France, Portugal, Romania** and **Sweden**. Although the **Romanian** Anti-discrimination Law (Ordinance 137/2000) does not include specific provisions on an exemption for employers with an ethos based on religion or belief to comply with the Employment Equality Directive, the provisions of Article 4 on genuine and determining occupational requirements and Articles 23-26 of Law 489/2006 on Religious Freedom and the General Status of Religious Denominations, on the employment of own employees, can be interpreted to allow ethos or religion-based exceptions. A similar situation exists in **Portugal**. In a similar manner, in **Finland**, the Non-Discrimination Act does not provide for an exception for employers with an ethos based on religion or belief, but the Government proposal cites Article 4(2) and additionally, it states that ‘setting such a requirement cannot lead to discrimination on another ground.’ In contrast, the following states have adopted provisions in national law that seek to rely on Article 4(2): **Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Slovakia, Slovenia** and **Spain**. In **Germany**, both before and after the *Egenberger* decision of the CJEU, national courts have issued first instance decisions indicating that some further clarity is needed with regard to the application of the ethos-based exception.³⁶⁴

Some states have provided exceptions that appear to go beyond the strict terms of the Employment Equality Directive (e.g. **Hungary**), or appear to be too wide (e.g. **Italy** and **Lithuania**). In **Greece**, the relevant provision transposing Article 4(2) stipulates that the law does not affect the right of public or private organisations with an ethos based on religious or other beliefs to demand that their employees act in compliance with that ethos. In practice, for example, the Orthodox Church invokes ethos requirements in order to discriminate against individuals who are homosexual or in a same-sex civil partnership agreement, without linking it to specific occupational requirements but by claiming that their way of life in general is not ‘compatible’ with the teachings of the Church.³⁶⁵ While similar considerations have often been accepted by courts in **Italy**, with regard to teachers in Catholic schools, the Supreme Court found in 2021 that the non-renewal of a teaching assignment

³⁶¹ CJEU, Grand Chamber judgment of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257. See also *European Equality Law Review*, Issue 2018/2, pp. 98-99.

³⁶² CJEU, Grand Chamber judgment of 11 September 2018, *IR v JQ*, C-68/17, ECLI:EU:C:2018:696. See also *European Equality Law Review*, Issue 2019/1, pp. 66-67. On 20 February 2019, the German Federal Labour Court delivered the final ruling in the case, in alignment with the findings of the CJEU. See ruling No. 2 AZR 746/14.

³⁶³ On 25 October 2018, the Federal Labour Court decided the *Egenberger* case in accordance with the CJEU decision (decision No. 8 AZR 501/14). At the time of writing, a constitutional complaint is pending before the Federal Constitutional Court against the Federal Labour Court decision, arguing that the CJEU acted *ultra vires* when handing down the *Egenberger* decision, which should therefore not be applied. For further information and analysis, see Mahlmann, M. (2024), ‘Freedom of religion and EU anti-discrimination law’ in *European equality law review 2024*.

³⁶⁴ See, for instance, Germany, Regional Labour Court of Niedersachsen, 8 Sa 599/19, 12 January 2022, and Regional Labour Court of Hess, 8 Sa 1092/20, 1 March 2022. As mentioned above, such clarity should be provided when the Federal Constitutional Court delivers its ruling in the pending *Egenberger* case.

³⁶⁵ Vevi, E., Samouri, Z. (2018), *The modern view on homosexuality and the civil partnership in Greece*, School of Health and Welfare Professions – Department of Social Work of the Technological Educational Institute of Western Greece.

to a lesbian person was a case of discrimination on the ground of sexual orientation, which was not covered by the exception, since the 'sexual orientation of a teacher ... is surely beyond the religious ethos of the school'.³⁶⁶

3.3 Justification of differences of treatment on grounds of age

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

Article 6(1) Employment Equality Directive:

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

The directive goes on to list examples of differences that could be allowed, including the fixing of minimum conditions of age, professional experience or seniority for access to employment. As a consequence, there remains very substantial uncertainty across the states as to which forms of age discrimination will be treated as justified by national courts. In *Mangold v. Helm*,³⁶⁷ the Court of Justice provided an early indication that directly discriminatory practices need to be carefully scrutinised by national courts. That ruling has been followed by an extensive body of case law from the CJEU related to age discrimination, which has greatly affected national implementation. In this context, it is important to underline that the CJEU has consistently ruled since 2010 that prohibition of discrimination on the grounds of age must be considered as a general principle of EU law to which the directive merely gives expression.³⁶⁸

Several Member States have simply inserted the text of Article 6 of the Employment Equality Directive into national law, including **Cyprus, Greece, Malta, Portugal** and **Slovakia**. Meanwhile, **Finland, France, Germany, Ireland, Italy, Luxembourg, Romania**, and **Slovenia** have provisions that resemble all or part of Article 6.

Ireland: Discriminatory age limit for access to the police force finally abolished

In January 2023, two long-running cases challenging a maximum recruitment age for employment in the Garda Síochána (the police force) were finally concluded.³⁶⁹ The complainants had initially sought to join the police force in 2005 and 2007 respectively but were not considered because they were older than 35 which was the upper age limit set by secondary legislation. After protracted legal proceedings,³⁷⁰ the Workplace Relations

³⁶⁶ Italy, Supreme Court, Judgment of 2 November 2021, No. 31071, *Istituto figlie del Sacro Cuore Gesù v. M.F., Associazione Radicale Certi Diritti, Confederazione Generale Italiana del Lavoro*.

³⁶⁷ CJEU, Judgment of 22 November 2005, *Mangold v Helm*, C-144/04, ECLI:EU:C:2005:709. *Mangold*, and in particular the CJEU's exercise of powers in that case, was (unsuccessfully) challenged before the Federal Constitutional Court in Germany. See the German Federal Constitutional Court, Decision 2 BvR 2661/06 of 6 July 2010.

³⁶⁸ CJEU, Judgment of 19 January 2010, *Seda Küçükdeveci v Swedex GmbH & Co*, C-555/07, ECLI:EU:C:2010:21.

³⁶⁹ Ireland, Labour Court, 25 January 2023, *Commissioner of An Garda Síochána and The Minister for Justice Equality and Law Reform v. Boyle*, EDA234; and *Commissioner of An Garda Síochána and The Minister for Justice Equality and Law Reform v. Fitzpatrick*, EDA233.

³⁷⁰ The proceedings included notably the Grand Chamber CJEU judgment of 4 December 2018 regarding the competence of the then Equal Treatment Tribunal, later Workplace Relations Commission, to disapply national law conflicting with EU law (C-378/17).

Commission had upheld the complaints in 2020, awarding maximum compensation to the complainants.³⁷¹ On appeal, the cases were brought before the Labour Court.

The Court found that the complainants established a *prima facie* case of discrimination as their applications had been rejected solely because of their age. It then assessed whether the age threshold was justified under national law, also considering in detail several CJEU judgments.³⁷² In the absence of relevant scientific or medical evidence, the Court found that the respondent had failed to establish 'that the characteristic of possession of a high level of fitness is inevitably related to a particular age and not found in persons over that age'. The respondent had also not shown that the maximum recruitment age could be justified based on training requirements or the need for a reasonable period of employment before retirement. The complainants were awarded EUR 12 700 compensation, the maximum possible under the legislative provisions in force when the complaints were initially referred. In December 2023, the impugned legislation was amended to raise the recruitment age for An Garda Síochána to 50.³⁷³

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

At the outset, it is important to distinguish between the age at which people become entitled to receive pensions (pensionable age) and the age at which they are required to cease employment (retirement age). Sometimes these are linked in national law. In **Cyprus** and **Malta**, protection against unfair dismissal is lost at pensionable age and in **Hungary** such protection is reduced. In **Latvia**, the Constitutional Court has held that it is not disproportionate to require civil servants to retire at pensionable age.³⁷⁴

The approach in national law to retirement age can be loosely grouped into three categories. First, there are countries where national law does not impose any compulsory retirement age, nor does it remove protection from unfair dismissal for workers after a certain age. In general, this includes **Estonia**,³⁷⁵ **Poland**,³⁷⁶ **Slovakia**³⁷⁷ and **Slovenia**.³⁷⁸ In **Denmark**, some collective agreements and individual employment contracts

³⁷¹ Ireland, Workplace Relations Commission, *Boyle v. Commissioner of An Garda Síochána and The Minister for Justice Equality and Law Reform*, DEC-E2020-003, 5 October 2020; and *Fitzpatrick v. Commissioner of An Garda Síochána and The Minister for Justice Equality and Law Reform*, DEC-E2020-002, 5 October 2020.

³⁷² Notably C-229/08, *Wolf v. Stadt Frankfurt am Main*, C-416/13, *Vital Perez v. Ayuntamiento de Oviedo*, and C-304/21, *VT v. Ministero dell'Interno*.

³⁷³ Ireland, S.I. No. 611/2023 - Garda Síochána (Admissions and Appointments) (Amendment) Regulations 2023, <https://www.irishstatutebook.ie/eli/2023/si/611/made/en/print>.

³⁷⁴ Latvia, Constitutional Court, Case No. 2003-12-01, Decision of 18 December 2003.

³⁷⁵ In Estonia, there are exceptions for a small number of categories of military and law-enforcement officials as well as for some specific professions such as judges.

³⁷⁶ In Poland, there are exceptions for judges, public prosecutors, court enforcement officers and notaries public.

³⁷⁷ In Slovakia, there are some de facto exceptions for certain professions in the public sector.

³⁷⁸ In Slovenia, there is a mandatory retirement age for judges (70). In addition, in December 2020, legislation was adopted to allow employers to unilaterally terminate the employment of a person who meets the conditions for the retirement pension. On 18 November 2021, the Constitutional Court ruled that this legislation was unconstitutional, without ruling specifically on its allegedly discriminatory nature (see decision No. U-I16/21, U-I-27/21).

still contain retirement ages, but no new such agreements or contracts can be entered into since 1 January 2016.³⁷⁹

In a second group of states, retirement ages are specified for public sector employees only. Mandatory public sector retirement can thus be imposed at a certain age without any possible extension in countries such as **Czechia** (70),³⁸⁰ **Greece** (67) and **Ireland** (70).³⁸¹ In other Member States however, mandatory retirement is imposed at a certain age in the public sector, although it can be postponed for a limited number of years. This is the case in **Austria** (65, extendable until 70), **Belgium** (65, extendable), **France** (67, extendable until 70), **Hungary** (65, extendable until 70),³⁸² **Latvia** (65, extendable) **Lithuania** (65, extendable until 67), **Luxembourg** (65, extendable until 68) and **Portugal** (70, extendable until 75). The circumstances allowing such an extension vary, with a simple mutual agreement between the employer and the employee being sufficient in some countries such as **Lithuania** and **Luxembourg**, while an 'important operational reason' (**Austria**) or 'a justified public interest' (**Portugal**) can be required in other countries. In **Ireland**, in the private sector, retirement ages are generally provided for in employment contracts, although any mandatory retirement age must be capable of objective justification both by the existence of a legitimate aim and evidence that the means of achieving that aim is appropriate and necessary.³⁸³ In **Cyprus**, different retirement ages apply to different public-sector employees, depending on the profession, the rank and the year of joining the service.³⁸⁴ The Council of Ministers may require a public sector employee to either retire before the statutory age or to remain in service after the imposed retirement age, depending on the public interest.

Finally, there are states where national law permits the compulsory retirement of employees, whether in the public or private sector, because they have reached a certain age: **Bulgaria**, **Croatia** (65),³⁸⁵ **Finland** (68-70), **Germany** (67),³⁸⁶ **Italy** (70), **Malta** (65 – being phased in), the **Netherlands**,³⁸⁷ **Romania** (63/65),³⁸⁸ **Spain** (65/68)³⁸⁹ and **Sweden** (69).³⁹⁰ In **Bulgaria**, although there is no generally applicable compulsory retirement age (other than in certain sectors of civil service), employers may, at their discretion, dismiss their employees

³⁷⁹ Denmark, Act No. 1489 of 23 December 2014. In addition, the Act on Civil Servants imposes retirement at the age of 70 for certain civil servants working within the judiciary as well as for priests (Sections 34(2) and 43(2) of the Consolidated Act No. 488 of 6 May 2010 as amended).

³⁸⁰ Only applicable for state employees.

³⁸¹ In Ireland, the statutory retirement age is dependent on the date of recruitment. For people who joined the public service before 1 April 2004 or since 1 January 2013, the statutory retirement age is generally 70. Public servants recruited between April 2004 and December 2012 have no compulsory retirement age. Distinct compulsory retirement ages are set for members of An Garda Síochána (police), the Defence Force, firefighters and prison officers.

³⁸² In Hungary, there are specific regulations regarding the retirement age and the possibility to postpone retirement in different sections of public employment.

³⁸³ Ireland, S.I. No. 600/2017 - Industrial Relations Act 1990 (Code of Practice on Longer Working) (Declaration) Order 2017, 20.12.2017.

³⁸⁴ Cyprus, Law on Pensions No 97(I)/1997 as amended, Article 12.

³⁸⁵ All employment contracts covered by the Labour Act, as well as civil service contracts. Different retirement ages apply in other areas of the public sector.

³⁸⁶ In Germany, there is a general mandatory retirement age for civil servants at the age of 67, maximum age limits for a number of specific categories of public servants, both on federal and Land level, as well as an authorisation for private sector employers to fix retirement at the federal pensionable age of 67 (being phased in), through both collective agreements and individual employment contracts.

³⁸⁷ In the Netherlands, compulsory retirement is allowed when the worker reaches pensionable age or a contractually agreed retirement age. However, employees who remain in employment beyond that age enjoy protection from unfair dismissal, including based on age discrimination.

³⁸⁸ The retirement age is 63 for women and 65 for men.

³⁸⁹ In Spain, retirement can be imposed at the age of 65 (extendable until 70) in the public sector. In the private sector, collective agreements can stipulate imposed retirement ages of 68 or above, if certain criteria are met.

³⁹⁰ In Sweden, the retirement age is not imposed by law but may be imposed by the employer by contract, collective agreement or unilaterally, at the age of 69 (as of 2023).

who have acquired the right to an old-age pension.³⁹¹ In countries such as **Croatia, Finland, Italy, Malta, Romania** and **Spain** (public sector), retirement can be postponed beyond the statutory retirement age, subject to an agreement between the employer and the employee.

In 2011, the CJEU examined the compatibility with the Employment Equality Directive of a collective agreement providing for the automatic termination of employment contracts at pension age in the case of *Prigge and Others v Deutsche Lufthansa*.³⁹² The Court found the relevant provision of the collective agreement to constitute direct discrimination on grounds of age, and that the measure could not be justified under the exception provided in Article 2(5) of the directive regarding public security. The Court also determined that possessing physical capabilities as an airline pilot can fall within the meaning of Article 4(1) of the directive on genuine and determining occupational requirements, and that such capabilities may diminish with age. However, although the objective relating to airline safety therefore was legitimate within the meaning of Article 4(1), the social partners had imposed a disproportionate requirement as both national and international legislation authorised pilots to carry out their professional activities until the age of 65, under certain conditions, while the collective agreement at hand provided for the automatic retirement of airline pilots at the age of 60. Finally, the Court proceeded to the justification test under Article 6 of Directive 2000/78/EC and ruled that air traffic safety did not constitute a legitimate aim related to employment policy, labour market and vocational training.

Another key issue is the justification with regard to age, and national practice varies greatly in this area. Article 6(1)(b) of the Employment Equality Directive expressly allows laws that seek to promote the vocational integration or protection of young people, older workers and persons with caring responsibilities. Such laws are very common. Almost every state has some legislation or practices that aim to protect and promote young employees, or to ensure a balance of age in the workforce. In **Denmark**, the Act on the Prohibition of Discrimination in the Labour Market etc. provides a general exception allowing collective agreements to establish different conditions of employment, remuneration and dismissal for employees aged below 18. In 2013, the Danish Supreme Court found that this provision is in compliance with the Employment Equality Directive, as it constitutes an appropriate means to ensure the integration of young employees in the labour market.³⁹³ Confusion around the justification issue is clearly noticeable throughout the EU, in particular as regards compulsory retirement and maximum age limits, and domestic case law also shows that national jurisdictions are not always consistent in finding discrimination.

3.4 Armed forces and other specific occupations

Article 3(4) Employment Equality Directive

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

³⁹¹ The ages for acquiring an old-age pension vary depending notably on the number of years of service.

³⁹² CJEU, Judgment of 13 September 2011, *Prigge and Others v Deutsche Lufthansa AG*, C-447/09, ECLI:EU:C:2011:573. In addition, two referrals for preliminary rulings are pending before the CJEU ([C-349/23 \(Zetschek\)](#) and [C-408/23 \(Anwaltsnotarin\)](#)).

³⁹³ Danish Supreme Court, Case 185/2010, decision of 14 November 2013.

A few states have included an explicit exemption for the armed forces in relation to both age and disability: **Cyprus, Denmark**,³⁹⁴ **France, Greece, Ireland, Italy, Malta** and **Slovakia**. In **Germany**, the Equal Treatment of Soldiers Act covers all grounds except for age and disability. Similarly, the specific anti-discrimination provisions contained in legislation regulating the security and armed forces in **Czechia** do not cover age and disability as protected grounds. In **Ireland**, the Workplace Relations Commission ruled in 2021 that Section 37(5) of the Employment Equality Act (transposing Article 3(4) of the Directive) afforded the respondent, the Irish Naval Service, a ‘complete exemption’ from the prohibition of age discrimination.³⁹⁵ The **Danish** Institute for Human Rights has argued that the specific exception for the armed forces is unnecessary and should be abolished, as the same aim could be reached through application of the exception for genuine and determining occupational requirements.³⁹⁶

Other countries have simply maintained age and capability requirements in their regulations on the armed forces without expressly declaring an exemption from the equal treatment principle, e.g. **Estonia, Hungary, Latvia, Lithuania, Poland, Portugal, Romania** and **Spain**.³⁹⁷ Military service requires candidates not to be older than a certain fixed age in, for instance, **Slovenia**, while the limitation in the **Dutch** Age Discrimination Act was only of temporary nature. In several states, the exceptions seem to be wider than provided for in Article 3(4). For example, **Irish**³⁹⁸ law provides exemptions on the basis of age in respect of the police, the prison service or any emergency service.

3.5 Nationality

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

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

In addition to the protected grounds covered by the two directives, several Member States have included nationality as an expressly protected ground in national anti-discrimination law, including **Belgium, Bulgaria, Finland, Italy, Lithuania**,³⁹⁹ **Luxembourg**, the **Netherlands, Portugal** and **Romania**. In **Spain**, the Organic Law on the Rights and Freedoms of Foreigners in Spain and their Social Integration (OL 4/2000) establishes the principle of non-discrimination and covers direct and indirect discrimination by nationality (as in citizenship), although the definitions are not similar to those used in the directives. The terms ‘race’ or ‘ethnic origin’ are considered to include nationality in countries such as **Ireland**, where nationality is explicitly listed as an aspect of the race ground, or **Sweden**, where the ground of ethnicity explicitly covers ‘national or ethnic origin, skin

³⁹⁴ The Danish Act on the Prohibition of Discrimination in the Labour Market etc. stipulates that the Ministry of Defence can make exceptions for the armed forces in relation to age and disability. The ministry has made use of this option (Executive Order No 350 of 30 March 2012).

³⁹⁵ Ireland, Workplace Relations Commission, *Irwin v Irish Defence Forces Naval Service*, ADJ-00031786, 17 August 2021.

³⁹⁶ Denmark, Danish Institute for Human Rights (2023), ‘The protection against discrimination in the armed forces should be strengthened’, August 2023.

³⁹⁷ See, for instance, Spain, Supreme Court (Contentious-Administrative Chamber), decision of 15 March 2023, No. 335/2023. The case concerned an age limit to access the Basque Country Police and the Local Police.

³⁹⁸ Ireland, Employment Equality Acts 1998-2021, Section 37(4). See also textbox above, p. 79-80.

³⁹⁹ In Lithuania, ‘citizenship’ is a protected ground only for citizens of the EU and EEA countries and their family members.

colour or any similar circumstance’, which essentially includes citizenship. In **Latvia**, nationality may be subsumed under ‘other circumstances’ and the distinction is not clear in case law between grounds such as ‘nationality’, ‘national origin’ and ‘ethnic origin’.⁴⁰⁰ Finally, in **France**, case law has confirmed that the explicitly protected ground of ‘belonging to a nation’ must be interpreted to cover citizenship.⁴⁰¹ In addition, there are several countries where the lists of protected grounds include the term ‘nationality’ but where this term is not considered to mean ‘citizenship’ but rather ‘national affiliation’ or similar concepts. This is the case for instance in **Czechia, Poland** and **Slovakia**.

The Netherlands: Court decision related to the ‘Child benefits scandal’

In 2020, it became known that the Tax Agency had wrongly accused thousands of families of fraud in relation to childcare benefits and forced them to repay large sums of money, in many cases resulting in huge debts and severe suffering, including many children being wrongly placed in foster care. Parents affected by this scandal who have dual nationality have also reported differential treatment as well as discriminatory language by Agency employees.⁴⁰² In the same year, the Data Protection Authority (DPA) established that people with dual nationality had been unlawfully targeted by the Tax Agency’s fraud investigations, and that this amounted to discrimination (only) on grounds of nationality.⁴⁰³ However, a majority of dual nationals have a ‘non-western’ migration background, mostly either Turkish or Moroccan, which is why it can be argued that targeting persons with dual nationality may have amounted to indirect discrimination on the ground of racial or ethnic origin.

In 2022 the Court of Appeal rejected – implicitly – the argument that the use of nationality criteria did not (necessarily) entail discrimination on the ground of racial or ethnic origin and found that a reasonable suspicion of (criminal) discrimination could be established. However, it concluded that the Tax Agency and its civil servants had carried out their actions assuming them to be in the public interest and not for personal gain, and they could therefore rely on state immunity and could not be held criminally liable for the alleged acts.⁴⁰⁴ In 2023 however, the Netherlands Institute for Human Rights issued its opinions in the first three cases directly originating in the benefits scandal. In each case, the Institute found that there had been indirect discrimination of parents with a migration background, i.e. on the ground of racial origin.⁴⁰⁵

A number of Member States have specific exclusions from the scope of their implementing legislation that apply to discrimination based on nationality: **Cyprus, Greece, Italy, Luxembourg** and **Malta**. In **Cyprus**, legislation adopted in 2023 prevents the naturalisation of third country nationals who entered Cyprus via an illegal point of entry, among many other criteria. Although the provision appears neutral, it may exclude from citizenship those persons born to a parent from Türkiye who migrated to and settled in Cyprus in the post-war era.

⁴⁰⁰ See, for instance, Latvia, Riga City Court, case No C29353322, case archive No C – 02188 – 23/8, of 28 November 2023; and Jelgava Court, [Case No. 15066406](#), of 25 May 2006.

⁴⁰¹ See for instance, France, Court of Cassation, Criminal Chamber, No. 01-85650, of 17 December 2002.

⁴⁰² Netherlands, Tweede Kamer 2020-2021, 35 510, no. 4, p. 13.

⁴⁰³ Netherlands, Tax Office (2020) *The use of nationality when processing child benefit applications*, July 2020.

⁴⁰⁴ Netherlands, Court of Appeal of the Hague, judgment of 13 July 2022, ECLI:NL:GHDHA:2022:1301.

⁴⁰⁵ Netherlands, NIHR Opinions Nos 2023-101, 2023-102 and 2023-103 of 2 October 2023.

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

Article 2(5) of the Employment Equality Directive

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

Several states have adopted exceptions relying on Article 2(5), including **Cyprus, Estonia, Greece, Ireland, Italy, Malta** and **Poland**. In **Croatia**, the Anti-discrimination Act contains an exception for conduct aimed at ‘preserving health and preventing criminal acts and misdemeanours’, stipulating that such conduct cannot lead to direct or indirect discrimination on the grounds of race or ethnic origin, skin colour, religion, gender, ethnic or social origin, sexual orientation or disability.⁴⁰⁶ In **Portugal**, even though the laws implementing the directives do not include any specific exceptions concerning public security, these exceptions may be considered implicit. A similar situation exists in **Hungary**, where national law does not include an explicit exception, but these grounds could be referred to under the general exempting clause of the Equal Treatment Act. In **Greece**, the exception also covers the ground of racial or ethnic origin, indicating a potential breach of the Racial Equality Directive which does not contain a provision similar to Article 2(5) of the Employment Equality Directive. Finally, in **Austria**, the Equal Treatment Act allows for a justification of differentiation based on ethnicity in advertising for housing, in cases where the provision of housing constitutes a particularly close or intimate relationship of the parties or their relatives. Although this is not explicitly stated, it could be considered as an exception aiming to protect the right to family life of others. Only advertising is covered by the exception, however, as opposed to the provision of housing itself.⁴⁰⁷

3.7 Other exceptions

In some states, national legislation includes exceptions that are not expressly specified in the directives. Some of these may be incompatible with the directives, but it is difficult to be certain in advance of case law testing their scope. For example, in **Lithuania**, the Equal Treatment Act provides exceptions that relate to knowledge of the state language, participation in political activities and enjoyment of different rights on the basis of citizenship. In **Luxembourg**, insurance contracts are excluded from the material scope of the prohibition of discrimination.

The **Hungarian** Equal Treatment Act and the **Irish** Equal Status Act (ESA) also contain a number of exceptions and exemptions to the non-discrimination rule that could be problematic with regard to the directives. With regards to the latter, any action required by or taken under ‘any enactment or order of a court’ is exempted from the prohibition of discrimination under the ESA. The word ‘enactment’ is not defined however, and a 2021 judgment of the High Court suggests that policy or guidance adopted by a public body that is expressly derived from legislation, without however forming part of it, may be covered by the exemption.⁴⁰⁸

⁴⁰⁶ Croatia, Anti-discrimination Act, Article 9(2)(1).

⁴⁰⁷ Austria, Equal Treatment Act, Section 36.

⁴⁰⁸ Ireland, High Court, *A.B. v Road Safety Authority*, [2021] IEHC 217, 25 March 2021.

