



The impact of
the **Racial Equality Directive**

Views of trade unions and employers in the European Union

Strengthening the fundamental rights architecture in the EU IV

This report addresses matters related primarily to the principle of non-discrimination (Article 21) falling under Chapter III 'Equality' of the Charter of Fundamental Rights of the European Union.

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Foreword

The fundamental rights architecture in the European Union has developed over time and continues to evolve. Regular 'health checks' on this situation are needed, not least when great change is taking place.

This report is one of four by the European Union Agency for Fundamental Rights (FRA) that looks at closely related issues, institutions and EU legislation, which contribute to the overarching architecture of fundamental rights in the European Union. The building blocks of this fundamental rights landscape are the data protection authorities and national human rights institutions (NHRIs), as well as Equality Bodies set up under the Racial Equality Directive (2000/43/EC).

Article 17 of the Racial Equality Directive obliges the FRA to contribute to the Commission's review of the implementation of the directive, by providing evidence on its impact on the ground. This report is part of this exercise, and it presents the directive's application in the world of work, as seen by the representatives of trade unions and employer organisations. It is complemented by the Agency's EU-MIDIS Data in Focus report on *Rights Awareness and Equality Bodies*, as well as the synthesis report on the Racial Equality Directive's challenges and achievements.

As this report illustrates, awareness of Equality Bodies among the ethnic minority and migrant workforce in the EU is limited. Numerous FRA publications point to the low rates of reporting in cases of ethnic discrimination, despite the establishment of complaint channels under the directive. The representatives of trade unions and employers interviewed for this report attribute the low number of complaints to the slow and burdensome complaints' procedures established by Equality Bodies, and the fear of retribution among victims of discrimination should they complain.

The prohibition of discrimination is a key principle in EU legislation, as set out in the Charter of Fundamental Rights of the European Union. Although efforts to eliminate discrimination on the grounds of race and ethnic origin in the EU have progressed, the challenge to make non-discrimination a reality still has a long way to go. Practical initiatives by social partners – namely employers and trade unions – and social dialogue promoting equal treatment at the workplace, are critical to eliminating discrimination on the grounds of race and ethnicity.

Morten Kjaerum
Director

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Executive summary

According to Article 17 of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin – also known as Racial Equality Directive – the European Union Agency for Fundamental Rights (FRA) shall contribute to the European Commission report to the European Parliament and the Council on the application of the directive.

In 2008, the FRA launched an interdisciplinary research project on the 'Impact of the Racial Equality Directive', of which this report constitutes one part. It summarises the key findings of the research on the views of employer organisations, trade unions and non-governmental organisations (NGOs) in the EU concerning the application of the directive in practice, with a sole focus on the area of employment.

Racial Equality Directive

One of the key principles in the European Union law is prohibition of discrimination as laid out in Article 21 of the Charter of Fundamental Rights of the European Union. The Racial Equality Directive (2000/43/EC) is the **key piece of EU legislation** combating discrimination on the grounds of race or ethnic origin. It emphasises that individuals should receive no less favourable treatment because of their racial or ethnic characteristics. It was adopted in 2000 and prohibits discrimination in the areas of employment, education, social protection including social security and healthcare, and in access to and the supply of goods and services, including housing. The directive had to be transposed into each Member State's national legislation by 2003, with the Member States that joined the EU in 2004 and 2007 having a slightly extended deadline.

The Racial Equality Directive required the creation of specialised **Equality Bodies promoting equal treatment** in each EU Member State. The Equality Bodies have an important function in providing assistance to victims of discrimination so as to make the legal system more accessible to them.

Since experience had shown that it was difficult in practice to prove discrimination, the directive stipulated that victims need only bring forward facts 'from which it may be presumed that discrimination has occurred'. The **burden of proof then shifts to the defendant**: the court will assume the principle of equal treatment has been breached, unless the defendant can prove otherwise.

The directive also included an obligation for the Member States to promote **social dialogue** between employers and employees to further equal treatment and encourage agreements between the social partners on anti-discrimination rules, as well as dialogue with non-governmental organisations involved in the fight against discrimination.

Research approach and objectives

In the scope of this research, national experts in all 27 EU Member States conducted more than 300 interviews with key actors, including:

- individual employers;
- employer associations at national and regional levels;
- trade unions at national and regional levels;
- trade union confederations and trade union federations;
- national Equality Bodies and non-governmental organisations concerned with discrimination in employment in selected countries.

In most countries this involved interviewing representatives of the peak employer or trade union organisations, and targeting employers and trade unions where there were significant proportions of ethnic minority or migrant workers in their workforces or among their memberships.

The **specific objectives** of the research were to:

- (1) gather primary qualitative data on the awareness of Member State social partners of the Racial Equality Directive and the corresponding national legislation;
- (2) collect information on what the social partners have done to prevent and combat discrimination based on racial or ethnic origin in employment since 2003;
- (3) identify good employment practices that have been encouraged by the presence of the Racial Equality Directive;
- (4) explore, which in the opinion of the social partners are the factors behind the low level of public complaints of racial and ethnic discrimination in employment reported to the new Equality Bodies, established under the directive;
- (5) assess the extent of active social dialogue on combating discrimination in employment between 2003-2004 and 2009. This covers the five years since the EU key instrument intended to prevent and combat discrimination based on racial and ethnic origin was supposed to have been implemented.

Challenges in assessing the impact of the directive

Analysing the effectiveness of the Racial Equality Directive is not a straightforward process. The respondents commented on and referred to several discrete political and economic developments as complicating any evaluation. These are namely:

- almost parallel introduction of **two Equality Directives** (Directive 2000/43/EC and Directive 2000/78/EC) into respective national legislations; for many interviewees, the two pieces of legislation became largely indistinguishable. Many companies and trade unions understood supporting 'Equality' as actions towards gender equality, rather than challenging "racial discrimination";
- **EU enlargement** by a total of 12 Member States (EU-12) in May 2004 and January 2007 since drafting of the directive; according to the assessments of the national experts, there is a noticeable gap in awareness of the directive between the respondents from the 15 EU Member States that formed the EU prior to enlargement in May 2004 (EU-15) and the EU-12, with the latter being less aware of and less responsive to the new legislation;
- increased **migration** and mobility within the EU; some social partners understood that the directive aims at protection of migrant workers, while in other countries it is assumed that it is actually only about equality for workers who are 'visibly' different. The result has been that in some countries considerable attention was reported in relation to the directive encouraging social partner activities aimed at the integration of recent migrants; at the same time, much less attention was reported about actions aimed at the full inclusion of EU citizens of minority racial or ethnic origin. In a parallel, equally misplaced understanding of the directive, in some other countries the absence of significant populations of black citizens led social partners to conclude that the directive did not apply to them, despite the presence of minorities who experienced considerable discrimination;
- global **economic crisis**, which reportedly encouraged protectionist tendencies; in addition, the social partners interviewed often reflected that the 'crisis' and 'jobs' had a higher priority than respect and real racial and ethnic equality;
- in the aftermath of the 9/11 terrorist attacks **Islamophobia** fuelled ideologies and discriminatory behaviour that the Racial Equality Directive was drafted to address.

Employer views and perspectives

The employer views on the impact of the Racial Equality Directive on the ground ranged from positive to overly critical ones.

1. Positive impact of the directive

Many representatives of employer organisations expressed the view that the Racial Equality Directive had made a moral contribution to a 'more open Europe'. The employer organisations that were positive in their assessment of the Racial Equality Directive were more likely to have responded to its implementation by adopting specific actions; these included: advising member organisations of the legislation; conducting diversity audits; support for language classes; introducing new or enhanced training; adopting codes of conduct; or introducing new complaints procedures. Several employer organisations also reported the adoption of diversity management strategies. There was limited evidence of positive measures in relation to recruitment strategies. Some of the employer organisations argued that since the legislation was new in their countries, they would be responding to the directive's requirements in the future, thereby emphasising the need for capacity building. Lastly, some employers also saw the positive impact of the directive in the "symbolic" value it had.

2. Little or no impact of the directive

A second group of employer organisations felt the directive had made little or no difference and considered it a post-factum recognition of a new reality. This group of employer organisations believed that labour market changes, such as increased migration of workers, had been more instrumental than the directive in changing employment practices to support anti-discrimination measures. Some argued that in today's labour market workers' skills mattered more than their ethnic origin. Lastly, employers who saw little or no impact of the directive argued that the pre-existing practices and existing laws or national constitutions already proscribed discrimination on the grounds of race or ethnic origin. Therefore, in their views the directive had little or no impact.

3. A negative view of the directive

Criticisms of the directive expressed by some employers were driven by the resistance to any legally binding instruments that might interfere with the freedom of enterprise. Some employer organisations participating in this research believed that **regulating** attitudes and behaviours in this area was **not possible**. Others saw the directive as an **unnecessary burden**: it imposed additional

costs and bureaucracy on businesses – the clause on the burden of proof was singled out by some respondents.

4. Ignorance and lack of awareness of the directive

Finally, there were employer organisations who may or may not have heard of the legislation, but which believed that it did not concern their organisations or their country. This attitude was particularly visible among the employer organisations in the 12 new Member States of the EU (EU-12) that joined the European Union in 2004 and 2007. In fact, some of the employer organisations in these countries treated anti-discrimination legislation as part of a 'western Europe package' of 'exotic' issues forced upon them from the outside in the process of EU accession negotiations. Others simply denied that ethnic discrimination existed in their countries. This view was particularly tangible in relation to Roma population – many employers identified their poor labour market position as a consequence of individual characteristics, accepting as "natural" that Roma have a different social status. However, some organisations also expressed the view that implementation and change were a question of time and that the new Member States needed time to 'catch up'.

Trade union views and perspectives

Trade union interviewees generally had a higher awareness of the Racial Equality Directive and corresponding national legislation compared with the employer respondents. However, their views were not homogenous and could be divided into four broad groups.

1. Positive impact of the directive

Many trade union respondents considered that the directive helped spread the general awareness of workers' rights among the general public. Several active policy changes were identified by the trade union respondents as a direct or indirect consequence of the directive. Some referred to one result being a reconsideration of traditional trade union views of opposing ethnic monitoring.

2. Little or no impact of the directive

It was argued that the adoption of the directive had not led to any improvements because pre-existing national legislation on ethnic discrimination already provided protection. Furthermore, some of the trade union respondents believed there was not enough readiness of individuals and organisations to challenge discrimination. This was ascribed to fear of raising a 'controversial' issue in the workplace both on the side of trade unions as well as employers. Some trade union respondents believed that the directive was not a right mechanism to fight discrimination.

3. Negative view of the directive

Some concerns were voiced that a policy of pursuing legal remedies on an individual level could lead to a weakening of unions' collective bargaining. Some also argued that workers did not pursue claims because the legal processes were complicated and slow, the remedies were limited and the desire to remain in work meant that individuals were reluctant to use the law because of a fear of reprisals.

4. Ignorance and lack of awareness of the directive

Several interviewees exhibited a lack of knowledge of and unease with the concept of racial discrimination. Furthermore, they insisted on denying the presence of discrimination despite admitting that particular groups, especially the Roma or linguistic minorities, do experience generalised disadvantage. Some appeared to define racial or ethnic discrimination in ways that were so narrow that they automatically concluded that such discrimination could not be present in their countries or trade unions. In other instances, trade union officials interviewed in this study displayed attitudes tolerant of discrimination on the grounds of racial origin.

The way forward: views and perspectives of social partners

Employer and trade union respondents participating in this research were asked whether they had suggestions as to how anti-discrimination policies on the grounds of racial or ethnic origin could be improved. Both agreed that **more rights awareness is needed**, especially among the target population. The interviewees indicated the need for anti-discrimination training to be mainstreamed into the social partner development programmes to strengthen the impact of Racial Equality Directive.

Key findings

- There are **geographical differences** in the awareness of the directive and corresponding national legislation among the social partners in the EU-27. In general, the social partner organisations in the 15 EU Member States (EU-15) that constituted the EU before enlargement in 2004 and 2007 were more aware than their peers in the EU-12. In some of the EU-12 countries, it was opined that anti-discrimination laws were so ineffective as to not merit consideration. They were treated by some respondents as part of a 'western Europe package' of 'exotic' issues that are marginal in their countries. On the other hand, EU-15 countries, which in themselves are not homogeneous, had greater awareness of the

legislation, since most respondents were in some way involved in preparations of the directive.

- **Trade union and employer organisation views differ.** Trade union interviewees generally had a higher awareness and more positive assessment of the Racial Equality Directive and corresponding national legislation. Overall, while trade unions prefer compulsory regulations, the employer organisations would opt for voluntary solutions. Small and medium-sized enterprises (SMEs) reported facing greater problems in developing diversity policies at the workplace. On the other hand, for the trade unions the challenge remains to reflect ethnic diversity in their ranks and convince their membership that real equality would benefit all workers.
- Neither employer organisations nor trade unions displayed a comprehensive understanding of racial discrimination as it affects the **Roma** population, for instance. In some countries, Roma were referred to, but their discriminatory treatment was often not conceptualised as racism. With few exceptions, the Roma were generally not acknowledged as coming under the protection of the directive.
- In most EU Member States, the **Equality Bodies** are not yet viewed as being entirely appropriate vehicles to use in articulating complaints about racial or ethnic discrimination in employment and in securing satisfactory outcomes. The social partner organisations interviewed voiced concerns about their lack of independence and powers.
- **Social dialogue** encouraged by the directive has led to many joint initiatives to challenge racial and ethnic discrimination. In many instances, social dialogue at EU, national or even company level has established common ground between employers and trade unions on the importance of fully integrating minority-origin workers, as well as of taking steps to end all forms of racial or ethnic discrimination. European funding, especially from the EQUAL Programme, has been used extensively to finance joint actions in this area. However, considerable room for improvement remains. While awareness of the directive is highest at the level of confederations and peak organisations of both employers and trade unions, it often does not reach organisations at lower levels, such as sectoral or regional social partner organisations.

Introduction

The European Union Agency for Fundamental Rights

The European Union Agency for Fundamental Rights (FRA) was established by Council Regulation (EC) No 168/2007 on 15 February 2007. Articles 2-4 set out the Agency's objectives, scope and tasks. These include identifying and analysing major trends in the field of fundamental rights; assisting the EU and its Member States in decision making, by providing quality and relevant data, facts and opinions; informing target audiences through awareness-raising activities; and identifying and disseminating examples of good practice.

In 2008, the FRA launched an interdisciplinary research project on the 'Impact of the Racial Equality Directive'. The project aims to collect evidence of the changing context of racial and ethnic discrimination in Europe and of the effectiveness of Directive 2000/43/EC. The project consists of four work packages:

- (1) secondary data collection on the impact of anti-discrimination practices in all 27 European Union Member States (data collected by RAXEN network);¹
- (2) secondary data collection of complaints statistics (data collected by FRALEX network of legal experts);²
- (3) the first ever EU-wide survey of immigrant and ethnic minority group experiences of discrimination and victimisation in everyday life, the European Union Minorities and Discrimination Survey (EU-MIDIS);³
- (4) primary qualitative data collection on the views of social partner organisations in the EU Member States on the impact of the Racial Equality Directive in the area of employment.

The evidence collected through this multidisciplinary project will allow the FRA to contribute to the European Commission's report to the European Parliament and Council on the application of the directive in the Member States.

Objectives of the report

This research was carried out on behalf of the FRA by the Working Lives Research Institute (WLRI) of London Metropolitan University.⁴

The specific objectives of the research are to:

- (1) gather primary qualitative data on the awareness of Member State social partners of the Racial Equality Directive and the corresponding national legislation;
- (2) collect information on what the Social Partners have done to prevent and combat discrimination based on racial or ethnic origin in employment since 2003;
- (3) identify good employment practices that have been encouraged by the presence of the Racial Equality Directive;
- (4) explore, what in the opinion of the social partners are the factors behind the low level of public complaints of racial and ethnic discrimination in employment reported to the new Equality Bodies, established under the directive;
- (5) assess the extent of active social dialogue on combating discrimination in employment since implementation of the directive.

The research involved interviewing employer organisations or associations, individual employers, trade union confederations and individual trade unionists and many NGOs between March and June 2009. It resulted in 27 national reports and this final comparative report.

1 For more information on the FRA RAXEN network, please see: http://194.30.12.221/fraWebsite/partners_networks/research_partners/raxen/nfp/nfp_en.htm.

2 FRA (2010) *The Racial Equality Directive: application and challenges*, Luxembourg: Publications Office of the European Union.

3 FRA (2010), *Rights Awareness and Equality Bodies*, EU-MIDIS Data in Focus 3, Luxembourg: Publications Office.

4 This report has been prepared by Stephen Jefferys and Sonia McKay of the Working Lives Research Institute (WLRI) of London Metropolitan University under a service contract with the FRA. The report was edited by the FRA, which is responsible for its conclusions and opinions.

Racial Equality Directive

One of the key principles in the European Union law is prohibition of discrimination as laid out in Article 21 of the Charter of Fundamental Rights of the European Union.⁵ The Racial Equality Directive⁶ is the key piece of EU legislation combating racial or ethnic discrimination. It emphasises that individuals should receive no less favourable treatment regardless their racial or ethnic characteristics. The directive prohibits discrimination in the areas of employment, education, social protection including social security and healthcare, and access to and the supply of goods and services, including housing. It was adopted in 2000 and had to be transposed into each EU Member State's national legislation by 2003 (with the 10 EU Member States that joined the EU on 1 May 2004 having a deadline of that year, and Bulgaria and Romania being required to transpose it by their date of accession on 1 January 2007).

Controversies over definitions

The FRA 2010 report on *Migrants, Minorities and Employment – Exclusion and Discrimination in the EU-27 Member States of the European Union* includes the following paragraphs in Chapter 3 on 'Racial/ethnic discrimination in employment: EU law'.⁷

"The reference to 'racial origin' was a controversial issue in the negotiations among the Member States about the Equality Directives⁸. A compromise was reached with the inclusion in the preamble of the explicit statement that the use of the term 'race' in the directive did not imply any admission by the EU of 'theories which attempt to determine the existence of separate human races'. The different views taken by the Member States are reflected in the formulations adopted in national legislations: Austria and Sweden for instance do not mention 'race', referring only to 'ethnic' belonging or origin. Belgium refers to 'presumed race', and France to 'real or presumed' racial belonging.

The directive does not define what 'ethnic or racial origin' should be taken to mean. Many countries explicitly mention skin colour – such as Belgium, Bulgaria, Estonia, and Slovakia – and nationality or national origin – such as Latvia, the Netherlands, Poland, and Romania. France prohibits discrimination on physical appearance and name. Language is included as a separate protected ground in Estonia, Finland, Lithuania, Romania and Slovakia. In Hungary, belonging to a national or ethnic minority is cited as a protected ground. The boundary between religion and ethnicity is ambiguous: in Dutch case law and in the UK, discrimination against Jews, Muslims and Sikhs has been recognised as race discrimination."

5 European Union (2007) *Charter of Fundamental Rights of the European Union*, Official Journal C 303, Luxembourg: Publications Office of the European Union, available at: <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:303:SOM:en:HTML>.

6 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Official Journal L 180, Luxembourg: Publications Office, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CEL:EX:32000L0043:en:HTML>.

7 FRA (2010), *Migrants, Minorities and Employment – Exclusion and Discrimination in the EU-27 Member States of the European Union*, Vienna: FRA.

8 The Equality Directives referred to here are the Racial Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC).

The Racial Equality Directive sets minimum standards for EU Member States to combat discrimination and, in many Member States, it was innovative in five key respects.

1. The directive required the creation of **Equality Bodies** and specialised judicial or administrative procedures to promote equal treatment in each Member State where they did not previously exist (Article 13).
2. It stipulated that Member States should ensure that associations or other legal entities have the possibility of engaging in such procedures in support or on behalf of individual victims.
3. It reversed the **burden of proof**, requiring only that the complainant bring forward facts *“from which it may be presumed that discrimination has occurred”*, thus requiring the defendant to prove that the principle of equal treatment has not been breached.⁹
4. The directive also gave clear definitions as to what constituted the denial of equal treatment, and carefully defined direct discrimination, indirect discrimination and harassment (Article 2):

Direct discrimination is defined as where *“one person is treated less favourably than another is, has been, or would be in a comparable situation on grounds of racial or ethnic origin”*.

Indirect discrimination is defined as occurring where *“an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary”*.

Harassment is defined as *“unwanted conduct related to racial or ethnic origin... with the purpose or the effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment”*.

5. Article 11 of the directive explicitly refers to **social dialogue**. It instructs Member States to *“take adequate measures to promote 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”*.

