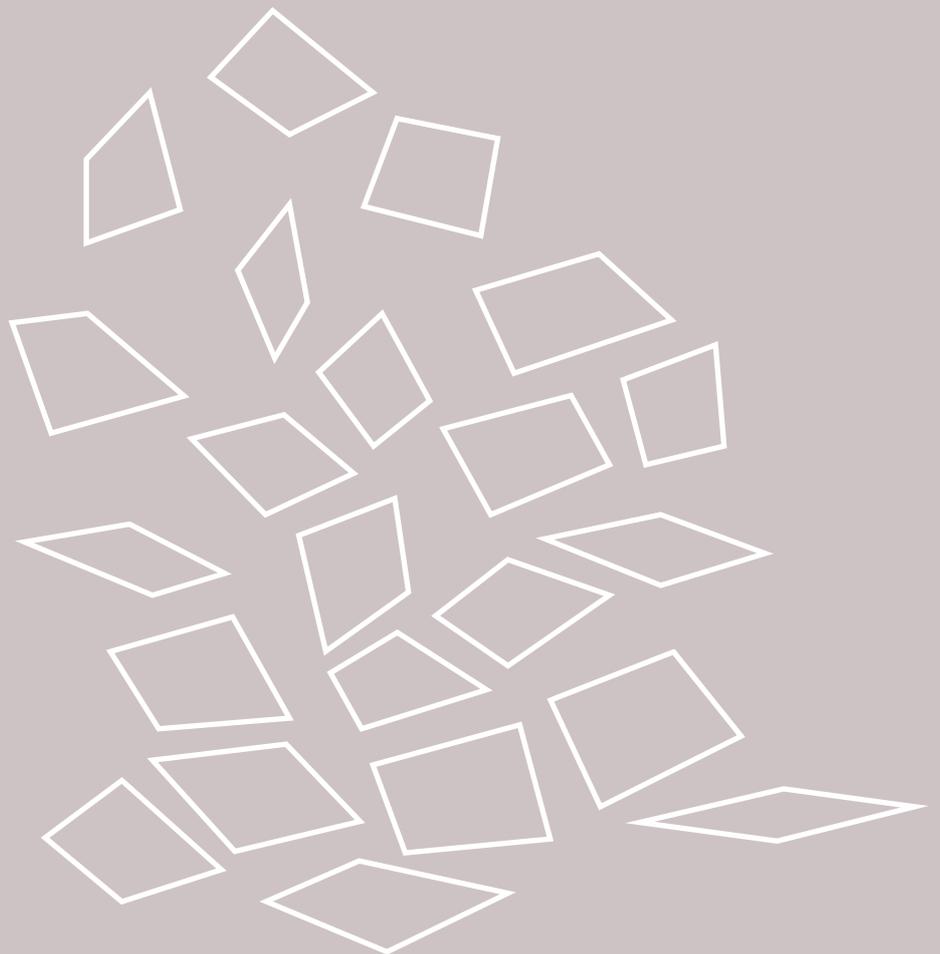




European network of legal experts in
gender equality and non-discrimination

A comparative analysis of non-discrimination law in Europe 2025



EUROPEAN COMMISSION

Directorate-General for Justice and Consumers

Directorate D — Equality and Non-Discrimination

Unit D1: Non Discrimination: LGBTIQ, Age, Horizontal Matters

Unit D2: Non Discrimination: Anti-Racism and Roma Coordination

European Commission

B-1049 Brussels

***Europe Direct is a service to help you find answers
to your questions about the European Union.***

Freephone number (*):

00 800 6 7 8 9 10 11

(*)The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

LEGAL NOTICE

This document has been prepared for the European Commission; however, it reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein.

More information on the European Union is available on the Internet (<http://www.europa.eu>).

Luxembourg: Publications Office of the European Union, 2026

ISBN 978-92-68-34310-4

ISSN 2600-0814

doi:10.2838/6732664

Catalogue number DS-01-25-211-EN-N

© European Union, 2026

A comparative analysis of non-discrimination law in Europe 2025

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

December 2025

Based on information current as of 1 January 2025

Contents

MEMBERS OF THE EUROPEAN NETWORK OF LEGAL EXPERTS IN GENDER EQUALITY AND NON-DISCRIMINATION	5
1 INTRODUCTION	7
2 PROTECTED GROUNDS OF DISCRIMINATION	8
2.1 Introduction to the transposition of the anti-discrimination directives	8
2.2 Grounds of discrimination	10
2.2.1 Racial or ethnic origin	15
2.2.2 Religion or belief	17
2.2.3 Disability	20
2.2.4 Sexual orientation	30
2.2.5 Age	31
2.3 Assumed and associated discrimination	32
2.4 Multiple and intersectional discrimination	33
3 DEFINITIONS AND SCOPE	36
3.1 Forms of discrimination	36
3.1.1 Direct discrimination	36
3.1.2 Indirect discrimination	38
3.1.3 Harassment	42
3.1.4 Instructions to discriminate	47
3.2 Scope of discrimination	50
3.2.1 Personal scope	50
3.2.2 Material scope	52
4 EXCEPTIONS TO THE PRINCIPLE OF NON-DISCRIMINATION AND POSITIVE ACTION	66
4.1 Genuine and determining occupational requirements	66
4.2 Employers with an ethos based on religion or belief	67
4.3 Justification of differences of treatment on grounds of age	69
4.4 Armed forces and other specific occupations	72
4.5 Nationality	73
4.6 Public security, public order, criminal offences, protection of health and protection of the rights and freedoms of others	74
4.7 Other exceptions	75
4.8 Positive action	75
5 ACCESS TO JUSTICE AND EFFECTIVE ENFORCEMENT	79
5.1 Judicial and administrative procedures	79
1.1.1 Available procedures	79
5.1.1 Obstacles to effective access to justice	81
5.2 Legal standing and associations	84
5.2.1 Entities which may engage in procedures	84
5.2.2 To engage 'on behalf of'	86
5.2.3 Collective redress	92
5.3 Burden of proof	95
5.4 Victimisation	96
5.5 Sanctions and remedies	99
6 EQUALITY BODIES	104
6.1 Grounds covered	105
6.2 Competencies of equality bodies	116
7 IMPLEMENTATION AND COMPLIANCE	122

7.1	Dissemination of information and social and civil dialogue	122
7.1.1	Dissemination of information and awareness-raising	123
7.1.2	Social and civil dialogue	124
7.2	Ensuring compliance	125
7.2.1	Ensuring the compliance of national legislation	125
7.2.2	Ensuring compliance of contractual clauses and other rules	126
8	CONCLUSION	127
	ANNEX 1. MAIN NATIONAL SPECIFIC ANTI-DISCRIMINATION LEGISLATION	129
	ANNEX 2. SIGNATURE/RATIFICATION OF INTERNATIONAL CONVENTIONS	144

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

Management team

General coordinator	Yvonne van Leeuwen-Lohde	Human European Consultancy
Specialist coordinator gender equality law	Linda Senden	Utrecht University
Lead Coordinator gender equality law	Franka van Hoof	Utrecht University
Specialist coordinator non-discrimination law	Isabelle Chopin	Migration Policy Group
Project managers	Jamie Kaan Anne Meynaar Tobin den Blijker	Human European Consultancy
Content coordinator gender equality law	Birte Böök	Utrecht University
Assistant coordinator gender equality law	Luana Almeida	Utrecht University
Content coordinator non-discrimination law	Catharina Germaine	Migration Policy Group
Senior Coordinator Gender equality law	Alexandra Timmer	Utrecht University

Senior experts

Senior expert on gender equality law	Susanne Burri
Senior expert on age	Elaine Dewhurst
Senior expert on sexual orientation/trans/intersex people	Peter Dunne
Senior expert on racial and ethnic origin	Lilla Farkas
Senior expert on EU and human rights law	Christopher McCrudden
Senior expert on social security	Frans Pennings
Senior expert on religion or belief	Isabelle Rorive
Senior expert on EU law, CJEU case law, sex, gender identity and gender expression in relation to trans and intersex people	Christa Tobler
Senior expert on disability	Lisa Waddington
Senior expert on equality bodies and enforcement	Niall Crowley
Senior expert on violence against women	Sara de Vido
Senior expert on gender, trans and intersex equality rights	Marjolein van der Brink
Senior expert on pregnancy, maternity, work-life balance rights and social security	Miguel de la Corte Rodríguez
Senior expert on artificial intelligence and human rights, algorithmic discrimination, bias and data-driven inequality	Raphaële Xenidis

National experts

	Anti-discrimination	Gender Equality
Albania	Irma Baraku	Entela Baci
Austria	Dieter Schindlauer	Marion Guerrero
Bosnia and Herzegovina		Adnan Kadribasic
Belgium	Sébastien Van Drooghenbroeck [*] Pieter Cannoot	Nathalie Wuiame
Bulgaria	Dilyana Giteva	Genoveva Tisheva
Croatia	Ines Bojić	Adrijana Martinović
Cyprus	Corina Demetriou	Vera Pavlou
Czechia	Jakub Tomšej	Kristina Koldinská
Denmark	Pia Justesen	Tine Birkelund Thomsen
Estonia	Mari-Liis Sepper	Anu Laas
Finland	Rainer Hiltunen	Kevät Nousiainen
France	Sophie Latraverse	Marie Mercat-Bruns
Germany	Matthias Mahlmann	Jule Mulder
Greece	Athanasios Theodoridis	Panagiota Petroglou
Georgia		Tamar Dekanosidze
Hungary	András Kádár	Lídia Hermina Balogh
Iceland	Guðrún Dögg Guðmundsdóttir	Herdís Thorgeirsdóttir
Ireland	Judy Walsh	Frances Meenan
Italy	Chiara Favilli	Simonetta Renga
Kosovo		Iliriana Islami
Latvia	Anhelita Kamenska	Kristīne Dupate
Liechtenstein	Patricia Hornich	Nicole Mathé
Lithuania	Monika Guliakaitė	Tomas Davulis
Luxembourg	Tania Hoffmann	Nicole Kerschen
Malta	Tonio Ellul	Romina Bartolo
Moldova		Nadja Hriptievschi
Montenegro	Maja Kostić-Mandić	Vesna Simović Zvicer
Netherlands	Karin de Vries	Fleur van Leeuwen
North Macedonia	Biljana Kotevska	Biljana Kotevska
Norway	Lene Løvdal	Marte Bauge
Poland	Łukasz Bojarski	Anna Cybulko
Portugal	Dulce Lopes and Joana Vicente	Catarina de Oliveira Carvalho and Luísa Andias Gonçalves
Romania	Romanița Iordache	Iustina Ionescu
Serbia	Ivana Krstić Davinic	Ivana Krstić Davinic
Slovakia	Vanda Durbáková	Zuzana Magurová
Slovenia	Katarina Vučko	Katarina Vučko
Spain	Fernando Camas Roda	Dolores Morondo Taramundi
Sweden	Paul Lappalainen	Jenny Julén Votinius
Türkiye	Ulaş Karan	Kadriye Bakirci
Ukraine		Oleksandra Golub
United Kingdom	Lucy Vickers	Rachel Horton

^{*} The network would like to express its sincere gratitude for the valuable contributions of Sébastien Van Drooghenbroeck, dedicated member of the network, who recently passed away. His commitment and insights have left a meaningful mark on our work, and he will be remembered with appreciation and respect.

1 Introduction

Twenty-five 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 2025.¹ 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 2024 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.

Twenty-five years after the adoption of the directives, all Member States have reviewed and amended their existing legislation to comply with the requirements of the directives. National courts and the Court of Justice of the EU have provided some further interpretation, as will be outlined below. 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.

¹ Where major changes in legislation have been adopted at national level after the cut-off date of 1 January 2025, they have been included and this has been indicated accordingly.

2 Protected grounds of discrimination

2.1 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, as well as victimisation, 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, instructions to discriminate and victimisation, 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.

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 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. In **Denmark**, a similar statutory evaluation was provided for by the Act on the Prohibition of Discrimination due to Disability and carried out in 2024.² 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.

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. The Commission may initiate proceedings for non-communication of transposition or for non-conformity where the transposition or implementation is incomplete or incorrect. Since the deadline for transposition of the two anti-discrimination directives, 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 2024 there were four ongoing infringement proceedings; against **Czechia**, **Hungary** and **Slovakia** concerning discrimination against Roma children in education,³ and, also against **Hungary**, for breaches of the Racial Equality and Employment Equality Directives due to legislation on sanctions for discrimination in education and vocational training.⁴

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.⁵ 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. Finally, in May 2024, a new groundbreaking development took place in EU non-discrimination law, with the adoption of two new directives on standards for equality bodies, as will be discussed further below.⁶

² Danish Centre for Social Science Research (2024), [The Act on the Prohibition of Discrimination due to Disability – Evaluation from a citizen and community perspective](#).

³ See European Commission, Infringement Nos (2014)2174 (Czechia), (2015)2025 (Slovakia) and (2015)2206 (Hungary).

⁴ See European Commission, Infringement No. (2021)2073.

⁵ 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.

⁶ [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](#)

2.2 Grounds of discrimination

While neither of the two non-discrimination directives contains definitions of any of the grounds covered, 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**.

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 legislation⁷ (at federal level)

Country	Grounds of discrimination protected in general anti-discrimination legislation
AUSTRIA (Equal Treatment Act; Federal Equal Treatment Act)	Gender, ethnic affiliation, religion, belief, age, sexual orientation. ⁸
BELGIUM (Racial Equality Federal Act; General Anti-Discrimination Federal Act)	Alleged race, ⁹ colour, descent, ethnic or national origin, nationality, age, sexual orientation, civil status, birth, property, religious or philosophical belief, state of health, ¹⁰ disability, physical or genetic features, political opinion, language, social origin or condition, trade union opinion.

[treatment and equal opportunities between women and men in matters of employment and occupation, and amending Directives 2006/54/EC and 2010/41/EU](#). See further below, Section 5.

⁷ 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.

⁸ In addition, disability is covered by the Act on the Employment of Persons with Disabilities and the Federal Disability Equality Act.

⁹ The Belgian legislature refers to 'alleged race' to avoid giving the impression that it subscribes to the idea that there are indeed different races.

¹⁰ Until the entry into force of the Law of 20 July 2022, the law referred to 'actual or future' state of health.

Country	Grounds of discrimination protected in general anti-discrimination legislation
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, ¹¹ age, health condition, ¹² disability, genetic heritage, gender identity and expression, ¹³ sexual orientation.
CYPRUS (Equal Treatment in Employment and Occupation Law; Equal Treatment (Racial or Ethnic Origin) Law)	Racial and ethnic origin religion or belief, age, sexual orientation. ¹⁴
CZECHIA (Anti-Discrimination Act)	Race, ethnic origin, nationality (<i>národnost</i>), sex, sexual orientation, age, disability, religion or belief or other conviction. ¹⁵
DENMARK (Act on the Prohibition of Discrimination in the Labour Market etc; Act on Ethnic Equal Treatment)	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.
ESTONIA (Equal Treatment Act)	Ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation. ¹⁶
FINLAND (Non-Discrimination Act)	Origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics.

¹¹ It protects all persons discriminated against on the basis of their marital/family status, including same-sex families.

¹² 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).

¹³ 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.

¹⁴ In addition, disability is covered by the Law on Persons with Disabilities.

¹⁵ 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.

¹⁶ 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	Grounds of discrimination protected in general anti-discrimination legislation
<p>FRANCE</p> <p>(Law relating to the adaptation of National Law to Community Law in matters of discrimination)¹⁷</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,¹⁸ disability, age, sexual identity.¹⁹</p>
<p>GREECE</p> <p>(Equal Treatment Law)²⁰</p>	<p>Race, colour, national or ethnic origin, genealogical descent, religious or other beliefs, disability or chronic illness, age, family or social status, sexual orientation, gender identity, characteristics or expression.</p>
<p>HUNGARY</p> <p>(Equal Treatment Act)²¹</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 1998-2021; Equal Status Acts 2000-2018)</p>	<p>Gender, age, race,²² religion, civil status, family status, disability, sexual orientation, membership of the Traveller community, housing assistance.</p>

¹⁷ Law No. 2008-496.

¹⁸ In Germany, 'belief' is not an explicitly protected ground in civil law.

¹⁹ 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).

²⁰ 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.

²¹ Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities.

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.

Country	Grounds of discrimination protected in general anti-discrimination legislation
ITALY (Legislative Decree implementing Directive 2000/43/EC; ²³ Legislative Decree Implementing Directive 2000/78/EC ²⁴)	Race and ethnic origin, religion or belief, disability, age, sexual orientation, nationality.
LATVIA	_ 25
LITHUANIA (Law on Equal Treatment)	gender, race, nationality, ²⁶ citizenship, ²⁷ language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin, religion.
LUXEMBOURG (General Anti-Discrimination Law; ²⁸ Public Sector Law) ²⁹	Race or ethnic origin, religion or belief, age, disability, sexual orientation, nationality.
MALTA (Equal Treatment in Employment Regulations; Equal Treatment of Persons Order)	Racial or ethnic origin, disability, sex, sexual orientation, pregnancy or maternity leave, gender reassignment, age, religion or religious belief.
NETHERLANDS (General Equal Treatment Act)	Sex, race, religion, belief, political opinion, nationality, heterosexual or homosexual orientation, civil (or marital) status. ³⁰

²³ Legislative Decree No. 215/2003 implementing Directive 2000/43/EC on equality of treatment between persons irrespective of racial or ethnic origin of 09.07.2003.

²⁴ Legislative Decree No. 216/2003 implementing Directive 2000/78/EC for equal treatment in employment and occupation 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. The exact list of grounds covered differs slightly between the different pieces of legislation.

²⁶ The term used in the Equal Treatment Act is '*tautybē*', 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.

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

Country	Grounds of discrimination protected in general anti-discrimination legislation
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 (Protection Against Discrimination Act)	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.
SPAIN Law 15/2022, Comprehensive for equal treatment and non-discrimination	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 suffer pathologies and disorders, language, socio-economic situation, or any other personal or social condition or circumstance

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.

³³ In addition, religion or belief, age, disability and sexual orientation are covered by the Labour Code of 12.02.2009. Law 46/2006 also prohibits and punishes discrimination based on disability and on a pre-existing risk to health.

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

Country	Grounds of discrimination protected in general anti-discrimination legislation
SWEDEN (Discrimination Act)	Sex, transgender identity or expression, ³⁵ ethnicity, religion and other belief, disability, sexual orientation, age.

2.2.1 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 The **German** anti-discrimination legislation and the Basic Law (Constitution) include the term ‘race’ but its inclusion generated heated criticism and opposition. Between 2020 and 2024, an amendment to remove the word ‘race’ from the Basic Law was discussed but was finally abandoned in 2024 notably due to concerns expressed by the Central Council of Jews in Germany. **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

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

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.

legislation in countries such as **Austria**, **Lithuania**, **Poland** and **Slovenia**. For instance, the **Lithuanian** Law on National Minorities adopted in 2024 defines ‘national identity’³⁸ as a person’s freely chosen identification with the ‘nationality’ of one of his or her parents or grandparents, based on the totality of its characteristic features – culture, language, traditions, customs – or at least one of these features.³⁹ 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,⁴⁰ meaning that they are covered by the race ground as well as by the separate ground of being a member of the ‘Traveller community’.⁴¹ Furthermore, persons of Roma origin may or may not be considered to be covered by the ‘Traveller community’ ground, as the case law is inconsistent in this regard.⁴²

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’.⁴³ The Court thus followed closely the guidance already provided by the European Court of Human Rights.⁴⁴

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. At Member State level however, the scope of protection is often the same for both grounds, making the distinction much less relevant. In some countries, the legal frameworks contain specificities such as in **Germany** where, due to the historical background of Nazi ideology, antisemitism is regarded as discrimination on the grounds of race and not of religion.

In the *Jyske Finans* judgment of 2017, the Court further clarified that ‘ethnic origin cannot be determined on the basis of a single criterion’ but must rather be based on a number of factors, ‘some objective and others subjective’.⁴⁵ The Court thus found that ‘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.’ Consequently, less favourable treatment on the basis of one’s country of birth being other than the EU or EFTA countries, amounts to neither direct nor indirect discrimination on the ground of ethnic origin.⁴⁶

³⁸ The Lithuanian term ‘*tautinė*’ can be translated as ‘national/ethnic’ rather than ‘national’ alone.

³⁹ Lithuania, Article 2(2) of the [Law on National Minorities No. XIV-3079](#), of 7 November 2024.

⁴⁰ Ireland (2017), 941(1) [Dáil Éireann Debates 461-463 \(Traveller Ethnicity: Statements\)](#), 1 March 2017.

⁴¹ See for instance Ireland, Workplace Relations Commission, *O’Donoghue v. The Minister for Social Protection*, DEC-S2018-014, of 5 June 2018.

⁴² Ireland, Workplace Relations Commission, *A Member of the Roma Community v. A Supermarket*, ADJ-00050944, 3 September 2024; and *Dirda v. Lily’s Limited trading as Lily O’Brien’s*, ADJ-00045849, 7 February 2024.

⁴³ CJEU, Judgment of 16 July 2015, *CHEZ*, C-83/14, EU:C:2015:480, para 46.

⁴⁴ European Court of Human Rights (ECtHR), *Timishev v. Russia*, Nos. 55762/00 and 55974/00 of 13 December 2005, paragraph 55.

⁴⁵ CJEU, Judgment of 6 April 2017, *Jyske Finans A/s v. Ligebehandlingsnævnet*, C-668/15, EU:C:2017:278.

⁴⁶ Following the CJEU preliminary ruling, the Danish Board of Equal Treatment repealed its previous decision in the *Jyske Finans* case and concluded that the applicant had experienced neither direct nor indirect discrimination (decision No. 9559 of 21 June 2018). 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.

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.⁴⁷

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.⁴⁸

2.2.2 Religion or belief

No state has attempted to provide a comprehensive definition of ‘religion or belief’ within anti-discrimination legislation (e.g. an exhaustive inventory of protected religions or a general conceptual definition), nor has it ever been defined at the international level. In 2017 however, the Court of Justice of the EU provided some guidance in its seminal *Achbita* ruling, confirming that the concept of religion ‘should be interpreted as covering both the *forum internum*, that is the fact of having a belief, and the *forum externum*, that is the manifestation of religious faith in public.’⁴⁹

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**,⁵⁰ 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.⁵¹ In 2022, the CJEU further clarified that the term ‘religion or belief’ constitutes a single ground of discrimination, covering both religious and philosophical or spiritual belief, but excluding political, trade union or other beliefs or preferences.⁵²

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

⁴⁷ CJEU, Judgment of 10 June 2021, *Land Oberösterreich v KV*, C-94/20, EU:C:2021:477.

⁴⁸ Netherlands Institute for Human Rights, *Opinion No. 2017-67 of 6 June 2017*.

⁴⁹ 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, EU:C:2017:203, para 28.

⁵⁰ 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).

⁵¹ 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.

⁵² CJEU, Judgment of 13 October 2022, *L.F. v SCRL*, C-344/20, EU:C:2022:774.

further elements of proof being required.⁵³ In **Italy**, the Supreme Court has held that the definition of ‘religion’ encompasses both atheist and agnostic beliefs,⁵⁴ while ‘belief’ as a protected ground covers, for instance, trade union affiliation⁵⁵ as well as the personal belief that one should refuse to carry arms, in the case of conscientious objectors.⁵⁶ 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.⁵⁷ 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.

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 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.⁵⁹ In **Belgium** in 2024, it was ruled that public employers may choose between ‘inclusive’ or ‘exclusive’ neutrality as long as they apply this choice consistently and systematically.⁶⁰ In contrast, in **France**, where hijabs have been prohibited in schools since 2004, the Council of State confirmed in 2024 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.⁶¹

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

In *Achbita*,⁶² 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

⁵³ Cyprus, District Court of Larnaca, *Voroklini Community Council v. XXXX Zarifis et al*, No. 1243/2018, 25 January 2019.

⁵⁴ Italy, Supreme Court, Judgment of 17 April 2020, *UAAR (Unione degli atei e degli agnostici razionalisti) v. Comune di Verona*, No. 7893.