In **Romania**, Article 2(8) of the Anti-discrimination Law states that its provisions cannot be interpreted as limiting freedom of expression and the right to access information. However, there are no guidelines on balancing freedom of expression and the right not to be discriminated against, the case law of the equality body and of the courts is not coherent, and there are reported cases in which misinterpretation of this exception has led to harassment not being penalised.

3.8 Positive action

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

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

In most countries, anti-discrimination legislation stipulates explicitly that positive action measures are permitted in relation to some or all grounds, although the specific scope and requirements vary. In **Denmark** for instance, individual employers cannot adopt positive action measures in the labour market as this possibility is reserved to the legislature and Government ministers through public projects.⁴⁰⁹ In **Estonia**, the law indicates that the Equal Treatment Act ‘does not prejudice the maintaining or adoption’ of positive action measures, without specifying who could adopt such measures and under what circumstances. In 2019, the **Belgian** Government adopted a Royal Decree setting the conditions for employers who wish to put in place positive action measures for the benefit of underrepresented groups.⁴¹⁰ As of January 2024, five such positive action measures have been put in place at federal level, targeting women, persons of certain ethnic origins or refugees. In the **Netherlands**, positive action schemes including narrowly tailored preferential treatment are only possible with respect to the grounds of sex, race and disability, as these are considered to be the only grounds that are causing ‘structural disadvantages’⁴¹¹ in society. Similarly, **Slovakian** law explicitly permits positive action, under the term ‘temporary equalising measures’, only for the grounds of racial or ethnic origin, age and disability. Entities that adopt such measures are required to monitor and evaluate them continuously and to provide regular information to the national equality body. In 2023, two new such measures were registered in the context of a project relating to Roma inclusion in employment, involving preferential employment in the public sector and internships for young Roma persons.

The scope for positive action is often a matter clarified through case law. In **Cyprus**, the Supreme Court clarified in 2015 that the principle of equality provides protection against arbitrary differentiations but does not exclude reasonable ones, which are allowed as a result of the essential nature of the circumstances.⁴¹² In **Croatia**, the most significant legal discussion on positive action related to measures intended to ensure the representation of ethnic minorities when employing civil servants and judges. In **Bulgaria**, the case law is currently ambivalent with regards to positive action measures, notably following a court decision from 2018, confirmed on appeal in

⁴⁰⁹ A specific exception is made for positive action measures for older persons and persons with disabilities. See Act on the Prohibition of Discrimination in the Labour Market etc., Section 9(3).

⁴¹⁰ Belgium, Executive regulation dated 11.02.2019, *Official Journal* 01.03.2019.

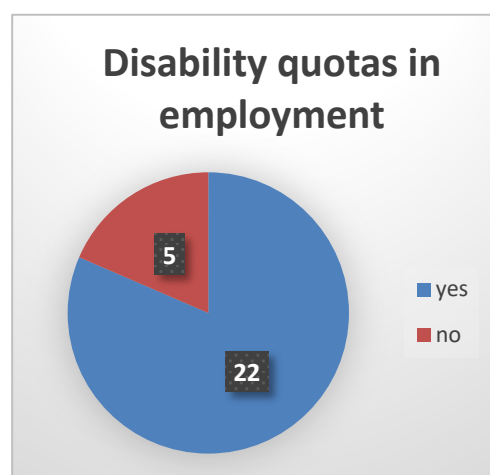
⁴¹¹ Structural disadvantage is defined as ‘suffering disadvantage in several fields at the same time which are not temporary in nature.’ (Tweede Kamer, 2001-2002, 28 169, p. 17.)

⁴¹² Cyprus, Supreme Court, *Costas Tsikas et al v. Republic of Cyprus through the Committee of Educational Service*, Ref. Nos 1519/2010 and 1520/10, 03.09.2015.

2020, ruling that scholarships reserved for Roma pupils were directly discriminatory against non-Roma people.⁴¹³ In **Romania**, the national equality body held in 2021 that positive action measures are not only allowed but required with regard to students with special educational needs.⁴¹⁴ In the **Netherlands**, the equality body has issued several opinions clarifying the legal framework on positive action measures. For example, in 2022 it held that an employer is not always obliged to provide statistical data to substantiate the underrepresentation of particular groups in the workforce when relying on the positive action exception for racial or ethnic origin.⁴¹⁵

Several countries have introduced legal duties to promote equality. In some countries, these duties take the form of broad obligations to advance equality contained in national constitutions (e.g. **Greece** and **Spain**). In other countries, non-discrimination law places a specific duty on some or all public authorities, for example in **Bulgaria**, where all authorities are required to take measures whenever necessary to equalise opportunities for disadvantaged groups – prioritising measures for victims of multiple discrimination – and to guarantee participation by ethnic minorities in education.⁴¹⁶ In practice however, no such measures are known to exist. Similarly, in **Spain**, the comprehensive equality law 15/2022 stipulates that in order to give effect to the constitutional right to equality, public authorities must adopt positive action measures and promote policies to foster equal treatment and real and effective non-discrimination in relations between individuals. In **Finland**, the Non-Discrimination Act obliges all public authorities as well as private organisations using public power or performing public administrative tasks, providers of education and those employers who employ more than 30 employees, to take steps to foster equality.⁴¹⁷ **Swedish** anti-discrimination law requires employers as well as education providers to carry out continuous goal-oriented work with regards to all grounds protected by Swedish

law. In **Lithuania**, public and private entities with more than 50 employees have an obligation to adopt measures for promoting equality policies in the workplace.⁴¹⁸



Disability is the ground for which the most positive action measures are already in place. These can be found in the great majority of countries. There is, for example, a quota system for the employment of persons with disabilities in **Austria, Belgium** (in the public sector), **Bulgaria, Croatia, Cyprus** (in the wider public sector), **Czechia**,⁴¹⁹ **France, Germany, Greece,**

⁴¹³ Bulgaria, Supreme Administrative Court, Decision No. 458 of 13.01.2020 in case No. 5375/2019, confirming the decision of Sofia City Administrative Court No. 7471 of 10.12.2018 in case No. 9628/2018.

⁴¹⁴ Romania, National Council for Combating Discrimination, 21 July 2021, *Zane Andrei v. the Bucharest University and the Ministry of Education*, Decision 561 in case No. 1037/2020.

⁴¹⁵ Netherlands Institute for Human Rights, Opinion No. 2022-40 of 28 April 2022. For another recent case, see NIHR Opinion No. 2023-94 of 30 August 2023

⁴¹⁶ Bulgaria, Protection Against Discrimination Act, Article 11.

⁴¹⁷ Finland, Non-Discrimination Act (1325/2014), Section 6.

⁴¹⁸ Lithuania, Labour Code, 2016, No. XII-2603, Article 26..

⁴¹⁹ In Czechia, employers with more than 25 employees have to implement one of three types of measures: employing at least 4 % of employees with disabilities; commissioning goods or working programmes from employers who employ at least 50 % of employees with disabilities; or making payments to the state budget. The system has been criticised for its lack of effectiveness as most employers choose to make payments to the state budget.

Hungary,⁴²⁰ **Ireland, Italy, Lithuania** (in the public sector),⁴²¹ **Luxembourg, Malta**, the **Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia** and **Spain**. However, alternatives to employing persons with disabilities, such as paying a fee or tax, are almost always offered. In **Ireland**, a policy objective of the Government is for 3 % of employees in the civil and public service to be persons with disabilities, although no sanctions are in place if the target is not achieved. Nevertheless, the target was met in 2011 and has been slightly exceeded since then.⁴²² The Irish Government has undertaken to progressively increase the statutory target towards 6 % by 2024.⁴²³ Similarly, in the **Netherlands**, the Government set specific targets in 2015 to encourage employers to employ persons with disabilities. These targets apply to public and private sector employers with more than 25 employees and until 2022, a ‘quota charge’ was imposed when employers were not able to comply with these requirements. Since 2022, the quota charge has been deactivated and a proposal to revise and simplify the quota system is being discussed.⁴²⁴ In **Portugal**, different quotas for the private and public sectors were established in 2019, with a four-year transition period for the private sector until February 2023. The available data indicates an increase in the number of workers with disabilities although the quotas have not been reached.⁴²⁵

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

⁴²⁰ In Hungary, the quota covers persons with ‘an altered ability to work’, i.e. persons whose ‘health status’ is assessed by the rehabilitation authority to be 60 % or less. This category includes, but is not limited to, persons with disabilities within the meaning of the Employment Equality Directive.

⁴²¹ In Lithuania, a quota requesting public bodies and public sector companies with more than 25 employees to employ at least 5 % persons with disabilities was only imposed from 1 January 2024.

⁴²² Irish National Disability Authority (2022) *Report on compliance with Part 5 of the Disability Act 2005 for 2021*.

⁴²³ Government of Ireland (2015) *Comprehensive Employment Strategy for People with Disabilities 2015-2024*.

⁴²⁴ Netherlands, Act of 13 November 2019, Official Journal (*Staatsblad*) 2019, 440.

⁴²⁵ See Disability and Human Rights Observatory (2023) ‘Persons with Disabilities in Portugal – Human Rights Indicators 2023’ (7th edition).

4 Access to justice and effective enforcement

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

4.1 Judicial and administrative procedures

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

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

In no state are discrimination disputes resolved purely in the courts. The vast majority of states combine judicial proceedings – which may be civil, criminal, labour and/or administrative – with non-judicial proceedings. Mediation or conciliation proceedings may be available as a mandatory part of the court proceedings, as in **Austria** (in cases concerning disability), **Italy**, **Spain** and **Sweden**, or separately, as for example in **Croatia**, **Estonia**, **Finland**, **Germany**, **Hungary**, **Malta**, **Poland**, **Slovakia** and **Slovenia**, or both, as in **Portugal**.⁴²⁶ In **Sweden**, when a trade union is representing one of its members, negotiations must take place with the employer before a case is brought to the Labour Court, with a view to reaching a settlement agreement. Some national proceedings are exclusively for private or public-sector complaints, while others deal with both. In **Belgium**, mediation is available either in criminal proceedings involving an offence punishable by imprisonment of a maximum of two years, or in civil proceedings where it can be ordered by the judge.

4.1.1 Available procedures

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

Labour inspectorates are charged with enforcing employment law, including equal treatment provisions, in **Czechia**, **Finland**, **France**, **Italy**, **Latvia**, **Poland**, **Portugal**, **Slovakia**, **Slovenia** and **Spain**. In **Lithuania**, individuals have the option to directly apply to labour dispute commissions⁴²⁷ or courts. The commissions have the power to award the payment of salaries, compensation and material and immaterial damages in cases of unfair dismissal, but can also function as mediators. Similarly, in **Estonia**, labour dispute committees have an important role in resolving labour disputes, including those involving discrimination. In **Hungary**, **Slovakia**,

⁴²⁶ In Portugal, conciliation is a mandatory part of labour court proceedings, while mediation is available as an option in all areas, including for some criminal offences.

⁴²⁷ Labour dispute commissions are composed of three members: a chairman (state official, appointed by the Labour Inspectorate), a representative of an employer organisation and a representative of a trade union.

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Slovenia and **Spain**, for instance, victims can also submit complaints to other inspectorates, such as in the areas of education or consumer protection. In **Ireland**, the previous specialised equality tribunal was dismantled in 2015, when its functions were merged with those of all bodies involved with workplace relations into the Workplace Relations Commission (WRC).⁴²⁸ This body, which specialises in workplace-related conflicts and issues, also hears discrimination cases beyond employment. It is problematic, however, that cases of alleged discrimination in relation to licensed premises (bars, etc.) are exempted from the mandate of the WRC and are instead adjudicated by the District Court, where proceedings are more costly and complex than before the WRC. This has an impact notably on the Traveller community whose members often face discrimination in access to licensed premises.⁴²⁹ It also risks leading to situations where neither the WRC nor the District Court recognises its jurisdiction, which happened in two cases in 2023.⁴³⁰

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

Some countries propose conciliation, such as **Latvia** where the Ombudsman's Office examines and reviews complaints of human rights violations and attempts to resolve conflicts through conciliation, which, if unsuccessful, is followed by non-binding opinions. Similarly, the **Estonian** Chancellor of Justice may provide an impartial conciliation procedure upon application by victims of discrimination in the private sphere. If approved, the conciliation agreement is legally binding for the parties. The Chancellor has only made use of this procedure three times since 2012, however, and in none of those cases was the agreement approved. In cases of discrimination in the public sphere, the Chancellor can conduct ombudsman-like procedures with non-legally binding results. In **Malta**, depending on the nature of the complaint, victims can turn to several specialised bodies, including the Industrial Tribunal, the National Commission for the Promotion of Equality, the Commission for the Rights of Persons with Disability and the UNCRPD Redress Panel, which was established in 2021. Additionally, the Mediation Act encourages and facilitates the settlement of disputes through mediation by the Malta Mediation Centre. In **Finland**, the Non-Discrimination and Equality Tribunal may confirm a settlement between the parties or prohibit the continuation of discriminatory conduct. It may also order a party to fulfil its obligations by imposing a conditional fine. The Non-Discrimination Ombudsman may issue statements on any discrimination case submitted to him/her, lead conciliation proceedings, where necessary forward the complaint to the pertinent authorities, if agreed to by the complainant, and provide legal assistance. In a few countries, the specialised equality bodies can impose sanctions, such as the **Bulgarian** Protection Against Discrimination Commission or the **Portuguese** High Commissioner for Migrations, or can even award compensation to victims, such as the **Danish** Board of Equal Treatment.⁴³¹ In **Cyprus**, although the equality body also has the power to examine complaints and issue binding decisions as well as non-binding opinions, it has only issued one binding decision since its creation, generally favouring the option of either attempting to mediate between the parties or to issue non-binding opinions.

⁴²⁸ Ireland, *Workplace Relations Act 2015*, No. 16, of 20 May 2015.

⁴²⁹ For instance, six complaints on the Traveller ground were dismissed by the WRC in 2023 because it did not have jurisdiction. See, for instance: *Stokes v. The Brass Fox*, ADJ-00040008, 14 February 2023.

⁴³⁰ See, for instance, Irish Workplace Relations Commission, *Stokes v. Murtagh Bars Limited*, ADJ-00036951, 5 May 2023.

⁴³¹ Further information regarding sanctions can be found in Section 4.5 below.

Since January 2021, the mandate of the previous **Hungarian** equality body, the Equal Treatment Authority, is exercised by the Ombudsman (Commissioner for Fundamental Rights). The Ombudsman can thus act either under the equality body mandate, i.e. by taking action against any discriminatory act and imposing severe sanctions on the perpetrators, or under its traditional ombudsman mandate in the public sphere.⁴³² The **Austrian** Equal Treatment Commission and the **Netherlands** Institute for Human Rights can both issue non-binding opinions. These do not preclude applicants from seeking binding court judgments on the same case, in which case the courts are obliged to take the opinion into consideration and give clear reasons for any dissenting decisions. In **Romania**, a victim of discrimination or any interested NGO can file a complaint with the National Council for Combating Discrimination and/or file a complaint with a court of law. The remedies before the national equality body and civil courts are not mutually exclusive, and the claimant can choose to use them simultaneously, which in practice creates difficulties for the parties, the equality body and the judiciary. Moreover, an action before the equality body does not suspend the time limit for filing a civil case.

There are special court procedures in a few countries. **Spain** has an emergency procedure in the social (labour) courts for actions for the defence of fundamental rights and civil liberties, while claimants in **Belgium** may request an injunction imposing immediate cessation of a discriminatory practice. In **Poland**, different compensation complaint procedures are available for victims of discrimination under the Labour Code⁴³³ (before the Labour Court) and under the 2010 Act on Equal Treatment (before the civil courts). In **Sweden**, since 2017 complaints of violation of the Discrimination Act in respect of education can be lodged with the Higher Education Appeals Board. However, the board lacks the power to issue any kind of discrimination compensation order and can only require the correction of the discriminatory act or omission.⁴³⁴

4.1.2 Obstacles to effective access to justice

Although the number of complaints submitted to courts or equality bodies has been gradually rising, the volume of case law on discrimination in most countries is still relatively low, which may well point towards real and perceived barriers to justice.

First, there are concerns that the complexity of discrimination law may be deterring victims of discrimination from bringing cases in, for instance, **Austria** and **Luxembourg**. Skilled, experienced assistance for victims can help to counter this, but such aid remains limited in availability (in contrast to the professional advice and representation usually available to respondents) and too costly for many victims. In most countries, legal representation is either mandatory or – at least – necessary in practice. The availability of free legal aid constitutes a core requirement to ensure access to justice for victims of discrimination. In practice however, there are many countries where access to free legal aid is either very limited or dependent on complex procedures (e.g. **Croatia**, **Hungary**, **Lithuania** and **Slovakia**). However, in **Greece**, as of 2023, free legal aid is available to all persons with a disability of 67 % or above, irrespective of their level of income.⁴³⁵ An additional

⁴³² Claimants need to specify whether they want their complaint to be handled according to the equality body procedures or those for the general Ombudsman mandate.

⁴³³ Poland, Labour Code, Article 183d.

⁴³⁴ Sweden, Act 2017:282 Changing the Discrimination Act, adopted 13.04.2017.

⁴³⁵ Greece, Article 23, para 3A of Law 5023/2023 on 'Principle of equal treatment regardless of disability or chronic illness, updating the terminology of the Civil Code, the Code of Civil Procedure, the Criminal Code, the Code of Criminal Procedure, the Code of

factor that discourages victims from initiating legal action is the level of court fees in some countries, such as in **Czechia**, **Greece** (notably when the respondent is a public administration), and **Slovakia**. Similarly, the **Belgian** equality body Unia has highlighted that it is very difficult for claimants who are not eligible for legal aid to bring a claim before the courts due to numerous obstacles, including very high costs and the risk of paying a procedural indemnity if the case is dismissed.⁴³⁶ The system of ordering the losing party to pay the winning party's legal fees and expenses is also particularly detrimental in some countries. In **Austria**, for instance a claimant who had won their discrimination case on the merits in 2022 was then ordered to pay 50 % of the respondent's costs which, together with the claimant's own costs, amounted to more than the amount of compensation awarded.⁴³⁷ In **Sweden**, claimants who have lost their cases of alleged discrimination are sometimes ordered to pay a total of more than EUR 20 000 in court fees to the winning party.⁴³⁸ To avoid paying such sums, individual victims, as well as NGOs representing them, generally bring discrimination complaints as small claims cases, which has serious consequences, notably in respect of the remedies available. While the courts may decide in a discrimination case that each party will bear its own costs, this is not a common practice.⁴³⁹ In **Bulgaria**, while the procedures under the Protection Against Discrimination Act are explicitly exempt from all costs, both state fees and expenses, this provision is not always respected in practice as the losing party is generally ordered to pay the winning party's fees and expenses.⁴⁴⁰ The case law of the Supreme Administrative Court is not settled with regard to this practice, causing legal uncertainty.⁴⁴¹

Another potential barrier is posed by short time limits for bringing a case, as the directives leave it to the national legislature to set any time limits it deems appropriate. Short time limits may be particularly problematic for persons with literacy difficulties, inadequate command of the state's official language or disabilities. In the **Netherlands**, an applicant who wishes to contest the lawfulness of the termination of an employment contract (discriminatory dismissal or victimisation dismissal) under civil law must do so within two months of the termination of the employment contract. Under **Germany's** General Equal Treatment Act there is a time limit of two months for claiming material or non-material damages in labour or civil law, beginning either with the receipt of the rejection of a job application by the applicant or with the knowledge of the disadvantageous behaviour. In **Ireland**, the Equal Status Acts 2000-2018 require a complainant to notify the respondent in writing within two months of the date of the incident. The three-month time limit in **Greece** is very strict, regardless of the sector, while in **Latvia** the three-month time limit to bring a discrimination claim in employment is much shorter than the two-year time limit that is generally applicable in other labour disputes. In **Sweden**, the very short time limits for bringing a case in employment matters seem to be based on the assumption that the victim is represented by a trade union, and if that is not the case they constitute a serious barrier to access to justice. Although the **Danish** Act on the Board of Equal Treatment does not contain any

Administrative Procedure, the Code of Notaries and Law 4478/2017, for its harmonisation with the Convention on the Rights of Persons with Disabilities ratified by Law 4074/2012 and other provisions to facilitate access to justice for persons with disabilities', Official Journal 34 A/17.02.2023.

⁴³⁶ Unia (2017) *Evaluation of the Anti-Discrimination Federal Acts*, February 2017, pp. 10 and 58-59.

⁴³⁷ Austria, Commercial Court of Vienna, Decision No. 1R 50/22g of 25 May 2022.

⁴³⁸ See for instance Sweden, Labour Court, decision of 8 June 2022, *Union for government employees (Fackförbundet ST) v Sweden through the Swedish Agency for Government Employers (Arbetsgivarverket)*, case No. 34/2022; and Labour Court, decision of 18 November 2020 in case No. 58/2020.

⁴³⁹ For one recent example of such a court decision, see Lund District Court, decision of 19 May 2021 in case No. T 4019-19, *Malmö mot Diskriminering (MmD) v Sweden through Lund University*.

⁴⁴⁰ This practice is based on an interpretative ruling by the Bulgarian Supreme Administrative Court, which is not specific to cases under the anti-discrimination law (No. 3 of 13.05.2010, rendered in commercial case No. 5 of 2009).

⁴⁴¹ See, for instance, Bulgaria, Supreme Administrative Court, Ruling of 4 July 2019 in case No. 6182/2019; and, in contrast, Decision No. 5733 of 18 May 2020 in case No. 6405/2019.

time limit for initiating proceedings, until 2023, the Board applied a general principle in Danish law that a person can lose their claim by acting ‘passively’. Since March 2023, however, the Board no longer applies this principle and, instead, has reopened several cases that had previously been dismissed due to the claimant acting ‘passively’.⁴⁴² In **France**, the complexity of the different time limits (although they are not particularly short) applicable for different types of actions, in particular in the field of employment, create an additional barrier.

Furthermore, the length and the complexity of procedures may act as deterrents to those seeking redress, as is said to be the case in, for example, **Austria, Croatia, Cyprus, Malta** and **Portugal**. There are serious concerns in **Hungary** and **Slovakia** that judicial proceedings can take more than four years to complete. In **Cyprus**, the equality body is often unable to provide any remedy in cases of discrimination when the delay in treating the case has caused either a third party to acquire rights which cannot be revoked, or the time limit to have passed by which the victim can apply to the court.⁴⁴³ A similar situation exists in **Finland**. In recent years, both the European Court of Human Rights and the **Croatian** Constitutional Court have issued several decisions determining that the excessive length of anti-discrimination proceedings before the Croatian courts amounts to a violation of the right to a fair trial (within a reasonable time).⁴⁴⁴

Finally, the infrequency of litigation may itself be a deterrent to victims of discrimination as the prevailing impression may be that success is improbable. The more that cases are reported in the media, the more knowledgeable victims will become about their rights and options for upholding these rights. The media are unlikely to report on discrimination cases in countries where they are not made public. For instance, in **Austria, Belgium** and **Italy** there is no systematic publication of decisions by either the courts or the equality body. By contrast, there is an encouraging practice in the **Netherlands** of publishing yearly reports containing detailed data about all discrimination complaints/reports received by a number of different bodies, thus providing invaluable information for research and analysis purposes. One potentially important barrier to effective access to justice which is related to the infrequency of litigation, is the lack of effective remedies, including compensation, for victims of discrimination.⁴⁴⁵

4.2 Legal standing and associations

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

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

⁴⁴² Denmark, Board of Equal Treatment, decision No. 9258 of 1 March 2023, and, for instance decision No. 9845 of 20 September 2023.

⁴⁴³ See, for instance, Report Ref. A.K.I. 32/2008 dated 6 April 2012, regarding discriminatory age requirements for recruitment to police special services.

⁴⁴⁴ European Court of Human Rights, *Salameh v. Croatia*, Application No. 38943/15, 14 October 2021; *Kirncic and Others v. Croatia*, Application No. 31386/17, 30 July 2020; *Mirjana Maric v. Croatia*, Application No. 9849/15, 30 July 2020. See also Constitutional Court, decisions Nos. U-III A-2294/22, 29 September 2022; U-III A-1038/2020, 9 September 2020; and U-III A-3623/2019, 1 October 2020.

⁴⁴⁵ For further information, please see Section 4.5 below.

Under the directives, EU Member States have some discretion as to how this clause is implemented in terms of the type of legal standing that associations can have, and therefore national legal orders present many different patterns that are difficult to compare. In some countries, the relevant anti-discrimination legislation provides associations and/or trade unions or other organisations with some legal standing specifically in cases of discrimination. These include **Austria, Belgium, Bulgaria, Croatia, Cyprus,**⁴⁴⁶ **Czechia, Estonia,**⁴⁴⁷ **France, Germany, Greece,**⁴⁴⁸ **Hungary, Ireland, Italy, Lithuania, Malta, Portugal, Romania, Slovakia, Slovenia, Spain** and **Sweden**. In a number of countries however, no such specific provision is made for cases of discrimination, although general provisions of civil, administrative or labour law provide some standing to associations under certain conditions (e.g. **Denmark, Latvia, the Netherlands** and **Poland**).

4.2.1 Entities which may engage in procedures

In many countries, legal standing – whether to engage on behalf of or in support of victims – is limited to those associations or organisations that fulfil certain requirements, based on, for example, a certain number of years of existence and/or explicit mention of the fight against discrimination in their statutes. In **France**, for example, trade unions and NGOs must have been in existence for over five years to act either on behalf or in support of victims of discrimination, before any jurisdiction.⁴⁴⁹ In addition, the equality body the Defender of Rights, can present observations in any case before any jurisdiction. Similarly, in **Belgium**, there are three categories of legal entities that may engage in proceedings on behalf or in support of a victim of discrimination: the equality body Unia; any legal persons that state as their objective the defence of human rights or the fight against discrimination and whose activities satisfy certain conditions of effectiveness contained in the Civil Procedure Code; and workers' and employers' organisations. However, where the victim of the alleged discrimination is an identifiable (natural or legal) person, an action brought by such bodies will only be admissible if they prove that the victim has consented to the action. In **Germany**, under the General Equal Treatment Act, anti-discrimination associations are entitled to support claimants in court proceedings, provided that they fulfil certain criteria (such as having at least 75 members and operating permanently rather than on an ad hoc basis to support one claim). In **Luxembourg**, under the General Anti-Discrimination Law of 28 November 2006, for associations to assist a victim of discrimination before the courts they must have legally existed for five years and be recognised by the Ministry of Justice as being nationally representative in the field of anti-discrimination.