⁹ See European Commission (2007) *Developing Anti-Discrimination Law in Europe. The 25 EU Member States compared*, Luxembourg: Publications Office, p.58.

The role of social dialogue in developing the directive

The Racial Equality Directive had an important antecedent. Being aware that the European Commission had determined 1997 should be the European Year Against Racism, the main European-level social partners met in Florence in 1995 and issued a nine-page ‘Joint Declaration on the Prevention of Racial Discrimination and Xenophobia and Promotion of Equal Treatment at the Workplace.’¹⁰

The so-called ‘Florence Declaration’, signed by the European Trade Union Confederation (ETUC), UNICE (the forerunner of BusinessEurope) and the European Centre of Employers and Enterprises providing Public Services (CEEP) defined **racial discrimination** as:

“comprising any distinction, exclusion, restriction or preference based on a person’s real or perceived race, religion, ethnic or national origin or colour, which has the effect of nullifying or impairing equal treatment in employment or occupation. This includes direct discrimination: where a person is treated less favourably on the grounds of his or her real or perceived race, religion, ethnic or national origin or colour. It also includes indirect discrimination: unjustifiable practices which, although applied without distinction, adversely affect more people of a particular race, religion, ethnic or national group than those not of that group.”¹¹

The Florence Declaration’s opening words reaffirmed

“the very great importance they attach to the achievement in Europe of a democratic, pluralistic society characterised by solidarity and respect for the dignity of all human beings”.

This joint commitment by European employers and trade unions is of crucial importance in combating discrimination.

Both sides of industry have an important role to play in combating racial discrimination at the workplace. European employers have a prime responsibility for the access to work of ethnic and racial minority

¹⁰ UNICE, ETUC and CEEP (1995) *Joint Declaration on the Prevention of Racial Discrimination and Xenophobia and Promotion of Equal Treatment at the Workplace*, Brussels, available at: http://resourcecentre.etuc.org/linked_files/documents/Declaration%20-%20xenophobia%20EN.pdf?HPSESSID=019e0e1841a8d948aa606296063b8df0.

¹¹ This definition of racial discrimination proposed by the European social partners is broader than that within the directive of 2000 since it includes discrimination on the grounds of national origin.

groups and for the conditions under which they work. It is clear that employers at a national and local level have a major role to play in preventing unlawful discrimination, as well as in promoting equality and the integration of people of different ethnic origins.

While some employers accept the moral case for treating all workers equally, many also identify a business opportunity in offering ethnic minority and migrant workers employment in customer-facing occupations or in areas with significant minority populations. These employers see the value in including 'other' workers in their workforces and are often ready to support 'diversity charters' and policies. This can include their being more prepared to adopt policies and practices against racial discrimination than are employers who are less concerned about attracting minority customers.

Europe's trade unions are its largest voluntary civil society organisations. They exercise widely varying degrees of influence in different countries and sectors over workplace conditions and regulations. All the affiliates of the ETUC are bound by its anti-racial discrimination stance. All of the European sector federations have either supported the ETUC positions or have adopted their own anti-discrimination positions.

Assessing the impact of the directive in context

Assessing the effectiveness of the Racial Equality Directive in changing behaviours in European labour markets since 2003 has been made much more complicated by the following political and economic developments commented on and referred to by the respondents.

Two Equality Directives

The Employment Equality Directive (2000/78/EC) prohibits discrimination in employment and occupation – access to employment, access to vocational training, working conditions, and membership of workers organisations – on the grounds of religion or belief, disability, age or sexual orientation. Together with the Racial Equality Directive, it sets a common framework for all EU Member States to implement anti-discrimination laws and policies.¹²

The passage of the Employment Equality Directive six months after the Racial Equality Directive, and its encompassing several of the same elements as the Racial Equality Directive (in particular the shift in the burden of proof and rights of complaint to an Equality Body) led many Member States to implement both in the same piece of national legislation. Where this occurred, most respondents participating in this research drew no distinction between the impact on the ground of the two directives.

Enlargement

In 2004 and 2007, the EU expanded by a total of 12 new Member States. In many of these States, there are significant populations of Roma, who almost everywhere experience social and economic disadvantage. At the time of drafting of the directive, Roma were not a significant minority population in the EU and their particular situation is not so well captured in this text of the directive. Therefore, it is difficult to use the same criteria for evaluating the very different situations of minorities and migrants in EU-15 and EU-12.

Migration

The European labour market boomed for most of the first decade of the 21st century. A huge demand for labour in western Europe drew in economic refugees, students and professional workers who entered the EU from third countries, while millions also moved from eastern to western Europe. Arguably this boom witnessed significant growth in the informal sectors of most EU economies. It also saw a significant shift in many employers' attitudes to migrant workers, whom they now welcomed as the answer to labour shortages. The amalgam of issues of discrimination against migrant workers with discrimination against indigenous ethnic minority workers provided a further complication for an assessment of the Racial Equality Directive's impact on the ground. Although, both groups are covered by the directive, the public attention is often concentrated on the protection it gives to the migrant workers, forgetting the benefits it gives to European Union nationals.

12 FRA (2010) *Migrants, Minorities and Employment – Exclusion and Discrimination in the EU-27 Member States of the European Union*, Luxembourg: Publications Office.

Economic crisis

From 2008, however, the European economy entered the sharpest economic crisis experienced since the 1930s. In several countries instances of xenophobic discourse and hostilities towards third country nationals re-surfaced against the background of job losses of the EU citizens. It led to questioning of EU policies against racial and ethnic discrimination in some countries.

Islamophobia

The 11 September 2001 terrorist attacks in New York unleashed world-wide condemnation. But it also precipitated sharp increases in the numbers of media, verbal and physical attacks on Muslim people and ideas in nearly all European countries. Some forms of public racism and xenophobia became politically and socially more acceptable in the very period the Racial Equality Directive was seeking to marginalise discriminatory ideologies and employment practices fuelled by them.¹³

Assessment of challenges

The combination of these elements made it challenging to clearly assess the impact of the directive on the ground. Making such an evaluation still more difficult has been the different scope or meaning attributed to the directive. This specifies that

“this prohibition of discrimination should also apply to nationals of third countries, but does not cover differences of treatment based on nationality and is without prejudice to provisions governing the entry and residence of third-country nationals and their access to employment and to occupation”¹⁴.

This rather complex formulation has permitted different readings of the directive in various Member States.

In some countries the scope of the Racial Equality Directive is primarily defined around the need to prohibit

discrimination against migrant workers (who are only sometimes ethnically or racially ‘visible’); in others, it is defined as only concerning equality for workers whose ‘otherness’ is defined by visible difference. In the former group of countries, there were many reports of the directive encouraging social partners to integrate recent migrants, but relatively few about actions aimed at the full inclusion of ethnic minority citizens. In the latter group of countries, the absence of significant populations of ethnic minority citizens led many social partners to conclude that the directive did not apply to them, despite the presence of national or linguistic minorities who experienced considerable discrimination.

In some countries there were already specific laws proscribing forms of racial and ethnic discrimination, sometimes within society as a whole and sometimes specifically referring to employment. In others, there was a presumption that existing constitutional guarantees of ‘equality’ also applied to ethnic minorities. The Racial Equality Directive was rarely implemented from ‘cold’, and the interviewee responses concerning their awareness of and response to racial or ethnic discrimination largely refer to the combination of changes brought about by the directive and the pre-existing anti-discrimination law.

Finally, it must be noted that transposition within the EU did not stick strictly to the implementation timetable. Nor were the transpositions that did take place initially fully satisfactory. In June 2007, the European Commission formally requested 14 Member States to fully implement EU rules under the directive. As recently as October 2007, neither Spain nor Luxembourg had operational Equality Bodies, and the Czech Republic Equality Body was only established in June 2009.

Another issue was that many of the Equality Bodies have not applied any sanctions in relation to cases of discrimination on the grounds of race or ethnic origin in employment. Perhaps even more significantly, nearly everywhere, the levels of processed complaints have been very low.¹⁵

For many respondents there was no distinction to be drawn between the directive and the resulting new laws or amendments to existing regulations that occurred when it was transposed. Therefore, in this report we use the terms Racial Equality

13 For a more detailed discussion on Islamophobia please consult the following reports: EUMC (2002) *Summary Report on Islamophobia in the EU after 11 September 2001*, Vienna: EUMC; EUMC (2006) *Perceptions of Discrimination and Islamophobia*, Vienna: EUMC; EUMC (2006) *Muslims in the European Union: Discrimination and Islamophobia*, Thematic report, Vienna: EUMC; FRA (2009) *The Muslims*, EU-MIDIS Data in Focus Report 2, Luxembourg: Publications Office.

14 European Union (19 July 2000) *Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin*, Official Journal L 180, Luxembourg: Publications Office, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML>.

15 See FRA (2008) *Annual Reports 2008*, Vienna: FRA, p. 107; FRA (2009) *Annual Report 2009*, Luxembourg: Publications Office, p. 21; and FRA (2010) *Annual Report 2010*, Luxembourg: Publications Office.

Directive or simply ‘the directive’ interchangeably with the name of the new national legislation.

Terminology used

While interviewees used various terms to describe minority populations in their countries, we use the following terminology in this report:

- *migrants* refers to foreign-born people who have moved to the host country to live and work;
- *ethnic minorities* refers to people whether foreign-born or nationally-born, whose ethnic origins are distinct from the majority of nationally-born people in the country they live in;
- *national minorities* refers to people who are recognised as having distinct long-standing cultural characteristics that closely resemble those of a country other than that where they were born;
- *linguistic minorities* refers to people whose first language is not the language of the majority of people in the country in which they live;
- *“the other”* refers to all of the above groups who are stereotyped by national majority populations, according to their cultural, linguistic, racial or ethnic characteristics.

Structure of the report

Chapter 2 in this report sets out the methodology used: who was interviewed; the characteristics of the respondents and their awareness of the directive. Chapter 3 focuses on the employers and how the Racial Equality Directive impacted on them and their responses. Chapter 4 focuses on how the directive impacted on the trade unions. Chapter 5 discusses the respondents’ experiences and views of the national Equality Bodies. Chapter 6 focuses on the role the social dialogue plays in fighting discrimination on the grounds of race or ethnic origin. Chapter 7 reports the views of the social partners on how to improve the directive. Finally, Chapter 8 details the conclusions and key findings from the research.

1. Methodology

This chapter sets out the methodology used in this research. It gives details of the interviewers, and the number and characteristics of respondents in each of the countries (employers, trade unions, Equality Bodies and non-governmental organisations). Finally it describes how the awareness of the directive among the respondents was evaluated.

1.1. Who was interviewed?

This research project covered all 27 EU Member States. In each country the FRA contractor, the Working Lives Research Institute (WLRI), selected researchers as national experts to carry out the interviews and to write a national report using criteria based on:

- knowledge of the employment relations context with access to employer and trade union respondents;
- knowledge of the issue of discrimination in employment.

In each country, these national experts identified the following respondents:

- (1) individual employers;
- (2) employer associations at national and regional levels;
- (3) trade unions at national and regional levels;
- (4) trade union confederations and trade union federations;
- (5) national Equality Bodies and non-governmental organisations concerned with discrimination in employment in selected countries.

The choice of organisations approached was made with the intention to best cover the issues concerned. In most countries, this involved interviewing representatives of the peak employer or trade union organisations, and targeting employers and trade unions where there were significant proportions of ethnic minority or migrant workers in their workforces or among their memberships.

The national expert for the country would then email and telephone the selected organisation with information about the research project and would invite the organisation to nominate an individual who would respond on their behalf. In most countries, therefore, this purposive sampling led to interviews with employers and trade unions that are more open to discuss the often sensitive issues concerned with the subject of racial discrimination. This sampling method may introduce

some bias since those agreeing to be interviewed tended to be more likely to be concerned with the issues of non-discrimination and to have taken action than those not agreeing or not being approached. However, it is not in contradiction with the purposes of the research project as its aim is to develop understanding of the issues facing the social partners, not to claim to be 'representative' of all employers or all trade unions.

Interview numbers

The aim of the research project was to interview 150 representatives of the employers and 150 representatives of Europe's trade unions, giving an overall total of about 300 organisations. The target numbers of interviews in each country were divided according to population size. All the interviewees were asked to sign a consent form,¹⁶ and in all except nine cases the interviews were recorded.¹⁷ A total of 344 respondents were interviewed during a total of 333 interviews (a small number of interviews involved two or three interviewees). Out of the respondents 52 per cent were male and 48 per cent were female. There were slightly more male respondents among the employer interviewees (60 per cent) and slightly fewer men among the Equality Body and NGO respondents (43 per cent). The interviews were all conducted in one of each country's recognised national languages between March and June 2009. The list of those who conducted the interviews is provided in Annex 1 (see page 77).

The employer representatives interviewed were nearly all Human Resource Managers, either line managers with responsibilities for equality issues or legal experts. Almost all had detailed knowledge of or responsibility for recruitment and internal promotion, or of their organisation's policies in relation to discrimination. As representatives of employer organisations or individual employers, the employer respondents tended to be careful to present only the organisation's views, rather than their own personal opinions.

The trade union interviewees almost all worked full-time for their union, either being directly employed or being given time to work for the union

16 The FRA consent form specified that the interviewee agreed to participate in the interview and that the statements they made could be used in electronic and paper publications of the research project referencing their organisation but not their name.

17 In one case, the respondent from the Greek peak employer organisation, the Hellenic Federation of Enterprises (SEV), explained that there was a strict general policy against having interviews recorded. In the other cases, there were technical problems.

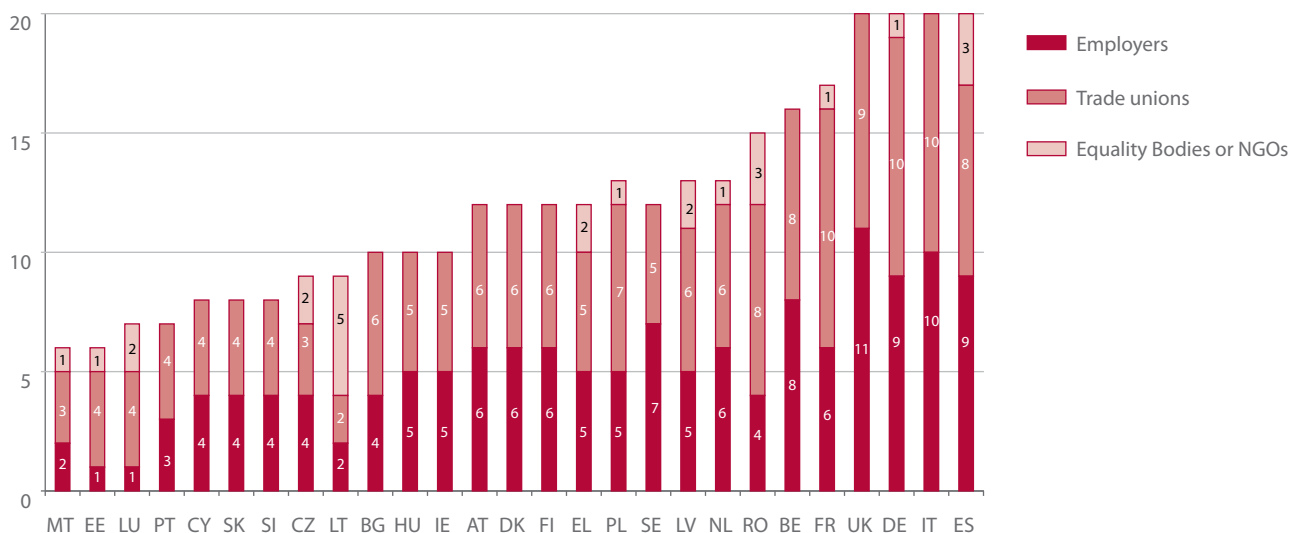
by their employer. In most cases they had specific organisational responsibilities for equality issues, discrimination, migrant workers or anti-racism.

Figure 1 shows the numbers of interviews conducted with the different social partners and NGOs by country, ranging from a total of 20 in Spain, Italy, Germany and the UK, down to six interviews each

in Estonia and Malta. The detailed figures charted here are provided in Annex 2 (see page 78).¹⁸

A relevant question in all qualitative research is “Would more interviews have led to different conclusions?”. Given the potential size of the target population, it is certain that many important actors were missed. Yet, the national experts who conducted the interviews are confident that interviewing more organisations would not have produced significantly different results.

Figure 1 : Numbers of interviews, by country and category



Source: FRA, 2010

18 The names of the organisations from which the interviewees came are listed in Annexes 6, 7 and 8.

Declining interviews

It is worth noting that over one third of the total number of 524 organisations initially approached declined to be interviewed. The distribution of refusals by country and type of organisation is shown in Annex 3 (see page 79).

Where reasons were given for declining to be interviewed, these tended to be either a lack of time on the part of human resources (HR) or trade union staff, or a lack of interest in the issue. In many cases, the sensitivities attached to the issue of racial or ethnic discrimination were also apparent in the rejection decision. In 19 countries, 194 different organisations refused requests for interviews, with most refusals registered in Spain and Romania.

The highest proportion of refusals came from multinational companies (66 per cent of those approached), followed by employer organisations at sector, branch or regional levels (63 per cent), and individual employers (44 per cent). These were closely followed by individual trade unions (41 per cent) and then by employer peak organisations (25 per cent). The lowest levels of refusals came from trade union peak organisations and Equality Bodies (8 per cent each).

The interviews lasted between 30 minutes and two hours. Two different semi-structured interview schedules were used by the interviewers, one for trade unions and another one for employers. They are attached as Annex 4 (trade union interview schedule (see page 80) and Annex 5 (employer interview schedule (see page 82). The schedules were developed by the WLRI research team working with the FRA and the project steering group¹⁹ to enable the distinctive views of both employers and trade unions to be expressed.

Interview analysis

Once completed, interview reports were either written up in English by the national experts involved, or written up in the national language and then translated into English and subsequently sent to the Working Lives Research Institute (WLRI) and to one of the regional experts.²⁰ At the WLRI, these interview reports were entered into a qualitative data analysis software package,²¹ and read and analysed initially in terms of the six main interview themes:

- (1) the background national and organisational context;
- (2) the kinds of policies and practices on ethnic and racial discrimination being implemented;
- (3) the extent and role of social dialogue in this area;
- (4) the impact on the organisation of the legal changes linked to the Racial Equality Directive;
- (5) a general assessment of the awareness of the rights granted under the directive by the organisation's own members and workers from ethnic and migrant backgrounds;
- (6) the difference that the Racial Equality Directive has made or could make.

At the same time, the national experts were each asked to prepare a brief national report summarising the interviews and to submit this first to the regional expert and to the WLRI. After the WLRI edited and developed these reports they were submitted to the FRA. These national reports are now available on the FRA website as background material to this comparative report (see <http://www.fra.europa.eu>).

The remainder of this chapter introduces the different categories of respondents, namely the employers and employer organisations interviewed, the trade unions and trade union federations and confederations, and the Equality Bodies and the NGOs. The final section explains the methodology used in presenting the results in the following chapters through introducing the evaluation of 'more aware' and 'less aware' employers and trade unions.

¹⁹ This comprised the FRA staff and representatives from the European Economic and Social Committee (EESC), BusinessEurope and European trade Union Confederation.

²⁰ Five of the national experts also worked as regional experts, controlling the content of the work of those reporting to them.

²¹ The package is NVIVO 8 from QSR. It enabled the interviews to be coded automatically according to these six general themes and as to the source of the interview. It then permitted further refined coding around a series of specific sets of issues.

1.2. Characteristics of respondents

1.2.1. Employer organisations

Employment in Europe is mostly concentrated in small and medium-sized enterprises (SMEs), the overwhelming majority of which employ less than 10 persons. Although large companies account for only 0.2 per cent of enterprise business population,²² they employ over 30 per cent of the European workforce (Eurostat, 2009) and can be exemplars of good practice.

The differences between large and small companies have an impact on their internal organisation and positioning. The smaller the company, the less likely it is that it would have a dedicated personnel/human resource department, let alone an employee dealing specifically with diversity matters. Also, the political agenda would differ between small, medium and large companies.

In order to promote common interests, companies often come together in the form of employer organisations (also referred to as employer associations or employer federations). Employer organisations frequently carry out collective bargaining with trade unions to establish a standard floor for hours, wages and working conditions at national, sectoral or regional level. In many cases collective bargaining can take place at local/company level.

The peak employer organisations constitute the following broad types of organisations:

- public sector employers;
- larger private sector employers;
- smaller private sector companies;
- micro-firms that produce craft products.

Which type of employers were interviewed?