⁵⁵ Italy, Supreme Court, Judgment of 2 January 2020, *S.L.A.I. COBAS v F.C.A. Italy S.P.A.*, No. 1.

⁵⁶ Italy, Tribunal of Ferrara, 15 April 2022, *FP-CGIL, XX v. Comune di Ferrara*, No. 506/2021.

⁵⁷ Sweden, Government bill No. 2007/08:95, pp.120-122.

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.

⁵⁹ Sweden, Supreme Administrative Court, judgments of 8 December 2022 in cases No. 4120-21 and No. 4266-21.

⁶⁰ Belgium, Brussels Labour Court of Appeal, [decision of 15 February 2024](#).

⁶¹ France, Council of State (Supreme Administrative Court, *Conseil d'État*), [decision of 27 September 2024 in case No. 487944](#).

⁶² 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, EU:C:2017:203. See also the Opinion of Advocate General Kokott delivered on 31 May 2016.

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.⁶³

In *Bouagnaoui*,⁶⁴ 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 that there was no neutrality rule justifying disciplinary action, but an ad hoc rule targeting a specific religious sign.⁶⁵

In the *Wabe* case, in the context of determining whether an employer’s neutrality policy amounts to indirect discrimination, the Court found that the employer must demonstrate that the policy at hand meets a ‘genuine need’ and is pursued in a consistent and systematic manner, to be legitimate. 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.⁶⁶

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.⁶⁷

The 2023 case of *Commune d’Ans* concerned a municipal employee who performed mainly ‘back-office’ functions without contact with the public.⁶⁸ 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, depending on the employment context, impose ‘exclusive neutrality’ upon all their employees, even those who do not enter into contact with the public. However, in December 2024, the national court concluded that the respondent had failed to justify its absolute ban on all religious symbols on the basis of the specific context, and it therefore amounted to indirect discrimination. In particular, the court took into account the fact that there were no tensions in the workplace, that the claimant was not in contact with the public or in a position of authority, and that the interference with the right to freedom of religion did not cause any tangible benefit to others.⁶⁹

⁶³ Belgium, Labour Court of Appeal of Ghent, Judgment No. 2019/AG/55 of 12 October 2020.

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, EU:C:2017:204. See also the Opinion of Advocate General Sharpston delivered on 13 July 2016.

⁶⁵ France, Court of Cassation, Social Chamber, *Asma Bouagnaoui, ADDH v. Micropole SA*, No. 13-19855 of 22 November 2017.

⁶⁶ 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, EU:C:2021:594.

⁶⁷ CJEU, Judgment of 13 October 2022, *L.F. v SCRL*, C-344/20, EU:C:2022:774.

⁶⁸ CJEU, Grand Chamber judgment of 28 November 2023, *OP v Commune d’Ans*, C-148/22, EU:C:2023:924.

⁶⁹ Belgium, Labour Court of Liège, decision of 3 December 2024.

2.2.3 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 referred explicitly to the obligations of EU Member States following the ratification by the EU of the UN CRPD and determined 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.’⁷¹

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

⁷⁰ CJEU, Judgment of 11 July 2006, *Chacón Navas v. Eures Colectividades SA*, C-13/05, 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, EU:C:2013:222, para. 38. Commentary by Lisa Waddington (2013) in *European Anti-discrimination Law Review*, Issue 17, p. 11.

⁷² CJEU, Judgment of 11 April 2013, *HK Danmark*, joined cases C-335/11 and C-337/11, 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, EU:C:2018:17; and Judgment of 11 September 2019, *D.W. v Nobel Plásticos Ibérica SA*, C-397/18, 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.

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 has opted for an inclusive use of the term 'disability' – an approach that might be interpreted as being partially in line with CJEU case law.⁷⁸ 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.⁷⁹ 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 certificates to establish their disability.⁸⁰ The same situation can be found in **Bulgaria**,⁸¹ where the law also defines 'persons with long-term disabilities', by referring to a medically certified disability of at least 50 %.⁸² Although the definition of disability in **Italy** was amended in 2024 to bring it in line with the UN CRPD and with CJEU case law,⁸³ Italian law still requires that the person be recognised by a certain committee as having a disability. 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 2024 for instance, the Board of Equal Treatment decided that the claimant's psychosocial illness could not be considered to be 'long term' as she had been able to work full time without any accommodation in between several periods of sick leave in the years leading up to the dismissal.⁹⁰ 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

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

⁸⁰ See, for instance, Greece, Court of Appeal of Piraeus, [decision No. 447/2022](#) of 18 July 2022.

⁸¹ 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.

⁸² Bulgaria, People with Disabilities Act, paras 1.1 and 1.2, Additional Provisions.

⁸³ Italy, [Legislative Decree No. 62 of 3 May 2024 defining the condition of disability, basic assessment, reasonable accommodation, multidimensional assessment for the development and implementation of the shared and individual life plan](#).

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 Denmark, Board of Equal Treatment, decision No. 10097 of 23 October 2024.

for relatively short periods of time may be recognised as having a disability.⁹¹ 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.⁹² 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’.⁹³ **Swedish** law does not consider the claimant’s specific abilities themselves, but rather the discriminator’s perception of these abilities. Therefore, it is irrelevant for the outcome of a case whether the claimant experiences any symptoms or not.⁹⁴

a. 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’.⁹⁵ 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’.⁹⁶ 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,**⁹⁷ **Cyprus, Czechia, Denmark, Estonia, Finland, France, Greece, Hungary, Ireland, Italy,**⁹⁸ **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

⁹¹ Ireland, Labour Court, *Phibsboro Cat Rescue v. Davis*, EDA2334, 7 September 2023.

⁹² Ireland, Employment Equality Acts 1998-2021, Section 2(1).

⁹³ 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).

⁹⁴ See, for example, Swedish Labour Court, *Sveriges Civilingenjörersförbund and MK v. T&N Management AB*, Judgment No. 32, of 30 March 2005.

⁹⁵ Directive 2000/78/EC, Article 5.

⁹⁶ CJEU, Judgment of 11 April 2013, *HK Danmark (Ring and Skouboe Werge)*, joined cases C-335/11 and C-33711, EU:C:2013:222, para. 54.

⁹⁷ 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.

⁹⁸ The Italian legislation states that public employers ‘shall apply this provision without any additional burden and with human, financial and instrumental resources already available’.

accommodation applies to other fields in addition to employment, such as the **Netherlands** (education and access to goods and services⁹⁹), **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’.¹⁰⁰ 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. In 2024, some guidance in that regard was provided by a national court decision which referred directly to the Directive and specifically to its Recital 21 when ruling on the dismissal of an employee with disabilities in violation of the employer’s obligation to provide reasonable accommodation.¹⁰¹

There are concerns regarding the extent of the duty to provide reasonable accommodation in several countries. In **France**,¹⁰² 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.¹⁰³ 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.¹⁰⁴ 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 states that in respect of reasonable accommodation, public employers ‘shall apply this provision without any additional burden and with human, financial and instrumental resources already available’.¹⁰⁵ 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

⁹⁹ Some specific restrictions still apply to public transport (Article 7 DDA) and housing (Articles 6a-c DDA).

¹⁰⁰ Sweden, Discrimination Act, as amended by Act 2014:958, of 8 July 2014, Chapter 1, Section 4(3).

¹⁰¹ Slovenia, Higher Labour and Social Court in Ljubljana, decision No. Pdp 79/2024 of 19 June 2024.

¹⁰² See France, Administrative Supreme Court (*Conseil d’État*) decisions in the *Perreux* case of 30 October 2009 and the *Bleittrach* case of 30 October 2010.

¹⁰³ Hungary, Act XXCI of 1998 on the rights of persons with disabilities and the guaranteeing of their equal opportunities, Article 15(2).

¹⁰⁴ Germany, Civil Code, Section 241.2.

¹⁰⁵ 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.

occupational disease and was refused different accommodation measures, however, the case was examined as potential harassment, and in the end the claims were rejected.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, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta**, the **Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain** and **Sweden**). 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 has been set up for the purpose of determining the reasonableness of, *inter alia*, reasonable accommodation measures. The board has 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 be determined when reasonable accommodation has been put in place or attempted.¹¹²

¹⁰⁶ Portugal, Porto Court of Appeal, decision of 13 July 2022 in case No. 3444/20.8T8MAI.P1.

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.

¹¹² See, for instance, Denmark, Board of Equal Treatment, decision No. 9241 of 20 March 2024.

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

Denmark: Reassignment to a different position in another workplace, as reasonable accommodation

The case concerned a social worker with a disability who was employed in a flexible job position by the Copenhagen Region. She worked at the Rigshospitalet with a weekly working time of 20 hours, but informed her manager that her health condition had deteriorated and that she was only able to work 10 hours per week. At a formal meeting concerning potential dismissal she was offered the possibility of creating a job alert on the region's internal web portal, to receive job postings until the possible termination of her employment. She applied for a posted position as a social worker with a weekly working time of 10 hours in another department at the hospital but was not offered the position following an interview. She was later dismissed on grounds that she was no longer available to perform the essential functions required by her position as a social worker, as her existing position could not be carried out in only 10 hours per week.

The parties agreed that the claimant had a disability and that the employer was not obliged to adjust her position by reducing the working hours. The question before the Supreme Court was whether the employer,

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, 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.

prior to the dismissal, had breached the duty of accommodation by failing to reassign the employee to the position in the other department.

Referring to the CJEU judgment in the *HR Rail* case, the Supreme Court stated that the duty of reasonable accommodation entails that the employer – when it is not possible to make adjustments to the employee's current position – has an obligation, prior to dismissal, to investigate and, if necessary, test the possibilities for reassigning the employee to a vacant position within the employer's organisation. According to the Court, an employer cannot merely direct the employee to independently identify and apply for vacant positions in competition with other applicants. If there is a vacant position for which the employee is qualified, suitable and available, the employer is obliged to reassign the employee to that position unless doing so would impose a disproportionate burden on them.¹²³

The Court concluded that the employer had failed to investigate the possibilities for reassigning the employee to a vacant position within the entire region prior to the dismissal. The Supreme Court thus concluded that the employer had not demonstrated that reassigning the claimant to the alternative position would have imposed a disproportionate burden, and the failure to do so therefore constituted a breach of the employer's duty to provide reasonable accommodation. On that basis, the claimant received compensation amounting to nine months' salary.

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. **Cyprus, Estonia, Luxembourg**). 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**), or an unspecified form of discrimination (**Croatia, France, Latvia, Lithuania, Poland** and **Portugal**).¹²⁶ In **Croatia**, for instance, it was confirmed in 2024 that a failure to provide reasonable accommodation was not considered to be solely based on disability and for this reason, it did not amount to direct discrimination.¹²⁷ 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**,¹²⁸ 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,¹²⁹ 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**, complaints relating to a

¹²³ Denmark, Supreme Court, decision of 3 December 2024, case No. BS-19728/2024-HJR.

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.

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

¹²⁷ Croatia, Dubrovnik County Court, decision of 24 July 2024 in case No. Gž-157/2024-3.

¹²⁸ 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.

¹²⁹ See: Netherlands, Article 2(1) of the Disability Discrimination Act

failure to provide reasonable accommodation remain the most common form of discrimination faced by persons with disabilities as reported to the Disability Ombudsperson. Negative attitudes towards employees with disabilities requesting reasonable accommodation remain very common among employers in Croatia, and the burden of recognising and realising the right to reasonable accommodation rests entirely on the individuals needing such accommodation.¹³⁰

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

Country	Legislation	Failure to provide RA amounts to 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 ¹³¹	Protection Against Discrimination Act, Art. 16	No
	People with Disabilities Act, Arts. 5(2.4), 29(6.5), 29(9.6)	No
CROATIA	Anti-discrimination Act, Art. 4(2)	Yes
	Act on professional rehabilitation and employment of persons with disability, Art. 7(2)	No
CYPRUS	Law on Persons with Disabilities, Art. 5(1A)	No ¹³²
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 ¹³³
FINLAND	Non-Discrimination Act, Sec. 15	Yes
FRANCE ¹³⁴	Law no 2005-102 for equal rights and opportunities and participation and citizenship of persons with disabilities, Articles 24 V (creating Article L5213-6 of the Labour Code) and 32	Yes

¹³⁰ Croatia, Ombudsperson for Persons with Disabilities (2024), *Report for 2023*.

¹³¹ 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).

¹³² 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.

¹³³ Judicial interpretation is required, but national legislation does not stipulate that a failure to provide reasonable accommodation would amount to discrimination.

¹³⁴ 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).

Country	Legislation	Failure to provide RA amounts to discrimination
	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
HUNGARY	Act on the Rights of Persons with Disabilities and the Guaranteeing of their Equal Opportunities, Art. 15 ¹³⁵	Yes ¹³⁶
	Act on the Labour Code, Art. 51 ¹³⁷	Yes ¹³⁸
IRELAND	Employment Equality Acts 1998-2021, Secs. 16(3)(a), 16(3)(b) and 16(4)	No ¹³⁹
ITALY	Legislative Decree 216/2003 Implementing Directive 2000/78/EC, Art. 3(3- <i>bis</i>) ¹⁴⁰	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 ¹⁴²
	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
POLAND	Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities, Art. 23a (1-3)	Yes

¹³⁵ 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.

¹³⁶ 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.

¹³⁷ The Labour Code imposes a duty to provide reasonable accommodation with regards to already existing employment, while judicial interpretation is needed regarding access to employment.

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 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.

¹⁴⁰ Article 17 of Legislative Decree 62/2024, defining the condition of disability, basic assessment, reasonable accommodation, multidimensional assessment for the development and implementation of the shared and individual life project of 3 May 2024 (entry into force 30 June 2024) also provides for rules and procedure on reasonable accommodation by amending Framework Law No. 104/1992 on social assistance of persons with disabilities. The new Article 5-*bis* entirely focusing on reasonable accommodation has been added to Framework Law No. 104/1992 complementing the provisions of Article 3-*bis* of Legislative Decree 216/2003.

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.

¹⁴² Judicial interpretation is required but national legislation may be interpreted so that a failure to provide reasonable accommodation would amount to discrimination.

Country	Legislation	Failure to provide RA amounts to discrimination
PORTUGAL	Labour Code, Arts. 85-88	Yes ¹⁴³
	Law prohibiting and punishing discrimination based on disability and on a pre-existing risk to health, Art. 5(4)	Yes ¹⁴⁴
ROMANIA	Law on the protection and promotion of the rights of persons with a handicap, Art. 5(4) 145	No ¹⁴⁶
SLOVAKIA	Anti-discrimination Act, Sec. 7 ¹⁴⁷	Yes ¹⁴⁸
SLOVENIA	Act on Equal Opportunities of Persons with Disabilities, Art. 3(3) ¹⁴⁹	No ¹⁵⁰
SPAIN	General Law on the Rights of Persons with Disabilities and their Social Inclusion, Art. 2(m)	No ¹⁵¹
SWEDEN	Discrimination Act, Ch. 1 Sec. 4(3), in conjunction with Ch. 2 Sec. 1	Yes ¹⁵²

b. 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 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.¹⁵³ Furthermore, in view of the specific dangers for employees with a reduced work capability¹⁵⁴ and under a number of other laws and

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 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.

¹⁴⁵ Reasonable accommodation is framed as a facility for the employee but not as a duty for the employer.

¹⁴⁶ 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.

¹⁴⁷ The Labour Code, Sections 158-159 also provide for a duty to provide reasonable accommodation for persons with disabilities. A breach of these provisions is interpreted as a violation of the principle of equality.

¹⁴⁸ The relevant provision does not use the term 'discrimination' in this regard but rather 'violation of the principle of equality'.

¹⁴⁹ The material scope of the provision is restricted and refers mainly to areas outside employment. Judicial interpretation is therefore required.

¹⁵⁰ Judicial interpretation is required.

¹⁵¹ Under the General Law on the Rights of Persons with Disabilities and their Social Inclusion, a failure to provide reasonable accommodation does not explicitly amount to discrimination per se, but to a violation of the right to equal opportunities. However, while Law 15/2022 of 12 July, which is comprehensive for equal treatment and non-discrimination, does not regulate a duty to provide reasonable accommodation per se, it stipulates that a failure to provide such reasonable accommodation amounts to direct discrimination.

¹⁵² In Sweden, failure to provide reasonable accommodation amounts to a specific form of discrimination, i.e. inadequate accessibility.

¹⁵³ Bulgaria, Healthy and Safe Working Conditions Act, Article 16 (1.2a).

¹⁵⁴ Bulgaria, Healthy and Safe Working Conditions Act, Article 16 (1.3).

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.

2.2.4 Sexual orientation

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’.¹⁵⁵ 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 as also including bisexuality,¹⁵⁶ while the Constitution refers to ‘sexual orientation’, which is considered to be a more inclusive term more in line with international law.¹⁵⁷ 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.’¹⁵⁸ 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’.¹⁵⁹ 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’.¹⁶⁰ The 2006 **German** General Equal Treatment Act adopts the term ‘sexual identity’ while the Federal German Constitutional Court refers to both sexual identity and sexual orientation as being part of each individual’s autonomous personality. This is understood to go beyond sexual orientation and also encompasses protection against discrimination for transsexual people.¹⁶¹

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

¹⁵⁵ Bulgaria, Protection Against Discrimination Act, Section 1.10 Additional Provisions.

¹⁵⁶ Netherlands, Tweede Kamer 1991-1992, 22 014, No. 10, p. 12.

¹⁵⁷ There are plans to replace the terms ‘hetero- or homosexual orientation’ with ‘sexual orientation’ in the General Anti-Discrimination Act as well.

¹⁵⁸ Spain, Law 4/2023, of 28 February, for real and effective equality of transgender people and for the guarantee of LGTBI rights, Article 3h.

¹⁵⁹ 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.

¹⁶⁰ 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.

¹⁶¹ German Federal Constitutional Court of 6 December 2005; 1 BvL 3/03, paragraph 48 *et seq.*

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**,¹⁶² and **Lithuania**¹⁶³).¹⁶⁴

2.2.5 Age¹⁶⁵

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’,¹⁶⁶ while the protection in the field of access to goods and services only applies to those aged above 18.¹⁶⁷ 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.¹⁶⁸ Moreover, with regard to employment, conditions of payment and dismissal, direct age discrimination against young people under 15 years of age is allowed if their employment is not covered 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.¹⁶⁹

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 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).¹⁷⁰ 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

¹⁶² 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.

¹⁶³ Despite a generally hostile political climate, the Lithuanian Constitutional Court declared in 2024 that legislative provisions restricting dissemination of information about LGBTIQ families are unconstitutional and therefore void. See [judgment No. KT101-N15/2024 of 18 December 2024](#).

¹⁶⁴ 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 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.

¹⁶⁵ For a detailed analysis of the justifications for age discrimination, see Section 3.3 below.

¹⁶⁶ Ireland, Employment Equality Acts 1998-2021, Section 6(3)(a).

¹⁶⁷ Ireland, Equal Status Acts 2000-2018, Section 3(3)(a).

¹⁶⁸ Denmark, Act on the Prohibition of Discrimination in the Labour Market etc., Section 5(a)(4).

¹⁶⁹ Cyprus, Supreme Court, Appeal Jurisdiction, *Michael Raftopoulos v. Republic of Cyprus*, Appeal No. 3/2012, 10 October 2017.

¹⁷⁰ Denmark, Board of Equal Treatment, Decision No. 9134 and Decision No. 9135, both of 25 February 2021.

to be ‘digital natives’ amounted to a difference in treatment based on age, which was not justified.¹⁷¹ A similar conclusion was reached by a **German** court in 2024.¹⁷² The **Lithuanian** Labour Inspectorate recommends that job advertisements should not indicate required work experience in terms of a certain number of years but rather in specific qualifications or competences.

2.3 Assumed and associated discrimination¹⁷³

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**,¹⁷⁴ **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.¹⁷⁵ 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.¹⁷⁶ In **Cyprus**, the Law on persons with disability includes assumption of disability within the definition of disability,¹⁷⁷ 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,¹⁷⁸ 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.¹⁷⁹ 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.¹⁸⁰ At the same time however, a series of decisions by the Board of Equal Treatment and by the courts have assessed disability from a purely medical approach, failing to examine whether the employer assumed or perceived the claimant to have a disability. Further guidance is therefore necessary in this regard in Denmark. In **France**, national law is interpreted as prohibiting discrimination by association¹⁸¹ 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

¹⁷¹ Belgium, Labour Court of Antwerp, *decision of 2 August 2023*.

¹⁷² Germany, Labour Court of Heilbronn, 18 January 2024, case No. 8 Ca 191/23.

¹⁷³ 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.

¹⁷⁴ 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.

¹⁷⁵ 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.

¹⁷⁶ 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.

¹⁷⁷ 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.

¹⁷⁸ Denmark, Act on Ethnic Equal Treatment, commentary to Sections 3 and 3(1), respectively.

¹⁷⁹ Denmark, Supreme Court, judgment of 8 October 2014, printed in U2015.16H.

¹⁸⁰ Denmark, Supreme Court, Case 305/2016, judgment delivered on 22 November 2017.

¹⁸¹ France, Caen Appeal Court, *Enault v. SAS ED*, No. 08/04500, 17 September 2010.

assumed characteristics’ and is interpreted, at least by the Ombudsman, to prohibit discrimination by association as well.¹⁸² 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.¹⁸³ In 2024, an **Italian** court concluded that the failure of an employer to count absences from work to care for a child with disabilities as justified absences for the purpose of calculating an attendance bonus, amounted to direct discrimination, without addressing the fact that the claimant was not a person with a disability herself.¹⁸⁴

Anti-discrimination legislation in **Austria, Belgium, Bulgaria, Croatia, Finland, Greece, Ireland, Portugal, Slovenia** and **Spain** explicitly prohibits both discrimination on perceived or assumed grounds and discrimination by association. 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**,¹⁸⁵ 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’¹⁸⁶ 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.¹⁸⁷

2.4 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.¹⁸⁸ Explicit provisions prohibiting multiple discrimination are provided in 10 Member States. This is the case for instance in **Greece** and **Portugal** – where multiple discrimination concerns the grounds of racial or ethnic origin, colour, nationality, ancestry and territory of origin.¹⁸⁹ There are only two Member States where intersectional discrimination is explicitly prohibited: **Belgium**, since 2023, and **Spain** since 2022.

¹⁸² See, for instance, Hungary, Ombudsman, decision No. [EBF-AJBH-28/2022](#) of December 2022.

¹⁸³ 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.

¹⁸⁴ Italy, Court of Appeal of Turin, [decision No. 273 of 12 July 2024](#).

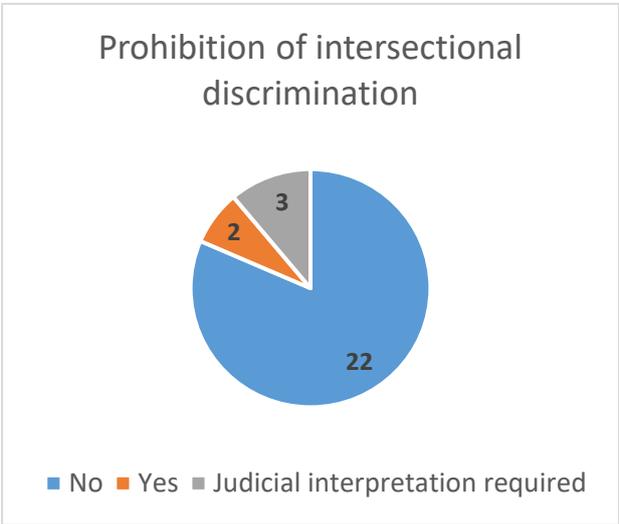
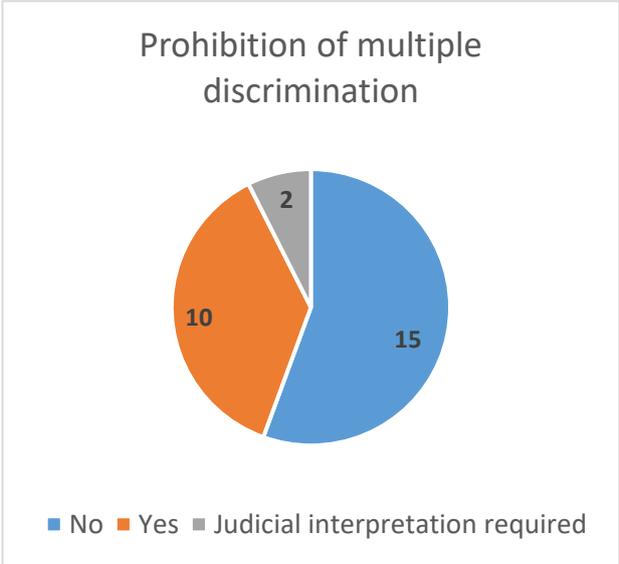
¹⁸⁵ In Luxembourg, discrimination by assumption is only prohibited on the ground of ethnic origin or belonging to a nationality, race or specific religion.