In **Italy**, the legal standing of associations active in the fight against discrimination varies depending on the legal basis for the action. As regards racial or ethnic origin as well as disability, associations may engage in proceedings in support or on behalf of complainants only if they are included in a list approved by a decree of the Department for Equal Opportunities.⁴⁵⁰ Regarding the other grounds of discrimination covered by Directive 2000/78/EC, however, standing to litigate is much broader and is accorded on an ad hoc basis to any

⁴⁴⁶ Only in the private sector.

⁴⁴⁷ In Estonia, the legal standing of organisations is limited to quasi-judicial proceedings before the Gender Equality and Equal Treatment Commissioner and conciliation proceedings before the Chancellor of Justice. No such standing is provided before the courts.

⁴⁴⁸ In Greece, however, associations, organisations or trade unions acting on behalf of victims of discrimination must do so through an accredited lawyer, which is quite costly.

⁴⁴⁹ France, Article R779-9 of the Code of Administrative Justice; Article 3 the New Code of Civil Procedure; Article 2, Code of Penal Procedure; Articles L1134-2 and L1134-3 of the Labour Code; Articles L131-1 and ff of the General Code of Public Service in the public sector.

⁴⁵⁰ Italy, Legislative Decree No. 215/2003, Article 5. See also Decree of the Department for Equal Opportunities of 6.09.2018. Further information available at: <https://www.unar.it/portale/associazioni>.

organisation or association regarded as having a 'legitimate interest' in the enforcement of the relevant legislation.⁴⁵¹ In addition, in the field of employment, trade unions have legal standing to engage on behalf or in support of victims of discrimination on all grounds.

In some countries, legal standing of associations, organisations and/or trade unions is not dependant on specific criteria other than having a legitimate interest in the issue raised by the case. In **Cyprus**, non-discrimination law provides that organisations are entitled to engage on behalf of victims if they have a 'legitimate interest'. This contrasts however with the constitutional principle limiting legal standing to individuals who are personally aggrieved. Furthermore, since 2017, the equality body only appears to be accepting complaints from victims and not, as previously, from NGOs representing them.⁴⁵² In **Croatia**, the right to intervene is given to bodies, organisations, institutions, associations or other people engaged in the protection of the right to equal treatment related to the group whose rights are at issue in the proceedings. In **Bulgaria**, public interest NGOs and trade unions may either join proceedings brought by a victim in their support or represent the complainants directly. Under **Slovakian** law, the equality body (the Slovak National Centre for Human Rights), any NGO that seeks to protect victims of discrimination and trade unions can intervene as a third party in court proceedings, but only upon invitation by the court.

In **Austria**, one specific statutory organisation, the Litigation Association of NGOs Against Discrimination, has been expressly given third-party intervention rights in the courts in support of the complainant, with his or her consent (Section 62 of the Equal Treatment Act). All specialised NGOs can join this association, while non-members can intervene before the courts if they prove their legal interest in the case. In disability-related cases concerning the workplace, the **Austrian** National Council of Persons with Disabilities has been given an explicit right of intervention,⁴⁵³ while interventions by the Litigation Association in the same field have also been accepted by the courts.⁴⁵⁴ In **Denmark**, the Danish Institute for Human Rights can bring cases of principle to the quasi-judicial equality body, the Board of Equal Treatment, including cases of general public interest.⁴⁵⁵ In **Lithuania**, the Equal Treatment Act stipulates that associations whose field of activity encompasses representation in the courts of victims of discrimination on a particular ground of discrimination have the right to engage on behalf or in support of complainants, with their approval, in judicial and administrative procedures. However, it is unclear how this provision interacts with more restrictive general provisions of the Code of Civil Procedure and the Law on the Proceedings of Administrative Cases.

4.2.2 To engage 'on behalf of'

A majority of the countries examined allow associations and/or trade unions to engage in proceedings 'on behalf of' victims of discrimination (i.e. representing them), including **Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia,**⁴⁵⁶ **Finland,**⁴⁵⁷ **France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania,**

⁴⁵¹ Italy, Legislative Decree No. 216/2003. Article 5.

⁴⁵² See notably *Philenews* (2018) '[Quarrel over the responsibilities of the Commissioner for Administration](#)', 26 April 2018.

⁴⁵³ Austria, Act on the Employment of Persons with Disability, Section 7q.

⁴⁵⁴ Austria, Linz Regional Court, *F. v. Linz Linien AG*, case No. 33C1725/127/14, decision of 15 July 2013.

⁴⁵⁵ Denmark, Consolidated Act No. 1230 of 2 October 2016, Section 1(7), with later amendments.

⁴⁵⁶ In Estonia, the legal standing of organisations to act on behalf of victims of discrimination is limited to quasi-judicial proceedings before the Gender Equality and Equal Treatment Commissioner and conciliation proceedings before the Chancellor of Justice. No such standing is possible before the courts.

⁴⁵⁷ In Finland, victims can be represented before the courts by a lawyer employed (or paid) by an organisation. The complaint remains in the name of the victim however, and the organisation is not a party in its own name.

Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden. However, the conditions for associations to engage on behalf of victims of discrimination as well as the scope of such potential action vary among the countries. In **Slovakia**, representation of victims by NGOs as well as the national equality body (the Slovak National Centre for Human Rights) is allowed before the ordinary courts and the Supreme Court, but Constitutional Court proceedings remain excluded.⁴⁵⁸ In **Austria**, associations and other legal entities may act on behalf of victims of discrimination only in proceedings where representation by a barrister is not mandatory. Such proceedings are very rare, but include those before the Equal Treatment Commission. In addition, trade unions and the Chamber of Labour may act on behalf of workers in employment-related cases. In **Latvia**, organisations and foundations whose aims are the protection of human rights and individual rights may represent victims of discrimination in court, but only before the lower instance courts and not before the Court of Cassation.⁴⁵⁹ However, the Constitutional Court has found a similar limitation on legal standing to be in violation of the Constitution, and it was repealed.⁴⁶⁰

In **Lithuania**, the legal standing of associations to bring cases before the Equal Opportunities Ombudsperson on behalf of victims remains uncertain, although the Ombudsperson does handle complaints lodged by organisations, generally by initiating proceedings ‘on its own initiative’ on the basis of the information provided. In **Finland**, either the Non-Discrimination Ombudsman or an organisation with an interest in advancing equality may bring a case before the Non-Discrimination and Equality Tribunal, as long as the victim gives their consent. In addition, the Ombudsman has legal standing to represent victims of discrimination before the courts, through a lawyer employed or paid by the Ombudsman. The case will then be brought in the name of the victim. Similarly, in **Ireland**, any individual or body may be authorised by an individual claimant to represent them before the Workplace Relations Commission and the Labour Court, but not before a civil court.

Finland: Exceptional equality body intervention on behalf of victims of race discrimination

The work contracts of two Roma women working as hairdressers were terminated after lasting only two weeks. The reason for terminating the contract was that the women were wearing the traditional Roma skirt at work. The women initiated criminal proceedings for race discrimination but the prosecutor decided, just two weeks before the statutory limitation deadline, not to press criminal charges against the employer. To prevent the women from being left without any remedy against discrimination, the Non-Discrimination Ombudsman decided to take the case to district court under the Non-Discrimination Act, on their behalf. It is very rare for the Ombudsman to take a case to court, and it has only happened a few times during its 20 years of existence.

In March 2023, the district court decided that the reason for terminating the employment contract was the women’s ethnic origin which became visible because of their clothing. The court concluded that the safety and health concerns raised by the employer were not mentioned until the women questioned the termination of their working contracts. The court awarded each claimant EUR 12 000 as compensation for direct discrimination under the Non-Discrimination Act and five months’ salary as compensation for financial damages under the Employment Contracts Act.⁴⁶¹

⁴⁵⁸ Slovakia, Civil Dispute Act, 160/2015, Section 429(2)(c).

⁴⁵⁹ Latvia, Amendments to the Civil Procedure Law, 19 December 2013, published in the *Latvian Herald* 2(5061), 3 January 2014.

⁴⁶⁰ Latvia, Constitutional Court, decision in Case No. 2003-04-01 of 27 June 2003.

⁴⁶¹ Finland, Pirkanmaa District Court, decisions Nos L 758/2022/458 and L 758/2022/455 of 29 March 2023.

The **Hungarian** Equal Treatment Act provides that ‘non-governmental and interest representation organisations’ as well as the Ombudsman, acting under the equality body mandate, may act on behalf of the victim in proceedings launched due to the violation of the equal treatment requirement.⁴⁶² The act specifies that such organisations include social organisations whose objectives, as set out in their articles of association or statutes, include the promotion of equal social opportunities or the catching up of disadvantaged groups defined by an exact enumeration of the concerned protected ground(s) or the protection of human rights.⁴⁶³ In **Sweden**, NGOs have the right to bring actions representing an individual person provided that their statutes envisage the possibility of taking into account their members’ interests, depending on their own activities, their finances and the circumstances of the case, and on condition that consent is given. Furthermore, the right of the Equality Ombudsman to bring a case to court is subsidiary to the right of a trade union to represent its members. Only where the trade union does not bring a case (or where the victim is not a member of a trade union) can the Ombudsman decide to do so.

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

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

Table 8: Legal standing of organisations in court (or before the national equality body) in discrimination cases

Country	Legal standing to act on behalf of victims	Legal standing to act in support of victims
AUSTRIA	Act on the Equal Treatment Commission and the National Equality Body, Sec. 12/2 ^{464,465}	Equal Treatment Act (with limitations), Sec. 62 ^{466,467}

⁴⁶² Hungary, Equal Treatment Act, Article 18(1).

⁴⁶³ Hungary, Equal Treatment Act, Article 3.

⁴⁶⁴ Representation before the Equal Treatment Commission.

⁴⁶⁵ The Act on the Labour and Social Courts, sec. 40/1/2 also allows representation by the Chamber of Labour and trade unions to represent workers in workplace related cases before courts of first and second instance.

⁴⁶⁶ Right to intervention in support of a victim for the Litigation Association of NGOs Against Discrimination.

⁴⁶⁷ Article 17 of the Civil Procedure Code gives the right of intervention in any civil law case to anyone who proves a legal interest in the result of the case.

A COMPARATIVE ANALYSIS OF NON-DISCRIMINATION LAW IN EUROPE 2024

BELGIUM	Racial Equality Federal Act, Art. 32	Racial Equality Federal Act, Art. 32
	General Anti-Discrimination Federal Act, Art. 30	General Anti-discrimination Federal Act, Art. 30
BULGARIA	Protection Against Discrimination Act, Art. 71(2) ⁴⁶⁸	Protection Against Discrimination Act, Art. 71(2)
CROATIA	Civil Procedure Act, Art. 434.a ⁴⁶⁹	Anti-discrimination Act, Art. 21
CYPRUS	Equal Treatment in Employment and Occupation Law, Art. 14	Equal Treatment in Employment and Occupation Law, Art. 14
	Equal Treatment (Racial or Ethnic origin) Law, Art. 12	Equal Treatment (Racial or Ethnic origin) Law, Art. 12
	Law on Persons with Disabilities, Art. 9D	Law on Persons with Disabilities, Art. 9D
CZECHIA	Anti-Discrimination Act, Sec. 11	No
	Civil Procedure Code, Sec. 26(3)	
DENMARK	Administration of Justice Act, Sec. 260 ⁴⁷⁰	Administration of Justice Act, Sec. 252
ESTONIA	Chancellor of Justice Act, Art. 23 (2) ⁴⁷¹	No ⁴⁷²
	Equal Treatment Act, Art. 17(1)	

⁴⁶⁸ Also, Administrative Procedure Code, Article 18(2).

⁴⁶⁹ Only trade unions and employers' organisations have standing to act on behalf of victims of discrimination. As a rule, associations cannot represent an individual victim in court, with the exception of lawyers employed by the trade unions who can represent workers in labour disputes.

⁴⁷⁰ This provision is limited to the field of employment, and provides more restricted legal standing to NGOs than to trade unions. Furthermore, the Public Administration Act provides legal standing for associations in front of the Board of Equal Treatment in all fields.

⁴⁷¹ Only in conciliation procedures before the Chancellor of Justice (private sphere only).

⁴⁷² As regards civil procedures, judicial interpretation is however required of Articles 213 and 216 of the Code of Civil Procedure.

FINLAND	Non-Discrimination Act, Sec. 21 ⁴⁷³	No ⁴⁷⁴
	Code of Judicial Procedure, 4/1734, Chapter 15, Section 1 ⁴⁷⁵	
FRANCE ⁴⁷⁶	Law relating to the adaptation of National Law to Community Law in matters of discrimination, Art. 10	Law relating to the adaptation of National Law to Community Law in matters of discrimination, Art. 10
GERMANY	No.	General Equal Treatment Act, Sec. 23
GREECE	Equal Treatment Law, Art. 8(3) ⁴⁷⁷	Equal Treatment Law, Art. 8(3-4) ⁴⁷⁸
HUNGARY	Equal Treatment Act, Art. 18(1)	Equal Treatment Act, Art. 18(2) ⁴⁷⁹
IRELAND	Employment Equality Acts 1998-2021, Sec. 77(11) ⁴⁸⁰	Employment Equality Acts 1998-2021, Sec. 79(1) ⁴⁸¹
	Equal Status Acts 2000-2018, Sec. 25(A) ⁴⁸²	Equal Status Acts 2000-2018, Sec. 25(1) ⁴⁸³

⁴⁷³ Organisations can only act on behalf of victims before the Non-Discrimination and Equality Tribunal in cases outside employment. The Ombudsman can assist, or order a lawyer from its office to assist, the victim of discrimination in court for securing their rights

⁴⁷⁴ However, the Non-Discrimination Act (Section 27) requires that a court must, in cases concerning the application of the act, allow the Non-Discrimination Ombudsman the opportunity to be heard insofar as the matter pertains to the authority of the Ombudsman. Additionally, the prosecutor must allow the Non-Discrimination Ombudsman the opportunity to be heard prior to bringing charges for discrimination (Chapter 11, Section 11 of the Criminal Code).

⁴⁷⁵ The Ombudsman can assist, or order a lawyer from its office to assist, the victim of discrimination in court for securing their rights. The case will then be brought in the name of the victim.

⁴⁷⁶ In addition to the law mentioned here, the following provisions are also relevant for both standing to act on behalf and in support of victims: Article 24-1 of Law of social modernisation No. 2002-73 regarding housing; Article 3 of Decree 75-1123 creating Article 3 of the Code of Civil Procedure; and Article 2 of Decree No. 2008-799 creating Article R-779-9 of the Code of Administrative Justice relating to all fields.

⁴⁷⁷ Article 8(3) is to be read in conjunction with the general requirements laid down by Greek procedural statutes (Article 62 of the Code of Civil Procedure).

⁴⁷⁸ Article 8(3) and (4) are to be read in conjunction with the general requirements laid down by Greek procedural statutes (Article 62 and 82 of the Code of Civil Procedure).

⁴⁷⁹ In Hungary, standing to engage in support of victims is only available in administrative procedures, and not before courts and after the individual victim has launched the proceeding.

⁴⁸⁰ Only before the Workplace Relations Commission and Labour Court.

⁴⁸¹ Only before the Workplace Relations Commission and Labour Court.

⁴⁸² Only before the Workplace Relations Commission and Labour Court.

⁴⁸³ Only before the Workplace Relations Commission and Labour Court.

A COMPARATIVE ANALYSIS OF NON-DISCRIMINATION LAW IN EUROPE 2024

ITALY ⁴⁸⁴	Legislative Decree No. 215/2003 Implementing Directive 2000/43/EC, Art. 5	Legislative Decree No. 215/2003 Implementing Directive 2000/43/EC, Art. 5
	Legislative Decree No. 216/2003 Implementing Directive 2000/78/EC, Art. 5	Legislative Decree No. 216/2003 Implementing Directive 2000/78/EC, Art. 5
	Act 67/2006 on Measures for the Judicial Protection of Persons with Disabilities who are Victims of Discrimination, Art. 4	Act 67/2006 on Measures for the Judicial Protection of Persons with Disabilities who are Victims of Discrimination, Art. 4
LATVIA	Law on Associations and Foundations, Art. 10(3) ⁴⁸⁵	Administrative Procedure Law, Art. 183
	Law on Trade Unions, Art. 12(4)	
LITHUANIA ⁴⁸⁶	Law on Equal Treatment, Art. 12(2) ⁴⁸⁷	Law on Equal Treatment, Art. 12(2)
LUXEMBOURG	No	General Anti-Discrimination Law, Arts. 7 and 18
MALTA	Equal Treatment of Persons Order Art. 16	Equal Treatment of Persons Order Art. 16
	Equal Treatment in Employment Regulations, Art. 11	Equal Treatment in Employment Regulations, Art. 11

⁴⁸⁴ In addition to the laws mentioned here, the following provisions are also relevant for both standing to act on behalf and in support of victims: Articles 44(10) and 43(10) of Legislative Decree 286 of 1998 ('Immigration Decree') and Article 18 of Act 300/1970 ('Workers Act').

⁴⁸⁵ Except in Cassation cases where the right to legal representation is reserved to the person participating to the case or their advocate (defence counsel).

⁴⁸⁶ It remains to be seen how Article 12(2) of the Law on Equal Treatment will be implemented, notably in conjunction with the relevant provisions of the Code of Civil Procedure.

⁴⁸⁷ Article 56(1)(6) of the Code of Civil Procedure stipulates that such associations may only engage in judicial proceedings on behalf of their members and that they must be represented by a person holding a law degree or by a member of the Bar.

	Equal Opportunities (Persons with Disabilities) Act, Arts. 22 and 33A	Equal Opportunities (Persons with Disabilities) Act, Art. 33A
	Employment and Industrial Relations Act, Art 75(2)	
NETHERLANDS	Civil Code, Arts. 3:305a and 3:305b	Civil Code, Art. 3:305a
POLAND	Act on Code of Civil Procedure, Arts. 8, 61 and 462	Act on Code of Civil Procedure, Arts. 8, 61 and 462
PORTUGAL ⁴⁸⁸	Law 93/2017 establishing the legal regime for the prevention, prohibition and combating of discrimination on the grounds of racial and ethnic origin, colour, nationality, ancestry and territory of origin, Art. 12(1)	Law 93/2017 establishing the legal regime for the prevention, prohibition and combating of discrimination on the grounds of racial and ethnic origin, colour, nationality, ancestry and territory of origin, Art. 12(1)
	Labour Code, Arts. 443(1)(d) and 477(d)	Labour Code, Arts. 443(1)(d) and 477(d)
	Labour Procedure Code, Art. 5	Labour Procedure Code, Art. 5
	Law 46/2006 which prohibits and punishes discrimination based on disability and on a pre-existing risk to health, Art. 15(1)	Law 46/2006 which prohibits and punishes discrimination based on disability and on a pre-existing risk to health, Art. 15(1)
	Law prohibiting any discrimination in access to and exercise of self-employment and transposing into national law Directives 2000/43/EC, 2000/78/EC and Directive 2006/54/EC, Arts. 5 and 8	Law prohibiting any discrimination in access to and exercise of self-employment and transposing into national law Directives 2000/43/EC, 2000/78/EC and Directive 2006/54/EC, Arts. 5 and 8

⁴⁸⁸ The Decree law 106/2013, which defines the statutes for NGOs of persons with disabilities and the state support for those organisations, also provides legal standing to disability NGOs to act on behalf of victims.

ROMANIA	Ordinance (GO) 137/2000 regarding the prevention and the punishment of all forms of discrimination, Art. 28	Ordinance (GO) 137/2000 regarding the prevention and the punishment of all forms of discrimination, Art. 28
SLOVAKIA	Anti-discrimination Act, Sec. 10	Civil Dispute Act, Sec. 95
SLOVENIA	Protection Against Discrimination Act, Art. 41(1-3)	Protection Against Discrimination Act, Art. 41(4)
SPAIN	Law on Fiscal, Administrative and Social Measures, Art. 31 ⁴⁸⁹	No
	General Law on the Rights of Persons with Disabilities and their Social Inclusion, Art. 76	
	Law 15/2022, of 12 July, comprehensive for equal treatment and non-discrimination, Art. 29490	
	Law on Social Jurisdiction, Art. 20	
SWEDEN ⁴⁹¹	Discrimination Act Ch. 6, Sec. 2	No

4.2.3 Collective redress

In 2013, the European Commission issued a recommendation to the effect that all Member States should introduce collective redress mechanisms to facilitate the enforcement of the rights that all EU citizens have

⁴⁸⁹ Organisations have the possibility to engage in civil and administrative proceedings but not in labour proceedings or in pre-judicial matters.

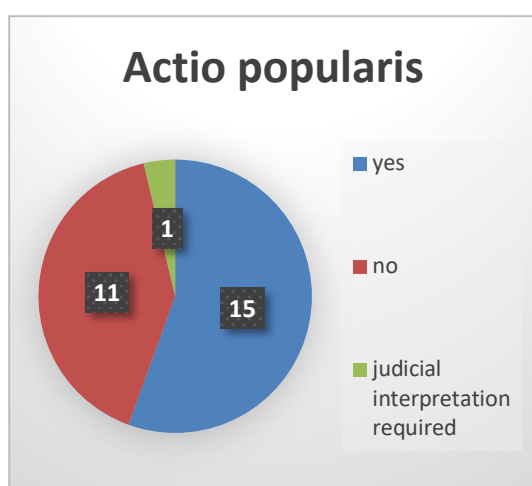
⁴⁹⁰ Without prejudice to the individual standing of the persons affected, political parties, trade unions, professional associations of self-employed workers, consumer and user organisations and legally constituted associations and organisations whose purposes include the defence and promotion of human rights are entitled, under the terms established by procedural law, to defend the rights and interests of their members or associates or users of their services in civil, contentious-administrative and social legal proceedings, provided that they have their express authorisation.

⁴⁹¹ Trade unions also have the right to represent their members in all disputes regarding employment (Labour Procedure Act, Chapter 4, Section 5).

under EU law.⁴⁹² Such action is not covered by the two anti-discrimination directives but can be divided into class action or group action (claims on behalf of an undefined group of claimants or identified claimants and multiple claims), on the one hand, and *actio popularis*, on the other.

Actio popularis is a very useful tool as it allows organisations to act in the public interest on their own behalf, without a specific victim to support or represent. According to the Court of Justice, Member States are not precluded from

'laying down, in their national legislation, the right of associations with a legitimate interest in ensuring compliance with [the Racial Equality Directive], or for the body or bodies designated pursuant to Article 13 thereof, to bring legal or administrative proceedings to enforce the obligations resulting therefrom without acting in the name of a specific complainant or in the absence of an identifiable complainant. It is, however, solely for the national court to assess whether national legislation allows such a possibility'.⁴⁹³



Actio popularis is permitted by national law for discrimination cases in 15 EU Member States (**Austria, Belgium,**⁴⁹⁴ **Bulgaria, Croatia, France, Germany,**⁴⁹⁵ **Hungary, Italy, Luxembourg, Malta,**⁴⁹⁶ the **Netherlands, Portugal, Romania, Slovakia** and **Spain**).⁴⁹⁷ For example, in **Hungary**, social and interest representation organisations, the Ombudsman and the Public Prosecutor can bring *actio popularis* claims, provided that the violation of the principle of equal treatment was based on a characteristic that is an essential feature of the individual, and that the violation affects a larger group of persons that cannot be determined

accurately.⁴⁹⁸ In other countries however, the possibilities for *actio popularis* are much more limited. In **Austria**,

⁴⁹² European Commission (2013), Commission Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law, OJ L 201, 26.7.2013, p. 60–65.

⁴⁹³ CJEU, Judgment of 10 July 2008, *Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV*, C-54/07, ECLI:EU:C:2008:397.

⁴⁹⁴ The equality body Unia, as well as registered associations and representative workers' organisations, can bring actions on their own behalf to challenge alleged breaches of the non-discrimination legislation.

⁴⁹⁵ This option exists notably on the basis of disability law and consumer protection law.

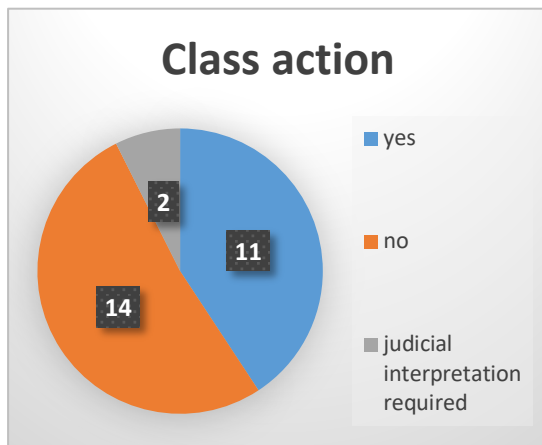
⁴⁹⁶ Only the National Commission for the Promotion of Equality may launch an *actio popularis*.

⁴⁹⁷ *Actio popularis* is possible in Spain only in criminal proceedings but since the entry into force of Law 15/2022 it can be argued that *actio popularis* is also possible in civil proceedings.

⁴⁹⁸ This possibility has been used many times, for instance by the Chance for Children Foundation to challenge the segregation of Roma children in education (e.g. Pécs Appeals Court, Pf.III.20.004/2016/4., 13 October 2016); by the Hättér Association to challenge a denominational university declaration that 'the church may not approve of [...] the education, recruitment and employment of pastors and teachers of religion who conduct or promote a homosexual way of life' (Supreme Court, Pfv.IV.20.678/2005/5., 8 June 2005); by the Hungarian Helsinki Committee to challenge as harassment racist speech and writing of a local mayor (Budapest Administrative and Labour Court, 20.K.33988/2013/10., 17 June 2014); and by the Equal Treatment Authority to challenge a company for advertising its products in a way that was highly degrading to women (Budapest Appeals Court, 2.Pf.20.122/2018/5/II., 5 April 2018).

such action is possible only in cases of discrimination on the ground of disability and can be brought by a limited number of organisations.