When the term 'employers' is used in this report, it refers to both employer organisations and companies, unless stated otherwise. Furthermore, the term 'employers' only refers to those employer representatives who agreed to be interviewed. Nearly 90 per cent of these were HR directors, managers or legal advisors, with the remainder being senior executives.

Five main types of employers were included in the research:

- the peak employer organisation (a national level multi-sector association);
- the national sector employer association (a single sector national-level association);
- the regional level employer organisation (a multi-sector association located in a specific region or city);
- the domestically-owned company – an employer that has its headquarters and ownership structure based in the country where the interview took place;
- the foreign-owned company – an employer that is a subsidiary of a company headquartered in another country.

As it can be seen from Table 1, domestic companies were the largest group of interviewees in our research, followed by peak employer organisations, with regional or branch employer organisations being the third significant source of interviewees. The full list of all employers interviewed is shown in Annex 6 (see page 84).

22 Data for 2006 based on non-financial business economy activity published in Eurostat (2009) *European Business, Facts and Figures*, Luxembourg: Publications Office, available at: http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-BW-09-001/EN/KS-BW-09-001-EN.PDF.

Table 1: Number of employers interviewed, by organisation type and country

	Peak organisation	Branch/sector or regional organisation	Domestic companies	Foreign owned companies	Total		Peak organisation	Branch/sector or regional organisation	Domestic companies	Foreign owned companies	Total
LU	1				1	EL	1	1	3		5
MT	1	1			2	HU	3		2		5
EU Level	2				2	IE	2	3			5
LT	2				2	DK	3	3			6
EE			1		1	AT	2		2	2	6
PT	2		1		3	FI	3	2	1		6
RO	1		2	1	4	NL	2	2	2		6
BG	3		1		4	FR	3	2	1		6
SK		1	1	2	4	SE		1	6		7
CY	2	2			4	BE	1	3	2	2	8
SI	3		1		4	DE	2	2	5		9
CZ			4		4	ES		3	6		9
PL	3		2		5	IT	2	4	4		10
LV	2	1	2		5	UK	2		8	1	11
						Total	48	31	57	8	144

Source: FRA, 2010

Peak employer organisations

National peak employer organisations interviewed for the research were affiliated to EU-level social partner organisations, namely BusinessEurope or the European Association of Craft, Small and Medium-sized Enterprises (UEAPME). BusinessEurope has 40 members based in 34 European countries, and has a staff of 45 people based in Brussels. UEAPME comprises 83 member organisations from 36 European countries.

The peak organisations affiliated to BusinessEurope ranged from the Bulgarian Industrial Association (BIA) to the Confederation of Finnish Industries (EK) and the Confederation of German Employers' Associations (BDA). Cooperating peak organisations affiliated to UEAPME included the Cyprus Chamber of Commerce and Industry (CCCI) and the Paris area of the French General Confederation of SMEs (CGPME). Representatives of both BusinessEurope and UEAPME were also interviewed.

In EU countries with smaller populations, the research tended to focus on the peak employer organisations. For example, in Lithuania, with a 3.4 million population, the employer respondents were the Lithuanian Confederation of Industrialists, representing larger companies, and the Lithuanian Business Employers' Confederation, representing mainly smaller firms employing less than 250 employees. In Estonia, where the population is 1.4 million, the respondents came from the Estonian Employers' Confederation, which has 24 sector affiliates.

In countries where the peak organisations did not appear most likely to yield useful results in terms of contacts and experiences with issues of discrimination on the grounds of race and ethnic origin (namely in the Czech Republic, Sweden and Slovakia), purposive

sampling was applied to recruit interviewees from other forms of employer representation.

Branch/sector or regional employer organisations

An example of a sector employer organisation that participated in the research is the Association of Danish Media Employers (DMA), whose membership includes companies that own almost all the Danish daily newspapers and other media, print and distribution companies. Like another participant, the Danish Master Painters (DM), it is affiliated to the Danish peak employer organisation, the Confederation of Danish Employers (DA), which was also interviewed. In Italy, the Padua branch of the National Builders' Association (ANCE) with 200 medium-sized and large construction firm members was interviewed. In Germany, the metal working and electrical employer federation, Gesamtmetall, which is one of the country's most important sectoral employer associations, participated in this study. In Sweden, an interviewee from the Construction Federation cooperated with the research.

Domestic companies

Domestic companies with significant numbers of foreign-born or ethnic minority origin workers participated in the research.

Some were very large, such as the German Dussman industrial catering, cleaning and security company which began with just ten cleaners in the 1960s and today employs 26,000 staff. In Spain the food sector business, Grupo Alimentario Guissona, has 3,000 employees of whom 56 per cent were born outside the country. Proportionately to the size of its national economy and population, the food industry Zito dd's 1,550 employees is an even more important firm within Slovenia.

Other firms interviewed had fewer employees, such as the Northern Greek door panel manufacturer, Tehni Pantelos, with 170 staff, but with roughly half coming from the local Muslim minority groups. Also in Northern Greece, a public sector employer participated from the Komotini capital of Northern Greece's Rhodopi area, where about 15 per cent of the employees are Muslim. A large public sector employer was Haringey Council in North London, of whose 6,750 employees 63 per cent are black or minority ethnic or non-UK born.

Global players

Among the participating domestic companies that are also global players were the car maker BMW and the logistics and rail transport multinational, Deutsche Bahn, in Germany. In the UK, those participating included the multinational retailer, Tesco, the global bank, HSBC, and the telecommunications company, British Telecom (BT). In Spain, another major telecoms company, Telefónica, also participated in the study. In Italy, where about 60 per cent of its employees are not Italian nationals, the smaller metal-working multinational, Global Garden Products, was interviewed, as was the largest European poultry producer, Gruppo Veronesi.

In lieu of interviews with peak organisations in Czech Republic and Sweden, purposive sampling led to the following interviews.

In the Czech Republic, the employer interviewees came from the Thomayer Hospital, from two manufacturing companies, BV Elektronik and a rubber industry firm, Gumotex, and from an employment agency, Stamont-Metal International. These were firms that all use migrant and/or ethnic minority workers.

In the case of Sweden, the interviews were conducted with the giant Swedish-owned multinational construction group, Skansa, a local hospital and four other public services with experience in recruiting and integrating employees of different ethnic origins.

Foreign-owned companies

Eight foreign-owned companies were interviewed in the course of the research. In Slovakia, two respondents came from foreign-owned companies: the Hungarian-owned MOL Group oil company and US Steel, the largest employer in eastern Slovakia.

Among the foreign-owned multinationals that agreed to be interviewed were a Romanian subsidiary of Accenture, the global management consulting company, with around 200 staff, and the Belgian subsidiary of Carrefour, the world's second largest retailer. In Hungary, the Shell oil company participated, as it did in Austria where the global logistics company, TNT, also agreed to be interviewed.

It has to be kept in mind that qualitative research focusing on the views of nearly 150 company and employer association representatives across the whole EU-27 cannot in any way claim to be representative of all these types of employers. All that can be suggested is that the context and experiences described should be treated as indicative – pointing to the issues and responses that may have a more general significance.

1.2.2. Trade unions

Trade unions are Europe's largest voluntary citizen organisations. They exist in all 27 EU Member States, and one in four of all European employees are trade union members.²³ The European Trade Union Confederation (ETUC), whose membership extends beyond the EU, claims to represent the interests of 60 million workers. It does so through its 82 national trade union confederation affiliates. The ETUC is an EU-level recognised social partner organisation with a mandate to negotiate on social and labour issues. The ETUC is the peak trade union organisation interviewed at EU level in this study.

In certain countries trade unions represent only their own members in discussions with employers and governments.²⁴ On some occasions and in some other European countries they also speak for and represent the interests of all employees, even if they are not union members. In several European countries, trade unions are structured by ideological sympathies, with different peak organisations representing different political or religious origins. Belgium is an example of this, with the FGTB/ABW socialist confederation distinct from the CSC/ACV Christian confederation and from the CGSLB liberal confederation.

The peak union organisations present in many European countries may also reflect different occupational groupings, most often manual occupations and sometimes white collar and professional groups. Denmark is an example here, with the LO (the Danish Confederation of Trade Unions) and its 17 affiliated unions, generally representing manual workers,

the FTF (Salaried Employees' and Civil Servants' Confederation) organising white collar workers largely in the public sector and the AC (Central Confederation of Professional Associations) representing professionals and managers.²⁵

In a third group of countries, there is only one peak trade union organisation to which nearly all the trade unions affiliate, regardless of their membership characteristics. This is the case in the UK, where the Trades Union Congress (TUC) is the sole national representative trade union confederation.

Interviews were conducted with trade union organisations from EU and national peak level down to sectoral/branch, regional and local level. Usually, a mix of interviews took place to probe trade union responses and views more deeply than if only the views of the highest level were investigated. Table 2 shows the distribution of trade union interviews by country and type of organisation. The detailed list of trade unions that agreed to participate is shown in Annex 7 (see page 87).

23 European Commission (2009) *Industrial Relations in Europe 2008*, Luxembourg: Publications Office.

24 In some EU Member States, such as France, Germany and Hungary, dual representation systems have historically provided all employees with legal rights at workplaces above a certain size to elect representatives to Works Councils, as well as allowing employees who are trade unionists their own input into collective bargaining. The Information and Consultation Directive (2002/14/EC) provided deadlines for the extension of such rights to employees in all EU Member States from 2005 and 2007.

25 In some EU Member States, industrial sector or branch organisations are also affiliated to international and European-wide trade union bodies that group together national federations on the basis of their industrial or occupational identities. At EU-level interviews were conducted with three of these: with the European Public Sector Union (EPSU) representing national trade unions and federations of public sector workers; with the European Metalworkers Federation (EMF) representing trade unions with members in the manufacturing sector; and with Eurocadres representing trade unions of managerial workers.

Table 2: Number of trade union organisation interviewed, by level and country

	Peak	Sector/branch or regional	Local	Total		Peak	Sector/branch or regional	Local	Total
LT	2			2	LV	1	5		6
CZ			3	3	BG	2	4		6
MT	1		2	3	DK	2	4		6
EE	2	2		4	AT	3	3		6
EU Level	1	3		4	FI	3	3		6
LU	3		1	4	NL	2		4	6
SK		2	2	4	PL	5	2		7
CY	2	2		4	BE	3	4	1	8
PT	2	2		4	RO	4	1	3	8
SI	3	1		4	ES	2	6		8
EL	2	2	1	5	UK	1		8	9
HU	2	3		5	FR	3	4	3	10
IE	1		4	5	DE	1	8	1	10
SE		3	2	5	IT	3	7		10
					Total	56	71	35	162

Source: FRA, 2010

1.2.3. NGOs and Equality Bodies

Aware that the issue of racial or ethnic discrimination in employment could be sensitive for some employers and trade unions, in certain countries the national interviewers were asked to approach national Equality Bodies and Non-Governmental Organisations (NGOs). Where these organisations have knowledge of such discrimination they might be able to complement the answers provided by the social partners.

In most EU-27 countries, national Equality Bodies covering discriminations related to ethnic origins are relatively new,

although in several there were pre-existing mechanisms through which concerns could be raised or brought before employment tribunals. At the EU-level, interviews were conducted with the new organisation representing all of Europe's Equality Bodies, Equinet, and with the European umbrella NGO, the European Network Against Racism (ENAR). The names of the other Equality Bodies and NGOs interviewed are listed in Annex 8 (see page 90).

Table 3 provides an analysis of the types of third-party interviews conducted in the 13 countries and at EU level.

Table 3: Number of interviews with Equality Bodies and NGOs, by country

	Equality Body	National NGO	Local NGO	Total		Equality Body	National NGO	Local NGO	Total
PL		1		1	EU Level	1	1		2
MT	1			1	LV	1	1		2
FR		1		1	CZ		1	1	2
DE			1	1	EL		2		2
NL		1		1	ES		2	1	3
EE	1			1	RO	1	2		3
LU	1	1		2	LT		5		5
					Total	6	18	3	27

Source: FRA, 2010

1.3. Ranking employer and union awareness

A major focus of the interviews for this research was to gather primary data on the 'awareness' of the Racial Equality Directive shown by the social partners, and on what the employers and trade unions have done to prevent and combat discrimination based on racial or ethnic origin since 2003.

After the interviews were completed, the national experts were asked to gauge the extent of awareness of the directive and the response to the legislation by the respondents' organisations. The objective was to provide a combined estimate of the extent of the respondents' knowledge of the Racial Equality Directive and the extent to which their organisation had responded to the new laws. They made these evaluations in response to six questions where they were asked to score them on a scale ranging from 1 (**limited** awareness or response) to 3 (**very extensive** awareness and response).

Once the national experts had completed their initial scoring they then averaged the results and produced two separate scores, one for 'employer awareness and response' and the other for 'trade union awareness and response'. These evaluations provide the data for Figures 2 and 3. The ranking is done based on the sum of two scores, representing the joint awareness of trade unions and employers in the given country, as assessed by the country expert.

Questions used to score 'awareness'

- (1) Are they (employers or unions) aware of the Racial Equality Directive?
- (2) Are they aware of national anti-racial discrimination legislation resulting from transposition of the directive?
- (3) Are they aware of their national Equality Body (if one exists)?
- (4) Have they adapted their policies to include anti-racial discrimination measures as a result of the directive?
- (5) Have they adapted their practices to include anti-racial discrimination measures as a result of the directive?
- (6) Are they strongly committed to anti-racial discrimination?

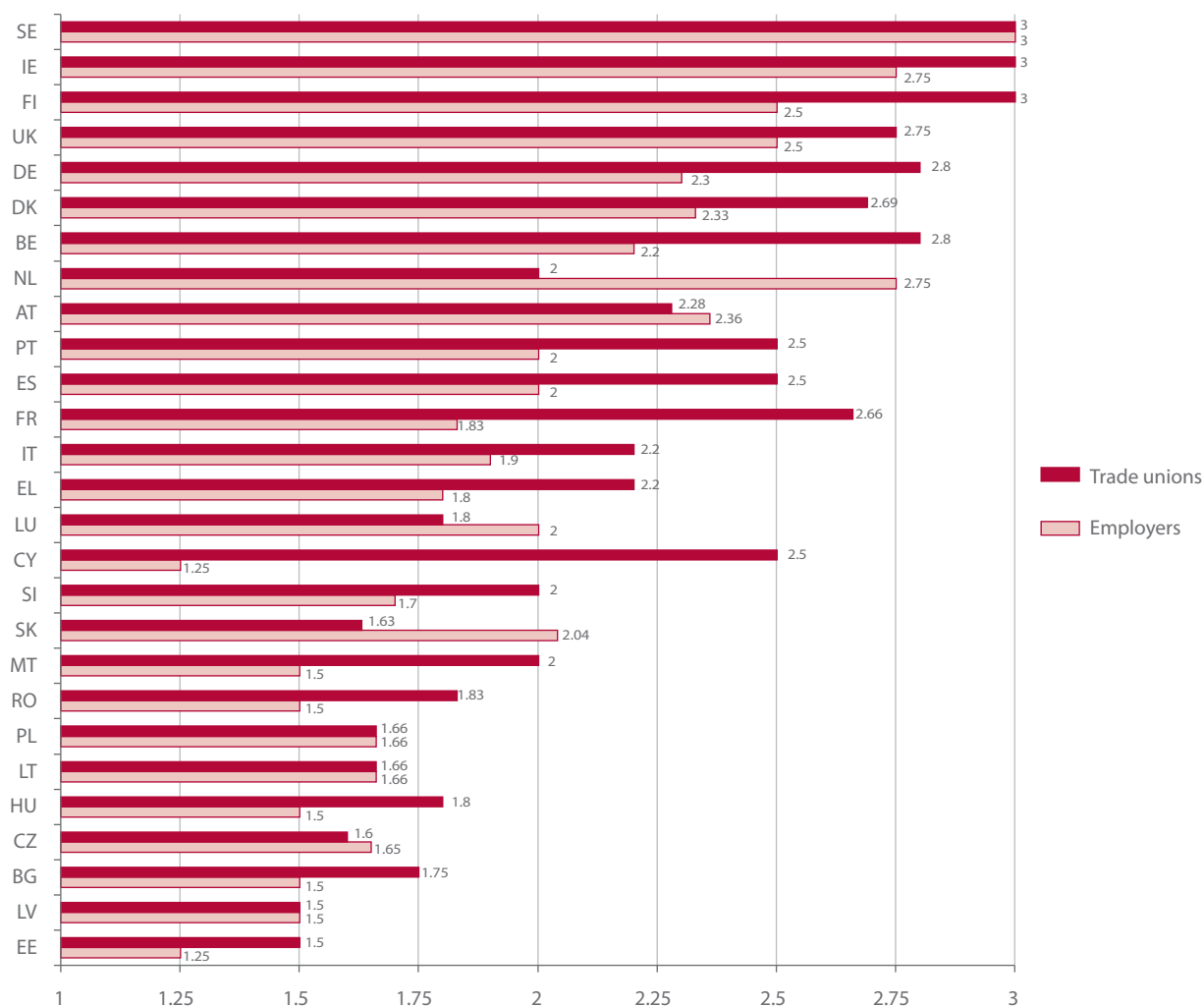
The data reflect the national experts' assessments of the groups of respondents, and thus are only **individual evaluations**. The respondent organisations were targeted by the interviewer and were self-selecting in that they agreed to be interviewed. The bar chart in Figure 2 does not claim to be representative of those who were not interviewed, nor of any country as a whole. Even among the small numbers of organisations interviewed, there was often considerable heterogeneity.

These awareness estimates depended upon who agreed to be interviewed. In Northern Europe the respondents were more often larger national employer organisations or larger multinational employers or larger trade unions

than they were in southern or central and eastern Europe. Awareness levels also reflected the levels of responsibility of the interviewee. Generally, the more senior, and the longer in their post was the respondent, the more likely it was that he or she was familiar with anti-discrimination law. Equally, the more ethnic minority or migrant workers employed by the company or within the sector, the more likely the employer or trade union was to be seriously committed to anti-discriminatory practices.²⁶

26 The Austrian employers interviewed, to give one example highlighted by the national expert, appear to be very aware and highly proactive concerning racial and ethnic discrimination, but this may reflect more on the national expert's selection process than on the reality for all Austrian employers.

Figure 2: Assessment of awareness and responses to the Racial Equality Directive on a 3-point scale (1 = low awareness; 3 = high awareness), by organisation and country



Source: FRA, 2010

The usefulness of these evaluations is not, therefore, because they reveal any statistical truth about the countries concerned, but because they allow the opinions and experiences of the social partners interviewed to be compared. **With these qualifications, two observations can be drawn: the evaluations of awareness appear generally higher in most EU-15 Member States than among most EU-12; and the evaluations also appear higher among the trade union than among the employer respondents.**

Social partner awareness

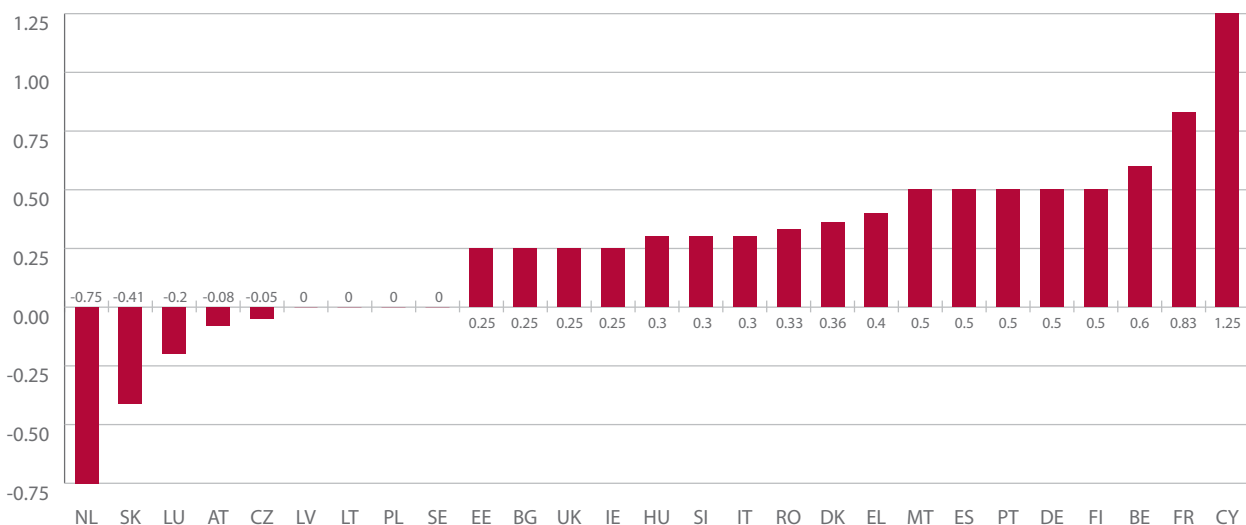
There is a clear divide between EU-15 and EU-12 countries in the awareness of the directive and anti-discriminatory practice. The social partners from EU-15 Member States have been more exposed and for a longer period to the social processes and legislation at the EU than have more recent members.