¹⁸⁶ Croatia, Anti-discrimination Act, 2008, Article 1(3).

¹⁸⁷ See notably Bulgaria, Supreme Administrative Court, Decision No. 395 of 19 January 2022 in case No. 8638/2021.

¹⁸⁸ Recital 3 of the Employment Equality Directive and recital 14 of the Racial Equality Directive.

¹⁸⁹ 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.



In Finland, the preparatory works of the Non-Discrimination Act state that both multiple and intersectional discrimination are included in the concept of discrimination.¹⁹⁰ 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’.¹⁹¹ It places a statutory duty on public authorities to give priority to positive action measures to the benefit of victims of multiple discrimination.¹⁹² 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.¹⁹³ 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, in 2024, the Supreme Administrative Court remanded a case for further examination, instructing the lower court to, notably, examine the alleged claims with regard to each invoked ground of discrimination individually.¹⁹⁴ In the Netherlands, although multiple discrimination is not explicitly prohibited by the General Equal Treatment Act, the equality body, the NIHR, has established a practice of explicitly examining cases as involving such discrimination.¹⁹⁵ Its practice appears to be more

problematic with regard to intersectional discrimination however, as can be seen for instance in a case from 2024 where the body acknowledged the claim of intersectional discrimination but found that it fell beyond the scope of its assessment.¹⁹⁶ 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,¹⁹⁷ while under Austrian law, the explanatory notes clarify that cases of discrimination based on multiple grounds need

¹⁹⁰ Finland, Government proposal on the Non-Discrimination Act, 19/2014, p. 57.
¹⁹¹ Bulgaria, Protection Against Discrimination Act, Additional Provisions, Article 1(11).
¹⁹² 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.
¹⁹³ Bulgaria, Protection Against Discrimination Act, Article 48(3).
¹⁹⁴ Bulgaria, Supreme Administrative Court, decision No. 11113 of 17 October 2024 in Case No. 2716/2024.
¹⁹⁵ See, for instance, Netherlands Institute for Human Rights, Opinion No. 2024-17 of 15 February 2024, concerning alleged discrimination on the grounds of sex and disability.
¹⁹⁶ Netherlands Institute for Human Rights, Opinions Nos. 2024-39 and 2024-40 of 14 May 2024.
¹⁹⁷ 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’.

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, however, and further judicial interpretation would still be required.¹⁹⁸ 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. Similarly, multiple and/or intersectional discrimination is also taken into account when evaluating the severity of sanctions in Austria, Belgium, Denmark, Finland, Hungary,¹⁹⁹ Ireland,²⁰⁰ Malta and Spain. In addition, the 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.²⁰¹

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.²⁰²

¹⁹⁸ See, for instance, Austria, Viennese Provincial Court on Civil Matters, Decision No. 34R19/23f of 21 February 2023, finding religious discrimination ‘connected with sex or gender’, but qualified as neither multiple nor intersectional.

¹⁹⁹ Only intersectional discrimination, based on judicial interpretation.

²⁰⁰ Based on judicial interpretation.

²⁰¹ See, for instance, Slovenia, Advocate of the Principle of Equality, decision No. 0700-41/2020/15 of 3 December 2021.

²⁰² Sweden, Labour Court, *The Equality Ombudsman v. State Employment Board*, Judgment No. 91/2010, of 15.12.2010.

3 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.

3.1 Forms of discrimination

3.1.1 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, Spain²⁰³ and Sweden. In French law, the definition does not cover hypothetical comparisons.²⁰⁴ 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

²⁰³ 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.

²⁰⁴ 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*.

proposed by Directive 2000/43/EC and Directive 2000/78/EC, the Romanian Anti-discrimination Law is in line with the directives since it provides a detailed definition, attempting to cover the whole range of actions and omissions leading to discrimination.

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.²⁰⁵

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.²⁰⁶ 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.²⁰⁷ In **Cyprus**, although a series of Supreme Court decisions held that discrimination that is ‘reasonable’ is lawful,²⁰⁸ more recent Supreme Court decisions have recalled both that exceptions to the principle of equality and non-discrimination must be interpreted narrowly,²⁰⁹ and that discrimination is permitted only where the individuals concerned are in dissimilar and non-comparable situations.²¹⁰ Similarly, in **Bulgaria**, several court decisions in 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

²⁰⁵ Ireland, Workplace Relations Commission, *Kenny v. An Garda Síochána*, ADJ-00030391, 21 June 2023.

²⁰⁶ Hungary, Equal Treatment Act, Article 7(2).

²⁰⁷ Finland, Non-Discrimination Act, Section 11(1).

²⁰⁸ 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’.

²⁰⁹ 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.

²¹⁰ Cyprus, Supreme Court, Appeal Jurisdiction, *Michael Raftopoulos v. Republic of Cyprus*, Appeal No. 3/2012, 10 October 2017.

carried out ‘knowingly’ and an absence of legitimate objectives that justify the unequal treatment.²¹¹ 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. In **Estonia** on the other hand, the courts have developed a tendency to allow objective justification of direct discrimination, following in a way the practice of the Supreme Court with regard to alleged violations of constitutional rights. In such cases, unequal treatment is unconstitutional only if there is no ‘reasonable cause’, and this practice has arguably influenced national courts when deciding on cases under the Equal Treatment Act, muddling the otherwise clear distinction between direct and indirect discrimination.²¹²

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 ²¹³	Anti-discrimination Act, Art. 2(1)	Yes	Yes
CYPRUS	Equal Treatment in Employment and Occupation Law, Art. 6(1)(a)	Yes	Yes
	Equal Treatment (Racial or Ethnic origin) Law, Art. 5(1)	Yes	Yes
	Law on Persons with Disabilities, Art. 3(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

²¹¹ See for instance, Bulgaria, Supreme Administrative Court, Decision No. 6704 of 3 June 2024 in case No. 9648/2023.

²¹² See, for example, Tallinn Circuit Court, decision of 30 May 2024 in case No. 3-22-1996, and Tallinn Circuit Court Administrative Law Chamber, decision of 7 October 2024 in case No. 3-22-1337/35.

²¹³ The Labour Code and the Same-sex Life Partnership Act also prohibit direct discrimination, with limited scopes of application.

Country	Legislation	Defined	Definition equivalent to the directives
FRANCE	Law relating to the adaptation of National Law to Community Law in matters of discrimination, Art. 1	Yes	No
GERMANY ²¹⁴	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
	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, ²¹⁵ 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(1)(a) and (b)	Yes	Yes
	Disability Discrimination Act, Art. 1(1)(a) and (b)	Yes	Yes
	Age Discrimination Act, Art. 1(1)(a) and (b)	Yes	Yes
POLAND ²¹⁶	Equal Treatment Act, Arts. 3(1) and 6	Yes	Yes

²¹⁴ 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.

²¹⁵ In addition, the Public Sector Law of 29 November 2006 prohibits direct discrimination in the public sector.

²¹⁶ The Labour Code also prohibits direct discrimination, but only in the field of employment.

Country	Legislation	Defined	Definition equivalent to the directives
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) ²¹⁷	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 ²¹⁸
	General Law on the Rights of Persons with Disabilities and their Social Inclusion, Art. 2.c	Yes	No ²¹⁹
	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

3.1.2 Indirect discrimination

A large proportion of states have introduced a definition of indirect discrimination that generally reflects the definition adopted in the directives.²²⁰ 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**.

²¹⁷ In conjunction with Section 2(1).

²¹⁸ Although the definition is not equivalent to that of the directives, it is interpreted as such by the jurisprudence.

²¹⁹ Although the definition is not equivalent to that of the directives, it is interpreted as such by the jurisprudence.

²²⁰ 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.

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.²²¹

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.²²² This can be illustrated notably by some aspects of the national court decision that followed the CJEU ruling in *Achbita*.²²³ 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.²²⁴ 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.²²⁵

Romania: Indirectly discriminatory criterion for granting access to social housing

In 2022, an NGO filed a petition before the quasi-judicial equality body regarding the decision of a local council that established the criteria and scoring method for granting access to social housing. The NGO noted that the criteria mainly affected Roma persons, as approximately 75 % of people living in social housing in the concerned municipality are of Roma ethnicity. The criteria challenged by the NGO included family status and income level, as well as educational status of both the applicants themselves and their children. In this regard, additional points were awarded for enrolling children in school and providing proof of a minimum of 80 % attendance, while a penalty was imposed for applicants whose children had dropped out of school.

The National Council for Combating Discrimination (NCCD) decided on the case in January 2024. It found that criteria such as dropping out from school and educational status in general amounted to indirect discrimination against Roma.²²⁶ In this regard, the NCCD relied on its own prior cases as well as a Court of Appeal decision from 2018, where the court had found that such criteria and scoring generated the effect of disadvantaging precisely those who are already socially disadvantaged.²²⁷ Specifically with regard to the penalty for children dropping out of school, the NCCD noted that studies and statistical data show that many Roma children do not attend school or drop out of school. Such a disadvantage was found to amount to discriminatory treatment in access to the public service of social housing. With regard to the criteria related

²²¹ Slovenia, Protection Against Discrimination Act, Article 6(2).

²²² 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.

²²³ 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.

²²⁴ See, for instance, Bulgaria, Supreme Court of Cassation, Ruling No. 60827 of 25 November 2021 in case No. 2146/2021.

²²⁵ Bulgaria, Supreme Administrative Court, Decision No. 3849 of 20 April 2022 in case No. 11488/2021.

²²⁶ Romania, National Council for Combating Discrimination, *Asociația Centrul de Resurse Juridice v. U.A.T. Baia Mare, Consiliul local Baia Mare*, decision No. 12 in case No. 156/02.04.2022, of 10 January 2024.

²²⁷ Romania, Court of Appeal Cluj, decision 86/2018.

to family status, the NCCD decision recommended that the local administration take into consideration the situation of same-sex couples to avoid causing indirect discrimination against LGBT people.

In terms of remedies, the NCCD decision issued only a warning, recommending to the local authority that it eliminate this criterion in the scoring. No follow up in practice was reported. It is also noteworthy that similar criteria exist in many cities and villages although the NCCD decision applies only to the respondent municipality.

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 ²²⁸	Anti-discrimination Act, Arts. 2(2)	Yes	Yes
CYPRUS	Equal Treatment in Employment and Occupation Law, Art. 6(1)(b)	Yes	Yes
	Equal Treatment (Racial or Ethnic origin) Law, Art. 5	Yes	Yes
	Law on Persons with Disabilities, Art. 3(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

²²⁸ The Labour Code and the Same-sex Life Partnership Act also prohibit indirect discrimination, with limited scopes of application.

Country	Legislation	Defined	Definition equivalent to the directives
GERMANY ²²⁹	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 ²³⁰
IRELAND	Employment Equality Acts 1998-2021, Sec. 22 and 31	Yes	Yes
	Equal Status Acts 2000-2018, Sec. 3(1)(c)	Yes	Yes
ITALY	Legislative Decree No 215/2003 Implementing Directive 2000/43/EC, Art. 2(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 Discrimination, Art. 2(3)	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, ²³¹ 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(1)(a) and (c)	Yes	Yes
	Disability Discrimination Act, Art. 1(1)(a) and (c)	Yes	Yes
	Age Discrimination Act, Art. 1(1)(a) and (c)	Yes	Yes
POLAND ²³²	Equal Treatment Act, Arts. 3(2), 4, 6, 7 and 8	Yes	Yes

²²⁹ 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.

²³⁰ Not fully, due to an exemption clause.

²³¹ The Public Sector Law of 29 November 2006 also prohibits indirect discrimination, in the public sector.

²³² The Labour Code also prohibits indirect discrimination, but only in the field of employment.

Country	Legislation	Defined	Definition equivalent to the directives
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) ²³³	Yes	Yes
SLOVENIA	Protection Against Discrimination Act, Arts. 6(2) and 4(2)	Yes	Yes
	Employment Relationship Act, Art. 6(3)	Yes	No ²³⁴
	Act on Equal Opportunities of Persons with Disabilities, Art. 3	Yes	No ²³⁵
SPAIN	Law on Fiscal, Administrative and Social Measures, Art. 28.1.c	Yes	No ²³⁶
	General Law on the Rights of Persons with Disabilities and their Social Inclusion, Art. 2.d	Yes	No ²³⁷
	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

3.1.3 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.²³⁸ The majority of states have adopted

²³³ In conjunction with Section 2(1).

²³⁴ Judicial interpretation is required.

²³⁵ Judicial interpretation is required.

²³⁶ Although the definition is not equivalent to that of the directives, it is interpreted as such by the jurisprudence.

²³⁷ Although the definition is not equivalent to that of the directives, it is interpreted as such by the jurisprudence.

²³⁸ Directives 2000/43/EC and 2000/78/EC, Article 2(3).

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**²³⁹ 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)’.

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.²⁴⁰ By contrast, it appears that the **Belgian** Constitutional Court requires an intention to harass on behalf of the respondent,²⁴¹ 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’ (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.²⁴² In **Ireland**, various forms of communication have been the subject of successful harassment complaints, including ‘spoken words’, text messages, graffiti and even repetitive invitations for meetings in the specific circumstances of a claimant on sick leave for depression.²⁴³ 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.²⁴⁴ 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’.²⁴⁵ Similarly, the **Finnish** Non-Discrimination Act was amended in 2022 to broaden the scope of the definition of

²³⁹ 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.

²⁴⁰ Sweden, Government proposal (*Regeringens proposition*) No. 2007/08:95, p. 106.

²⁴¹ Belgium, Constitutional Court, Decision of 12 February 2009, No. 17/2009, para. B.53.4, among others.

²⁴² Finland, Government Proposal on the Non-Discrimination Act 19/2014, p. 78.

²⁴³ Ireland, Workplace Relations Commission, 5 December 2024, *A Childcare Worker v. A Childcare Provider*, Case No. ADJ-00050258.

²⁴⁴ See, for instance, Bulgaria, Sofia City Administrative Court, Decision No. 4631 of 6 July 2022 in case No. 12615/2021.

²⁴⁵ See, for instance, Bulgaria, Supreme Administrative Court, decision No. 8085 of 28 June 2024 in case No. 2122/2024.

harassment, covering groups of people rather than individuals only.²⁴⁶ 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.²⁴⁷ More recently, a Slovak court also found that racially motivated police brutality amounted to harassment prohibited by the Anti-Discrimination Act.²⁴⁸

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.²⁴⁹ In **Ireland**, employers and service providers are liable for harassment by employees and third parties such as tenants, clients and customers,²⁵⁰ unless they can show that they took reasonably practicable steps to prevent harassment.²⁵¹ 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.²⁵² By contrast, the defence was applicable with regard to an employer who had conducted an investigation ‘diligently’ into alleged harassment on the Traveller ground, and consequently initiated disciplinary action against the perpetrator.²⁵³ In **Lithuania**, legislation adopted in 2024 has extended liability of employers and employees for failures to prevent violence and harassment or provide assistance to employees subjected to violence or harassment.²⁵⁴ 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.²⁵⁵ 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).²⁵⁶ 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).

²⁴⁶ Finland, Act Amending the Non-Discrimination Act (1192/2022), Section 14, in force as of 1 June 2023.

²⁴⁷ Slovakia, Regional Court of Košice, decision No. 9Co/21/2022 of 28 July 2023.

²⁴⁸ Slovakia, Municipal Court in Bratislava IV, decision of 19 April 2024, No. B1-16C/87/2016-394.

²⁴⁹ Germany, General Equal Treatment Act, Section 12.4.

²⁵⁰ Ireland, Employment Equality Acts 1998-2021, Section 14A; Equal Status Acts 2000-2018, Section 11.

²⁵¹ Irish Labour Court, *Dublin Bus v. McCamley*, EDA 164, 18.02.2016; *A Store v. A Worker*, EDA 163, 28.01.2016.

²⁵² Ireland, Workplace Relations Commission, *A Creche Worker v. A Creche*, ADJ-00032972, 4 April 2023.

²⁵³ Ireland, Workplace Relations Commission, *Casey v. Securitas Security Services Ireland*, ADJ-00034950, 4 January 2023.

²⁵⁴ Lithuania, Law amending Article 96 and the Annex to the Code of Administrative Offences, No. XIV-3035, 17 October 2024.

²⁵⁵ Austria, Supreme Court, Decision No. 9ObA66/20a of 29 September 2020.

²⁵⁶ See, for instance, Netherlands Institute for Human Rights, Opinions Nos 1997-82 of 17 June 1997 and 2004-128 of 5 October 2004.

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
BULGARIA	Protection Against Discrimination Act, Art. 5	Yes	Yes
CROATIA ²⁵⁷	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 ²⁵⁸
HUNGARY	Equal Treatment Act, Art. 10(1)	Yes	Yes
IRELAND	Employment Equality Act 1998-2021, Sec. 14A	Yes	Yes
	Equal Status Act 2000-2018, Sec. 11	Yes	Yes

²⁵⁷ The Labour Act also prohibits harassment, without defining it, but applies only in the field of employment.

²⁵⁸ Judicial interpretation is required in relation to the term 'unacceptable behaviour'.

Country	Legislation	Defined	Definition equivalent to the directives
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 ²⁵⁹	Yes
LITHUANIA	Law on Equal Treatment, Art 2(1) and (7)	Yes	Yes
LUXEMBOURG	General Anti-Discrimination Law, ²⁶⁰ 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
NETHERLANDS	General Equal Treatment Act, Art. 1a	Yes	Yes
	Disability Discrimination Act, Art. 1a	Yes	Yes
	Age Discrimination Act, Art. 2	Yes	Yes
POLAND ²⁶¹	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

²⁵⁹ Article 3.¹(8) of the Education Law refers to the definition in the Consumer Rights Protection Law, and is equivalent to the definition in the directives.

²⁶⁰ The Public Sector Law of 29 November 2006 also prohibits harassment, in the public sector.

²⁶¹ The Labour Code also prohibits harassment, but only in the field of employment.

Country	Legislation	Defined	Definition equivalent to the directives
SLOVAKIA	Anti-discrimination Act, Sec. 2a(4) ²⁶²	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 ²⁶³
	General Law on the Rights of Persons with Disabilities and their Social Inclusion, Art. 2(f)	Yes	Yes
	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 ²⁶⁴
SWEDEN	Discrimination Act, Ch. 1 Sec. 4(4)	Yes	Yes ²⁶⁵

3.1.4 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'.²⁶⁶ 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.²⁶⁷

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

²⁶² In conjunction with Section 2(1).

²⁶³ The words 'hostile' and 'degrading' are not included in this definition.

²⁶⁴ The words 'hostile' and 'degrading' are not included in this definition.

²⁶⁵ 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.

²⁶⁶ Directives 2000/43/EC and 2000/78/EC, Article 2(4). For further analysis of the concept, prohibition and liability for instructions to discriminate, see Dewhurst, E., Buendía, R. (2025), *Instructions to discriminate under EU and national law*, European network of legal experts in gender equality and non-discrimination.

²⁶⁷ Finland, *Government Proposal on the Non-Discrimination Act 19/2014*, p. 69.

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 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.²⁶⁸

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

²⁶⁸ Slovenia, Advocate of the Principle of Equality, [decision No. 0700-48/2022/19 of 11 September 2023](#).

Country	Legislation	Defined
BELGIUM	Racial Equality Federal Act, Art. 12	Yes
	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, ²⁶⁹ 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 ²⁷⁰
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
HUNGARY	Equal Treatment Act, Art. 7(1)	No
IRELAND ²⁷¹	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

²⁶⁹ The law prohibits ‘encouragement’ to discriminate, which should cover both instructions and incitement, but further judicial interpretation is needed.

²⁷⁰ 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.

²⁷¹ 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.

Country	Legislation	Defined
LUXEMBOURG	General Anti-Discrimination Law, ²⁷² Arts. 1(4) and 18	Yes
MALTA ²⁷³	Equal Treatment in Employment Regulations, Art. 3(4)	Yes
	Equal Treatment of Persons Order, Arts. 2(2)(c) and (d)	No
NETHERLANDS	General Equal Treatment Act, Art. 1(1)(a)	No
	Disability Discrimination Act, Art. 1(1)(a)	No
	Age Discrimination Act, Art. 1(1)(a)	No
POLAND ²⁷⁴	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)	Yes
ROMANIA	_ ²⁷⁵	N/A
SLOVAKIA	Anti-discrimination Act, Secs. 2a(1) and (6) ²⁷⁶	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
SWEDEN	Discrimination Act, Ch. 1 Sec. 4(6)	Yes

3.2 Scope of discrimination

3.2.1 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

²⁷² The Public Sector Law of 29 November 2006 also prohibits instructions to discriminate, in the public sector.

²⁷³ Instructions to discriminate are also prohibited in the Constitution of Malta (Article 45), Civil Code (Article 1044) and Criminal Code (Article 42).

²⁷⁴ The Labour Code also prohibits instructions to discriminate, but only in the field of employment.

²⁷⁵ The NCCD interprets the prohibition of 'orders to discriminate' of Article 2(2) of GO 137/2000 as a prohibition of instructions to discriminate.

²⁷⁶ In conjunction with Section 2(1).

status.²⁷⁷ 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,**²⁷⁸ **Portugal, Romania, Slovakia, Slovenia** and **Spain**. In some countries, however, legal persons remain categorically unprotected, such as in **Czechia, Denmark, and Sweden,**²⁷⁹ 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.²⁸⁰ In **Estonia**, the Equal Treatment Act refers to the rights of persons and the local legal tradition implies that only natural persons can be victims of discrimination (unless this is challenged in the national courts). Similarly, in the **Netherlands**, it is commonly held that legal persons are not protected against discrimination. However, the equality body has held in a number of opinions that a group of natural persons that is collectively subject to discrimination, such as a religious organisation or an association of professionals, may benefit from the protection against discrimination.²⁸¹ 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 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,**²⁸² the **Netherlands**²⁸³ 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

²⁷⁷ 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.

²⁷⁸ In Malta, legal persons are not afforded protection against discrimination on the ground of disability.

²⁷⁹ 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.

²⁸⁰ Ireland, Circuit Court, *XTX Markets Technologies Limited v. Aviva Investors Liquidity Funds PLC*, [2024] IECC 18, 24 October 2024.

²⁸¹ See for instance, Netherlands Institute for Human Rights Opinions Nos. 2013-94 and 2014-109.

²⁸² 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.

²⁸³ 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.

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.²⁸⁴ 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.²⁸⁵ 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.²⁸⁶ 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.

3.2.2 Material scope

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

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

Racial Equality Directive	Employment Equality Directive
(a) conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion	(a) conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion
(b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience	(b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience
(c) employment and working conditions, including dismissals and pay	(c) employment and working conditions, including dismissals and pay

²⁸⁴ Portugal, Labour Code, Article 551(3).

²⁸⁵ 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.

²⁸⁶ Croatia, Labour Act, Article 111.

(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, Belgium, 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 **Spain**, beyond the field of employment, the anti-discrimination legislation was not 'real and effective' until 2022 as no sanctions were provided in the event of a violation, except in relation to the ground of disability.²⁸⁷ 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 (see Section 2.2.2.6 below).