In **Lithuania**, both civil and administrative law provide that *actio popularis* is possible in cases 'as prescribed by law', but no such laws have been adopted. In addition, the Supreme Administrative Court has held that, as regards administrative law, only persons whose rights have been directly affected may file a complaint with the Ombudsperson.⁴⁹⁹ Finally, the **Danish** Institute for Human Rights has a competence to bring cases of principle before the Board of Equal Treatment, including cases of general public interest.⁵⁰⁰



Class actions (the ability for an organisation to act in the interest of more than one individual victim for claims arising from the same event) are permitted by law for discrimination cases in 11 EU Member States: **Bulgaria, Denmark, France, Germany, Italy, Lithuania, the Netherlands, Portugal, Slovakia, Slovenia** and **Sweden**. In **Germany**, it still remains to be seen whether the procedure for consumer rights' class action that was introduced in 2018⁵⁰¹ could be relevant for discrimination law. In **Lithuania**, the law does not allow associations,

organisations or trade unions to represent a class action, but it does allow class action through representation by a lawyer. **Swedish** law allows the filing of a class action in a district court for claims arising from the same issue, but only for cases outside the employment field.⁵⁰² In **Slovenia**, the 2017 Class Actions Act aimed to facilitate access to justice, prevent the unlawful conduct of perpetrators and enable access to compensation in cases of mass rights violations. In **France**, the legislation adopted in 2016 to create a procedure for class action specifically in cases of alleged discrimination contains several limitations and restrictions. These were highlighted by the Defender of Rights, the national equality body, in an opinion addressed to the Parliament in 2020.⁵⁰³ The opinion highlighted in particular certain procedural difficulties related to the exclusive exercise of the class action procedure in the employment field by trade unions, as well as the need to create a fund to ensure the financing of class actions.

Judicial interpretation is still required in two countries: **Cyprus** and **Malta**.

As regards countries where class action is not permitted, it is interesting to note that the **Hungarian** legal system does not prevent associations from obtaining authorisations from more than one victim and bringing a single case, but in such a case the claims of each victim will be examined individually. In **Romania**, aggregate

⁴⁹⁹ Lithuania, Supreme Administrative Court, Administrative case No A492-2078/2013, Decision of 7 November 2013.

⁵⁰⁰ Denmark, Section 1(7) of Consolidated Act No. 1230 of 2 October 2016, with later amendments.

⁵⁰¹ Germany, Act to introduce civil model declaratory proceedings, 12 July 2018, with effect from 1 November 2018.

⁵⁰² Sweden, Group Proceedings Act (2002:599).

⁵⁰³ France, Defender of Rights (2020), Opinion No. 20-01 of 5 February 2020.

claims by more than one victim arising from the same event would be annexed to the complaint both before the equality body and before the court.

Neither *actio popularis* nor class action is permitted in discrimination cases in **Czechia, Estonia, Finland, Greece, Ireland, Latvia** and **Poland**.

4.3 Burden of proof

As a result of the difficulties inherent in proving discrimination, Article 8 of the Racial Equality Directive and Article 10 of the Employment Equality Directive lay down that people who feel they have faced discrimination must only establish, before a court or other competent authority, facts from which it may be presumed that there has been discrimination.⁵⁰⁴ The burden of proof will then shift to the respondent, who must prove that there has been no breach of the principle of equal treatment. This does not affect criminal cases (Article 8(3)/10(3)), and Member States can decide not to apply it to cases in which courts have an investigative role (Article 8(5)/10(5)). Thus, for example, in **France**, the burden of proof is not shifted in administrative procedures, which are inquisitorial in nature. Nevertheless, the Council of State (the supreme administrative court) held in 2009 that, although it is the responsibility of the petitioner in discrimination cases to submit the facts that could lead the judge to presume a violation of the principle of non-discrimination, the judge must actively ensure that the respondent provides evidence that all elements which could justify the decision are based on objectivity and devoid of discriminatory objectives.⁵⁰⁵ **Portuguese** law states that the principle does not apply to criminal procedures or to actions in which, in terms of the law, it is up to the court to carry out the investigation. Similarly, in **Estonia**, the shift of the burden of proof does not apply in administrative court or criminal proceedings, or in conciliation proceedings before the Chancellor of Justice. In **Slovakia**, the Act on Labour Inspection does not contain any explicit and clear provisions on the burden of proof in relation to identifying breaches of the principle of equal treatment.⁵⁰⁶ In **Bulgaria**, the shift of the burden of proof is applicable to both judicial proceedings and proceedings before the equality body. Although the shift is uniformly applicable to all forms of discrimination, including harassment and victimisation, it is not always applied consistently in all cases and further training for judges and staff of the equality body would be advisable. In **Czechia**, the Constitutional Court's case law shows that in order to trigger the shift in the burden of proof, the claimant must (a) claim and prove that he/she was disadvantaged or treated in an unusual way, and (b) claim (but not necessarily prove) that such disadvantage or unusual treatment occurred as a result of some of the discrimination grounds.⁵⁰⁷ The claimant has also to demonstrate the existence of the specific ground of discrimination when it is not entirely clear in the claimant's situation. If all these conditions are fulfilled, the burden of proof is transferred to the respondent.

A minority of states appear to have failed to introduce burden of proof provisions in line with the directives. In **Latvia**, the shift of the burden of proof applies mainly to employment, but also to education and access to goods and services. No explicit provision exists regarding the shift of the burden of proof in discrimination cases

⁵⁰⁴ The shift of burden of proof was originally developed under gender legislation (see Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex).

⁵⁰⁵ France, *Conseil d'Etat*, No. 298348, 30 October 2009.

⁵⁰⁶ Slovakia, Act No. 125/2006 on Labour Inspection and changing and supplementing Act No 82/2005 on Illegal Work and Illegal Employment and changing and supplementing certain laws, as amended.

⁵⁰⁷ Czechia, Constitutional Court, No. III. ÚS 880/15, 8 October 2015.

in social protection and social advantages. The provision on the burden of proof in the **Austrian** Equal Treatment Act (applicable in the private sector) lowers the burden for the claimant, but in a way that is not considered to comply satisfactorily with the directives. However, the Supreme Court has provided an interpretation in line with the directives by ruling that, 'If discriminatory infringements are successfully established, it is for the respondent to prove that he or she did not discriminate'.⁵⁰⁸ In 2019, the **French** Court of Cassation explicitly revised its long-standing interpretation of the burden of proof in cases where discrimination allegedly arises from a collective agreement.⁵⁰⁹ In such cases, the claimant was previously considered to bear the burden of establishing that the differential treatment created arbitrary differences in treatment of persons in comparable situations that was foreign to any professional consideration.⁵¹⁰ In **Sweden**, although the rule on the shift in the burden of proof applies in both the general court system and before the Labour Court, the two systems appear to differ in their implementation of the rule. In 2023 for instance, a Labour Court ruled that an employer had fulfilled its burden of proof by simply presenting its risk analysis 'based on serious considerations, which do not appear to be unjustified, arbitrary or based on improper considerations', without providing any objective evidence for the existence of the risks.⁵¹¹

France: Guidance on the relationship between evidence in discrimination cases and the protection of personal data

In recent years, respondent employers in France often invoke the GDPR and the protection of employees' personal data to challenge court orders to share information on employees in cases of alleged discrimination. As labour court judges are often intimidated by GDPR-related arguments and not always familiar with the specificity of rules relating to access to evidence in discrimination cases, this defence strategy creates important barriers in access to evidence for claimants. In this context, in 2022, the French equality body, the Defender of Rights, reviewed 20 years of discrimination case law and published a framework decision to provide guidance on this specific issue.⁵¹²

Later the same year, the Court of Cassation ruled on a case related to the same issue. The Court decided that a data analysis based on employees' surnames was admissible in evidence, and that it was sufficient to establish a *prima facie* case of discrimination, as it showed a higher number of persons with European sounding names being offered permanent positions and a higher number of persons with non-European sounding names being offered (repeated) short-term contracts. The Court concluded that discrimination on the ground of origin was established and convicted the employer.⁵¹³

In 2023, the Court of Cassation further confirmed in another discrimination case that the right to the protection of personal data is not an absolute right and must be balanced with other rights, including the right to an effective remedy and access to an impartial tribunal.⁵¹⁴

⁵⁰⁸ The Act on the Employment of Persons with Disabilities and the Federal Disability Equality Act contain the same wording.

⁵⁰⁹ France, Court of Cassation, Social Chamber, decision of 3 April 2019, case No. 17-11970.

⁵¹⁰ See for instance France, Court of Cassation, Social Chamber, decision of 1 July 2009, No. 07-42675.

⁵¹¹ Sweden, Labour Court decision No. 71/2023, *SS v Rapid Säkerhet*, 13 December 2023, p. 11.

⁵¹² Defender of Rights (2022) [Framework decision No. 2022-138 of 31 August 2022](#).

⁵¹³ France, Court of Cassation, decision No. 21-19628 of 14 December 2022, ECLI:FR:CCASS:2022:SO21-19628.

⁵¹⁴ France, Court of Cassation, Social Chamber, [decision No. 21-12492 of 8 March 2023](#).

4.4 Victimization

Member States must ensure that individuals are protected from any adverse treatment or adverse consequences in reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment (Article 9, Racial Equality Directive; Article 11, Employment Equality Directive). There is still a major inconsistency with this principle in **Germany**, where protection is restricted to the employment field and thereby fails to explicitly protect against victimisation in the areas outside employment protected by the Racial Equality Directive.⁵¹⁵ This was the case in both **Lithuania** and **Spain** until 2022, when legislation was amended in both countries to extend the material scope of the protection against victimisation beyond employment.

Although the directives do not limit the protection against victimisation to the actual claimants themselves but potentially extend it to anyone who could receive adverse treatment ‘as a reaction to a complaint or to proceedings’, the protection is more restricted in several countries. According to **Danish** law for instance, the protection applies to a person who files a complaint regarding differential treatment of her/himself and to a person who files a complaint of differential treatment of another person, and it is a prior condition that a causal link can be established between the victimisation and the claimant’s request for equal treatment. Similarly, in **Spain**, there are no legal provisions explicitly extending protection against discrimination to any person other than the claimant. In **Ireland**, the protection against victimisation in the area of employment is also limited, in that such complaints may only be referred against the complainant’s employer and not, for instance, against a trade union.⁵¹⁶ In **Belgium**, protection against victimisation at federal level was limited to victims and formal witnesses, until 2023. This limitation, which had been found by the CJEU to be incompatible with EU gender equality law in 2019,⁵¹⁷ was finally corrected through the adoption of federal legislation in 2023, which now provides protection to ‘persons who intervene as a witness or who have made a report or lodged a complaint, for the benefit of the person concerned by the alleged violation and to persons who give advice or provide help or assistance to this person, as well as to any person who raises the question of the violation of this law’.⁵¹⁸

However, the scope of the protection is wider in most countries, such as in **Italy**, which includes protection for ‘any other person’ in addition to the claimant, or **Estonia** and **Poland**, where protection includes claimants as well as those who ‘support’ them. In **Romania**, protection against victimisation is not limited to the complainant but extends to witnesses, while the **Lithuanian** Equal Treatment Act repeats the wording of the Employment Equality Directive. In **France**, protection against victimisation applies to anyone ‘having testified in good faith’ about discriminatory behaviour or having reported it.

A few countries have gone further than the requirements of the directives. For example, in **Bulgaria**, protection is explicitly accorded for victimisation by presumption and by association. Furthermore, the Supreme Administrative Court held in 2021 that no specific proof is required of a causal link between the initial complaint against the employer and the adverse treatment amounting to victimisation.⁵¹⁹

⁵¹⁵ It should be noted however that any victimisation is prohibited due to the authoritative standards of the rule of law under the Fundamental Law of Germany (Article 20(3)), although judicial interpretation is required.

⁵¹⁶ Ireland, Labour Court, *Association of Secondary Teachers, Ireland v Dunbar*, decision No. EDA2811 of 25 August 2011.

⁵¹⁷ CJEU, Judgment of 20 June 2019, *Hakelbracht*, C-404/18, ECLI:EU:C:2019:523. The relevant provision of Belgian gender equality law used the same wording as that of Belgian law transposing Directives 2000/43/EC and 2000/78/EC.

⁵¹⁸ Belgium, Federal Act of 7 April 2023, Official Journal of 25 May 2023.

⁵¹⁹ Bulgaria, Supreme Administrative Court, decision No. 7293 of 16 June 2021 in case No. 2405/2021.

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In **Slovenia**, the Advocate of the Principle of Equality may, upon finding discrimination in the original case, order the offender to apply appropriate measures to prevent victimisation. In the event that an alleged offender does not obey the Advocate's order, the Advocate may order the offender to eliminate the consequences of victimisation.

Table 9: Prohibition of victimisation in national law (in the case of decentralised states only federal law is indicated)

Country	Legislation	Protection extended outside employment
AUSTRIA	Equal Treatment Act, Sections 27, 39	Yes
	Federal Equal Treatment Act, Sec. 20b	No
	Act on the Employment of Persons with Disabilities, Sec. 7i/2	No
	Federal Disability Equality Act, Sec. 9/5	Yes ⁵²⁰
BELGIUM	Racial Equality Federal Act, Arts. 14 and 15	Yes
	General Anti-discrimination Federal Act, Arts. 16 and 17	Yes
BULGARIA	Protection Against Discrimination Act, Art. 5.	Yes
CROATIA	Anti-discrimination Act, Art. 7	Yes
	Equal Treatment in Employment and Occupation Law, Art. 10	No

⁵²⁰ The Federal Disability Equality Act includes protection against victimisation for the whole scope of the Act (outside the employment field only).

CYPRUS	Equal Treatment (Racial or Ethnic origin) Law, Art. 11	Yes
	Law on Persons with Disabilities, Art. 9E	Yes
CZECHIA	Anti-Discrimination Act, Sec. 4(3)	Yes
DENMARK	Act on Prohibition of Discrimination in the Labour Market etc., Sec. 7(2)	No
	Ethnic Equal Treatment Act, Sec. 8	Yes
	Act on the Prohibition of Discrimination due to Disability, Sec. 9	Yes
ESTONIA	Equal Treatment Act, Art. 3(6)	Yes
FINLAND	Non-Discrimination Act, Sec. 16	Yes
FRANCE	Law relating to the adaptation of National Law to Community Law in matters of discrimination, Arts. 2 and 3	Yes
GERMANY	General Act on Equal Treatment, Sec. 16	No
GREECE	Equal Treatment Law, Art. 10	Yes
HUNGARY	Equal Treatment Act, Art. 10(3)	Yes
IRELAND	Employment Equality Acts 1998-2021, Secs. 14, 74(2), 98	No
	Equal Status Acts 2000-2018, Sec. 3(2)(j)	Yes
ITALY	Legislative Decree No. 215/2003 Implementing Directive 2000/43/EC, Art. 4bis	Yes

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	Legislative Decree No. 216/2003 Implementing Directive 2000/78/EC, Art. 4bis	No
LATVIA	Labour Law, ⁵²¹ Art. 9(1)	Yes
LITHUANIA	Law on Equal Treatment, Art. 7(8)	Yes
	Labour Code, Art. 26(2(5))	Yes
LUXEMBOURG	General Anti-Discrimination Law, ⁵²² Arts. 4 and 18	Yes
MALTA	Employment and Industrial Relations Act, Art. 28	No
	Equal Treatment of Persons Order, Art. 7	Yes
	United Nations Convention on the Rights of Persons with Disabilities Act, Part A of the Fourth Schedule	Yes
	Equality for Men and Women Act	Yes
NETHERLANDS	General Equal Treatment Act, Arts. 8 and 8a	Yes
	Disability Discrimination Act, Arts. 9 and 9a	Yes
	Age Discrimination Act, Arts. 10 and 11	Yes
POLAND ⁵²³	Equal Treatment Act, Art. 17	Yes
PORTUGAL	Labour Code, Arts. 129(1), 331(1)(a)-(d), 351(1)(3), 381(b)	No

⁵²¹ Protection against victimisation is also provided outside the employment field by the following laws: the 1995 Law on Social Security, Article 34(2), the 1999 Law on Consumer Protection, Article 3¹(10), and the 2012 Law on Prohibition of Discrimination against Natural Persons – Parties to Legal Transactions, Article 6.

⁵²² The Public Sector Law of 29 November 2006 also includes protection against victimisation in the public sector.

⁵²³ The Labour Code also prohibits victimisation.

	Law 93/2017 establishing the legal regime for the prevention, prohibition and combating of discrimination on the grounds of racial and ethnic origin, colour, nationality, ancestry and territory of origin, Art. 13	Yes
ROMANIA	Ordinance (GO) 137/2000 regarding the prevention and the punishment of all forms of discrimination, Art. 2(7)	Yes
SLOVAKIA	Anti-discrimination Act, Sec. 2a(1) and (8)	Yes
	Labour Code, Sec. 13(3)	No
SLOVENIA	Protection Against Discrimination Act, Arts. 7(4) and 11	Yes
	Employment Relationship Act, Art. 6(8)	No
SPAIN	Law on Fiscal, Administrative and Social Measures, Art. 37	No
	Law 15/2022, of 12 July, comprehensive for equal treatment and non-discrimination, Art. 6	Yes
SWEDEN	Discrimination Act, Ch. 2, Secs. 18-19	Yes ⁵²⁴

4.5 Sanctions and remedies

Infringements of anti-discrimination laws must be met with 'effective, proportionate and dissuasive' sanctions, which may include compensation being paid to the victim (Article 15, Racial Equality Directive; Article 17, Employment Equality Directive). The meaning of this concept must be determined in each case in the light of individual circumstances.

In practice, a wide range of possible remedies exist, which vary depending on the type of law (e.g. civil, criminal, or administrative remedies), the punitive or non-punitive character of the remedies, their orientation as backward-looking or forward-looking (the latter meaning remedies that seek to adjust future behaviour) and the level at which they are intended to operate (individual/micro or group/macro level). Remedies may be

⁵²⁴ The protection applies to all areas covered by the Discrimination Act.

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available through various, possibly complementary, enforcement processes (administrative, industrial relations and judicial processes). Depending on such features, the remedies offered by a particular legal order will reflect different theories of remedies (e.g. remedial, compensatory, punitive and preventative justice) and different concepts of equality (e.g. an individual justice model, a group justice model or a model based on equality as participation). It follows that a comprehensive enforcement approach is very broad indeed. This approach addresses not only procedural aspects and the substance of remedies (relief and redress for the victims of discrimination) but also broader issues such as victimisation, compliance, mainstreaming and positive action, as well as other innovative measures such as corrective taxation. Financial compensation to the victim may include compensation for past and future loss (most common), compensation for injury to feelings, damages for personal injury such as psychiatric damage, or exemplary damages to punish the discriminator (much less common).

As a whole, no single national enforcement system appears to be truly all-encompassing. Essentially, they are all mostly based on an individualistic and remedial – rather than a preventative – approach. **Irish** law provides a broad range of remedies, including compensation awards, reinstatement and re-engagement, as well as orders requiring employers to take specific courses of action such as creating an equal opportunities policy. In **Cyprus**, employers with more than 19 employees may be required by the court to reinstate an employee whose dismissal was either: (i) manifestly unlawful or (ii) unlawful and made in bad faith. In **Slovakia**, the Offices of Labour, Social Affairs and Family are entitled to investigate complaints regarding discriminatory job advertisements. When the labour office finds a violation, it can impose a fine of up to EUR 33 193. However, in practice, the labour offices face difficulties in identifying the entity that published the discriminatory announcement and therefore in imposing sanctions on the person and/or company responsible. The **Polish** Equal Treatment Act only refers to ‘compensation’ (which in Polish law is generally interpreted to cover only material damage), and case law shows discrepancies in whether different courts consider that compensation for non-material damage can be awarded in discrimination cases.⁵²⁵ Finally, in **Spain**, until 2022, the scope of sanctions that were provided for was limited to the employment field (for all the grounds) and for the ground of disability (in all fields).⁵²⁶ This gap was remedied through the adoption of the comprehensive equality law No. 15/2022, which established a regime of infringements and sanctions applicable where no other legislation applies, i.e. in cases of discrimination on any ground (except disability) and in all fields except employment.

In some Member States, the specialised body is empowered to issue sanctions in cases where they have found discrimination. The **Bulgarian** Protection Against Discrimination Commission (PADC) has powers to order preventative or remedial action and to impose administrative fines between the equivalents of EUR 125 and EUR 1 250 – amounts that would arguably only be dissuasive to individuals and small businesses. In addition, the PADC may order particular remedial action by discriminators and suspend the execution of employers’ decisions where those may result in discrimination.⁵²⁷ While the case law has been unclear with regard to the power of the PADC to impose such sanctions on public law entities, the Supreme Administrative Court has confirmed in several cases from 2022 and 2023 that the equality body does have such a competence.⁵²⁸ Similarly, the **Romanian** National Council for Combating Discrimination (NCCD) can issue administrative

⁵²⁵ For a positive example, see Poland, Regional Court of Warsaw, judgment of 29 September 2020, No. V Ca 2686/19 (not published).

⁵²⁶ Criminal sanctions may be applicable, depending on the interpretation of the court.

⁵²⁷ Bulgaria, Protection Against Discrimination Act, Articles 78-80 and 76, respectively.

⁵²⁸ Bulgaria, Supreme Administrative Court, decision No. 4036 of 27 April 2022 in case No. 563/2022; and decision No. 9998 of 23 October 2023 in case No. 11691/2022.

warnings and fines ranging from EUR 250 to EUR 7 500 where the victim is an individual, and from EUR 500 to EUR 25 000 where the victim is a group or a community. However, in practice, the NCCD only rarely issues fines, preferring instead to issue recommendations and administrative warnings.⁵²⁹ The **Cypriot** Commissioner for Administration ('Ombudsman') has the power to issue binding decisions and to impose small fines. It also has a duty to monitor the enforcement of its orders, and to impose fines for the failure to comply with its decisions. However, these fines are so low that they can hardly be seen as a deterrent, and furthermore, the Ombudsman has not yet used its power to impose fines. Similarly, the **Lithuanian** Ombudsperson has a limited power to impose fines only in the case of discriminatory advertisement for goods, products and services, but hardly ever uses this power in practice. The **Danish** Board of Equal Treatment on the other hand has a well-established practice of issuing binding decisions and awarding compensation. The standard compensation levels are for instance 6-12 months' salary in cases of discriminatory dismissal or EUR 3 350 in cases of denial of employment/non-recruitment. This amount can be significantly increased, however, for instance in a case where the denial of employment occurred late in the recruitment process, after several interviews.⁵³⁰ Its decisions can be appealed before the civil courts. While the **Hungarian** equality body has the power to impose fines in instances where it has found discrimination, the number of such fines issued each year has dropped steadily since the equality body mandate was transferred to the Ombudsman institution in 2021.⁵³¹

For certain cases, the Court of Justice of the European Union's case law contains specific indications regarding the European Union legal requirements in relation to remedies. In particular, as noted by the Court in its ruling in *Asociația Accept* in 2013,⁵³² the 'severity of the sanctions must be commensurate to the seriousness of the breaches for which they are imposed, in particular by ensuring a genuinely dissuasive effect (...), while respecting the general principle of proportionality.'⁵³³ It further noted that 'a purely symbolic sanction cannot be regarded as being compatible with the correct and effective implementation of Directive 2000/78'. Thus, in the case of discriminatory dismissal, the remedy (or remedies) granted must in all cases include either reinstatement or compensation. Furthermore, where compensation is chosen as a remedy it must fully make good the damage.⁵³⁴ Upper limits are not acceptable, except for situations where the damage was not caused through discrimination alone.⁵³⁵

There appear to be no limits either in relation to pecuniary or non-pecuniary damages in the national laws of **Belgium, Bulgaria,**⁵³⁶ **Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany,**⁵³⁷ **Greece,**

⁵²⁹ Romania, National Council for Combating Discrimination (2024) *2023 Annual report*.

⁵³⁰ Denmark, Board of Equal Treatment, Decision No. 9879 of 1 July 2022. In this case, the claimant was awarded EUR 5 375.

⁵³¹ Hungary, Commissioner for Fundamental Rights (2023) *Report on the activities of the Commissioner for Fundamental Rights and his Deputies 2022*, p. 106.

⁵³² CJEU, judgment of 25 April 2013, *Asociația Accept v. Consiliul Național pentru Combaterea Discriminării*, C-81/12, ECLI:EU:C:2013:275.

⁵³³ With regard to the 'genuinely dissuasive effect' of sanctions, the Court cited *Commission v United Kingdom*, 8.06.1994, C-383/92, ECLI:EU:C:1994:234 and *Draehmpaehl*, 22.04.1997, C-180/95, ECLI:EU:C:1997:208. With regard to the general principle of proportionality in relation to sanctions, the Court cited *Lindqvist*, 06.11.2003, C-101/01, ECLI:EU:C:2003:596, and *Nttonik and Pikoulas*, 5.07.2007, C-430/05, ECLI:EU:C:2007:410.

⁵³⁴ CJEU, judgment of 2.08.1993, *Marshall v Southampton and South West Hampshire Area Health Authority*, ('Marshall II'), C-271/91, paras 25-26.

⁵³⁵ CJEU, judgment of 22.04.1997, *Draehmpaehl v. Urania Immobilienservice*, C-180/95, ECLI:EU:C:1997:208.

⁵³⁶ In Bulgaria, according to settled case law (not specific to non-discrimination law), legal persons cannot claim compensation for non-material damage. See for instance, Sofia City Court, Decision No. 5103 of 11.07.2018 in case No. 1693/2016.

⁵³⁷ It is specified that the compensation for non-material damage in civil law and in labour law must also be appropriate. If the discrimination was not a causal factor in the decision not to recruit an individual, the compensation for non-material loss is limited to a maximum of three months' salary (General Equal Treatment Act (AGG), Section 15.2, sentence 2).