With only a few exceptions the peak level social partner organisations in the EU-15 were formally involved in the processes that led to the Racial Equality Directive being passed. Most conducted consultations with various stakeholders on the transposition of the directive. In many of these countries anti-discrimination NGOs have been provided with access to public funds for years.

It is also the case that the interviews were targeted at post-holders with responsibilities for dealing with racial and ethnic discrimination, and such posts are more likely to be found within the more established employer organisations and larger firms that are also more likely to be found in the EU-15. Finally, most of the pre-1975 EU members are countries that experienced significant inward migration of foreign-born workers between the 1950s and 1980s, helping create greater political awareness of the need to develop integrative strategies.

Among the social partners in the EU-12, there was a combination of less awareness and less response. This partly reflects their very recent EU membership, but also less understanding of what constitutes discrimination and denial of the problem. For some respondents such as those in Estonia, Lithuania and Poland the anti-discrimination directives and complaint mechanisms were seen as irrelevant and unnecessary devices from the West imposed on the new members as a consequence of the accession process. Along with sexual orientation they treated this kind of discrimination as a part of a ‘western Europe package’ of marginal ‘exotic’ issues, according to the interviewees from both union and employers sides.

Figure 3: Comparing awareness between trade unions and employer organisations, by organisation and country



Source: FRA, 2010

The lack of awareness of employment anti-discrimination legislation also partly reflects the smaller size of most companies in Europe. The Malta Employers' Association commented upon the obvious: *"The vast majority of companies in Malta are SMEs and do not even have an HR manager and would not know anything about this."*

Differences in awareness between the social partners

The levels of awareness and response estimated by the national experts also tend to be somewhat higher for the trade unions than for the employers. Figure 3 represents the differences between the social partner estimates.

The countries where the trade unions were evaluated by the interviewers as being more aware and responsive than were the employers in the same country have positive scores. In France and Cyprus these evaluations were considerably more positive among the trade unionists interviewed. As is shown in the following chapters, the trade union interviewees were more likely to have direct experiences of dealing with the directive and issues of racism and ethnic discrimination.

On the other hand, in five countries, namely the Netherlands, Slovakia, Luxembourg, Austria and Czech Republic, the employers interviewed were rated by the national expert as more aware and responsive than the trade unions.

In Latvia, Lithuania, Poland and Sweden, there were no significant differences in awareness between both sides of industry, according to the interviewers.

2. Employer organisation awareness and responses

This chapter consists of three main sections. It first discusses some of the general issues facing Europe's employers (understood here as both employer organisations as well as individual companies) in terms of adopting anti-discrimination policies, and considers the stress some of these have come under in the current economic crisis. It then presents the employers' views of the directive's impact on society and employment relations in general. Finally, it presents the changes in policies and practices that have occurred. These are divided into those that clearly result directly from the directive and its national transposition, and those that may be considered to have been indirect outcomes.

Good practices

One study published by the European Commission in 2005 examining responses to the rather broader diversity agenda in Europe suggested that *"it is reasonable to infer that recent EU anti-discrimination legislation has had a considerable impact in promoting action in this respect"*.²⁷ Among the good practices it found already in place, in which the larger firms within national states and the transnational companies often took the lead, were:

- Equality audits or surveys making it possible to see the progress (or otherwise) of minority workers (or overseas nationals and of the descendants of overseas nationals) in terms of their proportion within the organisation, their distribution by grade and occupation, and their average salaries and hours of work.
- The introduction of organisational charters or codes of best anti-discrimination practice.
- Provisions supporting migrant workers achieving real equality, such as quick access to banking facilities, rights to take extended leave so that they can be with their families for limited periods in the same way as national citizens can readily access their families, rights to information in their own languages, negotiating on language or other training, and the recognition of foreign qualifications.

However, this 2005 study also found that positive steps were barely evidenced in either the central and eastern Europe or the southern European Member States. In those countries and in the rest of Europe, among many medium-sized and small employers it concluded there is a lack of sympathy and a reluctance to introduce organisational initiatives to combat racial discrimination.

A follow-up study published in 2008 concluded, in the words of the European Commission, that although *"more companies have developed effective, efficient diversity-management strategies... we must also acknowledge that there is still reticence and that many companies – whatever their size and location – have a long way to go."*²⁸

2.1. Discrimination challenges

The 2008 DG Employment study *Continuing the Diversity Journey* found that SMEs in the 12 New Member States faced greater problems in the current economic uncertainty in developing diversity policies. It also found that although 'diversity charters' could be *"starting points on the road to fully fledged diversity policies"*, companies included in the research were divided equally as to whether such charters were helpful or unhelpful.²⁹

This current report for the FRA differs from both the 2005 and 2008 diversity reports on business practices commissioned by DG Employment, Social Affairs and Equal Opportunities in two ways. First, it considers both employer and trade union responses. Second, it focuses on changes in behaviours in relation to just one of the 'diversity' strands – racial and ethnic discrimination, arguably perhaps the most sensitive and political.

27 European Commission (2006) *The Business Case for Diversity: Good practices in the Workplace*, Luxembourg: Publications Office, p. 15.

28 European Commission (2008) *Continuing the Diversity Journey: Business Practices, Perspectives and Benefits*, Luxembourg: Publications Office, p. 4.

29 European Commission (2008) *Continuing the Diversity Journey: Business Practices, Perspectives and Benefits*, Luxembourg: Publications Office, p. 24 and p.15.

The Racial Equality Directive and national legislation

Often in the eyes of the respondents no clear distinction can be drawn between the Racial Equality Directive and the national legislation implementing it.

"The legislation on discrimination – even if I have to repeat that I have more knowledge of the national directives than of the European one – has definitely improved, is improving, and will improve. At the European level the purpose of the directives is [to give] the general lines that the states have to obey, they oblige the states to meet the standards... I am sure the European [legislation] will have influenced the Italian in some way."

Economic crisis

Another factor that is clearly shaping the ways in which employer organisations and companies are prioritising or not the active implementation of the directive within their policies and practices is the economic situation. The economic crisis beginning in 2008 was referred to by several respondents as having an important influence on recruitment and downsizing decisions.

In Europe's smallest member state, the interviewee from the Malta Hotels and Restaurants Association felt that *"with recession, things do not look good for racial equality"*: tourist bookings appeared to be down on previous years. The respondent's conclusion was that: *"If the recession persists there will be problems (about the migrants who have found work) because they will be the first to go."*

In Hungary the Shell respondent agreed: *"In [the current] crisis situation it is more likely that the members of disadvantaged groups are made redundant first."*

An interviewee from the Lithuanian Small Firms Confederation (LVDK) was also quite clear. In the crisis, employers were now more likely to exercise national, cultural, religious and ethnic preferences:

"When our economy was rising and we needed to employ workers, most employers don't look at the nationality or colour of their workers. But, in the changed situation when we could choose other people, I think that we prefer our nationals, because it is our religion, culture and mentality. It is closer for us than people from China."

In the UK, an employer interviewee from the Department of Work and Pensions that deals with unemployment benefits and job seekers explained that their increase in workload in the crisis meant that *"now is not the time to make equality training mandatory"*.

The analysis that this was a difficult period was shared by the Latvian Employers Confederation (LDDK) interviewee:

"Under the economic crisis employers might tend to be more discriminatory. It might also be more against people speaking Russian and not being fluent in Latvian, if an employer can choose between a Latvian-speaking and a Russian-speaking candidate and has to decide about a staff reduction."

However, the interviewee went on to indicate that the directive and the anti-discrimination regulations transposing it *"could be used as a weapon against an employer"* to make such discrimination less likely.

Some employers did maintain that anti-discrimination remained a vital commitment, despite the crisis. An interviewee at the Austrian Federal Economic Chamber believed there was unlikely to be a retreat: *"The Equal Treatment Act is very well anchored – like a collective agreement or the Employees' Law."*

In France, the respondent from the Paris region of the Small and Medium-Sized Business Confederation (CGPME) made a business case for pursuing anti-discrimination policies and recruiting widely:

"Companies during the crisis must know how to prepare for afterwards, in trying to find among people with diverse backgrounds, the men and women, young and less young... who have different talents. A period of crisis is a time to help small and medium-sized firms develop and find the talents they need."

2.2. The impact of the directive

Employer assessments of the impact of the Racial Equality Directive diverged considerably. Four discrete views about the effectiveness of the Racial Equality Directive and the national legislation transposing it (henceforward just described as the directive) were expressed:

Positive impact of the directive

Many representatives of employer organisations expressed the view that the Racial Equality Directive had made a moral contribution to a ‘more open Europe’. The employer organisations that were positive in their assessment of the Racial Equality Directive were more likely to have responded to its implementation by adopting specific actions; these included: advising member organisations of the legislation; conducting diversity audits; support for language classes; introducing new or enhanced training; adopting codes of conduct; or introducing new complaints procedures. Several employer organisations also reported the adoption of diversity management strategies. There was limited evidence of positive measures in relation to recruitment strategies. Some of the employer organisations argued that since the legislation was new in their countries, they would be responding to the directive’s requirements in the future, thereby emphasising the need for capacity building. Lastly, some employers also saw the positive impact of the directive in the “symbolic” value it had.

Little or no impact of the directive

A second group of employer organisations felt the directive had made little or no difference and considered it a *post-factum* recognition of a new reality. This group of employer organisations believed that labour market changes, such as increased migration of workers, had been more instrumental than the directive in changing employment practices to support anti-discrimination measures. Some argued that in today’s labour market workers’ skills mattered more than their ethnic origin. Lastly, employers who saw little or no impact of the directive argued that the pre-existing practices and existing laws or national constitutions already proscribed discrimination on the grounds of race or ethnic origin. Therefore, in their views the directive had little or no impact.

A negative view of the directive

Criticisms of the directive expressed by some employers were driven by the resistance to any legally binding instruments that might interfere with the freedom of enterprise. Some employer organisations participating in this research believed that **regulating** attitudes and behaviours in this area was **not possible**. Others saw the directive as an **unnecessary burden**: it imposed additional costs and bureaucracy on businesses – the clause on the burden of proof was singled out by some respondents.

Ignorance and lack of awareness of the directive

Finally, there were employer organisations which may or may not have heard of the legislation, but which believed that it did not concern their organisations or their country. This attitude was particularly visible among the employer organisations in the 12 EU Member States (EU-12) that joined the European Union in 2004 and 2007. In fact, some of the employer organisations in these countries treated anti-discrimination legislation as part of a ‘western Europe package’ of ‘exotic’ issues forced upon them from the outside in the process of EU accession negotiations. Others simply denied that ethnic discrimination existed in their countries. This view was particularly tangible in relation to Roma population – many employers identified their poor labour market position as a consequence of individual characteristics, accepting as “natural” that Roma have a different social status. However, some organisations also expressed the view that implementation and change were a question of time and that the new Member States needed time to ‘catch up’.

2.2.1. Positive impact of the directive

Many employers showed a high awareness of the legislation and were very positive about its impact. A respondent from Carrefour Belgium believed: *“The law can be an encouragement. . . People are put on the case, the company provides resources to get things done, and for that to happen it needs official incentives.”*

This view is developed by the Finnish Jyväskylä City respondent, who argues not only the new law is *“very important because it has shown that these issues are serious (but) it gives a tool to develop recruitment. The new law recognises that ethnic discrimination should be taken seriously into account.”*

A public sector respondent from the largest employer in the Austrian capital, Vienna City, agreed the Racial Equality Directive provided important support for diversity management: *“We need a legal framework to fulfil our integration and diversity tasks, a base stating that discrimination is forbidden.”* The Austrian Shell Company respondent took the same view. The Racial Equality Directive was a positive step and an important weapon for HR managers wishing to generalise non-discriminatory practices and harassment: *“Behaviour regarded as a peccadillo before, is now an offence to be prosecuted.”*

The legislation was seen as spreading greater awareness. The respondent for the largest employer organisation in the Netherlands, the 850-member strong AWWN, commented that the legislation encourages companies to be more active in trying to prevent discrimination: *“The employers who didn't know and didn't want to know are probably now more aware.”*

At the Austrian Federal Economic Chamber there was nearly unequivocal optimism: *“Since the implementation of the law in 2004 company staff recruitment processes have decisively improved and are more and more oriented on principles of equal treatment as a result of more training as well as social developments and enhanced experience of globalisation.”* Another Austrian interviewee from the Vienna City Administration was more nuanced:

“It was an important step, a crucial presupposition to protect people against discrimination, but the implementation into practice is very complicated. It is not clear enough where a person feeling discriminated should turn to and what is going to happen when he/she took this step. The legal protection is available in theory but does it function in practice?”

From Sweden, the Construction Industry Confederation respondent argued that

“Public debate on discrimination is the most important thing. The EU Racial Equality Directive and the Swedish law have helped to raise public debate and awareness on these issues.”

In Germany, the Post Office, with a substantial non-German born and migrant origin workforce, also considered the Racial Equality Directive and other laws fighting discrimination as helpful. Its interviewee commented:

“It's a war of talents... You have obviously heard about this. Employers have to be more open so that they can access more potential, different forms of potential and new potential.”

The directive was also embraced by Germany's BMW car company. It did not view the law as *“being too bureaucratic”*, nor as a serious issue:

“the fact that the burden of proof now lies with the employer. . . When an employee has complained we have always gone to the manager and said “Prove to us that you have not discriminated.”

Encouraged to focus on their practices by the directive, multinational companies in particular had embraced policies that included detailed rules and procedures to implement equality. In Slovakia, the US Steel Košice respondent confirmed that in 2003-2004 it had participated in consultations with the government on the national anti-discrimination laws. The interviewee believed:

“Increased awareness of racial and ethnic equality in society can be more easily achieved when it is supported by anti-discrimination legislation.”

A legal framework

What difference does a legal framework make? Employers may be analysed as coming from risk-averse or risk-tolerant cultures. The view of the Confederation of Danish Employers illustrates the first approach: *“Employers are generally people who uphold the law. If legislation exists which means that one person obtains a large amount of compensation if you step over the line, then it is something that employers will be informed about. The laws have meaning even though we do not have 100 cases.”*

A Dutch employer explained why they ‘adhere to the rules’: *“We are a very visible organisation in society. If we do something wrong we will be confronted with that immediately.”* As a result, it had ensured: *“The legislation on the legal position of every employee, the content of the directive is implemented into our working conditions and integrated into policy. When you are talking about treating employees as neutral as possible in every way, in conduct, in application procedures, I mean the codes that follow from the law they have been integrated into company policy and we are very aware of that.”*

The Irish Construction Industry Federation respondent felt the creation of a *“forum where people could vindicate their rights”* helped highlight the need to educate employers.

The Department of Work and Pensions interviewee in the UK saw the law as helpfully focusing employer attention on the need to be actively engaged in challenging discrimination and no longer ignoring the problem: *“It makes people stop and look at it and decide what you’ve got to do. You can’t just say ‘It’s there.’”*

Positive symbolism

Many employers considered the laws as having a positive ‘symbolic value’ (Danish Construction Association), even if the actual change was not that tangible. A Belgian respondent from Brussels Commercial and Industrial Enterprises argued: *“The European and national legislation confirmed what already existed. The law followed the reality. It didn’t start the motor, but it created a legitimacy to what had already been started.”* His assessment was: *“Laws do only what they can do. They aren’t there to organise society, but they can help prevent it going off the rails.”*

The Swedish Construction Confederation representative suggested how this could happen: *“The EU directive has helped to raise the public debate on discrimination and this has in turn increased the awareness and knowledge on this problem.”* The large Swedish Uppsala hospital employer recognised that proving the causal link between legislation and practice was not easy: *“It is difficult to say anything about the concrete effects of the EU directive and the Swedish law. However, nothing happens by chance. The regulations have probably been embedded in the common consciousness.”* The Swedish employer representative of Uppsala University confirmed that the changes were often motivational: *“The laws have also inspired employers to take action against discrimination.”*

The respondent from the Techni Pantelos panel manufacturer saw the directive as contributing to a general improvement over recent years. His argument was that:

“This is an area of general development in our society. That is, as a nation we do not feel as isolated, we now feel as members of a larger European community... Future generations will talk about Europe and not about nations... Hercules and Theseus will be heroes for Europeans not just for Greek people.”

Where national laws against racial or ethnic discrimination pre-dated the Racial Equality Directive, there was less likely to have been a significant change following its transposition. But there was nonetheless often considerable awareness of the directive and in some cases an explicit recognition of the impact of the law. Thus, in the UK, the British Telecom (BT) respondent thought the Racial Equality Directive laws produced *“changes round the edges, expanding on previous legislation in the UK. They didn’t make such a big change in the UK.”* But he considered the racial equality legislation was still important:

“It has widened protection for employees. That’s always from an individual’s perspective. How it works in this country depends on individuals exercising those rights and their willingness to take the employer to court. The mechanism is there if they feel that that is their last recourse.”

The Slovakian interviewee from the multinational MOL Group, also supported the anti-discrimination legislation, even though it did not change the legal context very much:

"We had relatively good anti-discrimination legislation in Slovakia long before the EU directive was implemented. Therefore the adoption of the directive did not require significant changes in country's labour legislation."

Nonetheless the MOL Group developed its Code of Ethics to take the Racial Equality Directive into account. Its second edition has just been issued and it is distributed to all employees. Its message is clear: *"As a MOL Group employee you must not discriminate against anybody on the grounds of sex, marital status, age, ethnic origin, colour, political conviction, disability, religion, or sexual orientation."*

Need for capacity building

Some employers who supported the directive considered that over time their country's practices would automatically catch up with EU standards. The Bulgarian Chamber of Commerce and Industry (BCCI), a former state structure, is now a nationally representative employer organisation with about 10,000 small and large company affiliates. Aware of the Protection against Discrimination Act, the respondent was convinced:

"Anti-discrimination legislation is absolutely necessary for the workplace. Such legislation is introduced and practised across Europe and in the USA. It is a form of protection of the individual and... expresses the general idea about the protection of human rights."

Despite the positive attitude towards the new legislation, there was a problem in Bulgaria, though, of lack of experience. The interviewee continued:

"However, there is not enough experience about the application of this legislation. It is important that such evidence is accumulated and that there are sufficient financial sanctions. A story of this Law more or less needs to be created in order that each party can apply it. In Bulgaria we do not have traditions in the application of such laws. However, I suppose that with time things will be regulated and in Bulgaria this legislation will be applied."

The BCCI has not organised membership training on the directive, but believes it would be appropriate, perhaps, to require each employer once a year to present a summary of their human resource policies in terms of their anti-discrimination duties and the rights of their employees.

2.2.2. Little or no impact of the directive

Several employer interviewees, including many who were highly aware of the law, considered the Racial Equality Directive had made no difference to them since they were already operating anti-racist policies. The Austrian respondent of the multinational TNT logistics company explained:

"The implementation of the directives in Austria TNT did not change anything in particular in the company's diversity and anti-discrimination policy because we have been considering diversity management as a key success factor for TNT since 1998."

According to the interviewee from one major Dutch company: *"The need for anti-discrimination/diversity policy has been obvious for us since 1988. The directive has not really changed this."*

There was also the view in several countries that the national context already proscribed racism and that that was sufficient. In Finland, the Confederation of Finnish Industries respondent commented: *"Discrimination in the labour market was indeed forbidden before the Equality Act. So employees and people in general have been widely aware that employees cannot be discriminated against on an ethnic basis."*

In Germany, one of the peak employer organisations representing the whole of German industry and services, the BDA, felt that Article 3 of the German Constitution already outlawed all forms of discrimination. More than that was not needed. In Denmark, the Local Government respondent also believed that the directive was not needed: *"The Danish Constitution stipulates that one must not discriminate on the grounds of religion, political views or descent."*

Labour market changes

Another reason for the lack of a clear impact of the directive given by several employers was that the overwhelming reason for not practising discrimination was a business one. Labour market changes involving increased migration were viewed as the essential driver of non-discriminatory policies. The migration flows of the last decade have made many employers introduce more inclusive policies to discourage xenophobic attitudes and racist practices within their organisations. This assessment of the directive among more 'aware' employers can be summarised in the Danish Local Government respondent's direct comment: *"It is pointless."*

For the Finnish Confederation of Industries higher levels of migration rather than the passage of the directive were responsible for increasing public awareness of the rights of ethnic minorities to equal treatment. The State Employer's Office in Finland also reported that: *"The EU Racial Equality Directive and Equality Act have not caused any essential changes in central government employment policies or practices."*

Focusing on workers' skills

The Belgian Retailers' Federation respondent believed: *"Law doesn't come into it: it's the need to get the right people that pushes the changes that open us up to diversity."* For RailGourmet in Brussels there had been *"a natural evolution towards a multicultural employment policy"* since the company had been established in 1994.