²⁸⁷ Criminal sanctions might apply, depending on judicial interpretation.

c. 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 **Lithuania** and **Slovakia**.²⁸⁸ 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** 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.²⁸⁹ 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,²⁹⁰ which does not contain any prohibition of discrimination. Nevertheless, the Federal Labour Court has held that the General Act on Equal Treatment does apply to situations where no special rules of dismissal are applicable, for instance during a probation period.²⁹¹

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,²⁹² 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.²⁹³ Similarly, students in upper secondary school (gymnasium) were found to fall within the scope of the same act because their education was aimed at getting paid employment.²⁹⁴ However, in contrast, the Board of Equal Treatment has also found that membership of a pension fund board cannot be considered as an 'occupation' in the meaning of this act, and it could therefore not examine a complaint of alleged age discrimination submitted by a candidate.²⁹⁵ In **Greece**, however, in

²⁸⁸ In Slovakia, contract work that falls beyond the scope of the Labour Code would probably not be covered by anti-discrimination law.

²⁸⁹ Germany, General Act on Equal Treatment, Section 2.1.2.

²⁹⁰ Germany, Law on Protection against Dismissal of 25 August 1969 (BGBl. I, 1317). Last amended on 14.06.2021 (BGBl. I, 1762).

²⁹¹ Germany, Federal Labour Court, 6 AZR 190/12, 19 December 2013, para. 22.

²⁹² Ireland, High Court, *An Garda Síochána v. Oberoi*, 30 May 2013, IEHC 267.

²⁹³ Denmark, Board of Equal Treatment, decision No. 9254 of 7 March 2018.

²⁹⁴ Denmark, Board of Equal Treatment, decision No. 9894 of 18 September 2024.

²⁹⁵ Denmark, Board of Equal Treatment, decision No. 9236 of 15 March 2024.

2024, membership of the administrative boards of sports federations were found to fall within the scope of application of employment-related protection against discrimination.²⁹⁶

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.

Denmark: No recourse for discriminatory job advertisement without individual claimant

A company placed an advertisement for a paid position as a ‘mystery shopper’ on the public jobcentre website for jobseekers and employers in Denmark. The position would involve visiting a particular store, pretending to be a customer and then evaluating the service with the purpose of providing feedback to staff and improving customer satisfaction. The advertisement made reference to the company’s website, where it appeared that persons with a flex-job status²⁹⁷ could not take the position.

The claimant, who had a flex-job, contacted the company to ask why she couldn’t become a mystery shopper because of her flex-job. The company replied that their set-up was not compatible with the use of flex-job employees. The claimant argued that she had been discriminated against because of her disability and that she was entitled to compensation.

The Supreme Court found that a violation of the Act on the Prohibition of Discrimination in the Labour Market etc. and compensation for discrimination required that the person had applied for a job with the employer. As this was not the case, the complainant had not experienced discrimination and could not be awarded compensation.²⁹⁸ The High Court had made the same finding, which may not be in full compliance with EU law and the *Feryn* judgment (Case C-54/07 of 10 July 2008), in particular.

d. 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’. 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.²⁹⁹ 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

²⁹⁶ Greece, single-member Court of First Instance of Athens, [decision of 5 July 2024](#), case No. 4421/2024.

²⁹⁷ Flex-job positions are adapted positions for persons with disabilities and imply reduced working hours as well as a public subsidy provided by the state authorities, according to national law.

²⁹⁸ Denmark, Supreme Court, [decision of 12 June 2024](#) in case No. BS-62875/2023-HJR, published in U.2024.3952H.

²⁹⁹ Lithuania, Equal Opportunities Ombudsperson (2010), [Annual Report for 2010](#). See also, decision of the Equal Opportunities Ombudsperson No. (21)SN-95)SP-62 of 3 October 2022.

of the public'.³⁰⁰ However, the Equality Tribunal (now the Workplace Relations Commission) has interpreted the definition of 'service' to include social protection from the outset.³⁰¹

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.³⁰² In **Denmark**, in 2024, the Board of Equal Treatment ruled that a case concerning the 'flex-job' scheme under national law, which provides an employment subsidy to persons with disabilities, fell within the scope of the Article 3(3) exception. The Act on Equal Treatment in the Labour Market etc. was therefore not applicable.³⁰³

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.³⁰⁴

³⁰⁰ Ireland, Equal Status Acts 2000-2018, Section 2(1).

³⁰¹ 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.

³⁰² Cyprus, The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(I)/2004, Article 6(2)(e).

³⁰³ Denmark, Board of Equal Treatment, decision No. 9405 of 22 April 2024.

³⁰⁴ Slovenia, Advocate of the Principle of Equality, decision of 21 June 2023 No. 0700-58/2022/17.

e. Social advantages

Protection against discrimination in social advantages is not explicitly provided in **Hungary**,³⁰⁵ **Ireland**,³⁰⁶ **Lithuania**³⁰⁷ 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 2021.³⁰⁸ 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.³⁰⁹ 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.³¹⁰ However, the Supreme Court came to the opposite conclusion in 2022, ruling that no custom of any community can override the best interests of children.³¹¹ In 2024, the Constitutional Court confirmed this latter finding, ruling that the decisions of the general courts in this case were in compliance with the Constitution.³¹²

f. 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.

³⁰⁵ 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.

³⁰⁶ 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.

³⁰⁷ The practice of the Lithuanian Ombudsman seems to indicate however that the equality body does accept complaints in the area of social advantages.

³⁰⁸ CJEU, Judgment of 10 June 2021, *Land Oberösterreich v. KV*, C-94/20, EU:C:2021:477.

³⁰⁹ See for example CJEU, Judgment of 12 July 1984, *Castelli*, C-261/83, EU:C:1984:280 and Judgment of 27 March 1985, *Hoeckx*, C-249/83 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.

³¹⁰ UNCRC (2016), *Concluding observations on the combined third to fifth periodic reports of Slovakia*, CRC/C/SVK/CO/3-5, 20 July 2016.

³¹¹ Slovakia, Supreme Court, decision No. 7 Cdo114/2020 of 27 October 2022.

³¹² Slovakia, Constitutional Court, decision No. IV. ÚS 197/2024 of 24 April 2024.

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.³¹³ 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 2020,³¹⁴ while the Schools Act was significantly amended in 2023 and 2024 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.³¹⁵ The 2024 amendments notably introduced mandatory desegregation standards that require educational institutions to introduce and adhere to rules, principles and procedures to prevent and correct segregation.³¹⁶ 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.³¹⁷ On the basis of this legislation, an order was issued in 2024 adopting a methodology to identify and assess segregation, whether on the ground of ethnicity or disability/special educational needs, or other grounds.³¹⁸

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 **Austria, Bulgaria, Croatia, Greece, Hungary** and **Italy**. In **Lithuania**, legislation from 2020 imposes an obligation on all schools to accept children and pupils with disabilities,³¹⁹ thus putting an end to the practice of segregation in special schools. Since the entry into force of the law on 1 September 2024, it is estimated that the number of children with special educational needs enrolled in mainstream schools has increased by approximately 2 000.³²⁰ In **Czechia**, the Schools Act has been repeatedly reformed in the past 10 years although some amendments and policy measures 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.³²¹ On the other hand, the Czech Constitutional Court confirmed in 2023 the fundamental principle of inclusive education and the 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

³¹³ Czechia, Ministry of Education, Youth, and Sports (2020), *Strategy on Education 2030+*, strategy document.

³¹⁴ 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'.

³¹⁵ Slovakia, Act No. 245/2008 on Education (Schools Act), as amended by, notably, Act No. 182/2023 amending Act No. 245/2008 on Upbringing and Education and Act No. 290/2024 of 15 November 2024 amending and supplementing Act No. 597/2003 on the financing of primary schools, secondary schools and school facilities, as amended, and amending and supplementing certain acts.

³¹⁶ See Slovakia, Section 145(1) of the Schools Act, as amended, Standards for Compliance with the Ban on Segregation in Education for schools and educational institutions, adopted in October 2024.

³¹⁷ Romania, Law No. 198/2023 on Pre-university Education, 5 July 2023, Articles 2 and 79(3).

³¹⁸ Romania, Ministry of Education, Order No. 7701/2024 approving the methodology for monitoring, assessing, identifying, preventing and combating school segregation in pre-university education, 6 December 2024.

³¹⁹ 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.

³²⁰ Lithuania, Ministry of Education, Science and Sports, 'The first months of universal inclusion: the process is progressing at the expected pace, difficult cases are being dealt with', 29 October 2024.

³²¹ 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.

assistant in school.³²² 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.³²³ 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 and other adjudicating bodies are regularly called upon to enforce the law in this area.³²⁴ Similarly, in **Sweden**, education providers have a duty to provide ‘adequate accessibility’ by accommodating the needs of pupils and students with special educational needs. In 2024, the Supreme Court confirmed that this duty applies even in the absence of a formal diagnosis, and that a school cannot remain passive with regard to a child or pupil when it is obvious that they need support.³²⁵ 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.³²⁶ 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.³²⁷ 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.³²⁸ 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.³²⁹ Following reports by the **Greek** Ombudsman, the Ministry of Education issued a circular in 2024 to reaffirm the principle that special education forms an integral part of the compulsory education system, in private as well as public schools.³³⁰

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**.³³¹ This issue seems to have constituted one of the European Commission’s priorities in recent years, as infringement proceedings have been launched against

³²² Czechia, Constitutional Court, [decision No. III. ÚS 1068/22 of 15 November 2023](#).

³²³ Slovakia, Schools Act No. 245/2008 as amended, Sections 2(i) and 145(a).

³²⁴ See, for instance, Belgium, Antwerp Court of First Instance, Judgment of 7 November 2018; and Flemish Human Rights Institute, Litigation Chamber, Opinion No. 2024-3 of 26 July 2024.

³²⁵ Sweden, Supreme Court, *S. v Malmö kommun*, [decision of 13 June 2024](#), Case No. T 3151-23.

³²⁶ Slovenia, Advocate of the Principle of Equality, [decision of 20 June 2023 No. 0700-34/2023/17](#).

³²⁷ France, Defender of Rights (2022), [The human support given to disabled children at school](#).

³²⁸ France, Prime Minister (2023) ‘[Education Day 2023: What progress for students with disabilities?](#)’, 31 January 2023.

³²⁹ Poland, Ombud (2023), [Support for students with disabilities by co-teachers, teacher aides and a personal assistant for students with special educational needs](#).

³³⁰ Greece, Circular ΨΦΠΤ46ΝΚΠΔ-ΔΘ6 of the Directorate of Private Education of the Ministry of Education, Protocol No. 51484/N1 - 20.05.2024.

³³¹ 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.

several countries for failure to correctly transpose and/or implement the Racial Equality Directive in this regard.³³²

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.³³³ 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 and other 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.³³⁴ Consequently, the Commission issued an additional letter of formal notice to Czechia in October 2024.³³⁵ Finally, the infringement procedure against **Slovakia** has been ongoing since 2015, and 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.³³⁶ Targeting specifically the issue of misdiagnosis and disproportionate placement of Roma children in special schools, the Slovak Schools Act was amended repeatedly in the last few years, leading to a reform by which ‘specialised’ classes were to be dismantled as of 1 January 2025.³³⁷ Instead, highly regulated ‘adaptation classes’ will be created for pupils with poor knowledge of the language of instruction or for whom, on the basis of a diagnostic examination, it has been recommended by the guidance and prevention system to modify the aims, methods, forms or approaches to education and training.³³⁸ In addition, many Roma children remain in classes and schools for children with disabilities on the basis of psychosocial diagnoses.³³⁹ 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.³⁴⁰

³³² Proceedings have been brought against Czechia (2014), Slovakia (2015) and Hungary (2016).

³³³ Hungary, Debrecen Appeals Court, decision of 24 September 2020 in case No. 2.Pf.1.20.214/2020/10.

³³⁴ 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](#).

³³⁵ European Commission (2024), [October infringement package](#), press release of 3 October 2024.

³³⁶ 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](#).

³³⁷ Existing ‘specialised’ classes were to be maintained during a transition period until the end of the school year 2024/25.

³³⁸ Slovakia, Schools Act, Section 29(14), as amended by Act No. 290/2024 of 15 November 2024.

³³⁹ Slovakian State School Inspectorate (2025), ‘[Status of admission of pupils to special primary schools and their equal access to education in the 2024/2025 school year](#)’, August 2025.

³⁴⁰ See Prešov Regional Court, decision No. 20Co/21/2022- 680 of 28 February 2023. See also text box below, p. 62.

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.³⁴¹ In **Croatia**, in the school year 2024/25, there were 85 Roma-only classes or classes where Roma children were significantly overrepresented, amounting to a total of 2 000 children. There were also fully ethnically segregated schools. It is noteworthy that the number of Roma children in segregated classes or schools appears to have increased since last year.³⁴² In **Hungary**, research seems to suggest that segregation in mainstream education has been on the rise in recent years.³⁴³ 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,³⁴⁴ segregation is defined as 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 or social exclusion or separation of a group of children, pupils, learners or participants in upbringing and education, except for [ethnic minority education].’³⁴⁵ In addition, the Ministry of Education increased its efforts to eliminate school segregation of Roma children and pupils in 2023–2024, by adopting a system for monitoring early signs and risks of segregation.³⁴⁶ The exception for ‘ethnic minority education’ which was introduced in 2024 has been criticised, however, as a means of potentially legalising segregation of Roma children and pupils.³⁴⁷

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.³⁴⁸ 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 the final ruling in May 2020, concluding that unlawful segregation had taken place and awarding compensation for non-pecuniary damage to the 60 claimants.³⁴⁹

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

³⁴¹ 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*.

³⁴² Bojić, I. (2025), *Country report non-discrimination Croatia 2025*, European network of legal experts in gender equality and non-discrimination, Section 3.2.7.a.

³⁴³ 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; (2024) Report on the activities of the Commissioner for Fundamental Rights and his Deputies 2023, pp. 193-194 and (2025) *Report on the activities of the Commissioner for Fundamental Rights and his Deputies 2024*, pp 157-158.

³⁴⁴ 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.

³⁴⁵ Slovakia, Schools Act, 245/2008, Section 2(ah).

³⁴⁶ Slovakia, Ministry of Education (2023), *Concept of monitoring the risk of segregation*, December 2023.

³⁴⁷ Roma Advocacy and Research Centre, Amnesty International and EduRoma (2024), *‘Mr Minister, this is not an education reform!’*, Press release of 31 October 2024.

³⁴⁸ See text box below, p. 62.

³⁴⁹ Hungary, Supreme Court (*Kúria*), Judgment No. Pfv.IV.21.556/2019/22 of 12 May 2020.

2022; that is 20 % more than in 2016.³⁵⁰ 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: Three 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.³⁵¹ 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.³⁵²

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.³⁵³

Several of the cases on which the Supreme Court ruled in 2022 and 2023 that there had been segregation amounting to prohibited discrimination for which state or local authorities were liable, were remanded back to lower instance courts in 2024. While these courts were bound by the Supreme Court findings regarding the existence of prohibited segregation and liability, in several cases they rejected the remaining claims of the claimants regarding remedies, such as imposing on respondents an obligation to develop and implement desegregation plans.³⁵⁴

In this context, 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.³⁵⁵

In addition, in many states, including **Belgium, Croatia, Cyprus, Finland, France, Greece, Ireland, 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 in 2022 only 21 % of Roma pupils

³⁵⁰ FRA (2022), [Roma in 10 European countries: Main results](#) – report.

³⁵¹ 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.

³⁵² Slovakia, Supreme Court, resolution No. 4Cdo/112/2021 of 28 March 2023.

³⁵³ 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.

³⁵⁴ See, for instance, Slovakia, Municipal Court Bratislava IV, decisions Nos. B3-11C/9/2023 – 48 of 7 May 2024; and 35C/28/2023 of 21 May 2024.

³⁵⁵ 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.

successfully completed primary school (ninth grade).³⁵⁶ In **Portugal**, significant efforts in recent years have led to reduced drop-out rates, notably through several scholarship programmes for Roma students in primary and secondary as well as tertiary education.³⁵⁷

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.³⁵⁸ 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).

g. 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.³⁵⁹ 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,**³⁶⁰ **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.³⁶¹ 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’.³⁶² 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.³⁶³ In 2024, the **Belgian** Court of Cassation provided important guidance

³⁵⁶ Slovenia, Institute for Ethnic Studies (2022), *Performance of Roma pupils in primary schools in Slovenia in the period 2016/17-2021/22*.

³⁵⁷ See, for instance, the *ROMA Educa Programme* (primary and secondary education) and the *Operational Programme for the Promotion of Education* (tertiary education).

³⁵⁸ 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).

³⁵⁹ Denmark, Board of Equal Treatment, decision No. 9842 of 20 September 2023.

³⁶⁰ 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.

³⁶¹ 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.

³⁶² Austria, Viennese Court of Commerce, decision 1R 129/10g, 19 January 2011.

³⁶³ 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.

regarding the concept of 'goods and services available to the public' in Belgian non-discrimination law.³⁶⁴ It noted that the legislature had intended to exclude only purely private relationships between individuals, including between members of an association. The economic, social, cultural or political activities of an association aimed at a wider public therefore fall within the scope of anti-discrimination law, even where the organisation imposes certain conditions for effective participation in the activity.

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 expulsions and segregation (e.g. in Belgium, Bulgaria, Greece, Romania and Slovakia) or issues in relation to campsites and stopping places for 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,³⁶⁵ reports from the past years shows a continuous increase in the number of forced evictions, reaching more than 1 400 in 2024, often without applying the diagnostic, social integration and shelter principles set out in the 2018 Ministerial Instruction.³⁶⁶ 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.³⁶⁷ 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.³⁶⁸ The decision was confirmed in appeal in 2023.³⁶⁹ 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.³⁷⁰ In Croatia, despite continuous measures to legalise illegal Roma settlements and to improve the living conditions for residents, concerns remain regarding de facto residential segregation and the high proportion of Roma living in informal settlements with poor quality housing and very limited access to basic services.³⁷¹

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.³⁷² 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.³⁷³ As of the end of 2024,

³⁶⁴ Belgium, Court of Cassation, decision of 18 November 2024 in case No. c.23.0090.N.

³⁶⁵ France, Instruction of Government supporting a renewed policy for the suppression of slums and illegal camps, No. NOR: TERL1736127, 25 January 2018.

³⁶⁶ Romeurope CNDH (2024), Annual report of collective evictions from informal living spaces, December 2024. Observatoire des lieux de vie informels (Observatory of informal campsites) (2023) Report on evictions from 1 November 2022 to 31 October 2023.

³⁶⁷ Romania, Bucharest Court of Appeal Civil Decision No. 1293 of 25 November 2020, in case No. 4/57/2019 RO:CAB:2020:177.001293, Consiliul local al Municipiului Alba Iulia, UAT Municipiul Alba Iulia v. CNCD si Asociatia Partida Romilor Pro Europa.

³⁶⁸ Slovakia, District Court Košice II, decision No. 15C/190/2014-650 of 21 January 2022.

³⁶⁹ Slovakia, Regional Court Košice II, decision No. 9Co/21/2022 of 28 June 2023.

³⁷⁰ Italy, Istat-UNAR (2021), 'Survey on housing transitions for Roma, Sinti and Caminanti', and Associazione 21 Luglio, 'Important signs of an end to the camps system in Italy', 19 February 2025.

³⁷¹ See notably: United Nations Human Right Committee (2024), Concluding Observations on the Fourth Periodic Report of Croatia, Geneva, 11 September 2024.

³⁷² In this regard, see Ombudsman (2017), Trailer resident seeks trailer site. An investigation into the reliability of the public authorities for trailer inhabitants. See also, more recently, district court of The Hague, decision of 29 May 2024, ECLI:NL:RBDHA:2024:7830.

³⁷³ Netherlands Ministry of the Interior and Kingdom Relations (2018), 'Policy framework on municipal trailer and camping sites'.

the shortage of stopping sites persists.³⁷⁴ In contrast, in **France**, Travellers' caravans are not considered as housing and their residents are therefore neither eligible for housing support, nor protected from eviction orders during the winter period.

h. Beyond the directives

Only two Member States (**Estonia** and **Poland**) have maintained the same level of protection as set out in the two directives, i.e. only expressly outlawing discrimination in social protection, social advantages, education and goods and services available to the public in relation to racial and ethnic discrimination. In contrast, a majority of states provide the same protection for all the other grounds of discrimination as well, and thus go well beyond the requirements of the directives by levelling-up protection (**Belgium, Bulgaria, Croatia, Czechia, Finland, France, Germany, Hungary, Ireland, Lithuania, Luxembourg, Romania, Slovakia, Slovenia, Spain** and **Sweden**). The remaining nine countries provide varying levels of protection for different grounds and different fields beyond the minimum scope of the directives. It is noteworthy in this regard that there are several countries where the material scope of the prohibition of discrimination is more limited with regard to the ground of age than the other grounds (**Denmark, Greece, Italy**³⁷⁵ and the **Netherlands**).

³⁷⁴ See, notably: Teodorescu, D., de Vries, F. and van Kan, A. (2024), '[From extinction to deferment policy' – exploration and recommendation commissioned by the National Coordinator against Discrimination and Racism](#).

³⁷⁵ In Italy, the same, limited, material scope applies to protection on the ground of sexual orientation as age.

4 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**,³⁷⁶ 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.

4.1 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.'³⁷⁷

³⁷⁶ 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.

³⁷⁷ 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, EU:C:2011:573; and CJEU Judgment of 21 October 2021, *TC and UB v Komisija za zaščito ot diskriminatsia and VA*, C-824/19, EU:C:2021:862.

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 that only *external racial appearances* may constitute a genuine occupational requirement.³⁷⁸ 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.

4.2 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

³⁷⁸ Netherlands, General Equal Treatment Act, Article 2(4)(b), as inserted by the 2004 EC Implementation Act.

*Egenberger*³⁷⁹ and *I.R. v. J.Q.*³⁸⁰ 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.³⁸¹

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.³⁸²

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.³⁸³ 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

³⁷⁹ 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.

³⁸⁰ CJEU, Grand Chamber judgment of 11 September 2018, *IR v JQ*, C-68/17, 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.

³⁸¹ On 25 October 2018, the Federal Labour Court decided the *Egenberger* case in accordance with the CJEU decision (decision No. 8 AZR 501/14). After the cut-off date for the current report, the Federal Constitutional Court decided on a constitutional complaint against the Federal Labour Court decision which argued that the CJEU acted *ultra vires* when handing down the *Egenberger* decision, which should therefore not be applied (see Federal Constitutional Court, [decision of the Second Senate of 29 September 2025, NO. 2 BvR 934/19](#)). For further information and analysis, see Mahlmann, M. (2024), ‘Freedom of religion and EU anti-discrimination law’ in *European equality law review 2024*, pp. 11-25.

³⁸² 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 was eventually provided after the cut-off date of this report. See Federal Constitutional Court, [decision of the Second Senate of 29 September 2025, NO. 2 BvR 934/19](#).

³⁸³ 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’.³⁸⁴

4.3 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, and despite quite extensive case law from the Court of Justice, there still remains some uncertainty across the states as to which forms of age discrimination will be treated as justified by national courts. Following the early ruling in *Mangold v. Helm*,³⁸⁵ whereby the Court indicated that directly discriminatory practices need to be carefully scrutinised by national courts, 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.³⁸⁶

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.³⁸⁷ The complainants’ applications to join the police force were not considered because they were older than 35, which was the upper age limit set by secondary legislation. After protracted legal proceedings,³⁸⁸ the Workplace Relations Commission had upheld the

³⁸⁴ 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*.

³⁸⁵ CJEU, Judgment of 22 November 2005, *Mangold v Helm*, C-144/04, 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.

³⁸⁶ CJEU, Judgment of 19 January 2010, *Seda Küçükdeveci v Swedex GmbH & Co*, C-555/07, EU:C:2010:21.

³⁸⁷ 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.

³⁸⁸ 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).

complaints in 2020, awarding maximum compensation to the complainants.³⁸⁹ On appeal, the cases were brought before the Labour Court.