Italy, Lithuania, Luxembourg, the Netherlands,⁵³⁸ Poland, Portugal, Romania, Slovakia,⁵³⁹ Spain and Sweden. In **Poland**, there is a *minimum* level of compensation, which is linked to the minimum wage. In **Belgium**, the victim may opt for a lump-sum amount of compensation, stipulated by law, instead of an amount to be calculated based on 'effective' damage. The lump-sum amount provided by federal law was significantly increased in 2023, reaching EUR 3 900. In the field of employment, the lump-sum amount is six months' salary.⁵⁴⁰ Although there are no statutory limits on compensation for damages in **Croatia**, the Supreme Court has published guiding criteria for non-pecuniary damages, which the courts are using as guidelines to determine levels of compensation, without necessarily taking into account the effectiveness, proportionality and dissuasiveness of the sanction.⁵⁴¹ In **Slovenia**, the Protection Against Discrimination Act stipulates the right of victims of discrimination to claim compensation of between EUR 500 and EUR 5 000. However, it is not clear how these provisions relate to the general rules of tort law, which contains no upper limit on the compensation. In **Hungary**, if discrimination is manifested in the unlawful termination of employment, the Labour Code establishes an upper limit of 12 months' salary as compensation for lost income.⁵⁴² However, if the court orders the reinstatement of the unlawfully dismissed employee, the employment is regarded as continuous. The employee will then receive their lost income as 'unpaid salary' and not as 'damages', without any upper limit. Furthermore, since 2020, compensation for non-pecuniary damage is no longer available in cases of violation of inherent personal rights committed by educational institutions.⁵⁴³ In **France**, since 2017, the Labour Code has provided for mandatory scales and ceilings regarding the damages awarded in relation to the dismissal of an employee. However, the mandatory scale does not apply when the judge finds that the dismissal is null and void because it breaches a fundamental right or constitutes harassment or discrimination prohibited by law.

In **Latvia**, there is no maximum amount for compensation under civil law, but the Reparation of Damages caused by State Administrative Institutions Act sets maximum amounts of compensation for different categories of harm, such as EUR 30 000 if life has been endangered or grievous harm has been caused to health. **Austrian** law specifies an upper limit of EUR 500 for non-pecuniary damages in cases of non-recruitment or non-promotion if the employer proves that the victim would not have been recruited or promoted anyway. Of the countries where limits do exist, **Ireland** is particularly interesting because there are no comparable statutory limits on compensation for discrimination on grounds of sex.

German Federal Labour Court provides guidance on compensation

The claimant has severe disabilities. He applied for employment at a public health insurance company but was not invited to an interview. The courts upheld his claim that the failure to invite him to an interview was

⁵³⁸ Dutch law provides for a limit on compensation, applicable only in administrative law proceedings.

⁵³⁹ The Slovakian Labour Code provides however for an upper limit to claims of salary compensation in cases of illegal dismissals (Section 79(2)), confirmed by the Supreme Court to be applicable also in anti-discrimination proceedings.

⁵⁴⁰ When the respondent establishes that the measure/action creating the disadvantage would have been adopted even in the absence of the discriminatory element, the amount is reduced to EUR 1 950, or three months' salary in the employment field.

⁵⁴¹ Croatia, Supreme Court, decision of the second session of the civil department of 5 March and 15 June 2020, No. Su-IV-47/2020-5-542 Hungary, Labour Code, Article 82(2).

⁵⁴³ Hungary, National Public Education Act, Article 59(4). For further information about the Gyöngyöspata debate which led to this legislative amendment, see Chopin, I. and Germaine, C. (2023), *A comparative analysis of non-discrimination law in Europe 2022*, European network of legal experts in gender equality and non-discrimination, pp. 103-104.

sufficient to establish an assumption that he had not been considered for the post due to his disabilities. The burden of proof was thus shifted to the respondent, who did not refute the assumption.

The Federal Labour Court was called upon to clarify the standards for the compensation awarded according to Section 15.2 of the General Act on Equal Treatment. It emphasised that the sanction serves as both compensation and prevention of further discrimination. Contrary to the findings of the lower instance court, the Federal Labour Court clarified that the amount of compensation cannot be reduced due to various factors. Notably, the fact that the employer employed more persons with severe disability than it was legally obliged to, is unrelated to – and thus irrelevant in calculating – the amount of compensation in the specific case. Other irrelevant factors included the fact that the position was part time and that the employer had behaved in a polite and respectful manner vis-à-vis the claimant. Finally, the fact that the employer is a public entity did not diminish its responsibility under anti-discrimination law. The court finally awarded compensation of EUR 5 100.⁵⁴⁴

The practice of courts with regards to sanctions in general and the award of compensation in particular varies considerably. There are several countries where some worrying trends can be noted in this regard. In **Czechia**, in the majority of discrimination cases brought before the courts, compensation for non-pecuniary damage is considered to be a subsidiary measure which is only awarded in case of particularly serious violations.⁵⁴⁵ In **France** and the **Netherlands**, courts are generally reluctant to award substantial amounts when calculating pecuniary loss, and the amounts awarded remain rather low. In **Greece**, on the other hand, there are no known cases on any ground where compensation has been awarded. In **Finland**, a study published in 2020 showed that compensation due to a violation of the Non-Discrimination Act was awarded on only three occasions between 2015 and 2019. One of the conclusions in this regard was that the risk of having to pay the respondent's legal costs acts as a deterrent for potential claimants.⁵⁴⁶

Low levels of compensation, coupled with the length of time it can take to obtain a decision casts doubt on the effectiveness of remedies. Their dissuasiveness is also questionable, in particular as far as larger employers are concerned. In this regard, **Spanish** and **Portuguese** legislation present an interesting approach, as company turnover can in some cases be used to determine the level of penalties. **Denmark** is also interesting in this regard, as the quasi-judicial equality body can award compensation to victims. While the **Finnish** Non-Discrimination and Equality Tribunal does not have a similar competence, in cases where it finds discrimination it can, since 1 June 2023, make a recommendation on the adequate amount of compensation to be awarded by the court. Another practice worth highlighting is the awarding of punitive damages, for example in **Italy**,⁵⁴⁷ where courts may also issue injunctions for specific measures to be adopted by respondents, such as changes in their internal practices.⁵⁴⁸ In **Sweden**, a 2021 district court ruling clarified that compensation for non-material damage due to discrimination has a preventive purpose that goes beyond simply compensating the individual victim, and thus, in the case in question, the widow of the victim who had died in relation to the discrimination

⁵⁴⁴ Germany, Federal Labour Court, decision of 28 May 2020 in case No. 8 AZR 170/19.

⁵⁴⁵ See, notably: Public Defender of Rights (Ombudsman) (2020) *Discrimination case law of Czech courts 2015-2019*.

⁵⁴⁶ Nieminen, K., Jauhola, L., Lepola, O., Rantala, K., Karinen, R., Luukkonen, T. (2020) *Study commissioned by the Prime Minister's Office on the implementation of the Non-Discrimination Act*, p. 62.

⁵⁴⁷ See, for instance: Italy, Supreme Court, Judgment of 15 December 2020, *T.C. v. Associazione diritti LGBTI – Rete Lenford*, No. 28646; CJEU, 23 April 2020, *Associazione Avvocatura per i diritti LGBTI*, C-507/18, ECLI:EU:C:2020:289.

⁵⁴⁸ For example, see Tribunal of Ferrara, Judgment of 15 April 2022, *FP-CGIL, XX v. Comune di Ferrara*, Ric. no. 506/2021.

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could inherit his right to compensation.⁵⁴⁹ The case was finally concluded in 2022 with a settlement between the national equality body (representing the claimant) and the respondent, awarding a significant amount of compensation to the claimant (approximately EUR 26 800) in addition to the reimbursement of the equality body's legal costs.⁵⁵⁰

⁵⁴⁹ Sweden, Göteborg District Court, *Equality Ombudsman (DO) v Region Västra Götaland*, decision of 26 May 2021 in case No. T 17336-19.

⁵⁵⁰ Settlement agreement of 6 April 2022, reference PRO 2019/7.

5 Equality bodies

Article 13, Racial Equality Directive:

'Member States shall designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights.'

Following a Recommendation issued in June 2018 on standards for equality bodies,⁵⁵¹ and a staff working document published in March 2021 which analysed the implementation of the 2018 Recommendation,⁵⁵² the European Commission presented two proposals for the adoption of directives on binding standards for equality bodies in December 2022.⁵⁵³ The directives were adopted after the cut-off date for the country reports on which this publication is based.

The two proposals contain identical provisions, they have different legal bases: one concerns equality bodies working on sex in employment and occupation and the other concerns equality bodies working on racial or ethnic origin as well as religion or belief, disability, age and sexual orientation in employment and occupation, and, finally, sex in access to goods and services.

The aim of the directives is to strengthen the national equality bodies across all 27 EU Member States by ensuring better guarantees for independence, more adequate resources and powers and establishing minimum requirements for wider mandates covering equally all grounds of discrimination protected by EU law, in all fields. ⁵⁵⁴

All EU Member States have designated at least one specialised body for the promotion of equal treatment irrespective of racial or ethnic origin, as required by Article 13 of the Racial Equality Directive.

⁵⁵¹ European Commission (2018) Commission Recommendation of 22.06.2018 on standards for equality bodies, C(2018) 3850 final, Brussels.

⁵⁵² European Commission (2021) *Report from the Commission to the European Parliament and the Council on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('the Racial Equality Directive') and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation ('the Employment Equality Directive')*, Brussels, 19.03.2021, COM(2021) 139 final, p.14.

⁵⁵³ European Commission, *Proposal for a Council Directive* on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in the field of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC (COM/2022/689 final); and *Proposal for a Directive of the European Parliament and of the Council* on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU (COM/2022/688 final).

⁵⁵⁴ *Council Directive (EU) 2024/1499 of 7 May 2024* on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in matters of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and amending Directives 2000/43/EC and 2004/113/EC; and *Council Directive (EU) 2024/1500 of 14 May 2024* on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and amending Directives 2006/54/EC and 2010/41/EU.

When transposing Article 13 of the Racial Equality Directive, some Member States, such as **France, Germany, Greece, Hungary,**⁵⁵⁵ **Italy, Romania, Slovenia** and **Spain**, opted to set up completely new bodies. In contrast, bodies that already existed but which were given the functions designated by Article 13 include the **Cypriot** Ombudsman, the **Estonian** Chancellor of Justice and the Gender Equality and Equal Treatment Commissioner, the **Lithuanian** Equal Opportunities Ombudsperson, the **Maltese** National Commission for the Promotion of Equality, the **Slovak** National Centre for Human Rights and the **Croatian** Ombudsperson. In **Portugal**, most of the responsibilities of the formally designated equality body, the High Commission for Migration, were transferred as of 29 October 2023 to the newly created Agency for Integration, Migrations and Asylum.⁵⁵⁶ The situation as of 1 January 2024 is unclear regarding the exercise of equality body competencies by the Agency.

5.1 Grounds covered⁵⁵⁷

The minimum requirement on Member States is to have one or more bodies for the promotion of equality irrespective of racial or ethnic origin. A large number of states went further than the wording of the Racial Equality Directive, either in terms of the grounds of discrimination that specialised bodies are mandated to deal with, or in terms of the powers that they have to combat discrimination. The Directive left Member States with a wide degree of discretion with regard to how to set up their specialised bodies. As a result, there are significant differences between the equality bodies established in the Member States in terms of their mandate, competences, structures, resources and operational functioning. There are undeniable advantages in instituting multiple-ground bodies, such as facilitating access for complainants, cost-effectiveness and capacity to deal with intersectionality and multiple discrimination. Such bodies may also face challenges however, such as implementing different standards of protection for different grounds of discrimination and ensuring balanced visibility for and relevance to all grounds covered by their mandate. Interpretations given by national courts of concepts may differ between the grounds protected.

⁵⁵⁵ In Hungary, the Equal Treatment Authority which had been established in 2004 as a new body, was abolished as of 1 January 2021 and its tasks and powers were transferred to the pre-existing Ombudsman.

⁵⁵⁶ Portugal, Decree-Law 41/2023 of 2 June 2023, entry into force 29 October 2023.

⁵⁵⁷ Council Directive 2024/1499 adopted on 7 May 2024, after the cut-off date for this publication, imposes a requirement for all Member States to have equality bodies covering not only racial or ethnic origin but also religion or belief, disability, age and sexual orientation in the area of employment.

Table 10: Relevant specialised bodies dealing with racial/ethnic origin, and the grounds and competencies covered by their mandates

Country / Specialised body	Grounds covered by the mandate	Competences covered by the mandate					
		Independent assistance to victims	Independent surveys	Independent reports	Recommendations	Quasi-judicial functions	Binding decisions
AUSTRIA ⁵⁵⁸ Equal Treatment Commission ⁵⁵⁹ ----- National Equality Body ⁵⁶⁰ ----- Federal Equal Treatment Commission ⁵⁶¹	Gender, ethnic affiliation, religion, belief, age, sexual orientation.	No	No	Yes	Yes	Yes	No
	Gender, ethnic affiliation, religion, belief, age, sexual orientation.	Yes	Yes	Yes	Yes	No	N/A
	Gender, ethnic affiliation, religion, belief, sexual orientation, age. ⁵⁶²	No	No	Yes	Yes	Yes	No
BELGIUM Inter-federal centre for	Alleged race, colour, descent, national or ethnic origin, nationality, age, sexual orientation, civil status, birth, property, religious or philosophical belief, state of health, disability,	Yes	Yes	Yes	Yes	No	N/A

⁵⁵⁸ In addition, the Ombud for Persons with Disabilities is dealing with discrimination issues for the ground of disability.

⁵⁵⁹ Austria, Act on the Equal Treatment Commission and the National Equality Body, Sections 1, 2, 11-14.

⁵⁶⁰ Austria, Act on the Equal Treatment Commission and the National Equality Body, Sections 3-5.

⁵⁶¹ Austria, Federal-Equal Treatment Act, Sections 22-25.

⁵⁶² The mandate of the Federal Equal Treatment Commission is limited to the area of public (federal) employment.

<p>Equal Opportunities and Opposition to Racism and Discrimination (Unia)⁵⁶³</p> <p>-----</p> <p>Flemish Human Rights Institute⁵⁶⁴</p>	<p>physical or genetic features, political opinion, trade union opinion (<i>‘conviction syndicale’</i>) and social origin or condition.</p>						
	<p>Race, colour, descent, national or ethnic origin, nationality; age, sexual orientation, civil status, birth, property, religious or philosophical belief, political opinion, trade union opinion, language, state of health, disability, physical or genetic features, social origin; sex/gender, gender identity, gender expression, ‘transsexuality’, pregnancy, childbirth, motherhood</p>	Yes	Yes	Yes	Yes	Yes	No
<p>BULGARIA</p> <p>Protection Against Discrimination Commission⁵⁶⁵</p>	<p>Race, ethnicity, sex, national origin, human genome, nationality, origin, religion or faith, education, beliefs, political affiliation, personal or social status, disability, age, sexual orientation, family status, property status, or any other ground provided for by law or by international treaty Bulgaria is a party to.</p>	Yes	Yes	Yes	Yes	Yes	Yes
<p>CROATIA</p> <p>People’s Ombudsperson⁵⁶⁶</p>	<p>Race or ethnic origin or colour, language, religion, political or other belief, national or social origin, property, trade union membership, education, social status, age, health condition, genetic heritage.</p>	Yes	Yes	Yes	Yes	No	N/A

⁵⁶³ Belgium, Cooperation Agreement between the Federal State, the Regions and the Communities creating the Inter-federal Centre for Equal Opportunities and Opposition to Racism and Discrimination, Article 2.

⁵⁶⁴ The mandate of the Flemish Human Rights Institute created by Decree of 28 October 2022, is limited to the matters falling within the powers of the Flemish Community and Region.

⁵⁶⁵ Bulgaria, Protection Against Discrimination Act, Articles 41, 46 and 47.

⁵⁶⁶ Croatia, Anti-discrimination Act, Article 12(1). The People’s Ombudsperson is competent for all the grounds covered by the Anti-discrimination Act except those grounds that are the responsibility of a special ombudsman. The ground of disability is covered by the Ombudsman for Persons with Disabilities and the grounds of gender, gender identity and expression and sexual orientation are covered by the Gender Equality Ombudsman.

<p>CYPRUS</p> <p>Office of the Commissioner for Administration and the Protection of Human Rights (Ombudsman)⁵⁶⁷</p>	<p>Race, community, language, colour, religion, political or other beliefs, national or ethnic origin, disability, age and sexual orientation (<i>explicitly listed</i>). In addition, all rights guaranteed by the Constitution (including ‘any ground whatsoever’),⁵⁶⁸ in the ECHR and its protocols (including Protocol 12), in the International Convention for the Elimination of All forms of Discrimination, in the Convention against Torture and other Forms of Inhumane or Humiliating Treatment, in the International Covenant on Civil and Political Rights and in the Framework Convention on the Protection of National Minorities.</p>	No ⁵⁶⁹	Yes	Yes	Yes	Yes	Yes ⁵⁷⁰
<p>CZECHIA</p> <p>Public Defender of Rights⁵⁷¹</p>	<p>Sex, race, ethnic origin, sexual orientation, age, disability, religion, belief or other conviction, ‘nationality’ (<i>národnost</i>), EU citizenship.⁵⁷²</p>	Yes	Yes	Yes	Yes	No	N/A
<p>DENMARK</p> <p>Institute for Human Rights – The National Human Rights Institute of Denmark⁵⁷³</p>	<p>Race, ethnic origin, gender, sexual orientation, gender identity, gender expression or gender characteristic.⁵⁷⁵</p>	Yes	Yes	Yes	Yes	No	N/A
	<p>Protected grounds in employment: gender, race, skin colour, religion or</p>	No	No	No	No	Yes	Yes

⁵⁶⁷ Cyprus, Combating of Racial and other forms of Discrimination (Commissioner) Law No. 42(I)/2004, Articles 5 and 7.

⁵⁶⁸ Such as gender, language, social descent, birth, wealth and social class.

⁵⁶⁹ Judicial interpretation may be required to determine whether the mandate of the Cypriot body to issue reports containing opinions (whether binding or not) in response to victims’ complaints can constitute ‘independent assistance’.

⁵⁷⁰ Although the law entitles it to issue binding decisions, the equality body very rarely uses this power, choosing to use its mediation function instead.

⁵⁷¹ Czechia, Act No. 349/1999, on the Public Defender of Rights, Article 21(b).

⁵⁷² In addition, the Anti-discrimination Act contains a reference to Regulation (EU) No. 492/2011. In situations relating to the free movement of workers where the said regulation applies, EU citizenship is also deemed a discrimination ground.

⁵⁷³ Denmark, Act No. 553 of 18 June 2012, with later amendments.

⁵⁷⁵ The mandate stipulated in the Act only covers gender, race and ethnic origin. According to Parliament Decision B15 of 17 December 2010, the DIHR is also responsible for monitoring the Danish implementation of the UN Convention on Rights of Persons with Disabilities. In practice, the DIHR has a broad human rights mandate and deals with all discrimination grounds, including gender, age, disability, sexual orientation, religion and faith, ethnicity and race.

<p>-----</p> <p>Board of Equal Treatment⁵⁷⁴</p>	<p>belief, political opinion, sexual orientation, gender identity, gender expression or gender characteristics, age, disability, national origin, social origin, ethnic origin.</p> <p>Protected grounds outside employment: gender, sexual orientation, gender identity, gender expression or gender characteristics, disability, race and ethnic origin.</p>						
<p>ESTONIA</p> <p>Gender Equality and Equal Treatment Commissioner⁵⁷⁶</p>	<p><u>Employment</u>: Gender, pregnancy, childbirth, parenting, family-related duties, other circumstances related to gender, ethnic origin, race, colour of skin, religion or other beliefs, age, disability and sexual orientation.⁵⁷⁸</p> <p><u>Beyond employment</u>: Gender, pregnancy, childbirth, parenting, family-related duties, other circumstances related to gender, ethnic origin, race, colour of skin.</p>	Yes	Yes	Yes	Yes	Yes	No
<p>Chancellor of Justice⁵⁷⁷</p>	<p><u>Public sector</u>: any ground.</p> <p><u>Private sector</u>: gender, race, nationality, ethnic origin, colour of skin, language, origin, religious, political or other belief, property or social status, age, disability, sexual orientation or other ground of discrimination provided for by the law.</p>	No	No	Yes	Yes	Yes ⁵⁷⁹	Yes ⁵⁸⁰

⁵⁷⁴ Denmark, Consolidated Act No. 1230 of 2 October 2016, with later amendments.

⁵⁷⁶ Estonia, Equal Treatment Act, Articles 15-22.

⁵⁷⁷ Estonia, Chancellor of Justice Act, Articles 19-35¹⁶.

⁵⁷⁸ The Equal Treatment Act does not preclude the Commissioner from exercising its mandate in relation to any other ground, in the area of labour relations, in particular due to family-related duties, social status, representation of the interests of employees or membership in an organisation of employees, level of language proficiency or duty to serve in defence forces.

⁵⁷⁹ Only in conciliation procedures.

⁵⁸⁰ Only in conciliation procedures.

FINLAND Non-Discrimination Ombudsman ⁵⁸¹	Origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics.	Yes	Yes	Yes	Yes	No	N/A
Non-Discrimination and Equality Tribunal ⁵⁸²	Gender, gender identity, origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics.	No	No	No	No	Yes	Yes
FRANCE Defender of Rights ⁵⁸³	Any ground protected by national law ⁵⁸⁴ and international conventions ratified by France.	Yes	Yes	Yes	Yes	No	N/A
GERMANY Federal Anti-Discrimination Agency ⁵⁸⁵	Race or ethnic origin, sex, ⁵⁸⁶ religion or belief (<i>Weltanschauung</i>), ⁵⁸⁷ disability, age, sexual identity.	Yes	Yes	Yes	Yes	No	N/A
GREECE Ombudsman ⁵⁸⁸	Racial or ethnic origin, descent, colour, language, religious or other beliefs, disability or chronic illness, age, family or social status, sexual orientation, gender identity or characteristics.	Yes	Yes	Yes	Yes	No	N/A

⁵⁸¹ Finland, Act on the Non-Discrimination Ombudsman, Section 1.

⁵⁸² Finland, Act on National Non-Discrimination and Equality Tribunal.

⁵⁸³ France, Organic Law No. 2011-333 of 29 March 2011 creating the Defender of Rights, Article 4(3).

⁵⁸⁴ In French legislation, the protected grounds are: mores, sexual orientation, sex, pregnancy, gender identity, belonging, whether real or supposed to an ethnic origin, a nation, a race or a specific religion, physical appearance, last name, family situation, trade union activities, political opinions, age, health, disability, genetic characteristics, place of residence, capacity to express oneself in another language than French, apparent economic vulnerability, refusal to be victim of bullying, banking residence, loss of autonomy, holding of a local political mandate, holding of an elective position, as well as the open list of grounds covered by the ECHR, grounds covered by international law and jurisprudence.

⁵⁸⁵ Germany, General Act on Equal Treatment, Section 25.

⁵⁸⁶ The German term '*Geschlecht*', translated as 'sex', encompasses gender identity/expression and sex characteristics.

⁵⁸⁷ Not applicable for civil law.

⁵⁸⁸ Greece, Law No. 2477/1997, Article 1 and Equal Treatment Law No. 4443/2016, Article 14.

<p>HUNGARY</p> <p>Commissioner for Fundamental Rights⁵⁸⁹</p>	<p>Sex, racial affiliation, colour of skin, nationality (not in the sense of citizenship), belonging to a national minority, mother tongue, disability, health condition, religion or belief, political or other opinion, family status, maternity (pregnancy) or paternity, sexual orientation, gender identity, age, social origin, financial status, 'part-time nature of employment legal relation or other legal relation aimed at labour, or determined period thereof', belonging to an interest representation organisation, any other situation, attribute or condition of a person or group.</p>	Yes	Yes	Yes	Yes	Yes	Yes
<p>IRELAND</p> <p>Irish Human Rights and Equality Commission⁵⁹⁰</p>	<p>Gender, age, race, religion, family status, disability, civil status, sexual orientation, membership of the Traveller Community, housing assistance.</p>	Yes	Yes	Yes	Yes	No	N/A
<p>Workplace Relations Commission⁵⁹¹</p>	<p>Gender, age, race, religion, family status, disability, civil status, sexual orientation, membership of the Traveller Community, housing assistance.</p>	No	No	No	No	Yes	Yes
<p>ITALY</p>	<p>Racial or ethnic origin, religion or personal belief, disability, age and</p>	Yes ⁵⁹⁴	Yes	Yes	Yes	No	N/A

⁵⁸⁹ Equal Treatment Directorate within the Office of the Commissioner for Fundamental Rights.

⁵⁹⁰ Ireland, Irish Human Rights and Equality Commission Act 2014, Sections 9 and 44.

⁵⁹¹ Ireland, Employment Equality Acts 1998-2021, Section 91; Equal Status Acts 2000-2018, Section 31.

⁵⁹⁴ As the equality body is set up as an office within the structure of the state administration, it cannot be affirmed that the body can exercise its competencies independently.

National Office against Racial Discrimination (UNAR) ⁵⁹²	sexual orientation, gender, nationality, Roma, Sinti and Travellers. ⁵⁹³						
LATVIA Ombudsman ⁵⁹⁵	Grounds not specified, hence any ground.	Yes	Yes	Yes	Yes	No	N/A
LITHUANIA Equal Opportunities Ombudsperson ⁵⁹⁶	Gender, race, citizenship, nationality, ⁵⁹⁷ origin, age, sexual orientation, disability, ethnic origin, language, social status, ⁵⁹⁸ religion, belief, convictions or views.	No ⁵⁹⁹	Yes	Yes	Yes	Yes	Yes ⁶⁰⁰
LUXEMBOURG Centre for Equal Treatment ⁶⁰¹	Race, ethnic origin, religion or belief, disability, age, sex, sexual orientation, nationality.	Yes	Yes	Yes	Yes	No	N/A
MALTA National Commission for the Promotion of Equality ⁶⁰²	Sex, family responsibilities, sexual orientation, age, religion or belief, racial and ethnic origin, gender identity, gender expression, sex characteristics, actual or potential pregnancy, childbirth and the free movement of workers in the EU.	Yes	Yes	Yes	Yes	No	N/A

⁵⁹² Italy, Legislative Decree No. 215/2003 Implementing Directive 2000/43/EC, Article 7.