For the Irish Hotel Federation also, *"the prime mover was market forces and the fact that we needed the people on board"*. This too was the view of the Irish Business and Employers' Confederation: *"More important has been the change in society: employers generally want the best employees and don't care where they are from"*. The pre-economic crisis skills shortage in Ireland *"to some extent made race a non-issue"*.

Forty per cent of the 180 Greek workers of the furniture and mattress manufacturer, Coco Mat, are migrant or ethnic minority workers. The company's main factory is in Xanthi, a region with a significant Muslim minority. The interviewee commented:

"Employment growth was not planned but the company received many applications from members of the minority. It is a fundamental principle of the company to look at the skills and educational background of candidates rather than the external characteristics such as colour or race or ethnicity."

Similarly, at the Torres Spanish wine-producer, employing workers from much of the EU as well as from many African and North African countries, it was claimed the Racial Equality Directive has changed nothing. The interviewee reported:

"We are only interested in workers' skills, we do not care about their race, religion and origin [...] procedures to fight against all kinds of discrimination were introduced as a result of the employers' awareness regarding these matters."

This, too, was the sentiment expressed by an interviewee at Italy's sixth largest food-processing business, the Gruppo Veronesi: *"Working side by side, workers of many races find solutions to their problems and work out their differences... independently of any legislation."*

2.2.3. Negative response to the directive

Criticisms of the directive expressed by some employers were driven by the resistance to any legally binding instruments that might interfere with the freedom of enterprise. Two main arguments followed, namely that:

- **regulating** attitudes and behaviours in this area was **not possible**;
- the directive was an **unnecessary burden**: it imposed additional costs and bureaucracy on businesses.

Impossible to regulate anti-discriminatory behaviour

Many employers expressed scepticism. This was not about the importance of treating people equally, regardless of their ethnic origins, but about the limited effectiveness of legislation. The Danish Local Government association respondent criticised the notion that laws can change behaviours:

"They (the Racial Equality Directive laws) are based on a naive idea that the situation can be changed if you come up with a new law. ... I consider it a misconception to think that one can pass laws on these issues. ... Legislation will not solve these issues."

This political objection to using legal regulation to try and influence discriminatory behaviours was repeated by several employers. The Danish Construction Association respondent argued: *"It is difficult to regulate how one recruits via laws and nothing good would come out of it. It is fine to have these laws as a signal, but they cannot be used to control people."*

The respondent from Danish Industries made a wider criticism: that in the current economic crisis with widespread lay-offs, rational decision-making in favour of keeping the 'more qualified' candidate was being distorted by discrimination legislation:

"Companies often feel they have to choose more unqualified employees. In that way the laws increase protection for the employees that are covered by the protection criteria, but it also creates a very vague

uncertain legal situation for businesses and for people who are neither young or old, white and etc.”

The Confederation of Danish Employers respondent added:

“Employers should only focus on one thing, and that is to acquire the most qualified labour force. So, it is meaningless to make statements that one should not discriminate. All that matters is to acquire the best labour force on the labour market.”

The interviewee from the Federation of Finnish Commerce articulated the concern that employers might feel unreasonably pressured to hold on to less qualified workers because they are protected by the directive:

“It can be the case that Finns are saying that ‘we have come in for collective dismissals, but immigrants can keep their jobs’. . . Ethnic minority workers are very motivated when they have a job, and the likelihood that they raise the accusation that there is ethnic discrimination in the workplace is high.”

In Denmark, an interviewee from one employer association, the DI, believed:

“If you focus on race and ethnicity, I do not think it [the directive and the laws] has changed something because we had no cases and we have no cases or inquiries from businesses.”

The interviewee from the general employer organisation in the Netherlands, the AWWN, argued:

“According to me that hasn’t had a great impact on the right (to equal treatment). And it hasn’t changed the awareness because that had already changed long before. I don’t believe that in 2000 there were still employers who thought it was all right to discriminate. I don’t think that it has changed the awareness greatly.”

The same view that discrimination would not be changed by the law was expressed by a Belgian employer association opposed to positive actions being proposed by the Belgian Equality Body. The Brussels Commercial and Industrial Businesses argued against two measures the Belgian Equality Body was considering:

“No one believes in recruitment testing or anonymous CVs. It’s another rite. It won’t change anything if the person isn’t convinced from the start that you shouldn’t discriminate.”

Strong criticism of the law was particularly evident in Germany. An interviewee from a major German cleaning company argued:

“They want to regulate something that cannot be regulated. They are restricting people’s freedom. . . I do not think that such a law is necessary because discrimination is something intrinsic which cannot be hindered by laws.”

Reasons given for why the directive is wrong

The Gesamtmetall (German Engineering and Electrical Employers’ Federation), one of Germany’s most important employer bodies, also believed the directive went too far:

“When employees start to argue amongst themselves and anti-foreigner things are said, I ask myself whether the employer should be held responsible? What can employers do if they argue? I believe that holding the employer responsible for what happens between employees is totally wrong.”

A German cleaning company respondent argued that the law could not be enforced:

“It is a law for idiots. I would never say ‘I do not want you because you are Turkish’. Nobody would do that. . . So, twenty other people who have the same profile have applied for the job. Naturally they do not know this. Naturally I would not make this public. And now I will choose someone that I like. I do not think you can regulate this through laws. I am totally opposed to this law; to these kinds of laws.”

Unnecessary law

Deutsche Bahn’s (German Railways) interviewee recalled: *“Our opinion was that the law was not necessary. This was because on the one side a lot had already been done on a voluntary basis; on the other hand, because Germany tends to be over-regulated.”* The Gesamtmetall (German Metal and Electronic Employers’ Association) respondent was also quite explicit:

“It was not possible to stop the law because the directive was already in place and it had to be transposed. So you could not say ‘stop the law’. What you could say though was ‘restrict it as best as possible’. . . Germany, certainly under the red/green government, had the tendency

to implement more than was really necessary... And we said 'Do what Europe requires but not more.'

Both main German employer organisations expressed considerable opposition to the passage of the equal treatment laws (including the Racial Equality Directive) in 2006. The Confederation of German Industry (BDI) is committed against racism but did not believe the law was the way to do it. The interviewee explained:

"When we had those very public cases in the media of foreigners being hunted and beaten up, the BDI held an event against xenophobia and on the need for better relations with each other. It was well attended. But you cannot always repeat such events. You do it too often and people start to lose interest. But finally such ways are, I believe, in the main better than trying to regulate things by laws."

The Confederation of German Employers' Associations (BDA) interviewee confirmed: *"We tried to stop the law."* Its opposition was partly because of what it saw as the government's attempt to go beyond the directive's minimum requirements. But it was also based on strong opposition to the Article putting the burden of proof of non-discrimination onto the employer. The BDA's concerns were confirmed because it had detected what it believed were abuses of the law by

"(...) so-called 'AGG-hoppers'³⁰ That means people who see a chance... that a certain job position is advertised in which their profile certainly does not fit, but which they nevertheless apply for, even though they are not interested in taking the job. And this, so that the court compensates them."

A similar argument came from the Employers' Confederation of Latvia. Recognising that the anti-discrimination laws had substantially increased awareness among employees, the interviewee suggested: *"More information about discrimination brings up more problems and it feels there is more discrimination around."* However, this may probably be true of gender discrimination than other forms, where awareness *"is still comparatively low"*.

The respondent from the Slovenian Association of Employers in Craft and Small Businesses also considered that the presence of specific anti-discrimination law might encourage *"filing complaints from the workers [that] could also be malicious"*. An interviewee from

a large Hungarian employer that had embedded the directive in its own practices also echoed these concerns: *"Legal instruments are not able to solve complex social problems, rather they generate a lot of new ones."*

The belief that the directive directly or indirectly increases employer costs was also shared by the Irish Small and Medium Enterprise Employers' Association, although its respondent did consider the law had improved workers' protections. The Italian management training firm, Fòrema, warned that

"(...) encouraging migrant workers to raise issues of racial discrimination can have unpredictable consequences: at times it can be useful, at times it can be counterproductive. To pursue certain dynamics and respond to certain requests because there is a law that tells you to do so has to be handled in a certain way in the sphere of company dynamics."

Another negative suggestion about the possible impact of the new equality laws in Germany was made by Deutsche Bahn (German Railways). Its respondent argued that on legal advice it had received failed candidates for recruitment were now no longer given any justifications for the decision:

"We cannot do this because someone who is on the outside and not yet on the inside is in no way inhibited from taking legal action. Because of this I believe that there is a feeling that a flood of legal cases would take place."

2.2.4. Ignorance and lack of awareness of the directive

Some employers' views about the impact of the directive must also be understood in the contexts of considerable ignorance of its existence, perhaps because it is relatively recent in some countries, or because of the presence of a significant informal economy structured around racial and ethnic segmentation, or of both factors working together. There were also several employers who did not see the point of a directive on this issue since they believed such discrimination did not occur within employment in their country.

The Athens Airport respondent considered awareness of the directive in Greece to be very low indeed. An Italian respondent from the training arm of the highly industrial Padua region's Union of Industrialists commented:

30 AGG stands for 'Allgemeines Gleichbehandlungsgesetz' – the German General Equal Treatment Act of 16 August 2006.

"There is not yet much awareness of this law. Many people know it exists, but then... we have no particular information from someone who has really studied it and knows something in detail. The awareness is increasing, but still at a very informal level."

In Hungary, the interviewee from the National Federation of Consumer Co-operatives, a recognised employer organisation at national level considered: *"People are absolutely not aware of the discrimination laws."* This was also the view of the Hungarian National Federation of Craftspeople, another recognised employer organisation whose average membership employment total is three or four people. *"Obviously,"* its respondent said, *"people are not aware of the discrimination laws."*

The interviewee from an Italian consultancy owned by the Trentino Hotel Association, related the lack of awareness of their rights among the region's hotel and tourism workers to the sector and the seasonal nature of employment: *"In my opinion there has been no change among the workers, the fact of being seasonal workers puts them in the condition of not knowing, and so of not being able to demand, their rights."* Another Italian company, the marble-producing Marmi Santa Margherita, confirmed that its non-Italian workers have also showed no awareness of protection against ethnic origin discrimination: *"I believe that the foreign workers have little knowledge of this directive in particular. It's much more likely that they know of immigration legislation such as the 'Testo Unico', the 'Bossi-Fini'."*³¹

Another explanation for the lack of evidence of any impact of the directive was given by the Union of Luxembourg Enterprises. In its case it believed the population of Luxembourg was very used to working with foreign nationals. One respondent explained that *"Diversity management is a little bit exotic. It's really not a preoccupation at the moment."* While another pointed out the quite common view that gender equality was a more attainable target: *"We are less active in the struggle against discrimination than in the struggle for equal opportunities. As an employers' organisation we see that problematic more positively."* It had therefore supported an EU-funded PROGRESS pilot project that provided awareness-raising and aimed to award companies with a badge of 'social responsibility' based on three elements: employment relations, equality of professional opportunities, and

governance and the environment. There would be a conference to help launch the badge in 2010.

The Portuguese Trade and Services Confederation added another argument for the lack of awareness of the directive. The respondent distinguished the legally-compliant from the non-compliant economy, suggesting that anti-discrimination legislation did not reach the informal economy:

"Mostly the companies that do not comply with the law regarding minority workers are those based on 'slave' work. They do not pay their taxes, nor social security and so on. They are a minority of companies but their profits are much higher than the other companies."

The respondent from the Romanian employment agency, Strametz, commented that *"the level of public awareness was very low, especially among members of minority or migrant groups. On the whole people do not benefit from the Racial Equality Directive regulations."* The overall situation in Romania was that *"the implementation of anti-discrimination legislation had not led to any significant improvement of national labour market conditions, given that not much publicity was carried out to raise public awareness around it."*

Denial of the problem

Denial of the presence of discrimination came in many forms. One of these was to argue that it was incompatible with running a business properly. The Romanian National Employers interviewee stated baldly: *"All in all, I do not consider that there are racial problems in Romania."* Echoing a German employer quoted earlier, he explained: *"Employers are practical people and oriented towards the well-being of its business, which implies not carrying on about discriminating. Thinking about discriminating goes against their interests."*

Another form of denial came in the argument that minority workers' readiness to accept existing conditions could demonstrate the absence of racial or ethnic discrimination. The respondent from the Union of Economic Initiative, a Bulgarian nationally-representative employer organisation with some 2,100 SME and around 4,000 individual trade members, reported that *"working people from the minorities... do not feel oppressed or discriminated against"*. He argued that a construction worker of minority origin would think that health and safety conditions at a construction site should be bad so as to protect the migrant worker's job – in their opinion nobody else would like to work in such conditions.

31 The Law 40/98, the 'Testo Unico sull'Immigrazione' of 1998 is the first basic Italian law on immigration and introduced administrative detention centres; the Law 189/2002 or 'Bossi-Fini' law linked the right to reside in Italy to an employment contract, a residence permit and housing.

This suggestion, that accepting discrimination was a deliberate choice, was questioned by a Czech Republic interviewee working for the Ústí Regional Authority. She pointed out that *“The discriminated themselves often do not know they are discriminated,”* but explained that they *“considered the behaviour of the majority society [towards them] as standard.”*

Another form of denial was to simply assert that racial or ethnic discrimination in the country was unknown. The Cyprus Chamber of Commerce and Industry, for example, received information on the directive from European organisations it was affiliated to such as UEAPME. The interviewee agreed: *“The EU-15 are much more active and developed in this field.”* Yet, despite reports showing migrant domestic workers faced significantly worse employment terms than did the Cypriot-born, he asserted: *“Today, all foreigners enjoy equal rights with Cypriots and there is equal treatment by employers.”*

Not here

In some cases a denial by the employer appeared to reflect their sense of pride in their own country. Echoing an Italian marble manufacturer who claimed: *“It is in the firm’s DNA not to discriminate”*, the Latvian Chamber of Commerce interviewee argued:

“Maybe there have been problems in Germany historically – we know that with the Jews. But in Latvia we have never had anything like that. Ethnic discrimination is not a problem, it has never been here. Never! If you hear about that in the press or somewhere else, it is rather an opinion of some individuals. It might be seen as a problem in buses, trams, in city parks, but it is not a problem in business. There is nothing to be improved, because the situation is good. It can only worsen if specially provoked.”

The Chamber of Commerce and Industry of Slovenia, one of the main employer organisations representing Chambers with a total of 140,000 employees, considered that if discrimination existed in employment it was because of *“ignorance or intolerance of particular individuals”*. In general it did just not occur, and the new laws had not had any impact since anti-discrimination had been laid down in the 1991 Slovenian Constitution as a basic human right.

In several countries the issue of racial discrimination was considered to be too low a priority for the employers to be expected to respond. The respondent from the Confederation of Hungarian Employers and Industrialists, an affiliate of BusinessEurope and the largest employer organisation in Hungary, was clear: *“The opinion of Hungarian employers is fixed. For them it is not a priority issue.”* The Confederation circulated information by email about the new legislation, but did not hold any special conferences or produce any special literature.

Lack of recognition of prejudice

The interviewee from the Bulgarian Union of Economic Initiative was ready to admit that the lack of change since the transposition reflected the survival of xenophobic tendencies:

“Bulgaria is a strange country with a lot of prejudices. The idea of “Bulgarian tolerance” is a myth. But people internalise this. They rarely go to the surface and things are not said directly – for example, you will be laid off because of “low qualifications” [rather than because of prejudices].”

Ethnic discrimination against the Roma

It is difficult to establish with any degree of accuracy the precise number of Roma living at the territory of the European Union³². The countries with the greatest proportions of Roma in their national population are mostly in central and eastern Europe. As the FRA has emphasised in its reports, the Roma are the minority group which is the most likely to be discriminated against – they experience disadvantage in all areas of social life, from education, through to housing and access to healthcare³³.

The Polish employer association (Lewiatan) interviewee reported: *“There would be no problem with employing a Bulgarian, however, there might be a problem with a Romanian, as in Poland they are associated with Romanian Gypsies who beg on the streets.”*

One result of this neglect, a Lithuanian NGO commented, was that the Racial Equality Directive had not been used as it might have been: *“For Roma*

32 FRA (2009) *The situation of Roma EU citizens moving to and settling in other EU Member States*, Summary report, Vienna: FRA.

33 FRA (2009) *The Roma*, EU-MIDIS Data in Focus Report 1, Luxembourg: Publications Office.

people who are afraid of government, like 'the government', and of the state, like 'State', for them, everything and everybody is a 'police officer', it is especially hard."

Open prejudice about the Roma was expressed by one employer respondent whose view was that: *"The problem in Lithuania is about the "Roma species" as we call them here. They simply don't want to work; they don't want to work; they don't want to learn; they don't want to respect the country's laws."*

Within many countries of central and eastern Europe the acceptance as 'natural' that Roma people have a different status means that despite the directive many people find it difficult today to recognise the presence of ethnic discrimination with regard to the Roma. The Bulgarian Chamber of Commerce and Industry interviewee described the range of factors shaping their understanding:

"Probably the factors that contribute to racial or ethnic discrimination are related to our national identity, to the history of democracy, to the forms of government. This is due to the fact that we were a closed system for a long period of time when many forms of the protection of the individual were excluded."

2.3. Practical outcomes

What actual policies and practices did employers adopt as a result of the Racial Equality Directive? The main responses were in the areas of information, training, codes of conduct and forms of diversity management, including in some instances positive recruitment initiatives. Many interviewees indicated that their organisations had responded directly to the new legislation, while others reported taking steps to challenge racial and ethnic and, often, other forms of discrimination, without indicating they were a direct consequence of the directive.

Direct outcomes

Many employer organisations responded directly to the passage of the national legislation transposing the directive in their countries through sending out detailed information to their members. In Finland in 2004, for example, the Commission for Local Authority Employers, responsible for collective agreements covering 428,000 municipal employees, sent a general charter out to all its members describing the law in detail and explaining how each local authority must draw up

an equality plan. In Austria, TNT conducted a special 'diversity check' of its own recruitment procedures to see if it was fully compliant with the Equal Treatment Law.

At EDF Energy in the UK the wake-up call to the need to take anti-discrimination seriously had come from its competing for contracts from the public sector. In this case, as a private sector company, EDF Energy is not bound by the UK legislation covering the public sector by an 'equality duty'. Yet, the interviewee considered that the production of "a book-length equalities contract compliance document" had been driven essentially by the company's successful bidding for a major contract with the Olympic Development Authority:

"The ODA contract is having a major impact on the culture and working practices of the company because it has to profile and monitor all the equality strands both of its own employees and those of its sub-contractors... One of the consequences is that the on-site equality and diversity team is larger and has more resources at its disposal than the team at company headquarters that covers the whole of the rest of the UK."

The directive thus directly helps provide a context in which discrimination is seen as an obstacle to establishing proper business relations. The Royal Mail interviewee in the UK reported it was *"about to launch an ethical supplier diversity policy. That's very new. That's leading edge."* It would involve the company investigating the practices of its suppliers in order to ensure they fully complied with anti-discrimination law.

Training programmes

New or enhanced training programmes were a major consequence of the directive. Thus, Sweden's Uppsala City Council first introduced an optional one-day diversity course for its managers in 2003, and soon afterwards made it compulsory. The Danish Confederation of Employers (DA) included the new laws in its regular education and training programmes, although it did not develop a special programme. A similar policy to include the new Equality Act within existing training was adopted by the Finnish Confederation of Industries (EK), although the Finnish State Employer Office (VM TL) and Construction Industries Confederation (RT) organised special training sessions.

At the Uppsala Hospital in Sweden an information and training programme was introduced consisting of texts and films related to real cases

reported to the hospital's Ombudsman. These are studied and discussed by groups of staff.