The Court found that the complainants established a *prima facie* case of discrimination and then assessed whether the age threshold was justified under national law, also considering in detail several CJEU judgments.³⁹⁰ In the absence of relevant scientific or medical evidence, the Court found that the respondent had failed to establish that a high level of fitness is inevitably related to a particular age or 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 the highest possible compensation at the time. In December 2023, the impugned legislation was amended to raise the recruitment age to 50.³⁹¹

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.³⁹²

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**,³⁹³ **Poland**,³⁹⁴ **Slovakia**³⁹⁵ and **Slovenia**.³⁹⁶ In **Denmark**, some collective agreements and individual employment contracts still contain retirement ages, but no new such agreements or contracts can be entered into since 1 January 2016.³⁹⁷

³⁸⁹ 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.

³⁹⁰ 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*.

³⁹¹ 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>.

³⁹² Latvia, Constitutional Court, Case No. 2003-12-01, Decision of 18 December 2003.

³⁹³ 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.

³⁹⁴ In Poland, there are exceptions for judges, public prosecutors, court enforcement officers and notaries public.

³⁹⁵ In Slovakia, there are some de facto exceptions for certain professions in the public sector.

³⁹⁶ 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).

³⁹⁷ 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).

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),³⁹⁸ **Greece** (67) and **Ireland** (70).³⁹⁹ 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** (66, extendable), **France** (67, extendable until 70), **Hungary** (65, extendable until 70),⁴⁰⁰ **Latvia** (65, extendable until 67), **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 **France**, on the other hand, the Council of State clarified in 2024 that, in the public sector, an extension of service beyond the retirement age is never a right of the employee but is always dependent on the managerial discretion of the head of service.⁴⁰¹ 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.⁴⁰² In **Cyprus**, different retirement ages apply to different public-sector employees, depending on the profession, the rank and the year of joining the service.⁴⁰³ 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),⁴⁰⁴ **Finland** (68–70), **Germany** (67),⁴⁰⁵ **Italy** (70), **Malta** (65 – being phased in), the **Netherlands**,⁴⁰⁶ **Romania** (65 – being phased in),⁴⁰⁷ **Spain** (65/68)⁴⁰⁸ and **Sweden** (69).⁴⁰⁹ In **Bulgaria**, although there is no generally applicable compulsory retirement age (other than in certain sectors of civil service), employers may, at their discretion, dismiss their employees who have acquired the right to an old-age pension.⁴¹⁰ In countries such as **Croatia**, **Finland**, **Malta**,

³⁹⁸ Only applicable for state employees.

³⁹⁹ 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.

⁴⁰⁰ In Hungary, there are specific regulations regarding the retirement age and the possibility to postpone retirement in different sections of public employment.

⁴⁰¹ France, Council of State (Conseil d’État), [decision No. 489202 of 11 April 2024 No. 489202](#).

⁴⁰² Ireland, [S.I. No. 600/2017 - Industrial Relations Act 1990 \(Code of Practice on Longer Working\) \(Declaration\) Order 2017, 20.12.2017](#).

⁴⁰³ Cyprus, Law on Pensions No 97(I)/1997 as amended, Article 12.

⁴⁰⁴ 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.

⁴⁰⁵ 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.

⁴⁰⁶ 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.

⁴⁰⁷ The retirement age is 65 for men and 63 for women, to be raised to 65 by 2035. Women may choose to retire at 65 if they wish; Constitutional Court of Romania, decision No. 387/2021.

⁴⁰⁸ 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.

⁴⁰⁹ 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.

⁴¹⁰ The ages for acquiring an old-age pension vary depending notably on the number of years of service.

Romania and **Spain** (public sector), retirement can be postponed beyond the statutory retirement age, subject to an agreement between the employer and the employee.

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. Almost every state has such 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 18.⁴¹¹ 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.

4.4 Armed forces and other specific occupations

Article 3(4) Employment Equality Directive

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

A few states have included an explicit exemption for the armed forces in relation to both age and disability: **Cyprus, Denmark,**⁴¹² **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.⁴¹³ 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.⁴¹⁴ While the **Greek** Ombudsman has argued that the blanket exclusion of persons with learning impairments from the training schools of the armed and security forces is in breach of the principle of equal treatment, the Supreme Administrative Court confirmed in 2023 that this exclusion is justified for reasons of public interest.⁴¹⁵ On the other hand, in **Sweden**, the specific exception in relation to conscription and military education only applies to age, not disability. With regard to this latter ground, a court concluded in 2024 that the armed forces were liable for disability discrimination by rejecting the conscription application of a person with autism (Asperger's syndrome) without assessing his individual capabilities.⁴¹⁶

⁴¹¹ The Danish Supreme Court has 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. Case 185/2010, decision of 14 November 2013.

⁴¹² 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).

⁴¹³ Ireland, Workplace Relations Commission, *Irwin v Irish Defence Forces Naval Service*, ADJ-00031786, 17 August 2021.

⁴¹⁴ Denmark, Danish Institute for Human Rights (2023), 'The protection against discrimination in the armed forces should be strengthened', August 2023.

⁴¹⁵ Greece, Supreme Administrative Court (Council of State), *Decision No. 1643/2023*, 28 September 2023.

⁴¹⁶ Sweden, Stockholm District Court, *DO v Swedish Armed Forces*, *decision of 19 November 2024*, case No. T 17322-22.

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**.⁴¹⁷ 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**⁴¹⁸ law provides exemptions on the basis of age in respect of the police, the prison service or any emergency service.

4.5 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**,⁴¹⁹ **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 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’.⁴²⁰ Finally, in **France**, case law has confirmed that the explicitly protected ground of ‘belonging to a nation’ must be interpreted to cover citizenship.⁴²¹ 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**.

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

⁴¹⁷ 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.

⁴¹⁸ Ireland, Employment Equality Acts 1998-2021, Section 37(4).

⁴¹⁹ In Lithuania, ‘citizenship’ is a protected ground only for citizens of the EU and EEA countries and their family members.

⁴²⁰ 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.

⁴²¹ See for instance, France, Court of Cassation, Criminal Chamber, No. 01-85650, of 17 December 2002.

language by Agency employees.⁴²² 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.⁴²³ 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.⁴²⁴ In 2023 and 2024, however, the Netherlands Institute for Human Rights issued its opinions in several cases directly originating in the benefits scandal. In eight cases, the Institute found that there had been indirect discrimination of parents with a migration background, i.e. on the ground of racial origin.⁴²⁵

Finally, 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**.

4.6 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.⁴²⁶ 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

⁴²² Netherlands, Tweede Kamer 2020-2021, 35 510, no. 4, p. 13.

⁴²³ Netherlands, Tax Office (2020) *The use of nationality when processing child benefit applications*, July 2020.

⁴²⁴ Netherlands, Court of Appeal of the Hague, judgment of 13 July 2022, NL:GHDHA:2022:1301.

⁴²⁵ Netherlands, NIHR Opinions Nos 2023-101, 2023-102 and 2023-103 of 2 October 2023; 2024-51 of 12 June 2024; 2024-77 of 6 September 2024; 2024-80 of 23 September 2024; 2024-84 of 17 October 2024; and 2024-102 of 6 December 2024.

⁴²⁶ Croatia, Anti-discrimination Act, Article 9(2)(1).

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.⁴²⁷

4.7 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.⁴²⁸

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.

4.8 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.⁴²⁹ In Estonia, the law indicates that the Equal Treatment Act ‘does not prejudice the maintaining or adoption’ of positive action measures, where proportionate to the objective of preventing or diminishing inequality related to a protected ground. In 2019, the Belgian Government adopted a Royal Decree setting the conditions for employers who wish to put in place

⁴²⁷ Austria, Equal Treatment Act, Section 36.

⁴²⁸ Ireland, High Court, *A.B. v Road Safety Authority*, [2021] IEHC 217, 25 March 2021.

⁴²⁹ 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).

positive action measures for the benefit of underrepresented groups.⁴³⁰ As of January 2025, 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’⁴³¹ in society. In 2024, a bill that would have introduced a positive duty on employers and intermediary agencies to develop policies for non-discriminatory recruitment and selection procedures was rejected by the Dutch Senate.⁴³² 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 2024, three new such measures were registered, all aiming at providing preferential access to employment and/or vocational training for Roma persons from marginalised communities.

The scope for positive action is often a matter clarified through case law. 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 2020, ruling that scholarships reserved for Roma pupils were directly discriminatory against non-Roma people.⁴³³ 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.⁴³⁴ 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.⁴³⁵

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.⁴³⁶ In practice however, no such measures are known to exist. Similarly, in Spain, the comprehensive equality law 15/2022 stipulates that 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 addition, legislation adopted in 2024 imposes specific positive duties to ensure LGBTI equality, through collective bargaining, on all companies with more than 50 employees.⁴³⁷ 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

⁴³⁰ Belgium, Executive regulation dated 11.02.2019, *Official Journal* 01.03.2019.

⁴³¹ 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.)

⁴³² The Netherlands, Legislative proposal for an Act on the promotion of equal opportunities in recruitment and selection, EK 2022-2023, 35 673, No. A. See also *European equality law review 2024*, pp. 168-169.

⁴³³ 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.

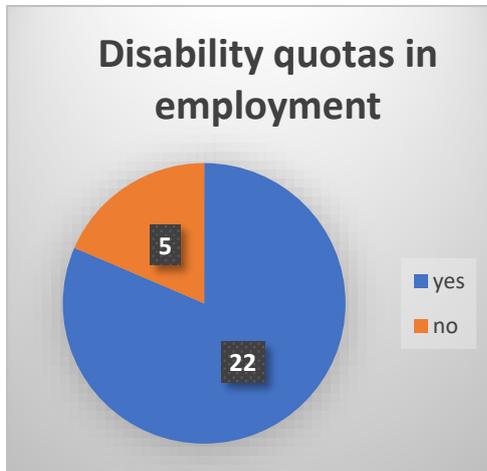
⁴³⁴ Romania, National Council for Combating Discrimination, 21 July 2021, *Zane Andrei v. the Bucharest University and the Ministry of Education*, Decision 561 in case No. 1037/2020.

⁴³⁵ 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

⁴³⁶ Bulgaria, Protection Against Discrimination Act, Article 11.

⁴³⁷ Spain, Decree 1026/2024 of 8 October 2024.

than 30 employees, to take steps to foster equality.⁴³⁸ 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.⁴³⁹



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,**⁴⁴⁰ **France, Germany, Greece, Hungary,**⁴⁴¹ **Ireland, Italy, Lithuania** (in the public sector), **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 **Lithuania**, the quota is limited to the public sector and imposes an obligation on public

employers with more than 25 employees to employ at least 5 % persons with disabilities. It only came into force as of 1 January 2024 and data from the end of October of the same year indicates that 45 % of the entities subject to the quota were not yet in compliance.⁴⁴² No sanctions are provided for a failure to comply. In **Ireland**, a policy objective of the Government for 3 % of employees in the civil and public service to be persons with disabilities was achieved in 2011 and reached 4.1 % in 2022 and 2023.⁴⁴³ Although the Irish Government undertook to progressively increase the statutory target towards 6 % by 2025,⁴⁴⁴ no recent data have been published. 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, but the 'quota charge' to be imposed when employers were not able to comply with these requirements has been deactivated since 2019 and a proposal to revise and simplify the quota system is pending.⁴⁴⁵ 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.⁴⁴⁶ In **Italy**, it is concerning to note that the application of the quota system is different for persons with intellectual disabilities, imposing

⁴³⁸ Finland, Non-Discrimination Act (1325/2014), Section 6.

⁴³⁹ Lithuania, Labour Code, 2016, No. XII-2603, Article 26.

⁴⁴⁰ 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.

⁴⁴¹ 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.

⁴⁴² See media reporting: LRT.It (2024), '[Recruitment process for people with disabilities is stalling – nearly half of organisations did not reach their quotas](#)' 3 December 2024.

⁴⁴³ Irish National Disability Authority (2024) *Report on compliance with Part 5 of the Disability Act 2005 for 2023*.

⁴⁴⁴ Ireland, Disability Act 2005, Section 47(4), as amended by Section 101 of the Assisted Decision-Making (Capacity) Amendment Act 2022.

⁴⁴⁵ Netherlands, Act of 13 November 2019, Official Journal (*Staatsblad*) 2019, 440.

⁴⁴⁶ See Disability and Human Rights Observatory (2023) '[Persons with Disabilities in Portugal – Human Rights Indicators 2023](#)' (7th edition).

stricter administrative requirements on employers and therefore, arguably, raising the barriers for prospective employees.⁴⁴⁷

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.

⁴⁴⁷ Italy, Law 68/1999, Article 9(4).

5 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.

5.1 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), Spain and Sweden, or separately, as for example in Croatia, Estonia, Finland, Germany, Hungary, Malta, Poland, Slovakia and Slovenia, or both, as in Portugal.⁴⁴⁸ 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.

1.1.1 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 **Belgium, Czechia, Finland, France, Italy, Latvia, Poland, Portugal, Slovakia, Slovenia** and **Spain**. In **Lithuania**, individuals have the option to directly apply to labour dispute commissions⁴⁴⁹ 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, 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

⁴⁴⁸ 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.

⁴⁴⁹ 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.

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).⁴⁵⁰ 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.⁴⁵¹ It also risks leading to situations where neither the WRC nor the District Court recognises its jurisdiction, which happened in two cases in 2023.⁴⁵²

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 only one has led to the approval of a binding agreement.⁴⁵³ 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. 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. It is important to note however that the Tribunal does not have jurisdiction in cases related to employment. 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 can even award compensation to victims, such as the **Danish** Board of Equal Treatment.⁴⁵⁴ In **Cyprus**, although the equality body also has the power to examine complaints and issue binding decisions as well as non-binding opinions, it generally favours the option of either attempting to mediate between the parties or to issue non-binding opinions.

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

⁴⁵⁰ Ireland, *Workplace Relations Act 2015*, No. 16, of 20 May 2015.

⁴⁵¹ For instance, six complaints on the Traveller ground were dismissed by the WRC in 2023 because it did not have jurisdiction. See: *Stokes v. The Brass Fox*, ADJ-00040008, 14 February 2023.

⁴⁵² See, for instance, Irish Workplace Relations Commission, *Stokes v. Murtagh Bars Limited*, ADJ-00036951, 5 May 2023.

⁴⁵³ See Sepper, M-L. (2025), *Country report non-discrimination Estonia 2025*, European network of legal experts in gender equality and non-discrimination, Section 7.8.

⁴⁵⁴ Further information regarding sanctions can be found in Section 4.5 below.

sanctions on the perpetrators, or under its traditional ombudsman mandate in the public sphere.⁴⁵⁵ 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 Code⁴⁵⁶ (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.⁴⁵⁷

5.1.1 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.⁴⁵⁸ An additional 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

⁴⁵⁵ 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.

⁴⁵⁶ Poland, Labour Code, Article 183d.

⁴⁵⁷ Sweden, Act 2017:282 Changing the Discrimination Act, adopted 13.04.2017.

⁴⁵⁸ 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 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.

paying a procedural indemnity if the case is dismissed.⁴⁵⁹ 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.⁴⁶⁰ 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,⁴⁶¹ or even exceptionally more than EUR 100 000.⁴⁶² 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.⁴⁶³ In **Bulgaria**, while the procedures under the Protection Against Discrimination Act (PADA) 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.⁴⁶⁴ Until 2024, the case law was not settled with regard to this practice, causing legal uncertainty.⁴⁶⁵ However, in 2024, the General Assembly of the Chambers of the Supreme Administrative Court issued an interpretative ruling, reviewing conflicting decisions and legal opinions from various administrative courts and legal bodies. Relying notably on the *lex specialis* principle, the Court held that the PADA takes precedence over general procedural provisions imposing state fees, and ensures financially unburdensome access to court for victims of discrimination, thus guaranteeing them an effective remedy for a fundamental right.⁴⁶⁶

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 a case of multiple discrimination where the claimant was made aware of the less favourable treatment on one ground (age) at a later date than the other ground (disability), the time limit thus expired at different dates, allowing the compensation claim to be accepted for one ground but dismissed for the other.⁴⁶⁷ 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

⁴⁵⁹ Unia (2017) *Evaluation of the Anti-Discrimination Federal Acts*, February 2017, pp. 10 and 58-59.

⁴⁶⁰ Austria, Commercial Court of Vienna, Decision No. 1R 50/22g of 25 May 2022.

⁴⁶¹ 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.

⁴⁶² Sweden, Labour Court 2015 No. 57, *D.P. v Quintiles AB*, decision of 30 September 2015.

⁴⁶³ 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*.

⁴⁶⁴ 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).

⁴⁶⁵ 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.

⁴⁶⁶ Bulgaria, Supreme Administrative Court, Interpretative Decision No. 5 of 25 June 2024 in Case No. 5/2021.

⁴⁶⁷ Germany, Federal Labour Court, decision No. 8 AZR 21/23 of 25 July 2024.

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 there is in principle no time limit for initiating proceedings before the **Danish** Board of Equal Treatment, the previous practice of dismissing claims when the claimant was considered to have acted 'passively', which was formally abandoned in 2023, sometimes still impacts on the decisions of the Board.⁴⁶⁸ 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. The internal procedure of the **Romanian** quasi-judicial National Council for Combating Discrimination was revised in 2024, increasing the barriers for victims of discrimination to submit claims before the body, including a time limit of 15 days to submit additional information or risk having the case dismissed.⁴⁶⁹

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 **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.⁴⁷⁰ 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).⁴⁷¹

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 **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.⁴⁷²

⁴⁶⁸ Denmark, Board of Equal Treatment, decision No. 9974 of 20 September 2024. The claim was submitted in October 2021 and concerned alleged discrimination that occurred in August 2018.

⁴⁶⁹ Romania, Order 27/2024 of the President of the National Council for Combating Discrimination approving the internal procedures for solving and investigating petitions, Official Gazette of 12 February 2024.

⁴⁷⁰ See, for instance, Report Ref. A.K.I. 32/2008 dated 6 April 2012, regarding discriminatory age requirements for recruitment to police special services.

⁴⁷¹ 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-5323/2021, 15 February 2024 and U-III A-6490/2022, 14 March 2024.

⁴⁷² For further information, please see Section 4.5 below.

5.2 Legal standing and associations⁴⁷³

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

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

Under the directives, EU Member States have some discretion as to how this clause is implemented in terms of the type of legal standing that associations can have, and therefore national legal orders present many different patterns that are difficult to compare. In some countries, the relevant anti-discrimination legislation provides associations and/or trade unions or other organisations with some legal standing specifically in cases of discrimination. These include **Austria, Belgium, Bulgaria, Croatia, Cyprus,**⁴⁷⁴ **Czechia, Estonia,**⁴⁷⁵ **France, Germany, Greece,**⁴⁷⁶ **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**).

5.2.1 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.⁴⁷⁷ 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).

⁴⁷³ For further analysis of, among other things, issues related to legal standing of organisations, associations and trade unions, see lordache, R. (2025), *NGOs and trade unions supporting the enforcement of EU non-discrimination law*, European network of legal experts in gender equality and non-discrimination.

⁴⁷⁴ Only in the private sector.

⁴⁷⁵ 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.

⁴⁷⁶ 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.

⁴⁷⁷ 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. The relevant provisions were amended after the cut-off date of this report; see Law No. 2025-391 of 30 April 2025, Article 16 I(c), V and XVIII(10).

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.⁴⁷⁸ 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 organisation or association regarded as having a 'legitimate interest' in the enforcement of the relevant legislation.⁴⁷⁹ 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.⁴⁸⁰ 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,⁴⁸¹ while interventions by the Litigation Association in the same field have also been accepted by the courts.⁴⁸² 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.⁴⁸³ 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.

⁴⁷⁸ 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>.

⁴⁷⁹ Italy, Legislative Decree No. 216/2003. Article 5.

⁴⁸⁰ See notably *Filenews* (2018) '[Quarrel over the responsibilities of the Commissioner for Administration](#)', 26 April 2018.

⁴⁸¹ Austria, Act on the Employment of Persons with Disability, Section 7q.

⁴⁸² Austria, Linz Regional Court, *F. v. Linz Linien AG*, case No. 33C1725/127/14, decision of 15 July 2013.

⁴⁸³ Denmark, Consolidated Act No. 1230 of 2 October 2016, Section 1(7), with later amendments.

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.

5.2.2 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,**⁴⁸⁴ **Cyprus, Czechia, Denmark, Estonia,**⁴⁸⁵ **Finland,**⁴⁸⁶ **France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, 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.⁴⁸⁷ 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.⁴⁸⁸ However, the Constitutional Court has found a similar limitation on legal standing to be in violation of the Constitution, and it was repealed.⁴⁸⁹

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

⁴⁸⁴ In Croatia, victims can be represented before the courts by a lawyer employed by a trade union. No other organisations have legal standing to act 'on behalf' of victims.

⁴⁸⁵ 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.

⁴⁸⁶ 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, and the organisation is not a party in its own name.

⁴⁸⁷ Slovakia, Civil Dispute Act, 160/2015, Section 429(2)(c).

⁴⁸⁸ Latvia, [Amendments to the Civil Procedure Law](#), 19 December 2013, published in the *Latvian Herald* 2(5061), 3 January 2014.

⁴⁸⁹ Latvia, Constitutional Court, decision in Case No. 2003-04-01 of 27 June 2003.

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.⁴⁹⁰ An appeal brought by the respondent was pending as of the cut-off date for this report.

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.⁴⁹¹ 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.⁴⁹² 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.

⁴⁹⁰ Finland, Pirkanmaa District Court, decisions Nos L 758/2022/458 and L 758/2022/455 of 29 March 2023.

⁴⁹¹ Hungary, Equal Treatment Act, Article 18(1).

⁴⁹² Hungary, Equal Treatment Act, Article 3.

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 ^{493,494}	Equal Treatment Act (with limitations), Sec. 62 ^{495,496}
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) ⁴⁹⁷	Protection Against Discrimination Act, Art. 71(2)
CROATIA	Civil Procedure Act, Art. 434.a ⁴⁹⁸	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. 260 ⁴⁹⁹	Administration of Justice Act, Sec. 252

⁴⁹³ Representation before the Equal Treatment Commission.

⁴⁹⁴ 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.

⁴⁹⁵ Right to intervention in support of a victim for the Litigation Association of NGOs Against Discrimination.

⁴⁹⁶ 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.

⁴⁹⁷ Also, Administrative Procedure Code, Article 18(2).

⁴⁹⁸ 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.

⁴⁹⁹ 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.

Country	Legal standing to act on behalf of victims	Legal standing to act in support of victims
ESTONIA	Chancellor of Justice Act, Art. 23 (2) ⁵⁰⁰	No ⁵⁰¹
	Equal Treatment Act, Art. 17(1) ⁵⁰²	
FINLAND	Non-Discrimination Act, Sec. 21 ⁵⁰³	No ⁵⁰⁴
	Code of Judicial Procedure, 4/1734, Chapter 15, Section 1505	
	Act on the Non-Discrimination Ombudsman, 1326/2014, Chapter 7 ⁵⁰⁶	
FRANCE ⁵⁰⁷	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) ⁵⁰⁸	Equal Treatment Law, Art. 8(3-4) ⁵⁰⁹
HUNGARY	Equal Treatment Act, Art. 18(1)	Equal Treatment Act, Art. 18(2) ⁵¹⁰
IRELAND	Employment Equality Acts 1998-2021, Sec. 77(11) ⁵¹¹	Employment Equality Acts 1998-2021, Sec. 79(1) ⁵¹²
	Equal Status Acts 2000-2018, Sec. 25(A) ⁵¹³	Equal Status Acts 2000-2018, Sec. 25(1) ⁵¹⁴

⁵⁰⁰ Only in conciliation procedures before the Chancellor of Justice (private sphere only).

⁵⁰¹ As regards civil procedures, judicial interpretation is however required of Articles 213 and 216 of the Code of Civil Procedure.

⁵⁰² The Trade Unions Act, Article 17(7), provides that the competencies of trade unions include the representation and protection of their members in labour dispute resolution bodies and in relations with state and local government authorities, employers and associations of employers.

⁵⁰³ Organisations can only act on behalf of victims before the Non-Discrimination and Equality Tribunal in cases outside employment.