⁵⁹³ The grounds covered by UNAR's mandate are not formally determined by law. A ministerial directive issued in 2010 extended the mandate to cover all grounds of discrimination listed in Article 19 of the TFEU. UNAR's annual reports reflect this extension by covering activities related to grounds such as sexual orientation and gender, age, disability, religion, Roma, Sinti and Travellers, race and ethnic origin, and nationality.

⁵⁹⁵ Latvia, Law on Ombudsman, Article 11(2).

⁵⁹⁶ Lithuania, Law on Equal Treatment, Articles 14-30.

⁵⁹⁷ The term used in the law is *tautybė*, which refers to belonging to a national minority and not 'citizenship'.

⁵⁹⁸ Including family status.

⁵⁹⁹ Providing independent assistance to victims of discrimination in pursuing their complaints does not explicitly fall within the competence of the Equal Opportunities Ombudsperson. Article 17(1) of the Law on Equal treatment reads as 'providing impartial and objective consultations with regards to investigation of complaints', however according to the Office's representatives, the consultations provided can be considered as independent assistance.

⁶⁰⁰ The Ombudsperson can issue both binding decisions (administrative sanctions) and non-binding opinions.

⁶⁰¹ Luxembourg, Law of 28 November 2006, Article 8.

⁶⁰² Malta, Equality for Men and Women Act, Article 11.

A COMPARATIVE ANALYSIS OF NON-DISCRIMINATION LAW IN EUROPE 2024

<p>NETHERLANDS</p> <p>Netherlands Institute for Human Rights⁶⁰³</p>	<p>Racial or ethnic origin, religion and belief, political opinion, hetero- or homosexual orientation, sex,⁶⁰⁵ nationality, civil (or marital) status, disability, age, working time and type of labour contract.</p>	No	Yes	Yes	Yes	Yes	No ⁶⁰⁶
<p>Anti-Discrimination Services⁶⁰⁴</p>	<p>Racial or ethnic origin, religion and belief, political opinion, hetero- or homosexual orientation, sex, nationality, civil (or marital) status, disability, age.</p>	Yes	No	No	No	No	N/A
<p>POLAND</p> <p>Commissioner for Human Rights (Ombudsman)⁶⁰⁷</p>	<p>No grounds specified, hence any ground.⁶⁰⁸</p>	Yes ⁶⁰⁹	Yes	Yes	Yes	No	N/A
<p>PORTUGAL⁶¹⁰</p> <p>High Commission for Migration⁶¹¹</p>	<p>Race or ethnic origin, skin colour, nationality, religion.⁶¹²</p>	Yes ⁶¹³	Yes	Yes	Yes	No	N/A ⁶¹⁴

⁶⁰³ Netherlands, Netherlands Institute for Human Rights Act, Articles 9-13.

⁶⁰⁴ Netherlands, Local Anti-discrimination Services Act, Article 2. There are approximately 40 such local anti-discrimination services, including regional ones catering to several smaller municipalities.

⁶⁰⁵ In the General Equal Treatment Act, 'sex' also includes gender identity, gender expression and sex characteristics.

⁶⁰⁶ The NIHR's opinions are, however, widely considered to be effective and well-respected.

⁶⁰⁷ Poland, Act on the Commissioner for Human Rights, Article 1.

⁶⁰⁸ However, according to the Equal Treatment Act (Articles 1 and 18), which designated the Ombud as an equality body, the protected grounds are gender, race, ethnic origin, nationality, citizenship, religion, belief, political opinion, disability, age and sexual orientation.

⁶⁰⁹ Judicial interpretation is required as the powers of the Ombudsman are limited regarding conflicts between private parties.

⁶¹⁰ Following the entry into force on 29 October 2023 of Decree-Law 41/2023 of 2 June 2023, most of the HCM competencies were integrated in the newly created Agency for Integration, Migrations and Asylum – AIMA. However, this agency is not designated as the new equality body. The situation as of 1 January 2024 is unclear and, therefore, the information contained in this table reflects the situation as of 28 October 2023. After the cut-off date of this publication, Law 3/2024 of 15 January established a 'new' CEARD as an independent administrative entity, to be adjoined to Parliament. However, at the time of writing, it was still not functioning in practice.

⁶¹¹ Portugal, Decree-law 31/2014, Article 1. While the High Commission for Migration (HCM) was the formally designated equality body until 29 October 2023, it was the Commission for Equality and Against Racial Discrimination - CEARD (an entity within the HCM) which exercised the equality body mandate in practice. The situation as of 1 January 2024 is unclear.

⁶¹² The High Commission for Migration had a mandate to deal with skin colour, nationality, race or ethnic origin and religion. Within this body, the Commission for Equality and Against Racial Discrimination was competent to deal with the grounds of race, ethnic origin, colour, nationality, ancestry and territory of origin.

⁶¹³ As the independence of the equality body was not stipulated in law, due to potential political influence, it cannot be affirmed that the body could exercise its competencies independently.

⁶¹⁴ Although the equality body was not considered to be a quasi-judicial institution, it could issue binding decisions and impose sanctions that could be appealed in courts.

ROMANIA National Council for Combating Discrimination ⁶¹⁵	Race, nationality, ethnic origin, language, religion, social status, beliefs, sex, sexual orientation, age, disability, non-contagious chronic disease, HIV positive status, belonging to a disadvantaged group or any other criterion.	Yes	Yes	Yes	Yes	Yes	Yes
SLOVAKIA Slovak National Centre for Human Rights ⁶¹⁶	Sex, religion or belief, race, affiliation to a nationality (<i>národnosť</i>) or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status, or the reason of reporting criminality or other anti-social activity, unfavourable state of health, duties to family, membership of or involvement in a political party or political movement, a trade union or other association.	Yes	Yes	Yes	Yes	Yes	No
SLOVENIA Advocate of the Principle of Equality ⁶¹⁷	Gender, language, ethnicity, race, religion or belief, disability, age, sexual orientation, gender identity, gender expression, social standing, economic situation, education, any other personal characteristic.	Yes	Yes	Yes	Yes	Yes	Yes ⁶¹⁸
SPAIN Council for the Elimination of Racial or Ethnic	Racial and ethnic origin.	Yes ⁶²⁰	Yes	Yes	Yes	No	N/A

⁶¹⁵ Romania, Ordinance (GO) 137/2000 regarding the prevention and the punishment of all forms of discrimination, Article 16 and following.

⁶¹⁶ Slovakia, Act No 308/1993 on Establishing the Slovak National Centre for Human Rights, Section 1, paras 1, 2a, e, f, g, h and Section 1(3) and (4).

⁶¹⁷ Slovenia, Protection Against Discrimination Act, Articles 19-32.

⁶¹⁸ The decisions are binding by law, but not enforceable.

⁶²⁰ The Spanish body has the competence to provide assistance to victims, conduct surveys and reports and issue recommendations but the independence of these functions is not certain due to the status of the body.

A COMPARATIVE ANALYSIS OF NON-DISCRIMINATION LAW IN EUROPE 2024

Discrimination ⁶¹⁹							
SWEDEN Equality Ombudsman ⁶²¹	Sex, transgender identity or expression, ethnicity, religion and other belief, disability, sexual orientation, age.	Yes	Yes	Yes	Yes	No	N/A

All Member States have a specialised body that at least deals with race and ethnicity. Three countries (**Belgium**,⁶²² **Estonia**⁶²³ and the **Netherlands**⁶²⁴) have two specialised bodies each. This makes a total of 30 bodies relevant for the purposes of examining the competences according to Article 13 of the Racial Equality Directive.

In **Austria**, **Denmark**, **Finland** and **Ireland** there are other institutions in addition to the equality bodies, exercising tribunal-like functions, namely the Equal Treatment Commission and the Federal Equal Treatment Commission in **Austria**, the Board of Equal Treatment in **Denmark**, the National Non-Discrimination and Equality Tribunal in **Finland** and the Workplace Relations Commission in **Ireland**.⁶²⁵ These institutions are included in the table above, but as their tasks do not fall within the competence of equality bodies as stipulated by the directive, they are not counted for the purposes of the analysis regarding the grounds covered and the powers of the equality bodies.

⁶¹⁹ Spain, Law on Fiscal, Administrative and Social Measures, Article 33. In 2022 Law 15/2022 provided for the creation of an independent authority for equal treatment and non-discrimination. However, as of the cut-off date of this report, this body is yet to be established, more than a year after the act came into force.

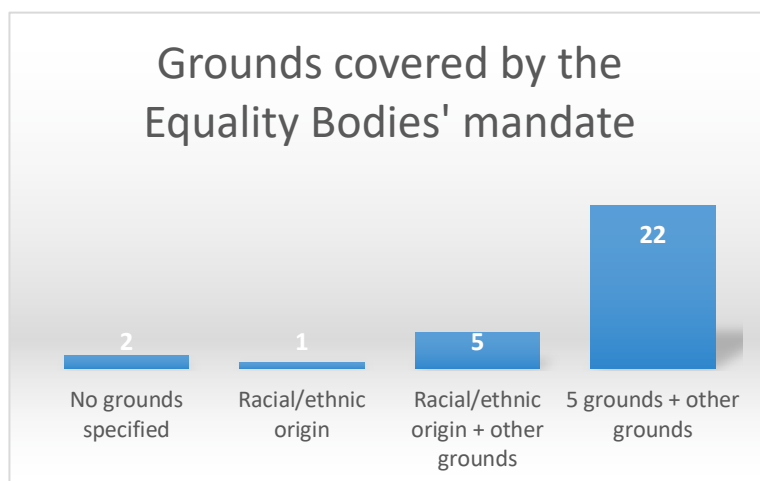
⁶²¹ The entire Equality Ombudsman Act.

⁶²² In Belgium, the equality body Unia has existed (under different names and with differing mandates) since 1993. In 2022, Unia lost its inter-federal status due to the creation of a new equality body competent only with regard to Flanders: the Flemish Human Rights Institute (*Vlaams Mensenrechteninstituut*), through the adoption of a Decree of 28 October 2022, OJ 9 November 2022.

⁶²³ In Estonia, only one of the equality bodies, the Gender Equality and Equal Treatment Commissioner, effectively exercises its mandate related to the promotion of equality and non-discrimination.

⁶²⁴ In the Netherlands, the anti-discrimination services at local level have the task of assisting victims of discrimination and monitoring their situation.

⁶²⁵ For the purposes of this report, only one specialised body has been counted on the national level for these four countries. See below, pp. 131-132, for further information regarding these quasi-judicial bodies.



Of the 30 relevant bodies, the **Spanish** specialised body is the only one dealing exclusively with race and ethnicity.⁶²⁶ In **Austria, Croatia, Denmark, Malta** and **Portugal**⁶²⁷ the grounds protected include race/ethnicity and one or more other grounds that are not necessarily identical to the other four protected by the Employment Equality Directive. In three countries, there are separate structures exercising equality body

competences with regard to the ground of disability exclusively, namely the Ombud for Persons with Disabilities in **Austria**, the Disability Ombudsperson in **Croatia** and the Commission for the Rights of Persons with Disabilities in **Malta**. It is interesting to note that some countries have chosen an open-ended list of grounds, for example, **Estonia** (Chancellor of Justice – public sector ombudsman-like proceedings), **Finland, Hungary, Romania, Slovakia** and **Slovenia**. In **Bulgaria, Estonia** (Chancellor of Justice – private sector conciliation proceedings) and **France**, the mandates of the equality bodies cover any ground as prescribed by law. In 19 countries, 22 bodies deal with the five grounds protected by the two anti-discrimination directives and other grounds.⁶²⁸ In **Latvia** and **Poland** no grounds are specified under the powers of the body.

5.2 Competencies of equality bodies⁶²⁹

Article 13, Racial Equality Directive:

'Member States shall ensure that the competences of these bodies include:

- without prejudice to the right of victims and of associations, organisations or other legal entities referred to in Article 7(2), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination,
- conducting independent surveys concerning discrimination,

⁶²⁶ The Comprehensive Law 15/2022 'on equal treatment and non-discrimination', adopted on 12 July 2022, stipulated the creation of a new specialised equality body competent to cover the grounds of birth, racial or ethnic origin, sex, religion, conviction or opinion, age, disability, sexual orientation or identity, gender expression, illness or health condition, serological status and/or genetic predisposition to pathologies and disorders, language, socio-economic status, or any other personal or social condition or circumstance. However, as of 1 January 2024, the new independent authority had not yet been established. For the purposes of the present analysis, we are thus considering the existing Spanish equality body.

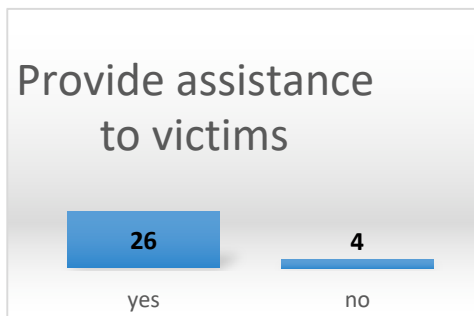
⁶²⁷ As mentioned above, the status of the Portuguese equality bodies as of 1 January 2024 is unclear.

⁶²⁸ The 22 bodies are the ones in Belgium (both Unia and the Flemish Human Rights Institute), Bulgaria, Cyprus, Czechia, Estonia (both the Gender Equality and Equal Treatment Commissioner and the Chancellor of Justice), Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, the Netherlands (both the Netherlands Institute for Human Rights and the local anti-discrimination services), Romania, Slovakia, Slovenia, and Sweden.

⁶²⁹ Council Directive 2024/1499 adopted on 7 May 2024, after the cut-off date for this publication, imposes a requirement for all Member States to have equality bodies with more extensive competencies than under the Racial Equality Directive, including for instance litigation powers as well as prevention and promotion competencies.

- publishing independent reports and making recommendations on any issue relating to such discrimination.'

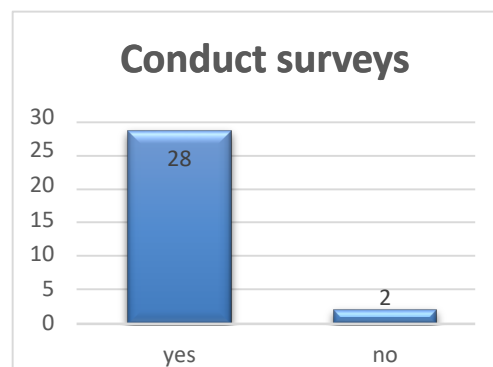
Overall, the majority of countries comply with the requirements of the Racial Equality Directive and have provided the relevant equality bodies with a mandate to exercise all four competencies listed under Article 13. However, this does not mean that all of them exercise the full range of their competencies in practice. Priorities and focus points may change over time, but budget and staff concerns can also impact the effectiveness of equality bodies.



Out of the 30 specialised bodies, 26 have a mandate to provide independent assistance to victims and four do not. The relevant bodies that officially lack a mandate to provide such assistance are: the **Cypriot** Ombudsman,⁶³⁰ the **Estonian** Chancellor of Justice,⁶³¹ the **Lithuanian** Equal Opportunities Ombudsperson⁶³² and the **Netherlands** Institute for Human Rights.⁶³³ In practice however, both the **Estonian** Chancellor of Justice and the **Lithuanian** Ombudsperson do provide some form of

independent assistance to victims. In **Poland**, the mandate of the Ombud is restricted with regards to providing assistance to victims of discrimination when the alleged discriminator is another private party. In such cases, the Ombud can only provide information on the victim’s rights and possible means of action, without intervening in any way. Finally, the **Spanish** equality body has established a Network of Centres of Assistance for Victims of Racial or Ethnic Discrimination, which handles cases for possible victims of discrimination. It involves eight NGOs that follow a formal protocol set up by the equality body.

Of the 30 specialised bodies, 28 have a mandate to conduct independent surveys while the **Estonian** Chancellor of Justice and the **Dutch** anti-discrimination services do not. In these countries, there are, however, separate bodies holding such a mandate.

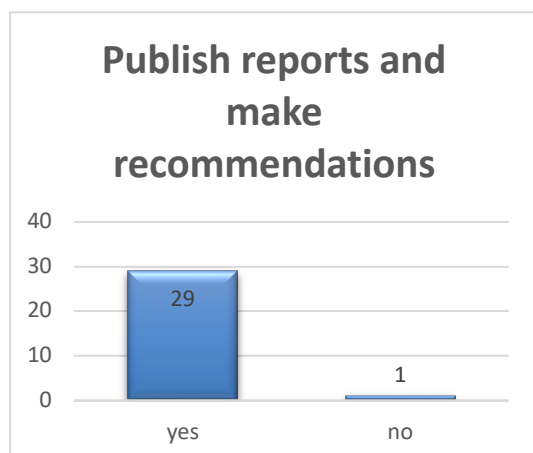


⁶³⁰ It is arguable whether the Cypriot Ombudsman’s mandate to publish reports containing recommendations in response to victims’ complaints, can be interpreted as ‘independent assistance’.

⁶³¹ In Estonia, the Gender Equality and Equal Treatment Commissioner has such a mandate.

⁶³² It is arguable whether the Lithuanian Ombudsperson’s mandate to provide ‘independent consultations’ can be interpreted to include some form of independent assistance to victims.

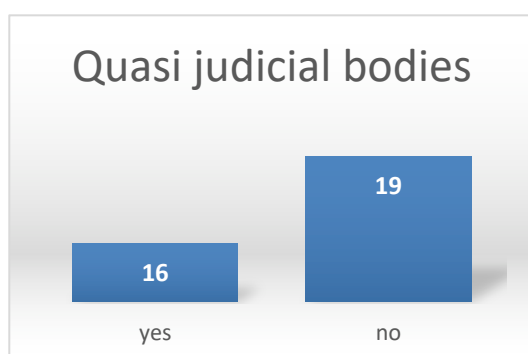
⁶³³ In the Netherlands, the local anti-discrimination services have such a mandate.



National equality bodies are also required to have a mandate to publish independent reports and to make recommendations. There are specialised bodies with such a mandate in all Member States. In the **Netherlands**, only one of the two designated bodies (Netherlands Institute for Human Rights) has such a mandate, as the powers of the two national bodies are designed to be complementary. However, the implementation of this mandate in practice varies greatly among the different countries, as can be seen in the nature and number of surveys and reports published and recommendations issued. While the recommendations

are rarely monitored and effectively implemented in many countries, their independent nature is often questionable in practice in other countries (see below for more on the independence of equality bodies).

Most bodies can arrange for conciliation between the parties and most can review and comment on legislative proposals and the reform of existing laws.

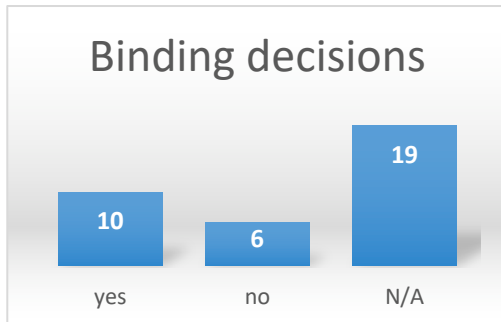


Although this is not required by the Racial Equality Directive, some specialised bodies are also quasi-judicial institutions with the power to examine cases of alleged discrimination and issue non-binding opinions or binding decisions. In countries where only non-binding opinions can be issued, such proceedings do not generally preclude the victim from subsequently taking legal action before the courts with a view to obtaining a binding remedy.⁶³⁴ Such tribunal-like, quasi-judicial bodies exist parallel to the specialised bodies

in **Austria, Denmark, Finland** and **Ireland** and they are also included in the analysis of this section, making a total of 35 bodies. Only 16 of these 35 bodies are quasi-judicial institutions: in **Austria** (the Equal Treatment Commission and the Federal Equal Treatment Commission), **Belgium** (the Flemish Human Rights Institute), **Bulgaria** (the Protection Against Discrimination Commission), **Cyprus** (the Ombudsman), **Denmark** (the Board of Equal Treatment), **Estonia** (both the Chancellor of Justice and the Gender Equality and Equal Treatment Commissioner), **Finland** (the National Non-Discrimination and Equality Tribunal), **Hungary** (the Ombudsman), **Ireland** (the Workplace Relations Commission), **Lithuania** (the Equal Opportunities Ombudsperson), the **Netherlands** (the Netherlands Institute for Human Rights), **Romania** (the National Council for Combating Discrimination), and **Slovenia** (the Advocate of the Principle of Equality). In addition, the **Slovak** National Centre for Human Rights is considered to be a quasi-judicial institution, although that is a matter of interpretation. In contrast, the **Portuguese** High Commission for Migrations, which was the formally designated equality body until 29 October 2023, exercised tribunal-like functions but was not considered to be a quasi-judicial body as

⁶³⁴ For further information about the procedures before such tribunal-like equality bodies, see Section 4.1.1 above.

it was not an independent administrative entity.⁶³⁵ Similarly, the equality body in **Luxembourg** has certain tribunal-like functions but is not considered to be a quasi-judicial body.



Among these 16 bodies, 10 can issue binding decisions.⁶³⁶ This is the case for the **Bulgarian, Cypriot,⁶³⁷ Danish,⁶³⁸ Estonian,⁶³⁹ Finnish, Hungarian, Irish, Lithuanian, Romanian** and **Slovenian** bodies. Nevertheless, in the **Netherlands**, the non-binding opinions of the Netherlands Institute for Human Rights are very much respected by both parties due to the long experience, expertise and practice of the equality body. In **Slovenia**, the equality body has the power to

issue binding decisions, but it lacks the instruments to enforce them in the event of non-compliance. However, in such instances, it can initiate a minor offence proceeding with the relevant inspectorate. Out of these 10 equality bodies, 8 can impose some form of sanctions: the **Bulgarian** Protection Against Discrimination Commission, the **Cypriot** Ombudsman, the **Danish** Board of Equal Treatment, the **Finnish** Non-Discrimination and Equality Tribunal, the **Hungarian** Ombudsman,⁶⁴⁰ the **Irish** Workplace Relations Commission, the **Lithuanian** Ombudsperson,⁶⁴¹ and the **Romanian** National Council for Combating Discrimination. Only one can award compensation to victims: the **Danish** Board of Equal Treatment.⁶⁴²

Whether or not the specialised bodies are quasi-judicial institutions, a large majority of them deal with complaints of discrimination brought to them by victims for attention or advice. Most equality bodies also have some form of legal standing in relation to the complaints they receive, for instance by bringing them to court on behalf of the victims, or by providing support to the victim bringing the complaint to court themselves. In addition, some bodies have the possibility of initiating strategic litigation, for instance in their own name in instances of discrimination without identifiable victims. A massive amount of information is consequently available to these bodies regarding who is or feels discriminated against and what grounds or fields are at issue. It is therefore of interest to know whether they record the number of complaints received and/or dealt with, or the decisions taken, whether they have data on at least the ground of discrimination concerned in complaints/decisions and also whether such data are available to the public through the body's website or annual report. Keeping such data and making it available to the public is extremely important both for gaining a better understanding of the issues at stake in fighting discrimination as a matter of societal information but also as a clear signal indicating what is or is not lawful according to national anti-discrimination legislation.

⁶³⁵ As mentioned above, since the transfer of competences from the High Commission for Migration on 29 October 2023, the status of the Portuguese equality bodies as of 1 January 2024 is unclear.

⁶³⁶ In addition, although the Portuguese High Commission for Migration was not a quasi-judicial body, it could, until 29 October 2023, issue binding decisions and impose administrative sanctions. The situation as of 1 January 2024 is unclear.

⁶³⁷ In practice, the Cypriot equality body has only issued one binding decision, and prefers issuing non-binding opinions containing recommendations, or attempting mediation. Its opinions are generally taken into serious consideration by the private and public sectors, although very few opinions have been issued against the latter since the inception of the body in 2004.

⁶³⁸ The Board of Equal Treatment.

⁶³⁹ The Chancellor of Justice only in private sector conciliation procedures. In practice, there is no information indicating specifically that any such binding decisions have ever been issued.

⁶⁴⁰ Acting under its equality body mandate.

⁶⁴¹ The Lithuanian Ombudsperson can only impose sanctions in cases of discriminatory advertisements for the sale of goods or services.

⁶⁴² Further information regarding sanctions imposed by equality bodies can be found in Section 4.5 above.

Some specialised bodies have specific responsibilities or powers that are not necessarily listed in Article 13(2) of the Racial Equality Directive.

Interesting and useful powers which are not listed in Article 13(2) include the following:

- In **Austria**, the National Equality Body can initiate administrative and penal proceedings before local administrative departments regarding the duty to advertise jobs and housing without discrimination. The National Equality Body is also involved in the assessment process of proposed legislation.
- In **Estonia**, the Gender Equality and Equal Treatment Commissioner and the Chancellor of Justice have the power to ‘analyse the effect of the implementation of legislation to the condition of the members of the society’.
- In **Finland**, the Ombudsman can act as the legal assistant for the victim in the court. The Ombudsman can also promote information exchange, education and training on equal treatment and non-discrimination. It is often invited to give lectures and presentations on its work and is regularly consulted by the ministries when preparing legislation.
- In the case of an investigation of a complaint which results in a finding of direct intentional discrimination (a criminal offence), the **French** Defender of Rights can propose a *transaction pénale* – a kind of negotiated criminal sanction – to a perpetrator, who can either accept or reject it. This could be a fine or publication (for instance a press release). If the proposed negotiated criminal sanction is rejected, or having been accepted there is a subsequent failure to comply with it, the Defender of Rights can initiate a criminal prosecution, in place of the public prosecutor, before a criminal court.
- The **Hungarian** Ombudsman, acting as a successor to the abolished Equal Treatment Authority, may initiate an *actio popularis* with a view to protecting the rights of persons and groups whose rights have been violated.⁶⁴³
- In **Ireland**, the Irish Human Rights and Equality Commission has the competence to prepare draft codes of practice for the elimination of discrimination and the promotion of equality of opportunity. Furthermore, it may serve a ‘substantive notice’ following an equality review or the preparation of an equality action plan. Where it appears to the body that there is failure to comply with an equality action plan the substantive notice may outline steps that should be taken to implement the plan. Non-compliance with the notice may result in prosecution for a criminal offence.
- The **Netherlands** Institute for Human Rights has the power to advise organisations (including governmental bodies) whether their employment practices contravene non-discrimination law.
- The **Slovenian** Advocate of the Principle of Equality has the discretionary power to submit a legal instrument to the Constitutional Court for constitutional review, if the Advocate assesses that the law is discriminatory.
- In **Sweden**, when the Equality Ombudsman represents a claimant victim of discrimination in court, it may order the alleged discriminator to provide information, allow access to the workplace or enter into discussions with the Ombudsman, subject to a financial penalty.