The training conducted in response to the directive of the German Metalworking and Electrical Employers (Gesamtmittel) focused on the burden of proof across the discrimination strands: *"An aim of our training concerns avoiding this point. How to avoid the appearance of discrimination because you can never prove the opposite."* At German Railways (DB) the law was put on the intranet and an e-learning programme was developed. The BD interviewee stressed: *"We were very conscious of the need to inform: 'What is different about this new law? What do we have to take note of?' But at the same time we have tried to overcome people's fears."*

The AWWN Dutch general employer association has also produced a myriad of documents and updates on diversity policy and it participated in the annual Equal Pay Day hosted in 2009 by the VNO-NCW peak employer confederation. However, although offering a training course on 'Equal Treatment at the Shop Floor' to its members, it has not had any requests over the past four years.

Codes of conduct

The need to demonstrate compliance with the shift in the burden of proof was also a motive in the adoption by several companies of codes of conduct. An example from a Netherlands-based MNC provides a direct reference to the new legal framework in their 'Global Code of Conduct and Ethics':

"Unlawful discrimination or harassment is prohibited. Decisions about recruitment, employment, promotion and termination are made on the basis of objective and non-discriminatory criteria."

New confidential complaints procedures were also introduced by several employers. Another Dutch employer believed:

"If the complaints procedure is properly undertaken a lot of problems can be solved and do not have to go to, for example, the CGB (Equal Treatment Commission) or courts. The company obviously does not want any bad publicity and likes to solve complaints on discrimination or otherwise through the in-house complaints procedure."

The Belgian Retail Employers' Federation introduced two new clauses in its Ethical Business Code, one directed at discrimination against customers and the

other proscribing all discriminatory attitudes within the business: *"in particular concerning recruitment, appraisals and promotions, that must be done in relation to the qualities and performance of the individuals involved, excluding any consideration based on nationality, race, religion, gender, marital situation, etc."*

The Austrian Shell respondent reported the parent company's Code of Conduct included guidelines for combating harassment and discrimination, and that levels of participation in training, including the legal background, had been high after the equality laws were introduced. Several contact points had been made available to employees to raise issues of discrimination, including anonymously if desired.

US Steel Košice had responded to the new Slovakian laws by adopting a Code of Ethical Business Conduct in June 2004. This specifically banned any kind of discrimination based on race, colour, citizenship and national origin. While this permits workers to use an anonymous and independent hotline phone number to report violations of the Code, no complaints of racial or ethnic discrimination have yet been made. In 2008, US Steel Košice organised a diversity training course for 120 managers and included a clause dealing with racial and ethnic origin in its three-year collective agreement negotiated with the unions.

Diversity policies at company level

Several 'more aware' employers reported the creation of 'Diversity Management' posts. As a result of the directive at one large Dutch company the *"Diversity Coordinator keeps all personnel managers up to date on diversity issues and has close consultation with the works council and initiates special projects if necessary."* These issues included conducting research into why some employees did not appear to make progress within the company and drawing conclusions about the need for increased in-house coaching and training. While discrimination training did not begin with the directive, it did push the company to *"step up its efforts regarding training on discrimination and diversity issues"*.

Committing to diversity is not, always, the same thing as fully implementing it. Thus, the Belgian Carrefour company signed a Diversity Charter in 2006 *"with a great deal of marketing publicity"*, but it was only two years later that the company allocated responsibility to someone to follow it through. The interviewee recalled that even now *"a real change in attitudes has to take place in the company... We were so used to working within the*

'BBB' ('Bleu, Blanc, Belge') tradition³⁴ and not to question this and now we are opening new horizons." Persuading line managers to recruit women wearing headscarves based on their competencies rather than anything else is still not easy, although *'in general it's getting better'*.

The Deutsche Bahn (German railways) employs 240,000 staff worldwide and 180,000 in Germany, of whom 10,000 are non-naturalised foreign-born. It signed up to the Diversity Charter launched by the government and four private companies in 2006 (the same year as the Equal Treatment Law was passed) and which now has 500 signatories. DB sees it as an alternative approach rather than as additional to the Racial Equality Directive:

"The charter represents a positive acknowledgement. In contrast to the AGG (Equality legislation) where you are forced, here you can positively document things and the aim is to bring more diversity in inclusion into companies... Voluntarism and positive measures can achieve a lot."

Positive measures

There were several reports of employers following up the directive by taking positive steps to tackle discrimination. In Denmark the Confederation of Danish Employers (DA) is supporting a joint 'integration-jobs' programme coordinated by Local Government Denmark (KL) and the union confederation, LO. In this scheme full-time workers with an ethnic minority background are recruited to public sector posts on the basis that one fifth of their time will be devoted to improving their qualifications.

In Slovakia at US Steel Košice, just before the new law was transposed, the company in 2002 started a project to recruit Roma from the closest village, Velká Ida. Its mayor played an important part in pre-selecting the long-term unemployed and in 2009 roughly 100 of the original 150 Roma workers were still employed.

The Swedish Skanska MNC launched an 'Equal Treatment Policy' in 2003, the same year as the Swedish Anti-Discrimination Law was passed. Its originality is that it is continuously updated with concrete objectives set every year, and that the company sees it as crucial *"to systematically integrate the work against discrimination into the company's ordinary operations."* Skanska's Action Plan includes check lists

and clear routines on how to respond if an individual considers themselves discriminated against.

In Austria, TNT started to offer German language courses free of charge after working hours. It also uses an annual employee survey that now includes questions on gender and ethnicity among the 25 different nationalities it employs. This enables it to monitor very clearly any discrimination issues that appear, and it promotes a tolerant multicultural atmosphere at work through providing menus without pork in the staff restaurant, and private prayer rooms for religious Muslims. In the UK, at Heathrow Airport, workers for Royal Mail had been invited through a self-managed Dignity and Respect at Work (DRAW) group to develop their own solutions to staffing problems caused by high levels of request for leave during the important non-Christian holidays, such as the Eid festival, which marks the end of Ramadan.

Ethnic monitoring, a process used to collect, store, and analyse data about people's ethnic backgrounds, is not new in the UK. Thus, the London Fire Brigade knows that Black and Minority Ethnic (BME) people make up 11 per cent of operational staff and 28 per cent of support staff (in a workforce of 7,000). But under the impetus of the heightened concern to challenge racial discrimination it now has a target of achieving 35 per cent of BME staff by 2013, in order to arrive at matching the BME share of London's population. The interviewee reported that most BME staff are lower down the hierarchy and that white people tend to do better in getting short-listed in recruitment. The employer is therefore dealing with these problems through running workshops for prospective applicants and in encouraging existing staff to pass on the message about the opportunities that exist.

³⁴ *'Bleu, Blanc, Belge'* is the brand name of the most well-known national cow, and in recruitment 'BBB' is shorthand for a 'white-skinned Belgian national'.

Targeting ethnic minority recruitment

At British Telecom (BT) in the UK a specific and successful recruitment campaign in 2007 had taken place: *“Recognising our increasingly diverse customer base, and wanting to be reflective of the mix of our communities, we looked to target ethnic minorities and women.”* The interviewee reported that it had involved *“changing the criteria by which candidates were assessed – placing emphasis on generic skills, such as customer empathy, communication and personality and less on formal qualifications.”* BT is a multinational company with a Global Equality and Diversity forum providing the lead:

“It is attended by senior representatives from each of the lines of business and champions of all the diversity strands and they set the agenda on diversity. They act as role models, as champions in their truest sense, as ambassadors for the promotion of diversity across and into our business. We also do communication across the business to all our populations.”

The interviewee went on: *“In the race sphere the company has an ethnic minority (Black workers) network as well as our Asian network, as well as some specific religious networks including a Muslim network, often specific to race as well.”*

These examples of some aware employers attempting to build upon and go beyond the basic legal framework provided by the Racial Equality Directive and to tackle indirect discrimination through positive action demonstrate what can be done if the political and managerial will is present.

Indirect outcomes

Some employers reported improving their policies and practices on racial and ethnic discrimination since the Racial Equality Directive target implementation date of 2003, but did not directly link this to the new law. The lack of an explicit link may in some cases reflect a clear continuity of policy dating back to before the directive. These examples are excluded from this report, although it is also clear that they have helped create the improving culture towards ‘the other’ that is found in several countries. In other cases the context of heightened awareness of the necessity to challenge discrimination for both business and legal reasons suggests the

directive did play a role in encouraging or enabling specific policies to emerge. These are the ‘indirect’ outcomes of the directive examples described here.

Mirroring the local customer base among its own staff has become a standard feature of many company business strategies, in particular in customer-facing sectors such as retailing. The Belgian Retailers’ Federation saw a clear recent business interest in diversity. The Brussels Commercial and Industrial Businesses employer association welcomed the creation of Diversity Managers paid for by the Brussels Region to be at the disposal of companies:

“The advantage is that these people are entirely devoted to diversity, while we couldn’t do that on our own; the disadvantage is that they are not as closely connected to the businesses.”

A Dutch employer recognised it was now crucial to *“integrate diversity in your image”*. This was critical both to attracting customers and to enable its employees to grow within the organisation. Tesco in the UK had also developed new policies in the last five years:

“We are seeking to attract and employ the most talented people. It’s a talent-based business case for us. We recognise there are many talented people from all walks of life. We know that there is a direct link between that talent and our balance sheet. How do we get people to realise their full potential?”

The semantic shift from the idea of ‘challenging discrimination’ to ‘implementing diversity policies’ was considered very positive by the Belgian Finance Sector Federation, whose members employ 0.7 per cent non-EU origin staff. Its respondent commented on the language used: in talking discrimination *“we feel accused”*, while we can feel *“passionate”* about diversity.

Evidence that a narrow definition of diversity is shared by some employers was given by the Finnish public sector employer respondent who suggested racial discrimination could be reduced through implementing what could be considered a form of tokenism: *“We should have a directive that at least one ethnic minority worker should be in every workplace. Of course, this is idealism.”*

The Irish Business and Employers’ Confederation is promoting the business case for diversity through seeking to establish mentoring-type relationships between organisations that are more advanced and others that are less so. The Irish Hotel Federation has

brought in a 'diversity award scheme' to encourage good practices in 'recruitment, training, promotion'. The largest French employer organisation, the Movement of French Enterprises (MEDEF), has also begun to encourage its local regional organisations to develop diversity among its member companies for both ethical and economic reasons.

Going beyond diversity

The Paris region of the French Small and Medium-Sized Business Confederation has many affiliated members and their employees coming from ethnic minority origins. The diversity it was committed to specifically included *"the struggle against discrimination and particularly against racial discrimination"*. The interviewee from the CGPME felt it was important to go beyond the slogan 'diversity' to sustainable local actions in terms of recruitment, training and awareness-raising. He explained:

"There is more and more opening up. But what worries me is the 'diversity alibi'. That is, to recruit one Black to a branch in order to pretend you are diverse. But how many Blacks are there across the whole branch network?"

In the case of the Austrian Vienna City Administration, a change in policy took place in 2004, in the wake of, but the respondents argued independently from, the directive. The new policy added 'diversity' to the previous policy of 'integration'. A Department for 'Integration and Diversity' was created so as *"to acknowledge the diversity of the Viennese population... to appreciate and to adjust to these changes... and to represent the entire population within the administrative structures"*. The new policy does not seek to be seen as a top-down imposition, and it is sensitive to the fear of competition among

"those who already are in privileged position and who perhaps also experienced a tedious career... It is always about social ups and downs and the fear of losing. What we are aiming at is to promote an understanding that everyone will benefit in the long run from diverse staff working in the Vienna City Administration."

In Hungary, a very large logistics company only employs a few Roma, but over half its workers are women and after the transposition of the directive in 2004 it developed an 'Equal Opportunity Plan' and Code of Conduct that is given to every employee. This policy is included in both line manager and new employee training programmes. In 2007 and 2008 the company had a competition between its units for the best equal opportunity practices, but none involved racial or ethnic discrimination. Its respondent was convinced:

"Should any kind of racial or ethnic discrimination emerge within the company, the top management would stand up against it in an extremely severe way."

Raising the importance of anti-discrimination practices through emphasising gender awareness was also the route taken by another inward investing multinational corporation (MNC), the Shell company in Hungary. It followed its Dutch-British multinational's lead and introduced an equal opportunity policy and code of conduct dealing with gender, language and religion as well as racial and ethnic discrimination in 2002, before the Hungarian law was passed. The company respondent believed Shell had been ahead of the legislation, and that directive transposition had made no difference. Nonetheless, in 2008 it began to deal with Roma problems and gave a Roma student a scholarship. It is also attempting to exercise influence on its petrol station franchisees to adopt strong measures of positive action. According to the interviewee the company wants to ensure that:

"the composition of employees at new filling stations should reflect the ethnic composition of the local population [...] In the background there are prejudices, deeply sitting in minds. For the long term solution, the Roma should be given chances, appropriate schooling and representation in employment. Even a quota system would be helpful in education. A breakthrough in welfare and employment policy is also needed to improve the situation."

Across several central and eastern European EU Member States a pattern emerged whereby interviewees from incoming multinational companies appeared more sensitive to racial and ethnic discrimination than did many nationally-based companies. But this was not always the case. One Bulgarian employer, the respondent from a Sofia Taxi firm with some 300-400 Roma drivers out of a total of 1,500-1,600, described its experience:

"We are the only taxi company with such a number of Roma taxi drivers, and we have no conflicts... we also have people in dispatcher positions from Roma origin, and one of them manages a Bulgarian channel with Bulgarian drivers."

The company is also considering putting all drivers into uniforms and training some Roma drivers as guides to take tourists to the Roma quarter of town.

In the Czech Republic, in 2007 the Gumotex rubber and chemicals firm was awarded the 'Ethnic Friendly' award by the IQ Roma NGO after passing an extensive check of its HR policies, wage system and collective agreements, and after interviews were held with workers from all ethnic groups. This programme was established after discussions on the transposition of the directive had begun.

A cautionary example, however, was given by the Confederation of Hungarian Employers (MGYOSZ) respondent. It participated in a successful EQUAL funded programming of vocational training for Roma after the directive had been transposed, but *"when the subsidies expired, the Roma participants had no sustainable enterprises and jobs"*.

3. Trade union awareness and responses

Trade unions are essentially reactive organisations. Made up of employees who voluntarily associate together in order to more effectively articulate collective views on their employment rights and conditions, they largely respond to changes rather than initiate them. The unions are rarely present in the vast majority of small firms, and have been losing members in many of Europe's larger firms over the last twenty years. Overall trade union density is higher in the EU-15, while the unions of central and eastern Europe are only rediscovering the union role as articulating an employee voice independently of the employer.

The national reports published on the FRA website that accompany this report outline the specific industrial relations systems and national roles of the unions. What is clear is that in most cases the unions have very limited room for manoeuvre in response to the regulations that employers introduce (or fail to introduce) in Europe's workplaces. Their awareness of and responses to the Racial Equality Directive and to the national frameworks of anti-discrimination laws are, nonetheless, part of the creation of a moral climate shaping what are acceptable or unacceptable employer practices.

This chapter first sketches the particular tensions between inclusion and exclusion in trade union policies in relation to ethnic minority or migrant workers. It then describes the challenges to trade union anti-discrimination policies created by the current economic crisis. Next, it turns to the trade unions' assessments of the impact of the directive, and finally considers its direct and indirect consequences on trade union policies and practices.

3.1. Inclusion or exclusion?

Nearly from their inception in the mid-19th century trade unions have grappled with the tension between an exclusive, national or skill-based protectionism and an inclusive internationalism. Up until the mid 20th centuries many of their responses to the employers' use of migrant workers were negative. 'Foreign' workers were essentially seen as a threat to jobs, wages and working conditions. While some unions and some union leaders advocated internationalism rather than protectionism, these were the minority.

Initially many unions argued for 'controlling numbers' of migrants. Then they developed the concept of 'equal treatment' to ensure there was no under-cutting of 'national' rates. But since the 1970s at first a few and then nearly all of western Europe's trade unions developed policies of toleration, support and 'equal opportunities'

towards ethnic minority workers.³⁵ The inclusive strand has become much stronger in western European trade unions. This was an outcome of significantly higher levels of migration and population mixing, of economic development that saw both a general up-skilling and shift from heavy industry towards services, and the extension of the notions of human and political rights.

When trade unions in central and eastern Europe joined the ETUC, they also signed up to the EU-level anti-discrimination policy agenda.

As outlined in the Introduction, after launching the Florence Declaration with UNICE in 1995 and being involved in the 1997 European Year Against Racism³⁶, the ETUC became one of the prime movers lobbying successfully in support of the Racial Equality Directive and it has remained committed to anti-racism ever since.

The ETUC respondent referred to the very negative publicity that had emanated from the UK when oil refinery construction workers who were members of the UNITE trade union had gone on strike in February 2009 for 'British jobs for British Workers'. Soon after that the Polish president of the OPZZ trade union confederation floated the idea of campaigning to protect jobs for Polish workers, "because other EU countries were doing it". Another OPZZ interviewee explained that:

"The statement about closing the labour market to foreigners was misunderstood. What the President meant was that OPZZ does not want to accept social dumping – we want to protect all employees and all jobs, so that nobody will be exploited. People who are coming to Poland to work should work on the same conditions as Polish workers."

The respondent from the Lithuanian Confederation of Trade Unions (LPSK) makes the protectionist argument quite explicitly:

"We are trying to keep our labour market from third country workers, even in a situation when we had not enough workers in Lithuania, we agreed only

35 Martens, A. (1999) "Migratory Movements: The Position, the Outlook. Charting a Theory and Practice for Trade Unions", in: Wrench, J. and Ouali, N. (eds.), *Migrants, Ethnic Minorities and the Labour Market*, Macmillan: Basingstoke.

36 The Florence Declaration followed upon the EU Commission's 1995 *Communication on Racism, Xenophobia and Anti-Semitism*, which included the proposal to designate 1997 as the European Year Against Racism.

to 5,000 places for third country workers. We are trying to keep our labour market for our workers."

This theme also recurred elsewhere, for example among the public sector unions of Luxembourg.

A more subtle form of the protectionist case was where migrant workers were welcomed but only as a temporary 'cushion' that could be removed to protect the 'national' workforce in the case of an economic downturn. An employer interviewee from the Stamont-Metal International employment agency in the Czech Republic that places temporary workers in several industrial companies noted:

"Trade unions in these companies are aware of the fact that foreign employees from agencies represent a certain cushion in case of dismissals. Therefore, they usually act helpfully towards them."

Impact of the economic crisis

Some respondents considered the current economic crisis as likely to lead to a sharpening of hostility towards ethnic minority or migrant worker, particularly if he or she actually had a job, and to postpone any serious implementation of the Racial Equality Directive. In Luxembourg, a Confederation of Independent Trade Unions (OGB-L) interviewee believed the crisis was affecting toleration: *"I now hear Luxembourgers and even Portuguese talking about the 'dirty cross frontier workers' coming here and taking our jobs."*

In Spain, a CCOO respondent reported growing antagonism among Spanish-born workers to the provision of unemployment benefit to non-Spanish workers. The respondent expressed real concern that the economic crisis could mean that the progress that has taken place is put into reverse.

"The fight against racial and ethnic discrimination has been achieving things, people are more aware of it. Unfortunately, the economic crisis is destroying part of the improvements. There is the danger of an increase in racism and xenophobia."

In some cases, proposals to integrate migrant workers more closely within a national trade union had been postponed. The crisis led to the cancellation of planned talks between the OS STAVBA union and Vietnamese trade unions about union rights for Vietnamese migrants working for Czech Republic employment agencies.

In Europe's largest economy, a German IG Metall union interviewee issued a warning: *"What we are now noticing is the nationalistic tone that exists in companies, irrespective of the new law in Europe."* In one of its smallest economies, Latvia, the Energija union respondent confirmed that minority workers were already worried: *"Especially now, some people have turned to me or other representatives, expressing their fear, asking if limited language knowledge might be one of reasons to be first in line to be fired."*

However, some respondents also argued strongly that the assertion of racial equality was even more important in the current crisis. An Italian trade union confederation (CGIL) interviewee stressed that:

"Basic principles must be reasserted precisely in situations of emergency... In this regard I say that certain European instruments can help us to strengthen and not to wreck the effectiveness of some laws already in force."

Trade union ambivalence

Both exclusionary and inclusionary strands of trade unionism remain present nearly everywhere. A preference for national workers is inevitably fuelled by the current economic crisis. Trade unions may embrace 'new' workers, but may at the same time come under pressure to appear to protect the interests of their existing 'national' members.

This can lead to the situation of potential tension between the struggle for better pay and working conditions for domestic workers and the struggle against discrimination on the grounds of race or ethnicity. This may explain why trade unions have not mobilised against racial discrimination in some countries.