⁵⁰⁴ 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).

⁵⁰⁵ A lawyer paid or employed by any organisation can assist a victim of discrimination in court. The organisation will not be a party to the court proceedings and the case will be brought in the name of the victim.

⁵⁰⁶ 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.

⁵⁰⁷ 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; Article 2 of Decree No. 2008-799 creating Article R-779-9 of the Code of Administrative Justice relating to all fields and Article 2 of Law No. 2001-1066 relative to the fight against discrimination.

⁵⁰⁸ 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).

⁵⁰⁹ 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).

⁵¹⁰ 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 initiated a proceeding due to the infringement of the requirement of equal treatment

⁵¹¹ Only before the Workplace Relations Commission and Labour Court.

⁵¹² Only before the Workplace Relations Commission and Labour Court.

⁵¹³ Only before the Workplace Relations Commission and Labour Court.

⁵¹⁴ Only before the Workplace Relations Commission and Labour Court.

Country	Legal standing to act on behalf of victims	Legal standing to act in support of victims
ITALY ⁵¹⁵	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) ⁵¹⁶	Administrative Procedure Law, Art. 183
	Law on Trade Unions, Art. 12(4)	
LITHUANIA ⁵¹⁷	Law on Equal Treatment, Art. 12(2) ⁵¹⁸	Law on Equal Treatment, Art. 12(2) ⁵¹⁹
LUXEMBOURG	No	General Anti-Discrimination Law, Arts. 7 and 18
MALTA	Equal Treatment of Persons Order Art. 16	Equal Treatment of Persons Order Art. 16
	Equal Treatment in Employment Regulations, Art. 11	Equal Treatment in Employment Regulations, Art. 11
	Equal Opportunities (Persons with Disabilities) Act, Arts. 22 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

⁵¹⁵ 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').

⁵¹⁶ Except in Cassation cases where the right to legal representation is reserved to the person participating to the case or their advocate (defence counsel).

⁵¹⁷ 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.

⁵¹⁸ 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.

⁵¹⁹ In all cases, it is for the court to decide whether the organisation has a legitimate interest in participating as a third party in support of the complainant. According to the interpretation by the Supreme Administrative Court, associations can take part in an administrative procedure only when their rights have been directly violated.

Country	Legal standing to act on behalf of victims	Legal standing to act in support of victims
PORTUGAL ⁵²⁰	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
ROMANIA	Ordinance (GO) 137/2000 regarding the prevention and the punishment of all forms of discrimination, Art. 28	Law 134/2010 Civil Procedure Code, Arts. 61 and 63 ⁵²¹
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)

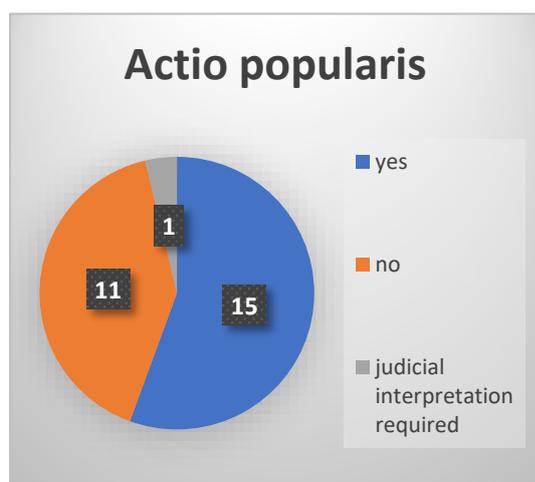
⁵²⁰ The Decree law 106/2013, which defines the statutes for NGOs of persons with disabilities and the state support for those organisations, also provides legal standing to disability NGOs to act on behalf of victims.

⁵²¹ NGOs with an interest in making a particular legal argument can ask permission of the courts to join pending procedures as interested parties under ordinary civil procedure provisions – Articles 61 et seq. of the Civil Procedure Code. Similarly, although not mentioned specifically by the law, but accepted in the practice of the NCCD, associations may be allowed to submit *amicus curiae* briefs in support of a complainant.

Country	Legal standing to act on behalf of victims	Legal standing to act in support of victims
SPAIN	Law on Fiscal, Administrative and Social Measures, Art. 31 ⁵²²	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. 29 ⁵²³	
	Law on Social Jurisdiction, Art. 20	
SWEDEN ⁵²⁴	Discrimination Act Ch. 6, Sec. 2	No

5.2.3 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 under EU law.⁵²⁵ 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 may provide for the right of associations with a legitimate interest in ensuring compliance with the Directives, or of national equality bodies, ‘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.’⁵²⁶

Actio popularis is permitted by national law for discrimination cases in 15 EU Member States (**Austria**,

⁵²² Organisations have the possibility to engage in civil and administrative proceedings but not in labour proceedings or in pre-judicial matters.

⁵²³ 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.

⁵²⁴ Trade unions also have the right to represent their members in all disputes regarding employment (Labour Procedure Act, Chapter 4, Section 5).

⁵²⁵ 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.

⁵²⁶ CJEU, Judgment of 10 July 2008, *Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV*, C-54/07, EU:C:2008:397.

Belgium,⁵²⁷ **Bulgaria, Croatia, France, Germany,**⁵²⁸ **Hungary, Italy, Luxembourg, Malta,**⁵²⁹ the **Netherlands, Portugal, Romania, Slovakia** and **Spain**.⁵³⁰ 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.⁵³¹ In other countries however, the possibilities for *actio popularis* are much more limited. In **Austria**, such action is possible only in cases of discrimination on the ground of disability and can be brought by a limited number of organisations. Even where *actio popularis* is permitted by law, it may be limited in practice. In **Croatia**, for instance, an association that has brought an *actio popularis* before the lower courts does not have legal standing to bring a constitutional complaint against their decisions before the Constitutional Court.⁵³² Indeed, where the association cannot claim to be a victim of actions or omissions affecting its members, the individual members would each have to bring an action in their own name before the Constitutional Court.

Portugal: *Actio popularis* against the state for failure to ensure accessibility for persons with disabilities

In Portugal, *actio popularis* is explicitly permitted in cases concerning public health, environment, quality of life, consumer rights, cultural heritage and the public domain. In 2024, a national court decision confirmed that this list of areas should be considered to include the area of non-discrimination. The case concerned the failure of the state to comply with the technical rules of accessibility for persons with disabilities accessing court buildings. Admitting the *actio popularis* claim, which was submitted by an association that defends the interests of persons with physical disabilities, the court ordered the state to comply with the applicable rules and specified in detail which adjustments should be made to several court buildings.⁵³³

⁵²⁷ 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.

⁵²⁸ This option exists notably on the basis of disability law and consumer protection law.

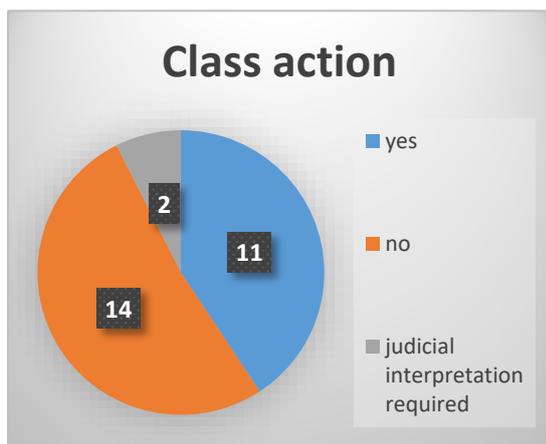
⁵²⁹ Only the National Commission for the Promotion of Equality may launch an *actio popularis*.

⁵³⁰ *Actio popularis* is possible in Spain only in criminal and administrative proceedings and will be possible in civil proceedings for the Independent Authority for Equal Treatment and Non-Discrimination, once it is functioning.

⁵³¹ 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 most recently by the Validity Foundation to challenge squalid conditions and poor treatment in a social care home (Budapest Appeals Court, [2.Pf.20.235/2024/9](#), 12 September 2024).

⁵³² Croatia, Constitutional Court, decision No. U-III-1107/2014 of 5 March 2024.

⁵³³ Portugal, Administrative and Fiscal Court of Leiria, Decision of 7 November 2024 in case No. 190/19.9BELRA.



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.⁵³⁴ 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.⁵³⁵

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,**⁵³⁶ **Italy, Lithuania**, the **Netherlands, Portugal, Slovakia, Slovenia** and **Sweden**. 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.⁵³⁷ 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 2020.⁵³⁸ 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. Some of these procedural barriers would be removed through the adoption of amendments that were being discussed in 2024.⁵³⁹

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 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**. In **Ireland**, there is, however, a form of action that can be initiated by the equality body, the Irish Human Rights and Equality Commission. In 2024, the High Court confirmed that

⁵³⁴ Lithuania, Supreme Administrative Court, Administrative case No A492-2078/2013, Decision of 7 November 2013.

⁵³⁵ Denmark, Section 1(7) of Consolidated Act No. 1230 of 2 October 2016, with later amendments.

⁵³⁶ It remains to be seen whether the procedure for consumer rights’ class action introduced in 2018 is applicable in discrimination cases. Act to introduce civil model declaratory proceedings, 12 July 2018.

⁵³⁷ Sweden, Group Proceedings Act (2002:599).

⁵³⁸ France, Defender of Rights (2020), *Opinion No. 20-01 of 5 February 2020*.

⁵³⁹ France, *Bill relating to the legal framework of group actions*, initially submitted on 15 December 2022.

such an action is admissible where it does not concern an ‘abstract or hypothetical’ question but addresses a ‘live dispute’ about the human rights of a group of persons.⁵⁴⁰

Finally, while both *actio popularis* and class actions are possible in the **Netherlands**, amendments adopted in 2019 have significantly increased barriers to the possibilities of organisations and trade unions engaging in such collective redress actions. A report published in 2024 points to, among other things, additional admissibility requirements with an impact that goes beyond the targeted aim of preventing commercial claims.⁵⁴¹

5.3 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.⁵⁴² 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, although administrative courts 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.⁵⁴³ **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.⁵⁴⁴ 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.⁵⁴⁵ The claimant has also to demonstrate the existence of the specific ground of discrimination when it is not entirely clear in the claimant’s situation. If all these conditions are fulfilled, the burden of proof is transferred to the respondent. A minority of states appear to have failed to introduce burden of proof provisions in line with the directives. In **Latvia**, the shift of the burden of proof applies mainly to employment, but also to education and access to goods and services. No explicit provision exists regarding the shift of the burden of proof in discrimination cases in social protection and social advantages. The provision on the burden of proof in the

⁵⁴⁰ Ireland, High Court, *The Irish Human Rights and Equality Commission v. The Minister for Children, Equality, Disability, Integration and Youth, Ireland and The Attorney General* [2024] IEHC 493, 1 August 2024.

⁵⁴¹ Veerman, P., Bryk, L., Hendrickx, M.B. (2024), *The obstacles of the Settlement of Mass Damage in Collective Action Act to non-profit action*.

⁵⁴² 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).

⁵⁴³ France, Conseil d’Etat, decision No. 298348 of 30 October 2009.

⁵⁴⁴ 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.

⁵⁴⁵ Czechia, Constitutional Court, No. III. ÚS 880/15, 8 October 2015.

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'.⁵⁴⁶ 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.⁵⁴⁷

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.⁵⁴⁸

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.⁵⁴⁹

In 2023, the Court of Cassation 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.⁵⁵⁰ In 2024, the Court further clarified that nominative comparable evidence must be limited to what is strictly necessary to allow the claimant to exercise their right to present their case.⁵⁵¹

5.4 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

⁵⁴⁶ The Act on the Employment of Persons with Disabilities and the Federal Disability Equality Act contain the same wording.

⁵⁴⁷ Sweden, Labour Court decision No. 71/2023, *SS v Rapid Säkerhet*, 13 December 2023, p. 11.

⁵⁴⁸ Defender of Rights (2022) [Framework decision No. 2022-138 of 31 August 2022](#).

⁵⁴⁹ France, Court of Cassation, decision No. 21-19628 of 14 December 2022, FR:CCASS:2022:SO21-19628.

⁵⁵⁰ France, Court of Cassation, Social Chamber, [decision No. 21-12492 of 8 March 2023](#).

⁵⁵¹ France, Court of Cassation, Second Civil Chamber, [decision No. 21-20979 of 3 October 2024](#).

thereby fails to explicitly protect against victimisation in the areas outside employment protected by the Racial Equality Directive.⁵⁵² 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 victimisation 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.⁵⁵³

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. In **Belgium**, since 2023, protection against victimisation at federal level applies 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’.⁵⁵⁴

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.⁵⁵⁵ In **Denmark**, the Board of Equal Treatment found in 2024 that the short time between the submission of a complaint of alleged harassment and the dismissal was sufficient to shift the burden of proof to the employer, who was unable to demonstrate that there was no violation of the principle of equality.⁵⁵⁶

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.

⁵⁵² 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.

⁵⁵³ Ireland, Labour Court, *Association of Secondary Teachers, Ireland v Dunbar*, decision No. EDA2811 of 25 August 2011.

⁵⁵⁴ Belgium, Federal Act of 7 April 2023, Official Journal of 25 May 2023.

⁵⁵⁵ Bulgaria, Supreme Administrative Court, decision No. 7293 of 16 June 2021 in case No. 2405/2021.

⁵⁵⁶ Denmark, Board of Equal Treatment, decision No. 10192 of 27 November 2024.

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 ⁵⁵⁷
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
CYPRUS	Equal Treatment in Employment and Occupation Law, Art. 10	No
	Equal Treatment (Racial or Ethnic origin) Law, Art. 11	Yes
	Law on Persons with Disabilities, Art. 9E	Yes
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
	Legislative Decree No. 216/2003 Implementing Directive 2000/78/EC, Art. 4bis	No
LATVIA	Labour Law, Art. 9(1)	Yes ⁵⁵⁸

⁵⁵⁷ The Federal Disability Equality Act includes protection against victimisation for the whole scope of the Act (outside the employment field only).

⁵⁵⁸ 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), the 2012 Law on Prohibition of Discrimination against Natural Persons – Parties to Legal Transactions, Article 6 and the Education Law, Article 3.¹(4).

Country	Legislation	Protection extended outside employment
LITHUANIA	Law on Equal Treatment, Arts. 7(7), 6(4) and 8(3)	Yes
	Labour Code, Art. 26(2(5))	Yes
LUXEMBOURG	General Anti-Discrimination Law, ⁵⁵⁹ 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
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 ⁵⁶⁰	Equal Treatment Act, Art. 17	Yes
PORTUGAL	Labour Code, Arts. 129(1), 331(1)(a)-(d), 351(1)(3), 381(b)	No
	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 ⁵⁶¹

5.5 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.

⁵⁵⁹ The Public Sector Law of 29 November 2006 also includes protection against victimisation in the public sector.

⁵⁶⁰ The Labour Code also prohibits victimisation.

⁵⁶¹ The protection applies to all areas covered by the Discrimination Act.

In practice, a wide range of possible remedies exist, which vary depending on the type of law (e.g. civil, criminal, or administrative remedies), the punitive or non-punitive character of the remedies, their orientation as backward-looking or forward-looking (the latter meaning remedies that seek to adjust future behaviour) and the level at which they are intended to operate (individual/micro or group/macro level). Remedies may be available through various, possibly complementary, enforcement processes (administrative, industrial relations and judicial processes). Depending on such features, the remedies offered by a particular legal order will reflect different theories of remedies (e.g. remedial, compensatory, punitive and preventative justice) and 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. Other countries where courts or adjudicating bodies can issue preventive sanctions such as injunctions in discrimination cases include **Belgium, Finland, Lithuania, the Netherlands and Slovenia**. In **Slovakia**, the Offices of Labour, Social Affairs and Family are entitled to impose fines of up to EUR 33 193 in cases involving discriminatory job advertisements. However, in practice, the labour offices face difficulties in identifying the liable person and/or entity and therefore in imposing sanctions. 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.⁵⁶²

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.⁵⁶³ The Supreme Administrative Court has confirmed in several cases from the past few years that the PADC can impose such sanctions on public law entities.⁵⁶⁴ Similarly, the **Romanian** National Council for Combating Discrimination (NCCD) can issue administrative 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,

⁵⁶² For a positive example, see Poland, Regional Court of Warsaw, judgment of 29 September 2020, No. V Ca 2686/19 (not published).

⁵⁶³ Bulgaria, Protection Against Discrimination Act, Articles 78-80 and 76, respectively.

⁵⁶⁴ Bulgaria, Supreme Administrative Court, decisions No. 4036 of 27 April 2022 in case No. 563/2022; No. 9998 of 23 October 2023 in case No. 11691/2022; and No. 11893 of 5 November 2024 in Case No. 2722/2024.

preferring instead to issue recommendations and administrative warnings.⁵⁶⁵ 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.⁵⁶⁶ 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 2021.⁵⁶⁷

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 2013,⁵⁶⁸ 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.'⁵⁶⁹ 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.⁵⁷⁰ Upper limits are not acceptable, except for situations where the damage was not caused through discrimination alone.⁵⁷¹

There appear to be no limits either in relation to pecuniary or non-pecuniary damages in the national laws of **Belgium, Bulgaria,**⁵⁷² **Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Italy, Lithuania, Luxembourg,** the **Netherlands,**⁵⁷³ **Poland, Portugal, Romania, Slovakia,**⁵⁷⁴ **Spain** and **Sweden**. In many Member States there are, however, specific limitations in cases where the discrimination ground was not a decisive factor. 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,

⁵⁶⁵ Romania, National Council for Combating Discrimination (2024) *2023 Annual report*.

⁵⁶⁶ Denmark, Board of Equal Treatment, Decision No. 9879 of 1 July 2022. In this case, the claimant was awarded EUR 5 375.

⁵⁶⁷ Hungary, Commissioner for Fundamental Rights (2025), *Report on the activities of the Commissioner for Fundamental Rights and his Deputies 2024*, p. 86; Hungary, Commissioner for Fundamental Rights (2023) *Report on the activities of the Commissioner for Fundamental Rights and his Deputies 2022*, p. 106.

⁵⁶⁸ CJEU, judgment of 25 April 2013, *Asociația Accept v. Consiliul Național pentru Combaterea Discriminării*, C-81/12, EU:C:2013:275.

⁵⁶⁹ With regard to the 'genuinely dissuasive effect' of sanctions, the Court cited *Commission v United Kingdom*, 8.06.1994, C-383/92, EU:C:1994:234 and *Draehmpaehl*, 22.04.1997, C-180/95, 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, EU:C:2003:596, and *Nttonik and Pikoulas*, 5.07.2007, C-430/05, EU:C:2007:410.

⁵⁷⁰ CJEU, judgment of 2.08.1993, *Marshall v Southampton and South West Hampshire Area Health Authority*, (Marshall II), C-271/91, paras 25-26.

⁵⁷¹ CJEU, judgment of 22.04.1997, *Draehmpaehl v. Urania Immobilienservice*, C-180/95, EU:C:1997:208.

⁵⁷² 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.

⁵⁷³ Dutch law provides for a limit on compensation, applicable only in administrative law proceedings.

⁵⁷⁴ 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.

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, and is further increased annually by indexation. In the field of employment, the lump-sum amount is six months’ salary.⁵⁷⁵ 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.⁵⁷⁶ 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.⁵⁷⁷ 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.⁵⁷⁸ In **France**, the Labour Code’s mandatory scales and ceilings regarding the damages awarded in relation to the dismissal of an employee do 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. 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.

Ireland: Compensation limit disapplied to ensure compliance with EU law

In Ireland, compensation is limited by law to a maximum of EUR 13 000 in employment cases where the claimant was not ‘in receipt of remuneration’ at the time of the alleged discrimination.

In 2024, the Workplace Relations Commission (WRC) decided on a case of failure to provide reasonable accommodation brought by a claimant with a disability who was on unpaid sick leave at the time of the (allegedly discriminatory) dismissal. While the compensation limit was in principle applicable, the WRC disapplied the relevant provision, having regard to the requirement under Article 17 of the Employment Equality Directive that sanctions be effective, proportionate and dissuasive. The claimant was thus awarded compensation in the amount of EUR 67 600, corresponding to two years’ remuneration, i.e., the general maximum under national non-discrimination law.⁵⁷⁹

⁵⁷⁵ 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.

⁵⁷⁶ 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.

⁵⁷⁷ Hungary, Labour Code, Article 82(2).

⁵⁷⁸ 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.

⁵⁷⁹ Ireland, Workplace Relations Commission, *Geoghegan v. Freightspeed for Pharmacy Ltd (In Liquidation)*, decision of 7 February 2024 in case No. ADJ-00034387.

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 that is only awarded in cases of particularly serious violations.⁵⁸⁰ A similar situation exists in the **Netherlands**, where a finding of discrimination in itself is insufficient to award non-pecuniary damages. For instance, in 2024, a court of appeal awarded no such damages to a claimant as the discriminatory failure to provide caravan housing had resulted in no psychological illness; no intent or gross negligence could be established; and the claimant was able to live in a caravan at least part of the time as a sub-tenant and was thus able to express his cultural identity.⁵⁸¹ In **France**, 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.⁵⁸²

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. In **Finland**, the Non-Discrimination and Equality Tribunal 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**,⁵⁸³ where courts may also issue injunctions for specific measures to be adopted by respondents, such as changes in their internal practices.⁵⁸⁴ 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 could inherit his right to compensation.⁵⁸⁵

⁵⁸⁰ See, notably: Public Defender of Rights (Ombudsman) (2020) *Discrimination case law of Czech courts 2015-2019*.

⁵⁸¹ The Netherlands, Court of Appeal of Den Bosch, decision of 11 June 2024, ECLI:NL:GHSHE:2024:1892.

⁵⁸² 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.

⁵⁸³ 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*, EU:C:2020:289.

⁵⁸⁴ For example, see Tribunal of Ferrara, Judgment of 15 April 2022, *FP-CGL, XX v. Comune di Ferrara*, Ric. no. 506/2021.

⁵⁸⁵ Sweden, Göteborg District Court, *Equality Ombudsman (DO) v Region Västra Götaland*, decision of 26 May 2021 in case No. T 17336-19. The case was finally settled between the equality body (representing the claimant) and the respondent, awarding compensation of approximately EUR 26 800 to the claimant; Settlement agreement of 6 April 2022, reference PRO 2019/7.

6 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,⁵⁸⁶ and a staff working document published in March 2021 which analysed the implementation of the 2018 Recommendation,⁵⁸⁷ the European Commission presented two proposals for the adoption of directives on binding standards for equality bodies in December 2022.⁵⁸⁸ The directives were adopted in May 2024 and contain identical provisions, but have different legal bases. Directive 2024/1500 concerns equality bodies working on sex in employment and occupation⁵⁸⁹ and Directive 2024/1499 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.⁵⁹⁰

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. Member States are required to transpose the directives by June 2026. By the cut-off date for the country reports on which this report is based, most of them had not yet revised their legislation in view of transposing the new directives.

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.

When transposing Article 13 of the Racial Equality Directive, some Member States, such as **France, Germany, Greece, Hungary,**⁵⁹¹ **Italy, Romania, Slovenia** and **Spain**, opted to set up completely new bodies. In contrast,

⁵⁸⁶ European Commission (2018) Commission Recommendation of 22.06.2018 on standards for equality bodies, C(2018) 3850 final, Brussels.

⁵⁸⁷ 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.

⁵⁸⁸ 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).

⁵⁸⁹ *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.

⁵⁹⁰ *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.

⁵⁹¹ 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.

bodies that already existed but which were given the functions designated by Article 13 include the **Croatian** Ombudsperson, 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 and the **Slovak** National Centre for Human Rights. In **Portugal**, a reform took place in 2023-2024, replacing the previous formally designated equality body, the High Commission for Migration, with the newly created Agency for Integration, Migrations and Asylum.⁵⁹² In January 2024, the Commission for Equality and Against Racial Discrimination (CEARD) was established as an independent equality body, but as of 1 January 2025, it was still not fully functional in practice.⁵⁹³ Similarly, in **Spain**, Law 15/2022 provided for the creation of a new Independent Authority for Equal Treatment and Non-Discrimination. However, as of 1 January 2025, this body is yet to be established, more than two years after the entry into force of the act.⁵⁹⁴

6.1 Grounds covered⁵⁹⁵

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.