By contrast, some concerns can be highlighted in relation to the equality bodies in particular countries. For instance, in some countries there is concern that specialised bodies are too close to Government, thereby jeopardising the independence of their work. For example, the independence of the **Portuguese** High Commission for Migration was not stipulated in law, and it may be argued that it could not exercise its powers independently due to its close links with the Prime Minister under whose authority its duties were carried out.⁶⁴⁴ Similar concerns arise in relation to the **Italian** National Office against Racial Discrimination (UNAR), which operates as a ministerial department, is fully dependent on the Department for Equal Opportunities and reports to the Prime Minister. These concerns were reinforced in 2022 when the Minister for Equal Opportunities appointed his personal secretary as the new director general of UNAR. There are concerns in **Hungary** that the

⁶⁴³ This procedure is only available where not all concerned individuals can be identified.

⁶⁴⁴ As mentioned above, since the transfer of competences from the High Commission for Migration on 29 October 2023, the status of the Portuguese equality bodies as of 1 January 2024 is unclear.

former Equal Treatment Authority's decisions in politically sensitive cases contributed to its hasty abolition. Furthermore, concerns have been raised regarding the (lack of) independence in practice of the Ombudsman, which has now taken over the equality body mandate in Hungary.⁶⁴⁵ In **Belgium**, the withdrawal of Flanders from the formerly inter-federal body Unia, and the creation in 2022 of a separate equality body, the Flemish Human Rights Institute,⁶⁴⁶ have raised criticism and concerns from different stakeholders. The coming years will show whether this division will impact on the effective implementation of anti-discrimination law in Belgium overall and in Flanders more specifically.

In **Cyprus**, the independence of the equality body is undermined by the absence of objective criteria for the appointment of the ombudsman and the lack of opportunities for candidates other than the one proposed by the Executive to be considered. The appointment in 2017 of the current ombudsman raised objections from NGOs, journalists and political parties who considered the appointment to be highly political and motivated by the appointee's close links with important media outlets. Since then, the ombudsman's work related to equality and non-discrimination issues is almost exclusively exercised without reference to the specific non-discrimination legal framework. Instead, the institution issues reports and examines complaints from the perspective of general administrative law or on the basis of its mandate to monitor the national implementation of the UN CRPD.⁶⁴⁷ Despite this, the ombudsman was reappointed for another term in 2023, without any real debate concerning the qualifications of other candidates. In contrast, in **Romania**, the law does set out objective criteria for the selection of members of the equality body's steering board. These criteria are not consistently respected however, and several appointments have been revoked by the Constitutional Court for this reason.⁶⁴⁸ In **Bulgaria**, although both Parliament and the President adopted rules in 2017 on the nomination of candidates for the equality body, the President's decision-making process remains discretionary and non-transparent under these rules. Similar concerns were raised in 2020 by the European Commission against Racism and Intolerance (ECRI) in its report on **Slovakia**.⁶⁴⁹ In the **Netherlands**, there are important differences between the local anti-discrimination services throughout the country, in terms of size, funding and expertise. A report published in 2023 even noted that this lack of uniformity among the services hampers their visibility and effectiveness. The report further indicated that the current funding of the services also prevents their effective functioning and, in some cases, limits their independence from the municipalities.⁶⁵⁰ In **France**, in recent years, the equality body has been facing a significant increase in the number of complaints, without any increase in budget, forcing the body to reduce the number of complaints to be investigated as well as research activities and opinions submitted before the courts.

Independence, but also effectiveness is greatly affected by the available budget for equality bodies. In the past, the budget cuts following the economic crisis have had an impact, for instance, in **Greece, Hungary, Ireland**

⁶⁴⁵ See, Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions (2021), *Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA)*, 14-24 June 2021.

⁶⁴⁶ Belgium, Decree of 28 October 2022, OJ 9 November 2022.

⁶⁴⁷ For further information, see European network of legal experts in gender equality and non-discrimination (2022) *Country report Non-discrimination: Cyprus 2022*.

⁶⁴⁸ Romania, Constitutional Court, decision No. 434/2018 of 21 June 2018 and decision No.41/2023 of 22 February 2023.

⁶⁴⁹ European Commission against Racism and Intolerance (ECRI) (2020) *ECRI report on the Slovak Republic: 6th monitoring cycle*, Council of Europe, 1 October 2020.

⁶⁵⁰ Van Beijnhem, R. *et al* (2023), *Structure, tasks and financing of ADVs. An investigation into the local approach to discrimination in the Netherlands (Inrichting, takenpakket en financiering ADV's. Een onderzoek naar de lokale aanpak van discriminatie in Nederland)*, Berenschot 20 February 2023.

and **Latvia**. In **Romania**, although the budget of the equality body has been increasing, in 2023, out of the 99 posts that were needed, only 77 posts were actually occupied.⁶⁵¹

⁶⁵¹ Romania, National Council for Combating Discrimination (2024), *2023 Annual Report*.

6 Implementation and compliance

6.1 Dissemination of information and social and civil dialogue

Article 10, Racial Equality Directive; Article 12, Employment Equality Directive

‘Dissemination of information

Member States shall take care that the provisions adopted pursuant to [these Directives], together with the relevant provisions already in force, are brought to the attention of the persons concerned by all appropriate means throughout their territory.’

Article 11, Racial Equality Directive; Article 13, Employment Equality Directive

‘Social dialogue

1. Member States shall, in accordance with national traditions and practice, take adequate measures to promote the social dialogue between the two sides of industry with a view to fostering equal treatment, including through the monitoring of workplace practices, collective agreements, codes of conduct, research or exchange of experiences and good practices.
2. Where consistent with national traditions and practice, Member States shall encourage the two sides of the industry without prejudice to their autonomy to conclude, at the appropriate level, agreements laying down anti-discrimination rules in the fields referred to in Article 3 which fall within the scope of collective bargaining. These agreements shall respect the minimum requirements laid down by this Directive and the relevant national implementing measures.’

Article 12, Racial Equality Directive; Article 14, Employment Equality Directive

‘Dialogue with non-governmental organisations

Member States shall encourage dialogue with appropriate non-governmental organisations which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on grounds of [racial and ethnic origin, religion or belief, disability, age or sexual orientation] with a view to promoting the principle of equal treatment.’

The low level of formal implementation of the directives’ provisions on dissemination of information and social and civil dialogue by Member States is to some degree due to the interpretation by some Governments that they are only bound to take some steps towards achieving the objectives of these articles. The provisions do not seem to be very well implemented in, for example, **Bulgaria, Cyprus, Czechia, Hungary and Luxembourg**. More generally, it seems that the duty to disseminate information and establish mechanisms for dialogue is not a high priority at the national level.

6.1.1 Dissemination of information and awareness-raising

In general, activities organised by the Member States and candidate countries aimed at disseminating information about the anti-discrimination legal framework and available means of redress are relatively rare. In some countries, such activities are organised by Government ministries, through for instance the publication of basic information on the principle of equal treatment or information campaigns through the media and the organisation of seminars (for example in **Finland, Germany, Malta** and **Sweden**). In **Slovakia**, the Ministry of Labour, Social Affairs and Family runs a website that provides a wide range of information for the general public concerning discrimination.⁶⁵² In **Latvia**, the Society Integration Fund takes an active role in disseminating information to the general public through awareness-raising campaigns and to more specifically targeted stakeholders such as the legislature or employers.

In most countries however, the dissemination of information about anti-discrimination law is mainly carried out by the national equality body. Therefore, the mandates of specialised bodies in most countries include awareness-raising activities, for instance in **Denmark, Estonia, France, Germany, Greece, Ireland, Italy, Lithuania, Malta, the Netherlands, Romania, Slovenia** and **Sweden**. Such activities may include, for instance, awareness-raising campaigns, educational programmes and training activities, round-table discussions, conferences and workshops, etc.⁶⁵³

A small number of Member States, including **Poland** and **Portugal**, have included in their legislation an obligation on employers to inform employees of discrimination laws. In **Poland**, the National Labour Inspectorate is responsible for monitoring the implementation of the obligation on employers. In **France**, all hiring committees of organisations of more than 300 employees are obliged to undertake training to correct discriminatory biases and implement transparent processes.⁶⁵⁴

However, in most Member States, serious concerns persist around perception and awareness, as individuals are often not informed of their rights to protection against discrimination and of protection mechanisms.

6.1.2 Social and civil dialogue

A few countries have put in place permanent structures specifically for dialogue with civil society and the social partners on equality issues, notably **Belgium, Finland, France, Greece** and **Slovakia**. There appear to be more instances of structured dialogue for disability than for the other grounds of discrimination, as is the case for instance in **France, Latvia** and **Spain**. In **France**, the social partners have a statutory obligation to hold annual negotiations on measures necessary for the professional integration of persons with disabilities.

Specific structures dealing with Roma have also emerged over the past decade. For instance, in 2013, the **French** Government gave a specific mandate to the Inter-ministerial Delegation on Emergency Accommodation and Access to Housing to establish the conditions for a programme on access to rights (including health,

⁶⁵² The website is available in Slovak at: <https://www.horizontalneprincipy.gov.sk/>.

⁶⁵³ For example, in Ireland (<https://www.ihrec.ie/your-rights/>), Sweden (Equality Ombudsman (2024) Annual Report 2023, pp. 15, 24-25 and 28), in Denmark ([https://menneskeret.dk/files/media/document/Beretning til Folketinget - Menneskerettigheder i Danmark 2022-a.pdf](https://menneskeret.dk/files/media/document/Beretning%20til%20Folketinget%20-%20Menneskerettigheder%20i%20Danmark%202022-a.pdf)), the Netherlands (NIHR Annual programme for 2022 (Jaarplan 2022), p. 15-16, 19 and 20).

⁶⁵⁴ France, [Law No. 2017-86 of 27 January 2017 on equality and citizenship](#), Article 61 *bis*.

education, employment, accommodation and housing) and integration of foreign Roma and Travellers. In **Finland**, the Advisory Board on Romani Affairs was established in 1956, with the remit of enhancing the equal participation of the Roma population in Finnish society, improving their living conditions and socioeconomic status, and promoting their culture. In **Spain**, the National Roma Council is a collegiate participatory and advisory body whose purpose is to promote the participation and cooperation of Roma associations in the development of general policy and the promotion of equal opportunities and treatment for the Roma population. Of its 40 members, half come from the central Government and the other half are representatives of Roma associations. The **Austrian** Federal Chancellery set up a National Contact Point for Roma Integration in 2012 to coordinate governmental activities regarding the Roma strategy and support a corresponding 'dialogue platform', which also maintains contacts with NGOs. The **Belgian** National Roma Platform was launched in 2016, with the aim of triggering a dialogue with all stakeholders and Roma communities in Belgium. The platform is supervised by a pilot committee of staff of the federal and regional administrations, NGOs active at the local level and the equality body Unia. In **Greece**, 'multi-centres' located close to Roma schools and settlements provide services to facilitate integration, particularly of Roma children. In addition, a Roma Human Rights Advocacy and Defence Observatory was established in 2021 to collect, process and forward complaints of discrimination against Roma, and to publish reports presenting and analysing the data on complaints.⁶⁵⁵

Generating dialogue with social partners and civil society is also often the role of the specialised equality bodies. This is the case for the **Irish** Human Rights and Equality Commission, the **Spanish** Council for the Elimination of Racial or Ethnic Discrimination and the **Belgian** Unia. Since 2016, Unia has offered free online training for employers on anti-discrimination law⁶⁵⁶ and in 2020, a support committee in the field of racial discrimination was set up, bringing together civil society organisations, academics and social partners. Finally, in **Greece**, although the Economic and Social Council was formally entrusted with this task, in practice it is exercised by the national equality body, the Ombudsman.

6.2 Ensuring compliance

Article 14 of the Racial Equality Directive and Article 16 of the Employment Equality Directive require Member States to ensure that legal texts comply with the directives, demanding on the one hand that, 'any laws, regulations and administrative provisions that are contrary to the principle of equal treatment are abolished', and on the other that, 'any provisions contrary to the principle of equal treatment which are included in contracts or collective agreements, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations are, or may be, declared void or are amended'. The wording of these provisions would appear to prescribe the systematic repeal of all discriminatory laws, whereas more leeway is left for annulling contractual provisions and bringing them into line with the directives.

6.2.1 Ensuring the compliance of national legislation

None of the Member States has adopted legislation transposing the directives which explicitly (and automatically) repeals any discriminatory laws. In **Greece**, the Equal Treatment Law stipulates that all legislative, regulatory and administrative orders or acts, policies and actions within the fields covered by the

⁶⁵⁵ Further information is available on the project's website, available at: <https://www.romproject.gr/draseis>.

⁶⁵⁶ For more details on this initiative, see the website www.ediv.be/.

Law must respect the principle of equal treatment.⁶⁵⁷ The **Bulgarian** Protection Against Discrimination Act requires all public authorities to respect the aim of not allowing any direct or indirect discrimination when drafting and applying legislation, and to take all possible and necessary measures to achieve the aims of the act.⁶⁵⁸ However, in practice the public authorities do not implement these provisions. In **Malta**, the draft Equality Act, which has been going through the enactment process since 2014, appears to be encountering some resistance due to a clause that would ensure the supremacy of the law, when enacted, above all other national legislation.⁶⁵⁹

In all other Member States, compliance with Articles 14(a) of the Racial Equality Directive and 16(a) of the Employment Equality Directive relies on constitutional equality guarantees and/or general principles of legal interpretation such as *lex specialis derogat legi generali* and *lex posteriori derogat legi priori*. Discriminatory laws and regulations must therefore be challenged in court, with varying levels of procedural barriers among the Member States. In most countries, the constitutional equality guarantee already acts as a filter for discriminatory laws, with the constitutional court having the power to set aside any unconstitutional provisions. However, in countries where such proceedings are lengthy, requiring the prior exhaustion of all other remedies, it is questionable whether this is sufficient to fulfil this provision of the directives. Aside from constitutional clauses, there are often clauses in primary legislation that allow lower courts to declare void laws that are in breach of the principle of equal treatment, such as in **France**, for example. In **Romania**, despite clear statutory provisions, the Constitutional Court has ruled that neither the NCCD⁶⁶⁰ nor the civil courts⁶⁶¹ can set aside discriminatory legal provisions.

In **Belgium**, the approach to potentially discriminatory laws and regulations is particularly problematic, as both the General Anti-Discrimination Federal Act and the Racial Equality Federal Act contain so-called safeguard provisions ensuring that these acts will not apply to differences in treatment imposed by (or by virtue of) another piece of legislation. Similarly, in **Ireland**, there is concern that the Equal Status Acts 2000-2018 remain subordinate to other legislative enactments, because Section 14(1)(a)(i) provides that nothing in the Equal Status Act will prohibit any action taken under any other enactment.⁶⁶²

6.2.2 Ensuring compliance of contractual clauses and other rules

Most Member States have not inserted any specific provisions in their anti-discrimination legislation to ensure that discriminatory clauses in contracts, collective agreements and other rules are or may be declared null and void or are amended. Instead, countries such as **Croatia, Czechia, Denmark, Estonia, France, Hungary, Italy, Latvia, Poland, Portugal, Romania, Slovakia** and **Slovenia** rely on constitutional guarantees or general provisions in labour and/or civil law to ensure compliance with Articles 14(b) of the Racial Equality Directive and 16(b) of the Employment Equality Directive.

⁶⁵⁷ Greece, Law No. 4443/2016, Article 12.

⁶⁵⁸ Bulgaria, Protection Against Discrimination Act, Articles 6(2) and 10.

⁶⁵⁹ The explicitly listed exceptions would be the Constitution, the European Convention Act and any future act of Parliament amending the law.

⁶⁶⁰ Romania, Constitutional Court, Decision No. 997 of 7 October 2008 finding that Article 20(3) of the Anti-discrimination Act, defining the mandate of the NCCD in relation to discrimination triggered by legislative provisions, is unconstitutional.

⁶⁶¹ Romania, Constitutional Court, Decision No. 818, 3 July 2008, *Official Gazette* 537 of 16 July 2008.

⁶⁶² For an extensive analysis of this specific exception under Irish law, please see Walsh, J. (2019) 'Primacy of national law over EU law? The application of the Irish Equal Status Act' in *European Equality Law Review* 2019/2, pp. 35-48.

In many other Member States however, explicit non-discrimination provisions stipulate either that such clauses and rules *are* declared null and void or that they are inapplicable (**Belgium, Finland, Germany, Greece, Ireland, Malta**, the **Netherlands** and **Spain**⁶⁶³) or that they *may be found* to be so (**Cyprus, Luxembourg** and **Sweden**). For example, all the **Belgian** anti-discrimination laws stipulate that contractual clauses as well as any 'provisions' contrary to the prohibition of discrimination, shall be considered null and void. Similarly, in **Spain**, Article 17(1) of the Workers' Statute declares void any discriminatory clauses in collective agreements, individual agreements and unilateral decisions of discriminatory employers. Section 25 of the **Finnish** Non-Discrimination Act provides that a court may, in a case before it, change or ignore contractual terms that are contrary to the prohibition of discrimination if it would be unreasonable to apply the contract otherwise unaffected.

Significantly, the **Irish** Employment Equality Acts 1998-2021 provide that all employment contracts are deemed to have an equality clause that transforms any provisions of the contracts that would otherwise give rise to unlawful discrimination (Section 30). All discriminatory provisions in collective agreements are deemed void and it is not possible to opt out of the terms of the equality legislation (Section 9). Although it is the case that discriminatory clauses are not valid, the reality is that this fact may only be established through litigation. Where the Workplace Relations Commission holds that the clause in question is contrary to the legislation, that part of the collective agreement or contract cannot be enforced and must be modified.

Finally, in **Austria, Bulgaria** and **Lithuania**, there are neither specific non-discrimination provisions nor general provisions of labour or civil law declaring that contractual clauses and other rules are null and void if they are contrary to the principle of equality.

⁶⁶³ In Spain, the relevant clause is only applicable in the area of employment. See Royal Legal Decree 2/2015 of 23 October 2015 ('Workers' Statute'), Article 17(1).

7 Conclusion

Twenty-four years after the adoption of the Racial Equality and Employment Equality Directives it stands without question that their transposition has immensely enhanced legal protection against discrimination on the grounds of racial or ethnic origin, religion or belief, age, disability and sexual orientation across Europe. It is also encouraging to note that a majority of Member States provide further protection compared to the requirements of EU law and that the levelling up of protection across grounds continues in a number of countries. In the past few years, most of the remaining shortcomings and gaps in national transpositions have been remedied, sometimes following the initiation of infringement proceedings by the European Commission and sometimes due to pressure from other stakeholders, such as civil society organisations representing the groups most affected by discrimination. This comparative analysis of the specific transposition, implementation and enforcement on the national level shows, however, that some gaps remain

Transposition gaps can still be observed in several Member States with regard to the definition of different forms of discrimination. To give a few examples, in some countries hypothetical and/or past comparators are excluded from the definition of direct discrimination and in others the category of jobseekers does not fall under the personal scope of the duty to provide reasonable accommodation. Gaps may also appear in the transposition of the material scope of the directives in national legislation. This is mainly evident when it comes to the areas of social protection, social advantages or with regard to public employment or the self-employed. Although there are still minor gaps in the transposition of specific aspects of certain anti-discrimination provisions in a few Member States, the main issue is the implementation of such legislation (and of both European directives) and the judicial interpretation by national courts and the CJEU.

As regards the implementation of the EU anti-discrimination directives, shortcomings remain in national legislation. For instance, in some Member States, the legal conditions required to claim the right to reasonable accommodation in employment are highly restrictive and the definitions of disability are often based on a medical rather than a human rights approach. Moreover, it is not clear from the wording of several national laws whether the failure to provide reasonable accommodation would amount to discrimination. Issues can also be observed in relation to the liability of the employer for harassment of one of their employees carried out by a third party (clients, other employees, etc). Such legal vacuums in national legislation are reducing the protection provided by the directives.

Legal vacuums in national laws can be – and sometimes have been – solved by the interpretation given by national courts. However, there are countries where leading case law is missing to the detriment of legal certainty regarding some fundamental aspects of anti-discrimination law. In that regard, the CJEU plays an increasingly important role and the number of preliminary references lodged before the CJEU continues to rise.⁶⁶⁴

In many countries, however, it remains to be seen how national courts and equality bodies will apply this developing body of case law. Although case law is becoming more frequent in most countries, it does not always correctly apply the principles, concepts and definitions of the directives or those developed by the Court of

⁶⁶⁴ In 2023, see for example: judgment of 12 January 2023, *J.K. v TP S.A.*, C-356/21, ECLI:EU:C:2023:92 (sexual orientation), Grand Chamber judgment of 28 November 2023, *OP v Commune d'Ans*, C-148/22, EU:C:2023:924 (religion or belief), and judgment of 7 December 2023, *J.M.P. v AP Assistenzprofis GmbH*, C-518/22, EU:C:2023:956 (age).

Justice. Exceptions and exemptions are thus interpreted too extensively in some countries, while worrying developments can also be observed with regard to the prohibition of direct discrimination and the fact that it may under certain circumstances be generally justified.

As already expressed in previous editions of this publication, detailed and specialised legislation, and in particular, specific procedural rights as regards available remedies and enforcement provisions, could possibly fill these gaps. In relation to enforcement, however, further issues of concern arise. These include the lack of (or too restrictive) legal standing of organisations and associations to engage in proceedings on behalf or in support of victims of discrimination, restrictive application of the shift of the burden of proof as well as a number of barriers to effective access to justice. Although different means of collective redress, such as class action or *actio popularis*, could go a long way towards ensuring effective access to justice for victims of discrimination, procedural barriers in many countries hinder the full development of these potentially valuable tools. Another crucial barrier to effective enforcement highlighted by the country reports is the lack of 'effective, dissuasive and proportionate' sanctions and remedies, in particular beyond the area of employment. In some countries, there are, for instance, maximum limits (in the law or in practice) on compensation awarded to victims. Therefore, in some countries the impression remains of a theoretical legal framework that is in conformity with the directives but that does not work effectively in practice.

Equality bodies have played a fundamental role in the enforcement of non-discrimination legislation over the years. By assisting victims of discrimination, they are contributing to the improvement of victims' access to rights and justice. Equality bodies also perform important duties at the institutional level by providing recommendations and policy advice to Governments, and supporting good practices and positive equality obligations. Lastly, they are major actors in raising awareness in society through campaigns, media work, training of professionals, etc. and in providing information on the available mechanisms for claiming rights. This activity is necessary in order to reduce the discrepancy between the levels of discrimination experienced and discrimination that is being reported. However, shortcomings have been observed concerning equality bodies and the impossibility of their effectively fulfilling the role that they are given by the Racial Equality Directive,⁶⁶⁵ whether that is because of insufficient resources, a restricted scope of activities or a lack of independence from Government and public authorities. In this context, the introduction of two new directives on binding standards for all Member State equality bodies is a very welcome development.

Filling these remaining gaps in anti-discrimination law and its implementation cannot merely be perceived as a technical issue. More than two decades ago, the directives were drafted with the aim of contributing to the establishment of a more inclusive society, where everyone has equal rights and opportunities to achieve their potential. Although formal equality has been obtained in most national legislation, stronger efforts need to be made in order to achieve substantive equality. This objective continues to inspire and drive the ambitions of the European network of legal experts in gender equality and non-discrimination.

⁶⁶⁵ Most equality bodies deal not only with race and ethnicity but with other protected grounds, including, but not only, the four protected grounds of the Employment Equality Directive (religion or belief, disability, age and sexual orientation). For more information on equality bodies, see Chapter 5 above.

Annex 1. Main national specific anti-discrimination legislation

The information in these tables is based on the updated country reports for the European network of legal experts in gender equality and non-discrimination which contain information valid as at 1 January 2024. This is a non-exhaustive list, which contains only the main pieces of anti-discrimination legislation in each country and it does not include references to other specific legislation. Inclusion of national legislation in the tables does not imply that it complies with Directives 2000/43/EC and 2000/78/EC. Dates of latest amendments refer to amendments that are of relevance for non-discrimination law.

Country	Constitutional anti-discrimination provisions	Main specific anti-discrimination legislation	Grounds covered
AUSTRIA	Article 7 Federal Constitutional Act, Article 2 Basic Law	Federal Equal Treatment Act of 23 June 2004, as last amended in 2023	Gender, ethnic affiliation, religion, belief, age, sexual orientation
		Equal Treatment Act of 26 June 2004, as last amended in 2023	Gender, ethnic affiliation, religion, belief, age, sexual orientation
		Act on the Employment of Persons with Disabilities of 10 August 2005, as last amended in 2022	Disability
		Federal Disability Equality Act of 10 August 2005 as last amended in 2018	Disability
		Styrian Equal Treatment Act of 31 May 2023	Gender, ethnic affiliation, religion, belief, disability, age and sexual orientation
		Viennese Anti-discrimination Act of 8 September 2004, as last amended in 2018	Ethnic affiliation, religion, belief, disability, age, sexual orientation, sexual identity, gender, pregnancy and parenthood
		Lower Austrian Anti-discrimination Act of 26 January 2017, as last amended in 2018	Gender, ethnic affiliation, religion or belief, disability, age, sexual orientation
		Lower Austrian Equal Treatment Act of 1 January 2015, as last amended in 2023	Gender, ethnic affiliation, religion or belief, disability, age, sexual orientation
		Carinthian Equal Treatment Act of 23 September 2021	Gender, racial or ethnic origin, religion or belief, disability, age, sexual orientation

1 Please note that in most countries protection against discrimination is also granted in the Labour and Penal Codes. These have not been indicated unless there is no other protection in national law. Legislation which is specific or one single ground has been indicated in the tables where specific anti-discrimination law does not include that specific ground, and has been included in footnotes where anti-discrimination law also covers them.