3.2. The impact of the directive

This section presents the views of the trade unions on the impact of the directive on the ground. The interviews disclose three main union positions on the directive's significance:

Positive impact of the directive

Many trade union respondents considered that the directive helped spread the general awareness of workers' rights among the general public. Several active policy changes were identified by the trade union respondents as a direct or indirect consequence of the directive. Some referred to one

result being a reconsideration of traditional trade union views of opposing ethnic monitoring.

Little or no impact of the directive

It was argued that the adoption of the directive had not led to any improvements because pre-existing national legislation on ethnic discrimination already provided protection. Furthermore, some of the trade union respondents believed there was not enough readiness of individuals and organisations to challenge discrimination. This was ascribed to fear of raising a 'controversial' issue in the workplace both on the side of trade unions as well as employers. Some trade union respondents believed that the directive was not a right mechanism to fight discrimination.

Negative view of the directive

Some concerns were voiced that a policy of pursuing legal remedies on an individual level could lead to a weakening of unions' collective bargaining. Some also argued that workers did not pursue claims because the legal processes were complicated and slow, the remedies were limited and the desire to remain in work meant that individuals were reluctant to use the law because of a fear of reprisals.

Ignorance and lack of awareness of the directive

Several interviewees exhibited a lack of knowledge of and unease with the concept of racial discrimination. Furthermore, they insisted on denying the presence of discrimination despite admitting that particular groups, especially the Roma or linguistic minorities, do experience generalised disadvantage. Some appeared to define racial or ethnic discrimination in such narrow ways that they automatically concluded that such discrimination could not be present in their countries or trade unions. In other instances, trade union officials interviewed in this study displayed attitudes tolerant of discrimination on the grounds of racial origin.

3.2.1. Positive impact of the directive

Awareness-raising outcomes identified by some unions that flowed from the Racial Equality Directive and its national transposition included the knock-on effect that well-publicised legal cases of racism were having on public awareness. For the interviewee from Sweden's largest union, the local government union Kommunal, one fifth of whose members have non-Swedish origins: *"The EU Racial Equality Directive and the subsequent Swedish law have made the problems of racism and discrimination more visible."* The Swedish Commercial Employees' Union, Handels, echoed this analysis: *"The public debate on ethnic discrimination in recent years has increased awareness among the members."*

Similarly, the Belgian General Workers' Federation (FGTB) respondent emphasised: *"Yes, I can see a real awareness. But it's the result of several things including in particular the role of the media, which is really important"*. The impact of the Adecco case, where the temporary work agency had put 'BBB' next to white Belgian job workers in order to allow clients to make a racial selection, had been considerable. In Belgium, it was also reported by the FGTB that collective bargaining on discrimination had become noticeably easier with the employers after the directive had been transposed into national law.

Another Belgian FGTB interviewee commented very positively upon the state-funded Diversity Advisor posts created in September 2007: *"The directives have helped to implement the diversity policies and provided strong arguments to legitimate them."* The Advisors' role is to help companies develop diversity plans, but also to give support to trade union representatives in taking up grievances concerning discrimination and racism.

Overcoming denial

A respondent from the French General Workers' Confederation (CGT) saw the creation of the French Equality Body, the HALDE, as extremely important in unblocking resistance to the concept that racism could be widespread in France. The CGT participated in the HALDE's Consultative Committee and the interviewee believed:

"Without the European legislation the strength of denial has always been so strong that we would still be having to battle in order to start the fight against discrimination."

In Germany, an interviewee from the IG BCE (the chemical and mine workers' union) believed: *"Society has become more sensitive. We have been able to see many areas affected, especially the employers who were against the laws."*

Legal benefits were noted by some of the trade unions. In Sweden, the Construction Industry Federation believed an important change was that the union could now directly take up issues of discrimination, whereas before it was only the Discrimination Ombudsman. Although the transposition did not represent a new departure, the German VERDI trade union respondent believed:

"The advance that took place occurred in the fact that it [the law] was directly aimed at individuals. So that they now had far reaching possibilities and... could, when they felt discriminated or were discriminated against, make it an issue and test this legally as well as receive damages."

However, the VERDI respondent went on to recognise that *"in practice it is difficult to apply"*.

In the Netherlands, the largest trade union confederation, the FNV, welcomed a recent amendment to the Working Conditions Act making the employer legally responsible for the prevention of discrimination in the workplace. The interviewee believed this could encourage works councils to raise the need to combat discrimination within companies. In the UK the Communication Workers Union interviewee also welcomed the legal changes: *"The harassment provisions are very significant since they allow more people to challenge employers driven by racist undertones."* The respondent went on:

"Although you still find shocking examples [of discrimination] where race has been the primary motivation... the situation was improving as the employers became more aware of their legal duties."

The Danish Confederation of Professional Associations (AC) saw two main improvements with the Racial Equality Directive: *"Of course the shift in the burden of proof is an important change and also that the Institute for Human Rights has been given the mandate to initiate cases... It has set things straight."*

Finally, even in cases where respondents could see positive impacts of the directive, some of them still perceived there to be certain problems.

In Denmark, the unions faced an ideological dilemma, identified by the 3F trade union interviewee as:

"A conflict between collective rights – represented in the Danish model – and individual rights – represented in EU [...] There is a fundamental fear in the Danish model that EU laws will dictate and limit the Danish model, which is based on dialogue and consensus between the different parts of the labour market. However it is the view of 3F that Human Rights must overrule all agreements. It has been a challenge for 3F to promote this point of view."

3.2.2. Little or no impact of the directive

Although in general the majority of Union interviews saw it as a positive development, they pointed to the following reasons as limiting the impact of the directive and the relevant national laws:

- existing laws and practices already reflected anti-discrimination values;
- there are problems with the transposition at the national level;
- the trade unions are too weak to be able to impose full compliance upon otherwise slow or non-responsive employers;
- the directive is not seen as the right mechanism to fight anti-discrimination.

Existing anti-discrimination legislation

The overall estimate of its impact so far on the Netherlands given by the FNV was:

"There are no changes in the awareness of the right to non-discrimination at work that are visible among employers and employees. The anti-discrimination legislation has not led to any specific improvement of the position of ethnic minorities in practice."

Another reason given was that in many countries the directive had made little or no direct difference to existing provisions – although it was acknowledged its impact could be indirect. This was the position of the FNV in the Netherlands and of the UNITE trade union interviewee in the UK who argued:

"In terms of race equality we already had legislation in place so the Racial Equality Directive did not make much difference. ... But it is always helpful to have legislation that encourages us and other bodies to negotiate with employers."

The Irish Bank Officials Association interviewee also pointed to the Irish 1998 Employment Equality Act and the 2000 Equal Status Act as having "most impact on awareness. The Equality Directive and the 2004 Employment Equality Amendment Act had limited impact on the union, its members or the employers."

In Poland the ZNP-OPZZ teacher trade union interviewee recalled opposition taking place to the anti-discrimination amendment of the Labour Code: "People were saying that the Polish Constitution that states that we are all equal to law is enough." In Slovakia the OZ Chémia union interviewee from the Slovnaft MOL oil refinery also considered the directive has not led to any changes because 'anti-discrimination' policy was already in place.

Problems with transposition

One reason given for the absence of real improvements was that its provisions had not been universally transposed. A respondent from the UNISON public sector trade union in the UK argued that across Europe:

"The regulations created a two-tier approach to race equality. ... Different Member States transposed the legislation in different ways... and did not adhere to the 'no detriment' principle [by which] all Member States should have the same protection or better."

In Malta, the General Workers' Union appointed a section secretary to deal with the directive and the interviewee was relieved 'at least we now had a law'. However, since most migrants worked in the informal economy and the issue was highly sensitive in a small country that had seen proportionately large numbers of undocumented migrants come to the island, other stakeholders such as the Immigrants' Commission run on behalf of the local Catholic Church were considered as more appropriate. "Until now the country's priority was to get rid of them". In terms of racial equality, "we are still at the early stage".

Trade Union weakness and non-responsive employers

Some respondents also indicated that the problem of lack of impact was partly down to their own weakness. Thus, the Cyprus Building Workers Union interviewee put it down to the low general level of trade union presence in the sector and country:

"Where migrants work in unionised workplaces they feel more protected and secure; but where they are in non-unionised workplaces or in the informal economy they are not aware of the law and are vulnerable to gross violations of their rights."

The positive impact of large numbers of trade union members was recognised by an interviewee from the Metal Workers' Trade Union, IG Metall:

"Where we are strong, where I have 80 to 90 per cent union density, then naturally it is a lot easier to get certain things over. And here the individual feels more confident to do something against it [discrimination]. Because they know a strong union and strong works council means that they can behave more confidently."

The lower the level of unionisation in a country, therefore, the less impact the directive is likely to have had. However, even within 'stronger union' or 'more union-friendly' societies, trade union interviewees often admitted they still had major problems in dealing with continuing racial and ethnic discrimination.

Unions also find weakness in their own structures because of conflicting priorities. An Austrian trade union (GPA-DPJ) interviewee explained that the rightward shift of Austrian electors in recent years was creating a fear among some trade union activists of losing their positions and attached privileges (primarily time away from the workplace on trade union duties) if they showed themselves too supportive of measures challenging racial and ethnic discrimination:

"On the one hand they are afraid that their clientele does not appreciate such steps. On the other hand there is the fear of being challenged by migrant workers who want to represent themselves."

While union leaders at the top of their organisations generally endorsed the directive's anti-discrimination measures, the ways in which these policies are articulated at workplace level often suggest a more passive or neutral approach. Only 15 per cent of the 250 complaints a year received by the Belgian Equality Body are thus brought to its attention by the unions – a proportion that the unions feel is rather low.

The interviewee from EARN, a Dutch working group of black and migrant-origins union officers, confirmed the suspicion that victims of ethnic and racial discrimination often turn to NGOs to look for help rather than go to the union. The unions may often “offer no structural legal support, or the support they do offer is not sufficient” and the experience of unions is that there is “often a lot of bureaucracy”. These are frequently voiced criticisms of their union structures by many members. However, this interviewee explained that the difference for those experiencing racial discrimination was that there was also “a lack of knowledge of discrimination issues” on the part of union representatives.

Other more direct fears were also expressed about responses at workplace level. The EARN interviewee went on to argue that individuals need:

“confidence in the system that you can take your complaint somewhere where it would lead to a proper result. Recent experience has not provided the evidence to create this confidence. Why should people take the risk?”

Some trade unions also argued forcefully that the lack of apparent impact was because the employers have not really changed their practices. The Belgian FGTB interviewee summarised the doubts of many: “The position of the employers was: ‘we really want to take up a position against discrimination’, but they limit themselves to paper declarations.”

In Slovenia the argument that little had changed was put by the Free Trade Union (SSS). The interviewee recognised that the legislation “helps the trade unions to become more active on anti-discrimination issues”, in particular with the Roma and the German-speaking minority. However, the respondent considered that:

“The new laws encouraging anti-discrimination did not stimulate employers to adopt equality and anti-discrimination policies... If the employer does not see profit, in the majority of cases there is no effect.”

Directive not seen as the right mechanism to fight discrimination

In Germany the 1995 Florence Agreement had led many Works Councils to use the legal framework of the Works Constitution Act to secure company-level anti-racist agreements. One of the DGB interviewees reported:

“These company agreements go much further than the law set down by the AGG. They not only address the question of what happened when discrimination occurs, but they also include preventative measures to protect people from discrimination, and the contents of management training.”

Some trade unionists were concerned that the promise of a legal solution to the problem of racial discrimination could be illusory. An Austrian interviewee from the GMTN industrial trade union pointed out that the example of women fighting individually under the country's gender equality law did not bode well:

“In my opinion it is very important that the legislation and the commission [on equal treatment] exist, but they are not a very efficient means of handling the issue of and combating discrimination. As you see with the gender issue, the Commission and Ombudsman have been treating it for 20 years, but it did not improve much in terms of overall social and socio-economic changes. Every single fighter received support, hundreds of cases are settled each year but they are insignificant judged by reality [...] Any measures that depend on being taken up on the initiative of individuals cannot have a sustainable impact on the generally discriminatory situation of whole population groups.”

An interviewee from the CFDT (French Democratic Confederation of Workers) insisted that the real way that racism is challenged is through concrete actions on the ground: “It's not the law that brings about change”. A respondent from the German IG Metall argued:

“[The directive] does not mean that people's awareness has changed. It has to be lived. And for this reason I think the law has to be filled with life. You have to find practical examples so to be able to say that it is great to work in a diverse environment.”

One of the Belgian FGTB interviewees indicated another area of concern:

“The Racial Equality Directive and the Anti-Racism Act didn’t necessarily improve protection against racism in employment, because it became more covert, insidious and then difficult to identify.”

Several of those interviewed recognised, like a Belgian Flemish-speaking Tunisian-origin trade union activist, that with the passage of the directive it was “now easier to deal with diversity since it embraces many kinds of people, not only those of Black and Minority Ethnic origins”. However, this did not resolve the core problem: that while stereotyping and selecting on visible or linguistic characteristics remains a pervasive method of choosing employees or of allocating work, training or promotion, it remains difficult to prove and was still frequently damaging for the victim to raise.

Two Equality Directives

One problem in evaluating the specific impact of the Racial Equality Directive derived from its frequent legislative transposition alongside and confusion with the Employment Equality Directive. For many this merger had provided an ‘easier’ option of introducing anti-racial discrimination measures into agreements or workplace practices under the flag of ‘general’ anti-discrimination. In fact many interviewees when asked about the anti-discrimination legislation would confuse it with gender equality legislation.

3.2.3. No impact of the directive

The two main explanations for the total lack of any impact of the directive within their country or on their organisation given by the trade union interviewees were:

- **slow process:** the country’s democratic processes were still undeveloped in relation to fully implementing and respecting the directive;
- **other priorities:** the unions had many demands on them and responding to the issue of race and ethnic origin was not as high up as other issues.

In some countries where racial or ethnic discrimination has only been prohibited very recently, there is also considerable scepticism about any laws that prohibit such stereotyping. For example, the Latvian Energija trade union respondent reported: “The EU non-discrimination law is seen as something forced on the country from the outside, and non-essential.”

The Polish NSZZ Electronics Industry union interviewee was aware of the problems with the Belarus and Ukrainian minorities, as well as of the challenges posed by recent migration into Poland. He argued that “the problem is known and understood”, and asked:

“Can we say that it is marginal issue? Well, employers would say that because they do not want to have problems. But trade unions do not have much time for it either – especially since it is difficult to organise people, because of legal barriers and because of their [the minority’s] low inclination towards trade unions.”

Several interviewees from new EU Member States confirmed the continuing presence of xenophobia within the trade unions despite the presence of the directive. In Cyprus, the respondent from the private sector union confederation, DEOK, was clearly committed to awareness-raising because: “Racists are found even in the ranks of trade unions.”

A slow process of implementation

In some countries, trade unionists argued that the lack of impact was due to a wider lack of respect for the rule of law, and that implementation would be a long and slow process. In Bulgaria, the interviewee from the Food Workers’ Union believed:

“There is no visible change since the implementation of the directive in the national legislation. Where discrimination exists it is still there... There is European harmonisation on paper but this is the trouble in Bulgaria: laws are not respected.”

The Trade Union Confederation of Latvia (LBAS) interviewee reported a similar problem:

“Theoretically we [Latvia] have transposed the majority of the new legal regulations. But we have problems with the other side of the coin, the implementation of these norms.”

Too early

The assessment that it is too early to measure the Racial Equality Directive's impact was expressed by the interviewee from one of the largest trade union confederations in Estonia, the EAKL: *"I am afraid that awareness has not increased enough, it is a longer process."* The interviewee from the Estonian Media Workers' Union (TALO) added: *"The new legislation has not produced any changes, especially in connection with race. Some political questions could be asked [as to why not], but even we do not want to talk about political issues."*

Other priorities

One of the common arguments used by some trade union respondents to explain the absence of a response by them to the directive was that they had other, more pressing problems. In particular, both in central and eastern Europe and in France, interviewees referred to 'discrimination' by employers against trade union activists and members as taking precedence. Thus, a French FO respondent argued that trade union practice had problems in changing not only because of real immediate problems – the crisis, restructuring and redundancies – but also *"because trade union activists believe that fighting against discrimination against activists takes priority"*.

For many trade unionists there was also the problem of convincing many of the existing 'majority' workers that the inclusion of ethnic and national 'minority' workers and real equality was in their interests. This can be more difficult in a period of restructuring and redundancies where agreements have been negotiated based on the 'first in, last out' principle that effectively discriminates against more recent and frequently minority or migrant employees. A German VERDI interviewee believed: *"The union is very conscious – as are works councils – that [seniority-based] redundancy programmes are clearly illegal under the new laws."*

For some trade unions, the lack of interest or low priority in racial or ethnic discrimination also appeared to reflect a calculation that the returns in terms of members or activists would not be very high. The Danish Commercial and Clerical Workers' Union (HK) reported no change to the levels of recruitment of ethnic minority workers or of their involvement.

3.2.4. Ignorance and lack of awareness of the directive

The ETUC-UNICE Florence Declaration clearly defined direct racial discrimination. It occurs where people are treated 'less favourably on the grounds of his or her real or perceived race, religion, ethnic or national origin or colour'; 'indirect' racial discrimination in contrast is where 'unjustifiable practices... adversely affect more of a particular... group than those not of that group'. Both forms were specified and proscribed in the Racial Equality Directive.

Yet, several interviewees exhibited a lack of knowledge of and unease with these definitions. Furthermore they insisted on denying the presence of discrimination despite admitting that particular groups, especially the Roma or linguistic minorities, do experience generalised disadvantage. Some appeared to define racial or ethnic discrimination in ways that were so narrow that they automatically concluded that such discrimination could not be present in their countries or trade unions. The Estonian Trade Union Confederation (EAKL) respondent, for example, was quite categorical: *"I think that racial discrimination in the workplace is not present in Estonia."*

In relation to the Roma, a Podkrepa interviewee argued: *"There are some practices in Bulgaria that are not discrimination, but as a result there are Roma people in an unfavourable position."* He considered that this was the result of the Roma's own desire to remain a 'closed group' who *"wish to preserve their way of living as they understand it"*. A lack of literacy and or qualifications then confirms labour market disadvantage, and leads, where they exist, to a perceived dependence upon social security benefits and other methods of surviving at the margins of society.

The absence of qualifications was reported by the Greek Public Servants Confederation (ADEDY) interviewee as being used against Greek Roma employed by a local council whom the union had defended. The Roma staff did not have the required Secondary School Leaving Certificate.

This context, in turn, makes it more difficult to acquire traditions of work attendance and discipline. The Bulgarian CITUB Food Workers' Federation interviewee stated:

"We don't have any complaints of discrimination based on ethnicity, race or religious criteria, with the exception of the preference for Bulgarian workers at the expense of Roma workers in recruitment. But it is understandable – the work habits and the qualification are better with the Bulgarians... The Bulgarian is preferred – he is considered more disciplined, he has work habits, he has better qualifications... The Roma worker is not preferred because he has low qualifications, his work habits are criticised. You can not always count on him, he will come to work today but not tomorrow. They are irresponsible. In many workplaces they try to eat and to steal things."

In Poland the ZNP-OPZZ teachers' union respondent noted that the union's own members were complicit in not protesting against the worse conditions that Roma children experience:

"There is a problem in ZNP about the Roma minority. We did not have any signals of any form of discrimination and then we read in newspapers that in many schools there is ethnic segregation and Roma children have different classes, in worse conditions. We were shocked that nobody reported that, none of our members."

In the Czech Republic one of the interviewees from the blue collar metal working trade union, OS KOVO, believed *"the racial discrimination issue is marginal"*. It has some Roma and Vietnamese members but has never organised any training or information materials on this issue, although it might do so when it sees what if any changes the new Anti-Discrimination Law of June 2009 might bring. More specifically, the interviewee from the OS STAVBA Czech Building Workers Union considered that the Roma on construction sites *"are very well aware of what they are and what they are not entitled to,"* adding that racial discrimination *"is kept on about in the media more than is needed"*.³⁷

In Lithuania, the Trade Union Confederation (LPSK) respondent made the same argument: *"We don't see a lot of discrimination here in Lithuania at all,"* before qualifying this assessment: *"As regards Gypsies, our employers do not like to have workers who are Gypsies."*

Qualifications and discrimination

The view that unfavourable treatment was not 'discrimination' was taken by the Latvian teachers' union (LIZDA). Although teachers from schools with Russian as the main language had approached the union with complaints of ethnic discrimination, it rejected them.