⁵⁹² Portugal, Decree-Law 41/2023 of 2 June 2023, entry into force 29 October 2023.

⁵⁹³ Portugal, Law 3/2024, of 15 January. For the purposes of this report, the mandate and powers of the new CEARD as established by law have been considered.

⁵⁹⁴ For the purposes of this report, only the existing Council for the Elimination of Racial or Ethnic Discrimination has been considered.

⁵⁹⁵ Council Directive 2024/1499 adopted on 7 May 2024, 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	Independent surveys	Independent reports	Recommendations	Quasi-judicial functions	Binding decisions
AUSTRIA ⁵⁹⁶ Equal Treatment Commission ⁵⁹⁷ ----- National Equality Body ⁵⁹⁸ ----- Federal Equal Treatment Commission ⁵⁹⁹	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. ⁶⁰⁰	No	No	Yes	Yes	Yes	No

⁵⁹⁶ In addition, the Ombud for Persons with Disabilities is dealing with discrimination issues for the ground of disability.

⁵⁹⁷ Austria, Act on the Equal Treatment Commission and the National Equality Body, Sections 1, 2, 11-14.

⁵⁹⁸ Austria, Act on the Equal Treatment Commission and the National Equality Body, Sections 3-5.

⁵⁹⁹ Austria, Federal-Equal Treatment Act, Sections 22-25.

⁶⁰⁰ The mandate of the Federal Equal Treatment Commission is limited to the area of public (federal) employment.

Country / Specialised body	Grounds covered by the mandate	Competences covered by the mandate					
BELGIUM Interfederal centre for Equal Opportunities and Opposition to Racism and Discrimination (Unia) ⁶⁰¹ ----- Flemish Human Rights Institute ⁶⁰²	Alleged race, colour, descent, national or ethnic origin, nationality, age, sexual orientation, civil status, birth, property, religious or philosophical belief, state of health, disability, physical or genetic features, political opinion, trade union opinion (' <i>conviction syndicale</i> ') and social origin or condition.	Yes	Yes	Yes	Yes	No	N/A
	Alleged 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, ⁶⁰³ state of health, disability, physical or genetic features, social origin; sex/gender, ⁶⁰⁴ family responsibilities. ⁶⁰⁵	Yes	Yes	Yes	Yes	Yes	No
BULGARIA Protection Against Discrimination Commission ⁶⁰⁶	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.	Yes	Yes	Yes	Yes	Yes	Yes

⁶⁰¹ Belgium, Cooperation Agreement between the Federal State, the Regions and the Communities creating the Interfederal Centre for Equal Opportunities and Opposition to Racism and Discrimination, Article 2.

⁶⁰² The mandate of the Flemish Human Rights Institute, created by Decree of 28 October 2022, is limited to matters falling within the powers of the Flemish Community and Region.

⁶⁰³ The language ground is covered for the promotional mandate of the Flemish Institute, but not for the quasi-judicial mandate.

⁶⁰⁴ The following grounds are equated with sex/gender: gender identity, gender expression, pregnancy, childbirth, maternity, breastfeeding, adoption, medically assisted reproduction, paternity, co-maternity, gender reassignment, and sex characteristics.

⁶⁰⁵ The following grounds are equated with family responsibilities: adoption leave, maternity leave, breastfeeding leave, birth leave, parental leave, care leave, foster care leave, absenteeism due to *force majeure* in connection with urgent family circumstances, in the event of illness or accident, flexible working arrangements for care purposes, time credit, care credit, or other statutory leave arrangements aimed at enabling employees to better reconcile work and family life.

⁶⁰⁶ Bulgaria, Protection Against Discrimination Act, Articles 41, 46 and 47.

Country / Specialised body	Grounds covered by the mandate	Competences covered by the mandate					
CROATIA People's Ombudsperson ⁶⁰⁷	Race or ethnic origin or colour, language, religion, political or other belief, national or social origin, property, trade union membership, education, social status, age, health condition, genetic heritage.	Yes	Yes	Yes	Yes	No	N/A
CYPRUS Office of the Commissioner for Administration and the Protection of Human Rights (Ombudsman) ⁶⁰⁸	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'), ⁶⁰⁹ 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.	No ⁶¹⁰	Yes	Yes	Yes	Yes	Yes ⁶¹¹
CZECHIA Public Defender of Rights ⁶¹²	Sex, race, ethnic origin, sexual orientation, age, disability, religion, belief or other conviction, 'nationality' (<i>národnost</i>), EU citizenship. ⁶¹³	Yes	Yes	Yes	Yes	No	N/A

⁶⁰⁷ 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.

⁶⁰⁸ Cyprus, Combating of Racial and other forms of Discrimination (Commissioner) Law No. 42(I)/2004, Articles 5 and 7.

⁶⁰⁹ Such as gender, language, social descent, birth, wealth and social class.

⁶¹⁰ 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'.

⁶¹¹ Although the law entitles it to issue binding decisions, the equality body very rarely uses this power, choosing to use its mediation function instead.

⁶¹² Czechia, Act No. 349/1999, on the Public Defender of Rights, Article 21(b).

⁶¹³ 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.

Country / Specialised body	Grounds covered by the mandate	Competences covered by the mandate					
DENMARK Institute for Human Rights – The National Human Rights Institute of Denmark ⁶¹⁴	Race, ethnic origin, gender, sexual orientation, gender identity, gender expression or gender characteristic. ⁶¹⁶	Yes	Yes	Yes	Yes	No	N/A
<p>-----</p> Board of Equal Treatment ⁶¹⁵	Protected grounds in employment: gender, race, skin colour, religion or belief, political opinion, sexual orientation, gender identity, gender expression or gender characteristics, age, disability, national origin, social origin, ethnic origin. Protected grounds outside employment: gender, sexual orientation, gender identity, gender expression or gender characteristics, disability, race and ethnic origin.	No	No	No	No	Yes	Yes

⁶¹⁴ Denmark, Act No. 553 of 18 June 2012, with later amendments.

⁶¹⁵ Denmark, Consolidated Act No. 1230 of 2 October 2016, with later amendments.

⁶¹⁶ The mandate stipulated in the Act covers gender, sexual orientation, gender identity, gender expression, gender characteristics, 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, LGBT+, religion and faith, national origin, ethnicity and race.

Country / Specialised body	Grounds covered by the mandate	Competences covered by the mandate					
ESTONIA Gender Equality and Equal Treatment Commissioner ⁶¹⁷ <hr/> Chancellor of Justice ⁶¹⁸	<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. ⁶¹⁹ <u>Beyond employment</u> : Gender, pregnancy, childbirth, parenting, family-related duties, other circumstances related to gender, ethnic origin, race, colour of skin.	Yes	Yes	Yes	Yes	Yes	No
	<u>Public sector</u> : any ground. <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.	No	No	Yes	Yes	Yes	Yes ⁶²⁰
FINLAND Non-Discrimination Ombudsman ⁶²¹	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
<hr/> National Non-Discrimination and Equality Tribunal ⁶²²	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. ⁶²³	No	No	No	No	Yes	Yes

⁶¹⁷ Estonia, Equal Treatment Act, Articles 15-22.

⁶¹⁸ Estonia, Chancellor of Justice Act, Articles 19-35¹⁶.

⁶¹⁹ 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.

⁶²⁰ Only in conciliation procedures.

⁶²¹ Finland, Act on the Non-Discrimination Ombudsman, Section 1.

⁶²² Finland, Act on National Non-Discrimination and Equality Tribunal.

⁶²³ The National non-discrimination and equality tribunal is competent for all these grounds outside employment and for gender and gender identity also in the employment field.

Country / Specialised body	Grounds covered by the mandate	Competences covered by the mandate					
FRANCE Defender of Rights ⁶²⁴	Any ground protected by national law ⁶²⁵ and international conventions ratified by France.	Yes	Yes	Yes	Yes	No	N/A
GERMANY Federal Anti-Discrimination Agency ⁶²⁶	Race or ethnic origin, sex, ⁶²⁷ religion or belief (<i>Weltanschauung</i>), ⁶²⁸ disability, age, sexual identity.	Yes	Yes	Yes	Yes	No	N/A
GREECE Ombudsman ⁶²⁹	Race, national or ethnic origin, genealogical descent, colour, religious or other beliefs, disability or chronic illness, age, family or social status, sexual orientation, gender identity, characteristics or expression. ⁶³⁰	Yes	Yes	Yes	Yes	No	N/A
HUNGARY Commissioner for Fundamental Rights ⁶³¹	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.	Yes	Yes	Yes	Yes	Yes	Yes

⁶²⁴ France, Organic Law No. 2011-333 of 29 March 2011 creating the Defender of Rights, Article 4(3).

⁶²⁵ 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.

⁶²⁶ Germany, General Act on Equal Treatment, Section 25.

⁶²⁷ The German term '*Geschlecht*', translated as 'sex', encompasses gender identity/expression and sex characteristics.

⁶²⁸ Not applicable for civil law.

⁶²⁹ Greece, Law No. 2477/1997, Article 1 and Equal Treatment Law No. 4443/2016, Article 14.

⁶³⁰ According to Law 3094/2003, the Ombudsman's mandate covers discrimination on the ground of gender under its separate gender equality mandate.

⁶³¹ Equal Treatment Directorate within the Office of the Commissioner for Fundamental Rights.

Country / Specialised body	Grounds covered by the mandate	Competences covered by the mandate					
IRELAND Irish Human Rights and Equality Commission ⁶³²	Gender, age, race, religion, family status, disability, civil status, sexual orientation, membership of the Traveller Community, housing assistance.	Yes	Yes	Yes	Yes	No	N/A
Workplace Relations Commission ⁶³³	Gender, age, race, religion, family status, disability, civil status, sexual orientation, membership of the Traveller Community, housing assistance.	No	No	No	No	Yes	Yes
ITALY National Office against Racial Discrimination (UNAR) ⁶³⁴	Racial or ethnic origin, religion or personal belief, disability, age and sexual orientation, gender, nationality, Roma, Sinti and Travellers. ⁶³⁵	Yes ⁶³⁶	Yes	Yes	Yes	No	N/A
LATVIA Ombudsman ⁶³⁷	Grounds not specified, hence any ground.	Yes	Yes	Yes	Yes	No	N/A
LITHUANIA Equal Opportunities Ombudsperson ⁶³⁸	Gender, race, citizenship, nationality, ⁶³⁹ origin, age, sexual orientation, disability, ethnic origin, language, social status, ⁶⁴⁰ religion, belief, convictions or views.	No ⁶⁴¹	Yes	Yes	Yes	Yes	Yes ⁶⁴²
LUXEMBOURG Centre for Equal Treatment ⁶⁴³	Race, ethnic origin, religion or belief, disability, age, sex, sexual orientation, nationality.	Yes	Yes	Yes	Yes	No	N/A

⁶³² Ireland, Irish Human Rights and Equality Commission Act 2014, Sections 9 and 44.

⁶³³ Ireland, Employment Equality Acts 1998-2021, Section 91; Equal Status Acts 2000-2018, Section 31.

⁶³⁴ Italy, Legislative Decree No. 215/2003 Implementing Directive 2000/43/EC, Article 7.

⁶³⁵ Initially, UNAR's activity only covered the grounds of racial and ethnic origin. Ministerial directives issued in 2010 and 2012 extended the mandate to cover all grounds of discrimination listed in Article 19 TFEU. In 2019 a new Ministerial Decree was adopted replacing the previous ministerial directives, extending UNAR's remit to any grounds and any fields. According to this Decree, 'the role of the Office is to ensure the effectiveness of the principle of equal treatment among all persons on any grounds, including LGBT, by ensuring the effectiveness of the measures to protect against discrimination including those based on sexual orientation and gender identity, and to help remove discrimination based on racial and ethnic origin, taking into account the different impact they have on gender, other grounds of discrimination and their relationship with other cultural and religious forms of racism including Roma, Sinti and Travellers'.

⁶³⁶ 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.

⁶³⁷ Latvia, Law on Ombudsman, Article 11(2).

⁶³⁸ Lithuania, Law on Equal Treatment, Articles 14-30.

⁶³⁹ The term used in the law is *tautybė*, which refers to belonging to a national minority and not 'citizenship'.

⁶⁴⁰ Including family status.

⁶⁴¹ 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.

⁶⁴² The Ombudsperson can issue both binding decisions (administrative sanctions) and non-binding opinions.

⁶⁴³ Luxembourg, Law of 28 November 2006, Article 8.

Country / Specialised body	Grounds covered by the mandate	Competences covered by the mandate					
MALTA National Commission for the Promotion of Equality ⁶⁴⁴	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
NETHERLANDS Netherlands Institute for Human Rights ⁶⁴⁵	Racial or ethnic origin, religion and belief, political opinion, hetero- or homosexual orientation, sex, ⁶⁴⁷ nationality, civil (or marital) status, disability, age, working time and type of labour contract.	No	Yes	Yes	Yes	Yes	No ⁶⁴⁸
----- Anti-Discrimination Services ⁶⁴⁶	Racial or ethnic origin, religion and belief, political opinion, hetero- or homosexual orientation, sex, nationality, civil (or marital) status, disability, age.	Yes	No	No	No	No	N/A
POLAND Commissioner for Human Rights (Ombudsman) ⁶⁴⁹	No grounds specified, hence any ground. ⁶⁵⁰	Yes ⁶⁵¹	Yes	Yes	Yes	No	N/A
PORTUGAL Commission for Equality and Against Racial Discrimination ⁶⁵²	Race or ethnic origin, skin colour, nationality, ancestry and territory of origin.	Yes	Yes	Yes	Yes	Yes	Yes

⁶⁴⁴ Malta, Equality for Men and Women Act, Article 11.

⁶⁴⁵ Netherlands, Netherlands Institute for Human Rights Act, Articles 9-13.

⁶⁴⁶ 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.

⁶⁴⁷ In the General Equal Treatment Act, 'sex' also includes gender identity, gender expression and sex characteristics.

⁶⁴⁸ The NIHR's opinions are, however, widely considered to be effective and well-respected.

⁶⁴⁹ Poland, Act on the Commissioner for Human Rights, Article 1.

⁶⁵⁰ 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. The protected grounds vary depending on the field. The Act on the Commissioner for Human Rights does not list any grounds or fields, so the activities of the Commissioner are therefore in principle not limited to any given grounds.

⁶⁵¹ Judicial interpretation is required as the powers of the Ombudsman are limited regarding conflicts between private parties.

⁶⁵² Portugal, Law 3/2024 of 15 January, Article 1. At the time of writing, the Commission was not fully functional in practice.

Country / Specialised body	Grounds covered by the mandate	Competences covered by the mandate					
ROMANIA National Council for Combating Discrimination ⁶⁵³	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 ⁶⁵⁴	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 ⁶⁵⁵	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 ⁶⁵⁶
SPAIN Council for the Elimination of Racial or Ethnic Discrimination ⁶⁵⁷	Racial and ethnic origin.	Yes ⁶⁵⁸	Yes	Yes	Yes	No	N/A

⁶⁵³ Romania, Ordinance (GO) 137/2000 regarding the prevention and the punishment of all forms of discrimination, Article 16 and following.

⁶⁵⁴ 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).

⁶⁵⁵ Slovenia, Protection Against Discrimination Act, Articles 19-32.

⁶⁵⁶ The decisions are binding by law, but not enforceable.

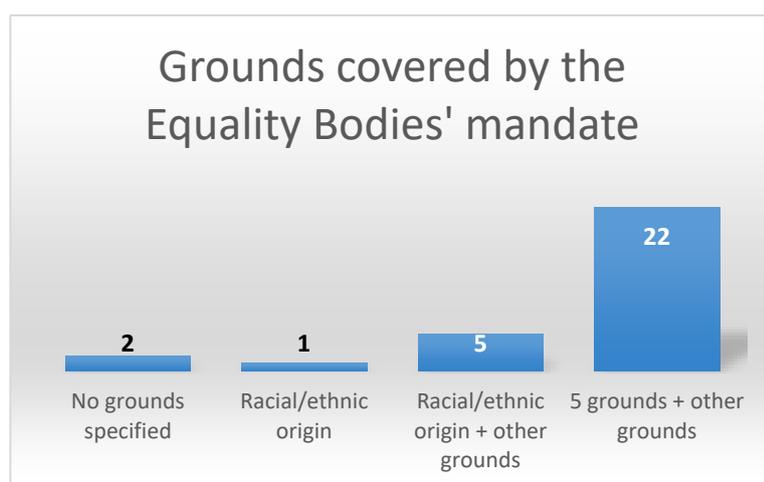
⁶⁵⁷ Spain, Law on Fiscal, Administrative and Social Measures, Article 33. As mentioned above, Law 15/2022 provided for the creation of the Independent Authority for Equal Treatment and Non-Discrimination. However, as this body was yet to be established as of 1 January 2025, only the existing Council for the Elimination of Racial or Ethnic Discrimination has been considered for the purposes of this report.

⁶⁵⁸ 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.

Country / Specialised body	Grounds covered by the mandate	Competences covered by the mandate					
SWEDEN Equality Ombudsman ⁶⁵⁹	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**,⁶⁶⁰ **Estonia**⁶⁶¹ and the **Netherlands**⁶⁶²) 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**.⁶⁶³ 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.



Of the 30 relevant bodies, the **Spanish** specialised body is the only one dealing exclusively with race and ethnicity.⁶⁶⁴ In **Austria**, **Croatia**, **Denmark**, **Malta** and **Portugal** 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. 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

⁶⁵⁹ The Equality Ombudsman Act as well as Chapters 4-6 of the Discrimination Act.

⁶⁶⁰ In Belgium, the equality body Unia has existed (under different names and with differing mandates) since 1993. In 2022, Unia partially lost its interfederal status due to the creation of a new equality body competent for all protected grounds under the Flemish anti-discrimination decree and with regard to Flemish competences: the Flemish Human Rights Institute (Vlaams Mensenrechteninstituut), through the adoption of Decree of 28 October 2022, OJ 9 November 2022. Unia remains competent with regard to the federal level and the other federated entities.

⁶⁶¹ 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.

⁶⁶² In the Netherlands, the local anti-discrimination services have the task of assisting victims of discrimination and monitoring their situation. Since 1 January 2024, they operate under the common name 'Discriminatie.nl'.

⁶⁶³ For the purposes of this report, only one specialised body has been counted on the national level for these four countries. See below, p. 118, for further information regarding these quasi-judicial bodies.

⁶⁶⁴ As mentioned above, as the new independent authority created by Law 15/2022 had not yet been established as of 1 January 2025, only the existing Council for the Elimination of Racial or Ethnic Discrimination has been considered for the purposes of this report.

law. In 19 countries, 22 bodies deal with the five grounds protected by the two anti-discrimination directives and other grounds.⁶⁶⁵ In **Latvia** and **Poland** no grounds are specified under the powers of the body. The mandate of the **Estonian** Gender Equality and Equal Treatment Commissioner ‘does not preclude the requirements of equal treatment in labour relations in relation to any other ground’. Consequently, in 2024, the Commissioner issued an opinion stating that the geographical area in which the work is being done cannot be a characteristic on the basis of which different bonuses are paid to employees of the same organisation, thus creating a new ground that is not explicitly listed in the Equal Treatment Act.⁶⁶⁶

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**. In 2024, such a (separate) body was also created in **Italy**, to be set up in 2025.⁶⁶⁷ The new specialised Ombudsman is to have similar competences to the existing equality body, UNAR, in addition to the mandate of monitoring the implementation of the UN CRPD, and will have functional independence.

6.2 Competencies of equality bodies⁶⁶⁸

Article 13, Racial Equality Directive:

‘Member States shall ensure that the competences of these bodies include:

- without prejudice to the right of victims and of associations, organisations or other legal entities referred to in Article 7(2), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination,
- conducting independent surveys concerning discrimination,
- publishing independent reports and making recommendations on any issue relating to such discrimination.’

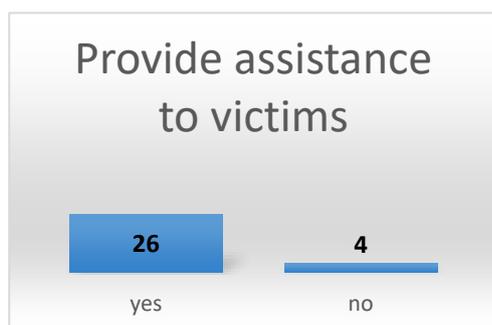
Overall, the majority of countries comply with the requirements of the Racial Equality Directive and have provided the relevant equality bodies with a mandate to exercise all four competencies listed under Article 13. However, this does not mean that all of them exercise the full range of their competencies in practice. Priorities and focus points may change over time, but budget and staff concerns can also impact the effectiveness of equality bodies.

⁶⁶⁵ 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.

⁶⁶⁶ Estonia, Gender Equality and Equal Treatment Commissioner, [Opinion No. 1-3/4_2024 of 25 July 2024](#).

⁶⁶⁷ Italy, [Legislative decree of 5 February 2024, No. 20, establishing the National Ombudsman for the Rights of Persons with Disabilities](#).

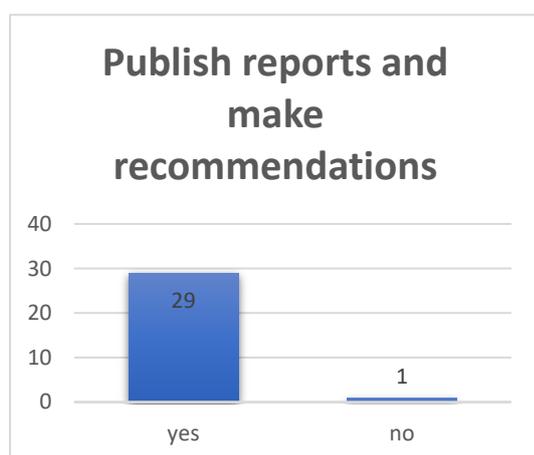
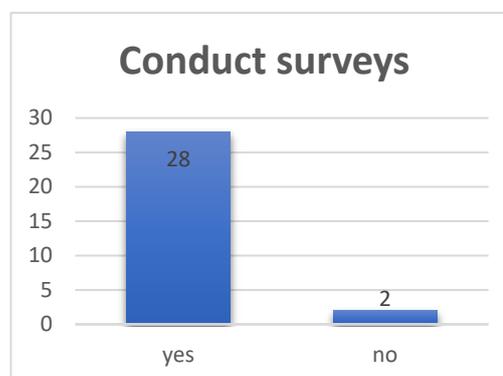
⁶⁶⁸ Council Directive 2024/1499 adopted on 7 May 2024, imposes a requirement for all Member States to have equality bodies with more extensive competencies than under the Racial Equality Directive, including for instance litigation powers as well as prevention and promotion competencies.



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,⁶⁶⁹ the **Estonian** Chancellor of Justice,⁶⁷⁰ the **Lithuanian** Equal Opportunities Ombudsperson⁶⁷¹ and the **Netherlands** Institute for Human Rights.⁶⁷² 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.



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

⁶⁶⁹ 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'.

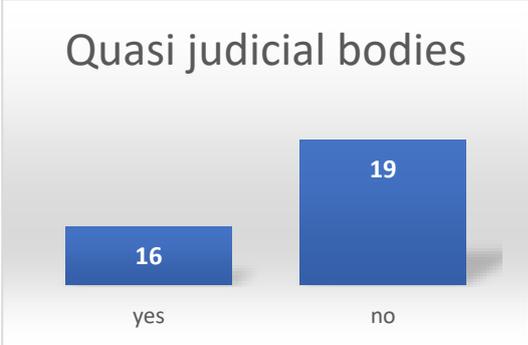
⁶⁷⁰ In Estonia, the Gender Equality and Equal Treatment Commissioner has such a mandate.

⁶⁷¹ 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.

⁶⁷² In the Netherlands, the local anti-discrimination services, Discriminatie.nl, have such a mandate.