Country	Constitutional anti-discrimination provisions	Main specific anti-discrimination legislation	Grounds covered
		Vorarlbergian Anti-discrimination Act of 19 May 2005, as last amended in 2023	Gender, ethnic affiliation, religion, belief, disability age, sexual orientation
		Upper Austrian Anti-discrimination Act of 6 May 2005, as last amended in 2021	Gender, racial or ethnic origin, religion, belief, disability age, sexual orientation
		Burgenlandian Anti-discrimination Act of 5 October 2005, as last amended in 2022	Gender, ethnic affiliation, religion, belief, disability, age, sexual orientation
		Tyrolian Equal Treatment Act of 11 January 2005, as last amended in 2023	Gender, ethnic affiliation, religion, belief, disability, age, sexual orientation
		Tyrolian Anti-discrimination Act of 31 March 2005, as last amended in 2023	Gender, ethnic affiliation, religion, belief, disability, age, sexual orientation
		Salzburg Equal Treatment Act of 31 March 2006, as last amended in 2023	Gender, racial or ethnic origin, religion, belief, disability, age, sexual orientation
BELGIUM	Articles 10 and 11 of the Constitution	Racial Equality Federal Act of 30 July 1981, ² as last amended in 2023	Alleged race, ³ colour, descent, ethnic and national origin and nationality
		General Anti-discrimination Federal Act of 10 May 2007, ⁴ as last amended in 2023	Age, sexual orientation, civil status, birth, property (<i>fortune</i>), religious or philosophical belief, state of health, ⁵ disability, physical or genetic features, political opinion, trade union opinion (<i>conviction syndicale</i>) and language and social origin
		Flemish Region: Decree on proportionate participation in the employment market of 8 May 2002 as last amended in 2021	Sex, alleged race, ethnic origin, religion or belief, disability, age and sexual orientation

2 Formal title: Act Criminalising Certain Acts inspired by Racism or Xenophobia.

3 The Belgian legislator refers to the expression 'alleged race' in order to avoid giving the impression that they subscribe to the idea that there are indeed different races.

4 Formal title: Act on the Fight against Certain Forms of Discrimination.

5 The former version of the Law mentioned 'actual or future' 'state of health'. The law of 20 July 2022 has suppressed the reference to 'actual or future'.

Annex 1. Main national specific anti-discrimination legislation

Country	Constitutional anti-discrimination provisions	Main specific anti-discrimination legislation	Grounds covered
BELGIUM	Articles 10 and 11 of the Constitution	Walloon Region: Decree on the Fight Against Certain Forms of Discrimination of 6 November 2008 as last amended in 2023 ⁶	Alleged race, colour, descent, national or ethnic origin, nationality; age, sexual orientation, civil status, birth, property ('fortune', in French), religious or philosophical belief, state of health, disability, physical or genetic features, political opinion, language, social origin or condition, trade union opinion; sex/gender and related grounds: pregnancy, childbirth, motherhood, breastfeeding, gender reassignment, gender identity and gender expression; family status.
		Region of Brussels-Capital: Ordinance related to the Fight Against Discrimination and Equal Treatment in the Employment field of 4 September 2008 as last amended in 2023	Sex, alleged race, religious, philosophical or political conviction, disability, age, sexual orientation, civil status, birth, property ('fortune'), language, actual or future state of health, physical or genetic features, pregnancy, childbirth, motherhood, gender reassignment, nationality, colour, descent, national, ethnic or social origin, trade
		Region of Brussels-Capital: Ordinance related to the Fight Against Discrimination and Equal Treatment in the Employment field of 4 September 2008 as last amended in 2022	Sex, alleged race, religious, philosophical or political conviction, disability, age, sexual orientation, civil status, birth, property (<i>fortune</i>), language, actual or future state of health, physical or genetic features, pregnancy, childbirth, motherhood, gender reassignment, nationality, colour, descent, national, ethnic or social origin, trade union opinion (<i>conviction syndicale</i>)

⁶ The original title was 'Decree on the fight against certain forms of discrimination, including discrimination between women and men in the fields of economy, employment and vocational training'.

Country	Constitutional anti-discrimination provisions	Main specific anti-discrimination legislation	Grounds covered
<p>BELGIUM</p>	<p>Articles 10 and 11 of the Constitution</p>	<p>Region of Brussels-Capital: Framework Ordinance to ensure a Diversity Policy and to combat discrimination in the local Brussels Civil Service of 25 April 2019</p>	<p>Sex, alleged race, religious, philosophical or political conviction, disability, age, sexual orientation, trade union opinion (<i>conviction syndicale</i>), civil status, birth, property (<i>fortune</i>), language, state of health, physical or genetic features, pregnancy, childbirth, motherhood, gender reassignment, gender identity and gender expression, nationality, colour, descent, national or ethnic origin, social origin or condition</p>
		<p><i>Commission communautaire française</i> (COCOF): Decree on the Fight Against certain forms of discrimination and on the implementation of the principle of equal treatment of 9 July 2010</p>	<p>Sex, alleged race, religious, philosophical or political conviction, disability, age, sexual orientation, civil status, birth, property (<i>fortune</i>, trade union opinion (<i>conviction syndicale</i>), language, actual or future state of health, physical or genetic features, pregnancy, motherhood, childbirth, gender reassignment, nationality, colour, descent and national, ethnic or social origin</p>
		<p>Decree on the fight against certain forms of discrimination (French Community) of 12 December 2008, as last amended in 2015</p>	<p>Sex, alleged race, national or ethnic origin, social origin, religious or philosophical belief, disability, age, sexual orientation, nationality, colour, descent, pregnancy, childbirth, motherhood, gender reassignment, gender identity and gender expression, civil status, birth, property (<i>fortune</i>), political opinion, trade union opinion (<i>conviction syndicale</i>), language, actual or future state of health, physical or genetic features</p>

Annex 1. Main national specific anti-discrimination legislation

Country	Constitutional anti-discrimination provisions	Main specific anti-discrimination legislation	Grounds covered
BELGIUM	Articles 10 and 11 of the Constitution	Decree aimed at fighting certain forms of discrimination (German-speaking Community) of 19 March 2012, as last amended in 2019	Sex, alleged race, national or ethnic origin, religious or philosophical belief, disability, age, sexual orientation, nationality, colour, descent, social origin, pregnancy, childbirth, motherhood, parenthood, transgender, civil status, birth, property (fortune), political opinion, trade union opinion (<i>conviction syndicale</i>), language, actual or future state of health, physical or genetic features
		Framework Decree for the Flemish equal opportunities and equal treatment policy (Flemish Community/Region) of 10 July 2008, as last amended in 2021	Sex, alleged race, religious or philosophical belief, disability, age, sexual orientation, nationality, colour, descent, national or ethnic origin, social position, civil status, family status, birth, property (<i>fortune</i>), political opinion, trade union opinion (<i>conviction syndicale</i>), language, state of health, physical or genetic features, pregnancy, childbirth, motherhood, gender reassignment, gender identity and gender expression
BULGARIA	Article 6 of the Constitution	Protection Against Discrimination Act of 16 September 2003, as last amended in 2018	Sex, race, national origin, ethnicity, human genome, nationality, origin, religion or faith, education, beliefs, political affiliation, personal or social status, disability, age, sexual orientation, family status, property status, or any other ground provided for by law or by international treaty Bulgaria is a party to
		People with Disabilities Act of 18 December 2018, as last amended in 2022	Disability

Country	Constitutional anti-discrimination provisions	Main specific anti-discrimination legislation	Grounds covered
CROATIA ⁷	Article 14 of the Constitution	Anti-discrimination Act of 9 July 2008, as last amended in 2012	Race or ethnic origin or colour, gender, language, religion, political or other belief, national or social origin, property, trade union membership, education, social status, marital or family status, age, health condition, disability, genetic heritage, gender identity and expression, sexual orientation ⁸
		Act on Professional Rehabilitation and Employment of Persons with Disability of 18 December 2013 as last amended in 2018	Disability
CYPRUS	Article 28 of the Constitution	Equal Treatment (Racial or Ethnic Origin) Law No. 59 (1)/2004, as last amended in 2006	Racial and ethnic origin
		Equal Treatment in Employment and Occupation Law No. 58 (1)/2004, as last amended in 2009	Racial and ethnic origin, religion or belief, age, sexual orientation
		Law on Persons with Disabilities No. 127(I)/2000, as last amended in 2015	Disability
CZECHIA	Article 3 of the Charter of Fundamental Rights and Freedoms (part of the Constitutional order)	Anti-Discrimination Act No. 198/2009 of 23 April 2009, as last amended in 2018	Race, colour, ethnic origin, 'nationality' (<i>národnost</i>), sex, sexual orientation, age, disability, religion or belief.
DENMARK	None ⁹	Act on Prohibition of Discrimination due to Race etc., of 9 June 1971, as last amended in 2022	Race, skin colour, national or ethnic origin, belief, sexual orientation, gender identity, gender expression or gender characteristics

7 In addition, protection against discrimination on the ground of sexual orientation is provided by the Same-sex Life Partnership Act of 15 July 2014.

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

9 The Constitution of Denmark does not contain a general provision prohibiting discrimination or a general equality clause. Articles 70 and 71 are both specific clauses respectively dealing with the right to civil and political rights, and deprivation of liberty on the basis of political or religious convictions and descent.

Annex 1. Main national specific anti-discrimination legislation

Country	Constitutional anti-discrimination provisions	Main specific anti-discrimination legislation	Grounds covered
		Act on Prohibition of Discrimination in the Labour Market etc., of 24 May 1996, as last amended in 2022	Race, skin colour, religion or belief, political opinion, sexual orientation, gender identity, gender expression or gender characteristics, age, disability or national, social or ethnic origin
		Act on Ethnic Equal Treatment of 28 May 2003, as last amended in 2013	Race and ethnic origin
		Act on the Prohibition of Discrimination due to Disability of 8 June 2018, as last amended in 2021	Disability
ESTONIA	Article 12 of the Constitution	Equal Treatment Act of 11 December 2008, as last amended in 2017 ¹⁰	Ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation,
FINLAND	Article 6(1-2) of the Constitution	Non-Discrimination Act of 30 December 2014	Origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics
FRANCE	Preamble to the Constitution of 1946, Article 1 of the 1958 Constitution	Law No. 2008-496 relating to the adaptation of National Law to Community Law in matters of discrimination of 27 May 2008, as last amended in 2017	Origin, sex, pregnancy, belonging, whether real or supposed to an ethnic origin, a nation, a race or a specific religion, morals, sexual orientation, gender identity, age, family situation, genetic characteristics, physical appearance, last name, health, disability, loss of autonomy, union activities, political convictions, place of residence, capacity to express oneself in another language than French, apparent economic vulnerability, banking residence, loss of autonomy.
		Law No. 2005-102 for equal opportunities and integration of persons with Disabilities of 11 February 2005, as last amended in 2014	Disability

¹⁰ In addition, Art. 2(3) of the Equal Treatment Act stipulates that any ground not listed here, in particular the grounds of family-related duties, social status, representation of the interests of employees or membership of an organisation of employees, level of language proficiency or duty to serve in defence forces, may be the subject of 'requirements of equal treatment' in labour relations only.

Country	Constitutional anti-discrimination provisions	Main specific anti-discrimination legislation	Grounds covered
		Law No. 2001-1066 of 16 November 2001 on the fight against discrimination	Mores, origin, sexual orientation, sex, pregnancy, gender identity, belonging, whether real or supposed, to an ethnic origin, a nation, or a race, religion, physical appearance, last name, family situation, philosophical convictions, trade union activities, political opinions, age, health, disability
GERMANY	Articles 3 and 33(3) of the Basic Law	General Act on Equal Treatment of 14 August 2006, as last amended in 2022	Race or ethnic origin, sex, religion or belief ¹¹ (<i>Weltanschauung</i>), disability, age, sexual identity
		Act on Equal Opportunities for Persons with Disabilities of 27 April 2002, as last amended in 2022	Disability
GREECE	Article 5(2) of the Constitution	Law 4443/2016 'On the transposition of Directive 43/2000/EC on the application of the principle of equal treatment irrespective of racial and ethnic origin, and the transposition of Directive 78/2000/EC on the configuration of the general framework of equal treatment in employment and work' of 2 December 2016	Racial or ethnic origin, descent, colour, language, religious or other beliefs, disability or chronic illness, age, family or social status, sexual orientation, gender identity or gender characteristics

Annex 1. Main national specific anti-discrimination legislation

Country	Constitutional anti-discrimination provisions	Main specific anti-discrimination legislation	Grounds covered
HUNGARY	Article XV of the Fundamental Law of Hungary	Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities of 28 December 2003, as last amended in 2023	Sex, racial affiliation, colour skin, nationality (not in the sense of citizenship), belonging to a national minority, mother tongue, disability, health condition, religion or belief, political or other opinion, family status, maternity (pregnancy) or paternity, sexual orientation, gender identity, age, social origin, financial status part-time nature of employment, 'part-time nature of employment legal relation or other legal relation aimed at labour, or determined period thereof', belonging to an interest representation organisation, any other situation, attribute or condition of a person or group.
		Act XXVI of 1998 on the Rights of Persons with Disabilities and the Guaranteeing of their Equal Opportunities of 1 April 1998, as last amended in 2023	Disability
IRELAND	Article 40.1 of the Constitution	Employment Equality Acts 1998-2021 of 18 June 1998, as last amended in 2021	Gender, age, race, religion, family status, disability, civil status, sexual orientation, membership of the Traveller community
		Equal Status Acts 2000-2018 of 26 April 2000, as last amended in 2018	Gender, age, race, religion, family status, disability, civil status, sexual orientation, membership of the Traveller community, housing assistance
ITALY	Article 3 of the Constitution	Legislative Decree No. 215/2003 Implementing Directive 2000/43/EC on equality of treatment between persons irrespective of racial or ethnic origin of 9 July 2003, as last amended in 2011	Race and ethnic origin

Country	Constitutional anti-discrimination provisions	Main specific anti-discrimination legislation	Grounds covered
		Legislative Decree No. 216/2003 Implementing Directive 2000/78/EC for equal treatment in employment and occupation of 9 July 2003, as last amended in 2013	Religion or belief, age, disability and sexual orientation, nationality
		Act No. 67/2006, Provisions on the Judicial Protection of Persons with Disabilities who are Victims of Discrimination of 1 March 2006, as last amended in 2011	Disability
LATVIA ¹²	Article 91 of the Constitution	Labour Law of 20 June 2001, as last amended in 2019	Race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or marital status, sexual orientation or other circumstances
		Law on Prohibition of Discrimination against Natural Persons – Parties to Legal Transaction of 19 December 2012, as last amended in 2021	Gender, age, religious, political or other conviction, sexual orientation, disability, race or ethnic origin
		Law on Social Security of 7 September 1995, as last amended in 2015	Race, colour, gender, age, disability, health condition, religious, political or other conviction, national or social origin, property or family status or other circumstances
		Consumer Rights Protection Law of 18 March 1999, as last amended in 2010	Gender, race, ethnic origin, disability
		Education Law of 29 October 1998, as last amended in 2017	Property and social status, race, ethnic origin, gender, religious and political belief, state of health, employment and place of residence.

Annex 1. Main national specific anti-discrimination legislation

Country	Constitutional anti-discrimination provisions	Main specific anti-discrimination legislation	Grounds covered
LITHUANIA	Article 29 of the Constitution	Law on Equal Treatment of 18 November 2003, as last amended in 2021	Gender, race, nationality, ¹³ citizenship, ¹⁴ language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion
		Law on Social Integration of Persons with Disabilities of 28 November 1991, as last amended in 2022	Disability
LUXEMBOURG	Article 10bis of the Constitution (for nationals only)	Law of 28 November 2006, ¹⁵ as last amended in 2008 (General anti-discrimination Law)	Religion or belief, disability, age, sexual orientation, race or ethnic origin, nationality
		Law of 29 November 2006, (Public Sector Law) ¹⁶	Religion or belief, disability, age, sexual orientation, race or ethnic origin
		Law of 12 September 2003 on persons with Disabilities, as last amended in 2008	Disability
MALTA	Article 45 of the Constitution	Employment and Industrial Relations Act of 2 December 2002, as last amended in 2022	Marital status, pregnancy or potential pregnancy, sex, colour, disability, religious conviction, political opinion or membership of a trade union or of an employers' association
		Equal Treatment in Employment Regulations of 5 November 2004 (issued under the Employment and Industrial Relations Act), as last amended in 2014	Religion or religious belief, disability, age, sex, sexual orientation, and racial or ethnic origin
		Equality for Men and Women Act of 9 December 2003, as last amended in 2015	Sex, family responsibilities, sexual orientation, age, religion or belief, racial or ethnic origin, gender identity, gender expression, sex characteristics, actual or potential pregnancy or childbirth

13 The term used in the Law on Equal Treatment is 'tautybė', which refers to belonging to a national minority and is not used with the meaning of 'citizenship'.

14 This ground only applies to citizens of the EU and EEA countries and their family members.

15 Full title of the law: Law of 28 November 2006, (1) transposing Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, (2) transposing Council Directive 2000/78/EC of the Council of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, (3) amending the Labour Code and introducing in Book II a new title V on equality of treatment in the area of employment and work, (4) amending articles 454 and 455 of the Criminal Code, (5) amending the law of 12 September 2003 on persons with Disabilities.

16 Full title of the 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.

Country	Constitutional anti-discrimination provisions	Main specific anti-discrimination legislation	Grounds covered
		Equal Opportunities (Persons with Disabilities) Act of 10 February 2000, as last amended in 2021	Disability
		United Nations Convention on the Rights of Persons with Disabilities Act of 17 August 2021	Disability
		Equal Treatment of Persons Order of 3 April 2007	Racial and ethnic origin
NETHERLANDS	Article 1 of the Constitution	General Equal Treatment Act of 2 March 1994, as last amended in 2019	Race, religion and belief, political opinion, hetero or homosexual orientation, sex, ¹⁷ nationality and civil (or marital) status
		Disability Discrimination Act of 3 April 2003, as last amended in 2016	Disability and chronic disease.
		Age Discrimination Act of 17 December 2003, as last amended in 2014	Age
POLAND	Article 32 of the Constitution	Act on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment of 3 December 2010, ¹⁸ as last amended in 2016	Gender, race, ethnic origin, nationality, citizenship, ¹⁹ religion, belief, political opinion, disability, age and sexual orientation
PORTUGAL	Article 13(2) of the Constitution	Law 93/2017 establishing the legal regime for the prevention, prohibition and combating of discrimination on the grounds of racial and ethnic origin, colour, nationality, ancestry and territory of origin of 23 August 2017	Racial and ethnic origin, colour, nationality, ancestry and territory of origin

17 In the General Equal Treatment Act, 'sex' also includes gender identity, gender expression and sex characteristics, as well as pregnancy and maternity.

18 Referred to in this report as the 'Equal Treatment Act'.

19 Citizenship is only protected for workers exercising their freedom of movement under EU law.

Annex 1. Main national specific anti-discrimination legislation

Country	Constitutional anti-discrimination provisions	Main specific anti-discrimination legislation	Grounds covered
		Law 7/2009 Labour Code, as last amended in 2022	Ancestry, age, sex, sexual orientation, gender identity, civil status, family situation, economic situation, education, origin or social condition, genetic heritage, reduced work capacity, disability, chronic illness, nationality, ethnic origin or race, territory of origin, language, religion, political or ideological convictions and trade union affiliation
		Law 46/2006 which prohibits and punishes discrimination based on disability and on a pre-existing risk to health as last amended in 2021	Disability and pre-existing risk to health
ROMANIA	Articles 4 and 16 of the Constitution	Ordinance (GO) 137/2000 regarding the prevention and the punishment of all forms of discrimination of 31 August 2000, as last amended in 2020	Race, nationality, ethnic origin, language, religion, social status, beliefs, sex, sexual orientation, age, disability, non-contagious chronic disease, HIV positive status, belonging to a disadvantaged group or any other criterion.
		Law 448/2006 on the protection and promotion of the rights of persons with a handicap of 6 December 2006, as last amended in 2021	Disability
SLOVAKIA	Article 12 of the Constitution	Act No. 365/2004 on Equal Treatment in Certain Areas and Protection Against Discrimination (Anti-discrimination Act) of 20 May 2004, as last amended in 2015	Sex, religion or belief, race, affiliation with a nationality (<i>národnosť</i>) or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status, or the reason of reporting criminality or other anti-social activity

Country	Constitutional anti-discrimination provisions	Main specific anti-discrimination legislation	Grounds covered
SLOVENIA	Article 14 of the Constitution	Protection Against Discrimination Act of 21 April 2016	Gender, ethnicity, race or ethnic origin, language, religion or belief, disability, age, sexual orientation, gender identity or gender expression, social standing, economic situation, education or any other personal characteristic
		Employment Relationship Act of 5 March 2013, as last amended in 2020	Ethnicity, race or ethnic origin, national and social origin, gender, skin colour, health condition, disability, religion or belief, age, sexual orientation, family status, membership in a trade union, financial situation or other personal circumstance.
		Act on Equal Opportunities of Persons with Disabilities of 16 November 2010, as last amended in 2017	Disability
SPAIN	Arts. 14 ²⁰ and 16 of the Constitution	Law 62/2003, on Fiscal, Administrative and Social measures, of 30 December 2003	Racial or ethnic origin, religion or beliefs, disability, age, sexual orientation
		RLD 1/2013, General Law on the Rights of Persons with Disabilities and their Social Inclusion of 29 November 2013, as last amended in 2022	Disability
SWEDEN	Chapter 1, Sec. 2 and Chapter 2, Sec. 12-13 of the Instrument of Government ²¹	Discrimination Act (2008:567) of 5 June 2008, as last amended in 2017	Sex, transgender identity or expression, ²² ethnicity, religion and other belief, disability, sexual orientation, age.

20 Article 14 only regards Spanish citizens.

21 In Sweden, four separate Acts are considered to form the Constitution, including the Instrument of Government (IG). Due to its anti-discrimination provisions, the IG is of relevance here.

22 Transgender identity or expression is a direct translation of the term used in the Swedish legislation. It can generally be considered as equivalent to the term 'gender identity' in English.

Annex 2. Signature/ratification of international conventions

-: not signed, not ratified /: signed X: ratified	European Convention on Human Rights	Protocol 12, ECHR	Revised European Social Charter	International Covenant on Civil and Political Rights	Framework Convention on the Protection of National Minorities	International Convention on Economic, Social and Cultural Rights	Convention on the Elimination of All Forms of Racial Discrimination	ILO Convention No 111 on Discrimination	Convention on the Rights of the Child	Convention on the Rights of Persons with Disabilities
	AUSTRIA	X	/	X	X	X	X	X	X	X
BELGIUM	X	/	X	X	/	X	X	X	X	X
BULGARIA	X	-	X	X	X	X	X	X	X	X
CROATIA	X	X	/	X	X	X	X	X	X	X
CYPRUS	X	X	X	X	X	X	X	X	X	X
CZECHIA	X	/	/	X	X	X	X	X	X	X
DENMARK	X	-	/	X	X	X	X	X	X	X
ESTONIA	X	/	X	X	X	X	X	X	X	X
FINLAND	X	X	X	X	X	X	X	X	X	x
FRANCE	X	/	X	X	-	X	X	X	X	X
GERMANY	X	/	X	X	X	X	X	X	X	X
GREECE	X	/	X	X	/	X	X	X	X	X
HUNGARY	X	/	X	X	X	X	X	X	X	X
IRELAND	X	/	X	X	X	X	X	X	X	X
ITALY	X	/	X	X	X	X	X	X	X	X
LATVIA	X	/	X	X	X	X	X	X	X	X
LITHUANIA	X	-	X	X	X	X	X	X	X	X
LUXEMBOURG	X	X	/	X	/	X	X	X	X	X
MALTA	X	X	X	X	X	X	X	X	X	X
NETHERLANDS	X	X	X	X	X	X	X	X	X	X
POLAND	X	-	/	X	X	X	X	X	X	X
PORTUGAL	X	X	X	X	X	X	X	X	X	X
ROMANIA	X	X	X	X	X	X	X	X	X	X
SLOVAKIA	X	/	X	X	X	X	X	X	X	X
SLOVENIA	X	X	X	X	X	X	X	X	X	X
SPAIN	X	X	X	X	X	X	X	X	X	X
SWEDEN	X	-	X	X	X	X	X	X	X	X

-: not signed, not ratifie /: signed X: ratified	European Convention on Human Rights	Protocol 12, ECHR	Revised European Social Charter	International Covenant on Civil and Political Rights	Framework Convention on the Protection of National Minorities	International Convention on Economic, Social and Cultural Rights	Convention on the Elimination of All Forms of Racial Discrimination	ILO Convention No 111 on Discrimination	Convention on the Rights of the Child	Convention on the Rights of Persons with Disabilities
SERBIA	X	X	X	X	X	X	X	X	X	X
SLOVAKIA	X	/	X	X	X	X	X	X	X	X
SLOVENIA	X	X	X	X	X	X	X	X	X	X
SPAIN	X	X	X	X	X	X	X	X	X	X
SWEDEN	X	-	X	X	X	X	X	X	X	X
TÜRKIYE	X	/	X	X	-	X	X	X	X	X
UNITED KINGDOM	X	-	/	X	X	X	X	X	X	X

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