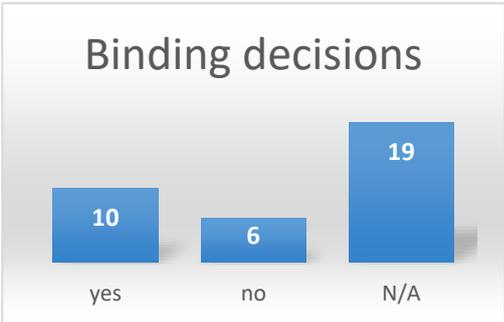
are rarely monitored and effectively implemented in many countries, their independent nature is often questionable in practice in other countries (see below for more on the independence of equality bodies).

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.⁶⁷³ 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). The **Slovak** National Centre for Human Rights is also considered to be a quasi-judicial institution, although that is a matter of interpretation. In addition, the newly established **Portuguese** Commission for Equality and Against Racial Discrimination, which is not yet fully functional in practice, will exercise quasi-judicial functions. In contrast, 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.⁶⁷⁴ This is the case for the **Bulgarian, Cypriot,⁶⁷⁵ Danish,⁶⁷⁶ Estonian,⁶⁷⁷ 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,

⁶⁷³ For further information about the procedures before such tribunal-like equality bodies, see Section 4.1.1 above.
⁶⁷⁴ 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.
⁶⁷⁵ 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.
⁶⁷⁶ The Board of Equal Treatment.
⁶⁷⁷ The Chancellor of Justice only in private sector conciliation procedures.

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,⁶⁷⁸ the **Irish** Workplace Relations Commission, the **Lithuanian** Ombudsperson,⁶⁷⁹ and the **Romanian** National Council for Combating Discrimination. The **Portuguese** Commission for Equality and Against Racial Discrimination will, once it is fully functional, have a mandate to issue binding decisions and impose sanctions. Only one equality body can award compensation to victims: the **Danish** Board of Equal Treatment.⁶⁸⁰

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. In all 27 Member States, equality bodies collect, in principle, some form of data on the number of complaints received and/or dealt with, or the decisions taken. However, there is wide variation, from countries where the data is limited to the most basic information without any level of detail (for instance **Luxembourg** and **Malta**), to countries where it is disaggregated by factors such as grounds, fields and outcomes (for instance **Belgium** and **Romania**). There are also differences regarding the availability of the data for the public. 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. It is therefore concerning to note that institutional or structural changes within the equality bodies have sometimes caused important data to be removed from public access, as has been the case in **Cyprus** and **Hungary**.

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

⁶⁷⁸ Acting under its equality body mandate.

⁶⁷⁹ The Lithuanian Ombudsperson can only impose sanctions in cases of discriminatory advertisements for the sale of goods or services.

⁶⁸⁰ Further information regarding sanctions imposed by equality bodies can be found in Section 4.5 above.

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 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.⁶⁸¹
- 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 require 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, concerns arise in relation to the independence of 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.⁶⁸² 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 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

⁶⁸¹ This procedure is only available where not all concerned individuals can be identified.

⁶⁸² See ECRI (2024), *Sixth Report on Italy*, 2 July 2024.

in Hungary.⁶⁸³ In **Belgium**, the withdrawal of Flanders from Unia, and the creation in 2022 of a separate equality body, the Flemish Human Rights Institute,⁶⁸⁴ raised criticism and concerns from different stakeholders. As of July 2024, the Flemish institute has proved to be quite prolific in issuing opinions on cases of alleged violations of the Flemish anti-discrimination framework.

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.⁶⁸⁵ 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.⁶⁸⁶ In **Bulgaria**, although both Parliament and the President adopted rules in 2017 on the nomination of candidates for the equality body, the President's decision-making process remains discretionary and non-transparent under these rules. In 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 noted that this lack of uniformity among the services hampers their visibility and effectiveness.⁶⁸⁷ The Government has announced that plans are in place to restructure the anti-discrimination services, and since 1 January 2024 they have been operating under a common name.⁶⁸⁸ 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** and **Latvia**. In recent years however, the **Latvian** Ombudsman has seen a significant, continuous increase in its budget, accompanying institutional changes that have been initiated to ensure compliance with the 2024 Directives.⁶⁸⁹

⁶⁸³ See, Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions (2022), *Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA)*, 14–25 March 2022.

⁶⁸⁴ Belgium, Decree of 28 October 2022, OJ 9 November 2022.

⁶⁸⁵ For further information, see European network of legal experts in gender equality and non-discrimination (2022) *Country report Non-discrimination: Cyprus 2022*.

⁶⁸⁶ Romania, Constitutional Court, decision No. 434/2018 of 21 June 2018 and decision No.41/2023 of 22 February 2023.

⁶⁸⁷ Van Beijnhem, R. *et al* (2023), *Structure, tasks and financing of ADVs. An investigation into the local approach to discrimination in the Netherlands*, Berenschot 20 February 2023.

⁶⁸⁸ The new name is Discriminatie.nl. See also Tweede Kamer 2023-2024, 30 950, No. 365.

⁶⁸⁹ Latvia, Ombudsman (2024), *Budget and properties*. See also LETA (2024), '[A Discrimination Prevention Unit is being established in the Ombudsman's Office](#)', 14 January 2024.

7 Implementation and compliance

7.1 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.

7.1.1 Dissemination of information and awareness-raising

In general, activities organised by the Member States 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, France, 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.⁶⁹⁰ 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 **France**, the interministerial delegation coordinating Government action in relation to combating racism and anti-LGBT hatred, DILCRAH, has put in place financing for continuous training programmes for civil servants on providing support and guidance to victims of racism.

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 **Croatia, Denmark, Estonia, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Malta**, the **Netherlands, Romania, Slovenia** and **Sweden**. While the equality bodies in some countries appear to limit this type of work to basic provision of information on their websites, other equality bodies engage in more proactive work. Recent examples include the 'Ignite your empathy' campaign launched by the **Latvian** Ombudsman in 2024, including a series of 10 video broadcasts on social media addressing prejudice and discrimination on different grounds including ethnicity (Roma), sexual orientation, etc. Another example is a (social) media campaign by the **German** Federal Anti-Discrimination Agency which includes music videos as well as an online tool to help individuals determine, through a step-by-step process, whether prohibited discrimination may have taken place and, if so, what options exist for taking action.⁶⁹¹ Other examples include the training sessions held by the **Maltese** National Commission for the Promotion of Equality for groups such as healthcare workers, the armed forces, students etc.⁶⁹² In 2023, the **Portuguese** Government established an Observatory on Hate Speech, Racism and Xenophobia with a mandate to disseminate information and raise awareness through the provision of support measures and training for different stakeholders as well as the development of practical tools.

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 companies with more than 300 employees as well as specialised recruitment companies, must, at least every five years, provide non-discrimination training to employees in charge of recruitment.⁶⁹³

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.

⁶⁹⁰ The website is available in Slovak at: <https://www.horizontalneprincipy.gov.sk/>.

⁶⁹¹ See Federal Anti-Discrimination Agency, '*habichwasgegen*' ('I have something against this!').

⁶⁹² See National Commission for the Promotion of Equality (2024), *Annual report 2023*.

⁶⁹³ France, Labour Code, Article L. 1131-2.

7.1.2 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**, although their practical impact on national policies is sometimes debatable. This is the case in **Slovakia** for instance, where the legal framework regulating civil society is being reformed to the detriment of many organisations active in the field of equality and non-discrimination. 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 **Austria, Belgium, France, Hungary, 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 are also common among the Member States. Some have existed for many years, such as the Advisory Board on Romani Affairs in **Finland** which was established in 1956 to enhance the equal participation of the Roma population in Finnish society, improving their living conditions and socioeconomic status, and promoting their culture. Most have emerged over the past 15 years, however, such as the **French** Interministerial Delegation on Emergency Accommodation and Access to Housing which was given a specific mandate in 2013 in relation to rights (including health, education, employment, accommodation and housing) and integration of foreign Roma and Travellers. In **Spain**, the purpose of the National Roma Council established in 2005 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. 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. Between 2023 and 2028, multi-purpose centres are being established in Roma settlements in **Slovenia** with the aim of improving the integration of Roma children and their families into the education system and into society in general. 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.⁶⁹⁴

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 law⁶⁹⁵ and in 2020, a support committee in the field of racial discrimination was set up, bringing together civil society organisations, academics and social partners. In **Sweden**, the Equality Ombudsman maintains a network of trade union representatives and is also involved in a mutual exchange process with rights bearers and civil society organisations. 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.

⁶⁹⁴ Further information is available on the project’s website, available at: <https://www.romproject.gr/drasesis>.

⁶⁹⁵ For more details on this initiative, see the website www.ediv.be/.

7.2 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.

7.2.1 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 Law must respect the principle of equal treatment.⁶⁹⁶ 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.⁶⁹⁷ 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.⁶⁹⁸

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 NCCD⁶⁹⁹ nor the civil courts⁷⁰⁰ 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

⁶⁹⁶ Greece, Law No. 4443/2016, Article 12.

⁶⁹⁷ Bulgaria, Protection Against Discrimination Act, Articles 6(2) and 10.

⁶⁹⁸ The explicitly listed exceptions would be the Constitution, the European Convention Act and any future act of Parliament amending the law.

⁶⁹⁹ 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.

⁷⁰⁰ Romania, Constitutional Court, Decision No. 818, 3 July 2008, *Official Gazette* 537 of 16 July 2008.

piece of legislation. Discrimination caused by legislation may still be challenged before the Constitutional Court however on the basis of the constitutional equality provision, either through an appeal for annulment or through a preliminary ruling. 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.⁷⁰¹

7.2.2 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.

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**⁷⁰²) 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.

⁷⁰¹ 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.

⁷⁰² 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).

8 Conclusion

Twenty-five 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 all but two Member States provide further protection compared to the requirements of EU law and that the levelling up of protection across grounds continues in a majority 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 important role although the number of noteworthy decisions on preliminary references has decreased compared to previous years, and decisions related to racial or ethnic origin remain almost non-existent.⁷⁰³

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

⁷⁰³ In 2024, see for example: judgment of 18 January 2024, *J.M.A.R. v Ca Na Negreta SA, other party: Ministerio Fiscal*, C-631/22, EU:C:2024:53 (disability); judgment of 17 October 2024, *Rechtsanwältin und Notarin v Präsidentin des Oberlandesgerichts Hamm*, C-408/23, EU:C:2024:901 (age). See also order of the Court of 10 September 2024, *Wiener Linien GmbH & Co KG v SwiftSuit Legal Tech GmbH*, C-65/24, EU:C:2024:728 (racial or ethnic origin).

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 work 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,⁷⁰⁴ 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 adoption 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.

⁷⁰⁴ 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 2025. 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.⁷⁰⁵ 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 2024	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 2024	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

⁷⁰⁵ Please note that in most countries protection against discrimination is also granted in the Labour and Penal Codes. These have not been indicated unless there is no other protection in national law. Legislation which is specific for one single ground has been indicated in the tables where specific anti-discrimination law does not include that specific ground, and has been included in footnotes where anti-discrimination law also covers them.

Country	Constitutional anti-discrimination provisions	Main specific anti-discrimination legislation	Grounds covered
		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 13 March 2017, as last amended in 2018	Gender, ethnic affiliation, religion or belief, disability, age, sexual orientation
		Lower Austrian Equal Treatment Act of 11 July 1997, as last amended in 2023	Gender, ethnic affiliation, religion or belief, disability, age, sexual orientation
		Carinthian Equal Treatment Act of 23 September 2021, as last amended in 2024	Gender, ethnic affiliation, religion or belief, disability, age, sexual orientation
		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 2024	Gender, ethnic affiliation, religion, belief, disability age, sexual orientation
		Burgenlandian Anti-discrimination Act of 5 October 2005, as last amended in 2024	Gender, ethnic affiliation, religion, belief, disability, age, sexual orientation
		Tyrolian Equal Treatment Act of 11 January 2005, as last amended in 2024	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 2024	Gender, ethnic origin, religion, belief, disability, age, sexual orientation

Country	Constitutional anti-discrimination provisions	Main specific anti-discrimination legislation	Grounds covered
BELGIUM	Articles 10 and 11 of the Constitution	Racial Equality Federal Act of 30 July 1981, ⁷⁰⁶ as last amended in 2024	Alleged race ⁷⁰⁷ colour, descent, ethnic or national origin and nationality
		General Anti-discrimination Federal Act of 10 May 2007, ⁷⁰⁸ as last amended in 2024	Age, sexual orientation, civil status, birth, property (<i>fortune</i>), religious or philosophical belief, state of health, disability, physical or genetic features, political opinion, trade union opinion (<i>conviction syndicale</i>), language, social origin or condition
		Flemish Region: Decree on proportionate participation in the employment market of 8 May 2002 as last amended in 2024	Sex, alleged race, ethnic origin, religion or belief, disability, age and sexual orientation
		Walloon Region: Decree on the Fight Against Certain Forms of Discrimination of 6 November 2008 as last amended in 2024	Nationality, alleged race, colour, descent, national or ethnic origin, age, sex, pregnancy, childbirth, breastfeeding, motherhood, fatherhood, co-parenthood, adoption, medically assisted reproduction, medical or social transition, gender identity and gender expression, civil status, family composition, birth, property, religious or philosophical belief, political opinion, trade union opinion, language, state of health, disability, physical or genetic characteristic, social origin or status, family responsibilities.

⁷⁰⁶ Formal title: Act Criminalising Certain Acts inspired by Racism or Xenophobia.

⁷⁰⁷ The Belgian legislature 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.

⁷⁰⁸ Formal title: Act on the Fight against Certain Forms of Discrimination.

Country	Constitutional anti-discrimination provisions	Main specific anti-discrimination legislation	Grounds covered
		Region of Brussels Capital: Joint Decree and Ordinance of the Brussels-Capital Region, the Joint Community Commission and the French Community Commission establishing the Brussels Code on Equality, Non-Discrimination and the Promotion of Diversity of 4 April 2024	Alleged race, colour, descent, national or ethnic origin, nationality, age, sexual orientation, civil status, birth, property ('fortune', in French), religious or philosophical belief, actual, present and future state of health, disability, physical or genetic features, political opinion, language, social origin or condition, trade union opinion, sex, family responsibilities (including single-parenthood), status of stay in Belgium, medically assisted reproduction, breastfeeding, sex characteristics, adoption, medical or social transition, pregnancy, childbirth, motherhood, gender identity and gender expression, paternity, co-maternity and co-parenthood
		Decree on the fight against certain forms of discrimination (French Community) of 12 December 2008, as last amended in 2024	Nationality, alleged race, colour, descent, national or ethnic origin, age, sexual orientation, religious or philosophical belief, disability, sex/gender, pregnancy, medically assisted reproduction, childbirth, breastfeeding, motherhood, family responsibilities, gender identity, gender expression, sex characteristics, medical or social transition, civil status, birth, property, social status or origin, political or trade union opinion, language, state of health, physical or genetic feature.
		Decree aimed at fighting certain forms of discrimination (German-speaking Community) of 19 March 2012, as last amended in 2023	Sex, alleged race, national or ethnic origin, religious or philosophical belief, disability, age, sexual orientation, nationality, colour, descent, social origin, pregnancy, childbirth, motherhood, parenthood, gender reassignment, 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

Country	Constitutional anti-discrimination provisions	Main specific anti-discrimination legislation	Grounds covered
		Framework Decree for the Flemish equal opportunities and equal treatment policy (Flemish Community/Region) of 10 July 2008, as last amended in 2024	Alleged 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, ⁷⁰⁹ and family responsibilities. ⁷¹⁰
BULGARIA	Article 6 of the Constitution	Protection Against Discrimination Act of 16 September 2003, as last amended in 2023	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 2024	Disability
CROATIA ⁷¹¹	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 ⁷¹²

⁷⁰⁹ The following grounds are equated with sex/gender: gender identity, gender expression, pregnancy, childbirth, motherhood, breastfeeding, adoption, medically assisted reproduction, fatherhood, co-motherhood, gender reassignment, sex characteristics.

⁷¹⁰ The following grounds are equated with family responsibilities: adoption leave, maternity leave, breastfeeding leave, birth leave, parental leave, care leave, foster care leave, absenteeism due to *force majeure* in connection with urgent family circumstances, in the event of illness or accident, flexible working arrangements for care purposes, time credit, care credit, or other statutory leave arrangements aimed at enabling employees to better reconcile work and family life.

⁷¹¹ In addition, protection against discrimination on the ground of sexual orientation is provided by the Same-sex Life Partnership Act of 15 July 2014.

⁷¹² 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.

Country	Constitutional anti-discrimination provisions	Main specific anti-discrimination legislation	Grounds covered
		Act on Professional Rehabilitation and Employment of Persons with Disability of 13 December 2013 as last amended in 2020	Disability
CYPRUS	Article 6 ⁷¹³ and 28 of the Constitution	Equal Treatment (Racial or Ethnic Origin) Law No. 59 (1)/2004 of 31 March 2004, as last amended in 2006	Racial or ethnic origin
		Equal Treatment in Employment and Occupation Law No. 58 (1)/2004 of 31 March 2004, as last amended in 2009	Racial or ethnic origin, religion or belief, age, sexual orientation
		Law on Persons with Disabilities No. 127(I)/21 July 2000, as last amended in 2021	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, ethnic origin, 'nationality' (<i>národnost</i>), sex, sexual orientation, age, disability, religion or belief or other conviction.
DENMARK	None ⁷¹⁴	Act on Prohibition of Discrimination due to Race etc.	Race, skin colour, national or ethnic origin, belief, sexual orientation,

⁷¹³ Article 6 regards discrimination against any of the two 'Communities' or any person by virtue of being a member of a 'Community'. The term 'Community' is used in the Constitution as meaning either the Greek or the Turkish Community in Cyprus.

⁷¹⁴ 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.

Country	Constitutional anti-discrimination provisions	Main specific anti-discrimination legislation	Grounds covered
		of 9 June 1971, as last amended in 2022	gender identity, gender expression or gender characteristics
		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 2020	Disability
ESTONIA	Article 12 of the Constitution	Equal Treatment Act of 11 December 2008, as last amended in 2017 ⁷¹⁵	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, as last amended in 2024	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, mores, sexual orientation, sex, pregnancy, gender identity, belonging, whether real or supposed, to an ethnic origin, a nation, a race or a particular religion, physical appearance, last name, family situation, trade union activities, political opinions, age, health, disability, genetic characteristics, place of residence, or banking residence, capacity to express oneself in a language other than French, apparent economic vulnerability, loss of autonomy

⁷¹⁵ 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. 2005-102 for equal rights and opportunities, participation and citizenship of persons with disabilities of 11 February 2005, as last amended in 2014	Disability
		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 ⁷¹⁶ (<i>Weltanschauung</i>), disability, age, sexual identity ⁷¹⁷
		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	Race, colour, national or ethnic origin, genealogical descent, religious or other beliefs, disability or chronic illness, age, family or social status, sexual orientation, gender identity, gender characteristics or expression

⁷¹⁶ In Germany, belief is not an explicitly protected ground in civil law.

⁷¹⁷ The term 'sexual identity' is considered to have the same meaning as 'sexual orientation' (AGG, Explanatory Report, *Bundestagsdrucksache* BT-Drs. 15/4538, p. 28).

Country	Constitutional anti-discrimination provisions	Main specific anti-discrimination legislation	Grounds covered
		Directive 78/2000/EC on the configuration of the general framework of equal treatment in employment and work' of 2 December 2016, as last amended in 2024	
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 2024	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, '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 2024	Disability
IRELAND	Article 40.1 of the Constitution	Employment Equality Acts 1998-2021 of 18 June 1998, as last amended in 2024	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

Country	Constitutional anti-discrimination provisions	Main specific anti-discrimination legislation	Grounds covered
ITALY	Article 3 of the Constitution	Legislative Decree No. 215/2003 Implementing Directive 2000/43/EC on equality of treatment between persons irrespective of racial or ethnic origin of 9 July 2003, as last amended in 2011	Race and ethnic origin
		Legislative Decree No. 216/2003 Implementing Directive 2000/78/EC for equal treatment in employment and occupation of 9 July 2003, as last amended in 2021	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 ⁷¹⁸	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 belief, 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 belief, 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 belief, national or social origin, property or family status or other circumstances

⁷¹⁸ There is no general anti-discrimination law in Latvia.

Country	Constitutional anti-discrimination provisions	Main specific anti-discrimination legislation	Grounds covered
		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.
LITHUANIA	Article 29 of the Constitution	Law on Equal Treatment of 18 November 2003, as last amended in 2023	Gender, race, nationality ⁷¹⁹ , citizenship, ⁷²⁰ language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin and religion
		Law on the Fundamentals of Protection of the Rights of Persons with Disabilities of 28 November 1991, as last amended in 2023	Disability
LUXEMBOURG	Article 15(1) and (2) of the Constitution (for nationals only)	Law of 28 November 2006, ⁷²¹ as last amended in 2017 (General anti-discrimination Law)	Religion or belief, disability, age, sexual orientation, race or ethnic origin, nationality
		Law of 29 November 2006, as last amended in 2017 (Public Sector Law) ⁷²²	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

⁷¹⁹ 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'.

⁷²⁰ This ground only applies to citizens of the EU and EEA countries and their family members.

⁷²¹ 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.

⁷²² 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
MALTA	Article 45 of the Constitution	Employment and Industrial Relations Act of 2 December 2002, as last amended in 2024	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, pregnancy or maternity leave, gender reassignment, and racial or ethnic origin
		Equality for Men and Women Act of 9 December 2003, as last amended in 2015	Sex, family responsibilities, sexual orientation, age, religion or belief, racial or ethnic origin, gender identity, gender expression, sex characteristics, actual or potential pregnancy or childbirth
		Equal Opportunities (Persons with Disabilities) Act of 10 February 2000, as last amended in 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, ⁷²³ nationality and civil (or marital) status
		Equal Treatment on the Ground of Disability or Chronic Illness Act of 3 April 2003, as last amended in 2016	Disability and chronic illness.
		Equal Treatment on the Ground of Age in	Age

⁷²³ In the General Equal Treatment Act, 'sex' also includes gender identity, gender expression and sex characteristics, as well as pregnancy and maternity.

Country	Constitutional anti-discrimination provisions	Main specific anti-discrimination legislation	Grounds covered
		employment Act of 17 December 2003, as last amended in 2014	
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, ⁷²⁴ as last amended in 2024	Gender, race, ethnic origin, nationality, citizenship, ⁷²⁵ 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 as last amended in 2024	Racial and ethnic origin, colour, nationality, ancestry and territory of origin
		Law 7/2009 Labour Code of 12 February 2009, as last amended in 2023	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 of 28 August 2006, as last amended in 2021	Disability and pre-existing risk to health

⁷²⁴ Referred to in this report as the 'Equal Treatment Act'.

⁷²⁵ Citizenship is only protected for workers exercising their freedom of movement under EU law.

Country	Constitutional anti-discrimination provisions	Main specific anti-discrimination legislation	Grounds covered
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 2022	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 2020	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
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

Country	Constitutional anti-discrimination provisions	Main specific anti-discrimination legislation	Grounds covered
SPAIN	Arts. 14 ⁷²⁶ 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
		Law 15/2022 comprehensive for equal treatment and non-discrimination of 12 July 2022	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 suffer pathologies and disorders, language, socio-economic situation, or any other personal or social condition or circumstance
		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 ⁷²⁷	Discrimination Act (2008:567) of 5 June 2008, as last amended in 2024	Sex, transgender identity or expression ⁷²⁸ , ethnicity, religion and other belief, disability, sexual orientation, age.

⁷²⁶ Article 14 only regards Spanish citizens.

⁷²⁷ 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.

⁷²⁸ 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

	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
-: not signed, not ratified /: signed X: ratified										
AUSTRIA	X	/	X	X	X	X	X	X	X	X
BELGIUM	X	/	X	X	/	X	X	X	X	X
BULGARIA	X	-	X	X	X	X	X	X	X	X
CROATIA	X	X	/	X	X	X	X	X	X	X
CYPRUS	X	X	X	X	X	X	X	X	X	X
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



Publications Office
of the European Union