The interviewee explained: *"We found out very fast, that there was no discrimination. It was an issue of insufficient qualification of these teachers... Nothing prevented them from abiding by the [Latvian language] law."*

The interviewee continued *"We, the trade union, are ready to protect our members, if they prove they try to learn the language... But they must know the state language, the language must be known. That's the law in Latvia and there is nothing discriminatory in these cases."*

3.3. Outcomes

Most trade union respondents reported that policy developments in relation to racial or ethnic discrimination had taken place during the course of the five to ten years. These have embraced both a more active involvement in defending ethnic minority workers and challenging discrimination in the workplace and changes to the unions' internal rules, organisation and strategy. Yet, few interviewees attributed these changes directly to the Racial Equality Directive. They were much more likely to consider that recent migration and globalisation had provoked these changes.

The 'more aware' trade union interviewee responses were divided between those who believed that the effect of the directive upon their own practices was minimal, because they had already implemented stringent anti-discrimination policies, and those who reported that their policies and practices had changed considerably. Some 'aware' respondents suggested that there was little impact because despite paying lip-service to the issue the union still did not take it seriously enough. It was argued in these cases that the directive had not yet stimulated enough commitment to drive the unions to attempting significant recruitment among or full integration of ethnic minority workers. Predictably, the 'less aware' trade union respondents generally reported few if any changes to their policies and practices.

37 The quality of this response may be compared with the finding of the EU-MIDIS report (2009, p. 6-7) that 83 per cent of Roma in the Czech Republic thought discrimination was widespread and 71 per cent did not know of any organisation to complain to.

In this section we first discuss those changes that were directly linked to the directive, and then those where it appears to have been an indirect trigger. We will not describe the many anti-discrimination actions that were reported to us which, although reflecting a generally heightened awareness of discrimination issues, could not be linked to the directive.

Direct outcomes

For many trade unions the readiness to challenge racial discrimination at work really began soon after the directive was passed in 2000. In several interviews it was clear that one motive for the unions taking up stronger positions than before was because their own members demanded it. But whether this happened or not frequently depended upon the presence of key union leaders ready to act as champions for the minority workers.

In France, a CGT interviewee reported that as early as 2003, union activists had begun taking legal actions on the grounds of an ethnic division of labour against certain major companies such as the German MNC Bosch and the nationalised SNECMA aircraft engine manufacturer. These activists were of North African origin themselves, and their parents had passed their entire working lives in marginal occupations.

In Hungary, the VDSZSZ Railway Union formed an Equal Opportunity Section immediately after the directive was transposed. It has many Roma among its 12,000 members. The interviewee has witnessed *“the everyday hate speech used by managers and employees against the Roma”*. The Roma are pejoratively described as a ‘Brazilian production line’ (playing on the words ‘Brazil gépsor’). But the union has won two successful court cases defending victims of discrimination, one of which in 2005 involved winning the case of 12 Roma track workers who were being made redundant.

Institutionalising anti-discrimination

With other unions the VDSZSZ negotiated an Equal Opportunity Plan at the Hungarian State Railways. For the interviewee:

“The main impact of the legislation has been that ethnic minority issues surfaced, became measurable – in terms of wage differences, for instance – and helped us as a union a lot, as it became equipped to fight discrimination. Though slowly, more people are getting increasingly aware of such issues too.”

Equal treatment issues have been incorporated into the union’s internal training for regional and local representatives. *“Although the principles were laid down earlier,”* the VDSZSZ interviewee insisted, *“the law amounted to a breakthrough in institutionalising anti-discrimination”*.

The respondent from Malta’s largest union (GWU) provided another positive example. He recognises: *“Racial discrimination is rampant and across the board in Malta.”* As recently as 2008, he reported that a union official had made a speech arguing: *“We should forget human rights, let’s throw them back in the sea and let’s just protect our jobs.”* But the union had made a *“360 degrees turn”* and now sees *“migrants as the new working class, because whether we like it or not, black people are here to stay”*.

With funding from the EU, the GWU union had started an education programme on racial equality, and had now taken *“a quantum leap”* forward in setting up an office to deal with it: *“Everything is new and everything is just getting off the ground.”* Early in 2009 black workers participated for the first time in Malta in a trade union protest march.

Changes to the internal procedures and rules of trade unions were quite common following the directive. In Denmark the timber and construction trade union (TIB) set up an Equality Committee concerned with ethnic and gender issues:

“They are tasked with examining what to do if unequal pay is discovered, and to examine how to get more people from ethnic minorities to enrol in TIB’s training programme. We want to know why they have a higher drop-out rate.”

Revisiting ethnic monitoring

Following the passage of the directive, some trade unions are reconsidering their traditional criticism of ethnic monitoring. This is the case in Belgium, where trade unions may build their ranks based on civil, political, philosophical or religious beliefs or convictions. Thus, the unions may expel members or refuse candidates for members, if it is deemed that he or she cannot support the legitimate principles of the association, or when their actions clearly indicate that they are not loyal to the principles of the association. The principle right to expel or refuse members was reaffirmed in the currently pending court case, where a union expelled members of a Vlaams Belang (formerly Vlaams Block, a far right wing party), for allegedly acting contrary to the ethos represented by the trade unions.³⁸

An interviewee reported on ethnic monitoring:

"Yes, we don't like to reduce people to their ethnic origins, but we have to be pragmatic and have a tool that shows tendencies and that allows us to target sectors and that also allows us to intervene when there are problems. . . It's a real tool that we don't have in Belgium."

Awareness is growing that the ethnicity of union leaderships should better reflect the composition of their membership if they are to more effectively recruit ethnic minorities and have a closer understanding of the issues their members face. At the founding conference of the German VERDI public sector union, with between six and eight per cent of its members from migrant backgrounds, it was agreed to increase the numbers of union officers, particularly younger people, from a migrant background.

In the German IG Metall union, only two per cent of the union's 1,600 employees are of ethnic minority

origins. One interviewee said: *"This is a discussion we constantly have. . . and it is this that our migrant members demand, because they account for around 10 per cent of our members."* At the French CGT there is now also a new sensitivity to the visible contrast between many of its trade union sections, where there are significant numbers of people of colour, including many women, and the more senior trade union positions. However, *"although change is slow, it is taking place at Confederation level"*.

In many countries, unions responded quite quickly to the transposition of the directive by offering information or training to their activists on how they could use the new legislation. In Bulgaria, CITUB has begun to train its activists and members to identify and challenge ethnic discrimination, using a brochure and a specially produced CD to support the training. The CITUB interviewee reported:

"The union produced written guidelines for its trade union sections about the Protection against Discrimination Act – and updated these in 2007. . . In 2007 it organised training with trade union activists in four areas, involving about three hundred local activists and another hundred from the various federations. We did this in order to raise the sensitivity and spread knowledge about discrimination among the trade union community."

Some problems

In the UK, the interviewee from a union (PCS) that is strongly committed to anti-racism explained that guidance on the changes in the law had been issued immediately after the transposition of the directive. However, despite proposals being made there had been no training organised for the paid union officials. The respondent believed that the practices of the union had not changed and that much more needed to be done:

"The hearts and minds of the members have to be won. They (the union leadership) like to pretend that it doesn't exist because, "Oh, we couldn't possibly have racism in the union, could we?"

In other unions, training was offered, but there was little interest. An interviewee from IG Metall in Germany who had held responsibilities for the 'migration' issue over several years, described it as *"a hot potato that one gladly passes on to the next person"*. His analysis of the new legislation is that it has:

"made no difference to the union's work at all. . . We recognise that the new law is now in place but very few

38 The interim decision of the Antwerp Court of Appeal of 26 April 2010 in the case 2008/AR/3194 reaffirming the principle right to expel members of organisations, based on: freedom of association (Article 27 of the Belgian constitution, Article 11 ECHR, Article 22 Treaty on civil and political rights); freedom of association and protection of the right to organise (ILO Treaty No. 87 as ratified by the Belgian law of 13 July 1951, more specifically Article 2 and 3 of the Treaty); the decision dated of 15 January 1992 of the Belgian Constitutional Court, stating that the right of association includes also the right to organise the internal organisation, functioning and management of the trade union. – The final decision in this court case is expected in 2011.

union officers either were or are really that interested in it... In the area of migration we tried to hold a workshop for works councils on the new law in 2008, but I had to cancel it twice because of a lack of interest."

A lack of continuing interest in the directive was confirmed by another IG Metall interviewee: *'It is very difficult now to motivate people to be active in this area. I believe this is a very general experience that exists everywhere.'*

A similar situation was reported in Austria where the interviewee from the Metal, Textile, Agricultural, Food, Beverage and Tobacco Workers union (GTMN) described some interest at the time the directive was transposed, but added that this had subsequently evaporated:

"Discrimination against migrant workers is not an issue in the decision-making bodies of the union. There is no deliberate strategy to address discrimination. When the directive was implemented – also due to the publicity of the topic – some initiatives arose. Since then the issue it is still around but the situation has not changed significantly."

However, as pointed by the IG Metall trade union interviewee from Germany, much depended on the individual, thus highlighting the importance of equality champions inside the union structures:

"In the unions we said 'We are against all forms of discrimination – that is our political foundation'... That there exist problems in transferring this position to the plant level is unquestionable, these (problems) still exist like in the past. Whether migration is an issue depends on whether the chair of the works council or another delegate is personally interested in this theme."

The UNISON interviewee in the UK was equally certain: *"It [the success of union anti-racist policy] depends on having equality champions, equality leaders".* These champions may come from national majority origins as well as ethnic minorities.

The presence or absence of individuals who are prepared to stand up for the minimum protections afforded by the directive often makes the difference in terms of an organisation's response.

Indirect outcomes

Since the directive was transposed many trade unions have embraced much more active policies in combating racism in society, seeing this as the key to challenging it at work. Building on the 2007 EU Year of Equal Opportunities for All, the Christian Netherlands trade union confederation (CNV) created a 'Multicultural Platform', whose object was to *"exchange experiences, review union policy and to keep the union informed on diversity-related topics"*. The Youth-CNV also organised a campaign aimed at raising awareness of discrimination in schools and among employers. Called 'Proud of Your Name', it had its own special website.

Other trade unions have focused much more clearly on campaigning against racism in the aftermath of the directive. Thus, in Denmark the smallest LO affiliate, the Ball Games Trade Union (Spillerforeningen), has become active in a football anti-discrimination campaign called 'Give Racism the Red Card'.

In the light of the directive the UK general union, the GMB, reflected upon the impetus behind the need to challenge racial and ethnic discrimination in increasingly diverse society. Its new strategy operates through a 'Respect@Work' policy whose purpose, the interviewee described, was to *"move equality from being a strand to being an issue... Racial equality has to be brought into the mainstream"*. The union is therefore beginning to campaign for 'Equality representatives' within the workplace who should have the same legitimacy as Health and Safety representatives.

Following the transposition of the directive raising anti-discrimination standards for the UK public sector, the Communication Workers Union got involved with the TUC's 'Let them work' campaign for the right of refugees and asylum seekers to work legally. The UK Civil Service PCS interviewee also reported heightened anti-racist policy commitments and recent union support for several campaigns against deporting undocumented workers. However, this respondent believed the union had not yet fully challenged workplace racism: *"We are very good at flag waving, for example on the anti-fascist stuff, but in terms of doing things for our members in the workplace, I think we could do better."*

4. Equality Bodies

This Chapter first introduces the context in which Equality Bodies were generalised across Europe. It then provides evidence of the views of both employers and trade unions on the Equality Bodies, and finally discusses their explanations for the relatively low number of complaints the bodies have received so far.³⁹

4.1. Context

As stipulated in Article 13 of the Racial Equality Directive, the EU Member States were obliged to “*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.*”

Nearly everywhere the Racial Equality Directive’s provisions were transposed in law alongside the Employment Equality Directive (2000/78/EC). This latter (also known as the ‘Equal Treatment Directive’) prohibits discrimination in employment and occupation – access to employment, access to vocational training, working conditions, and membership of workers organisations – on the grounds of religion or belief, disability, age, or sexual orientation. Like the Racial Equality Directive, the Employment Equality Directive stipulated that EU Member States shall ensure that judicial or administrative procedures are available to victims of discrimination. Furthermore, the directive is also to ensure that associations or other legal entities have the possibility to engage such procedures on behalf or in support of individual victims.⁴⁰

Multiple-grounds Equality Bodies

In some countries multiple-discrimination ground bodies were established, covering all forms of discrimination, while in others different Equality Bodies exist, each dealing with a specific discrimination. EQUINET, the EU-supported network of Equality

Bodies thus has only one member in some countries, and more than one member in others.⁴¹

Some gender equality boards were transformed into multiple-grounds Equality Bodies. For example, in Lithuania there is an Equal Opportunities Ombudsperson with responsibility for investigating complaints and for monitoring how equal opportunities are ensured, whose role was extended in 2005 to cover all the forms of discrimination. In Estonia, the previous Gender Equality Commissioner was extended to the Gender Equality and Equal Treatment Commissioner in 2008, to cover all forms of discrimination.

In Slovakia, the Slovak National Centre for Human Rights had its powers extended to cover all the forms of discrimination. In Slovenia, an Office for Equal Opportunities and a Council for the implementation of the principal of equal treatment were established, although its principal focus is on gender equality. Similarly in Luxembourg, a Centre for Equal Treatment, established in 2006, promotes, monitors and analyses equal treatment.

In some countries, a gender equality body was left separate from the new body. In Austria, there are two bodies at Federal level, the National Equality Body and the Commission for Equal Treatment. This last is split up into three ombudspersons with three ‘senates’ covering discriminations on the grounds of gender, at work and outside work. Both bodies cover all the forms of discrimination except discrimination on the ground of disability. Greece also has two principal bodies, an Ombudsman and the Equal Treatment Committee, although the latter does not cover employment.

In Belgium, the Centre for Equal Opportunity and Opposition to Racism covers all the grounds of discrimination other than gender. In Portugal, a Commission for Equality and Against Racial Discrimination (CICDR) had been established in 1999, and in 2007 its policy remit was enhanced by a new High Commissioner for Immigration and Intercultural Dialogue (ACIDI), while also in 2007 a new Commission for Citizenship and Gender Equality (CIG) was set up integrating the work of two earlier gender-focused Equality Bodies.

39 Evidence of low awareness of Equality Bodies in the EU can be found in the analysis of the EU-MIDIS dataset, see FRA (2010) *Rights Awareness and Equality Bodies*, EU-MIDIS Data in Focus Report 3, Luxembourg: Publications Office.

40 FRA (2010), *Migrants, Minorities and Employment – Exclusion and Discrimination in the EU-27 Member States of the European Union*, Vienna: FRA.

41 For more background information on Equality Bodies, please consult the work of the European Network of legal Experts in the field of non-discrimination; for instance, see European Commission (2006) *Catalysts for Change? Equality bodies according to Directive 2000/43/EC*, Luxembourg: Publications Office.

In some other countries, bodies covering previously separate discrimination grounds were brought together. In Sweden, a Discrimination Ombudsman was merged from the four previous different ombudspersons. In the UK, a multiple-grounds Equality and Human Rights Commission (EHRC) covers Great Britain, with a separate similarly named body covering Northern Ireland. Their remits cover all forms of discrimination and include the issue of defence of human rights. Previously, there were separate bodies covering race, gender and disability. In Cyprus, a general ombudsperson also covers all discrimination grounds.

All-grounds bodies now exist in Hungary, the Equal Treatment Authority, and in Ireland, the Equality Authority. In France, the HALDE was established in 2004 to help individuals identify and fight against all the criteria of discrimination, and it has powers to conduct investigations and discrimination testing in recruitment. The German equality body, the Federal Anti-Discrimination Agency, was established in 2006 under the General Act on Equal Treatment. It covers all forms of discrimination.

In Bulgaria, a Commission on Protection against Discrimination was created in 2005. In Poland, an Equal Treatment Plenipotentiary position was established in 2007.

4.2. Social partner views of Equality Bodies

Knowledge of their national Equality Bodies and their relationships to them varied considerably between the respondents on both employer and trade union sides. Some social partners on both sides of industry collaborated strongly with the Equality Bodies, while others had very little awareness or even saw Equality Bodies in some ways as a threat.

Strong involvement and collaboration

There were some strong examples of involvement and productive collaboration between employers and Equality Bodies reported by the respondents. In Italy, a strong relationship between the Confartigianato, the national Confederation for Handicraft and Small Firms, and the Equality Body (UNAR) was deliberately fostered by the part-EU funded EQUAL project, AHEAD (Accompanying Handicraft Entrepreneurs against Discrimination).

The three-year action research programme followed the transposition of the directive and led in 2005

“to a Memorandum of Understanding with the UNAR and... in the Triveneto region [of North-eastern Italy] we carried out information and training activities on the prevention of discrimination and to raise awareness of the directive.”

The interviewee from Confartigianato considers its involvement helped *“change the organisation’s perspective on the question of discrimination”*. One of the outcomes is a prize for anti-discrimination practices awarded jointly with UNAR, the Equality Body, and the Prime Minister’s Department of Equal Opportunities.

In Greece, the Hellenic Federation of Enterprises was also associated with EQUAL programmes in 2004 and 2005 aimed at raising awareness about equality. The interviewee believed *“more events and campaigns are needed”* and confirmed that the Federation participates in public consultation with the Greek Ombudsman, the principal Greek Equality Body.

The Irish Construction Industry Federation reports a strong operational relationship with the Equality Authority in Ireland, with which it cooperates on the development of best practice material and ideas of new anti-discrimination initiatives. This view is shared by the Health Service Executive Employers’ Agency, which participates in the Authority’s social partner committee.

In the UK, British Telecom reported good relations with the newly-merged Equality and Human Rights Commission (EHRC). Its Head of Diversity sits on several EHRC committees. At Royal Mail, a member of the EHRC had been appointed to lead its diversity strategy.

In Austria, although the social partners from the peak organisations of employees and employers are represented on the Equal Treatment Commission and the public employers report good relations with it, the private companies interviewed rarely referred to the national Equality Bodies.

The trade union respondents reported varying degrees of collaboration. The difference appeared to be partly shaped by the degree of influence the unions had in each country, and in part by the degree of political independence and the level of resources given to the Equality Body.

In Belgium, close relations had been established between the three main trade union Federations and the Centre for Equal Opportunity and Opposition to Racism. A protocol of cooperation had been signed by which the unions pass on information about the cases of racial discrimination reported to them and the Centre undertakes to construct winnable cases and to help take them to court.

In Hungary, the LIGA federation has also signed a partnership agreement with its Equal Treatment Authority.

Critical views

The Confederation of British Industry's direct contacts were not quite as strong, and its respondent pointed out that many of its members had problems approaching an organisation for advice and guidance when that organisation could also be preparing discrimination cases against them.

In Germany, trade union concerns were expressed about the appearance of a closer relationship of the Equalities Office to the employers than to the unions. A VERDI interviewee was disappointed because:

"The Equal Opportunities office is willing to jointly run a campaign with the employers' federations but not with the DGB in promoting the new laws."

In order to both be objective and to run campaigns promoting the laws the respondent believed:

"We need an independent office that implements this. It has to have a remit which is not set by the government rather it needs to be independent."

In the UK, relations had been closer in the past between several of the unions and the earlier single issue Equality Body, the Commission for Racial Equality (CRE). This had been merged into the general Equality and Human Rights Commission (EHRC), about which one interviewee from the Communication Workers Union reported: 'We haven't contacted them much on race issues'. A teachers' union (NASUWT) interviewee saw the shift from a single to a multiple-discrimination grounds Equality Body as being largely negative:

"We have major concerns with the new body... the leadership and direction are very poor. Race equality has gone back numbers of years... The new body has no teeth. We have lost out a lot especially on race equality councils... It's all very disappointing."

The TUC interviewee added: "There is no contact at all directly on race because no-one in the EHRC is responsible for race, unlike the CRE."

The UK TUC interviewee also raised a broader criticism of the merger of a specialist body focusing on racial equality into a much wider body: "The issue of security has shifted public discourse from anti-racism to integration." A similar danger could be seen in the new emphasis upon celebrating 'employment diversity', which could be interpreted as "a real distraction from dealing with institutional racial discrimination".

Furthermore, some unions expressed concern that reliance upon legal remedies for individual cases of racial discrimination might lead to less emphasis upon collective responses. On the one hand, a legal focus could encourage workplace representatives to pass discrimination issues on to 'experts' based outside the workplace; on the other it could encourage workers to consider discrimination as an individual rather than as a collective problem.

In the UK, the national TUC confederation respondent was critical of the shift in emphasis over the last period. Whereas unions used to prioritise collective bargaining as a means of resolving injustice in the workplace: "Now, race discrimination issues are mostly issues dealt with through individual cases not collective bargaining." The worry was that "lawyers appear to be making all the running' and 'a tension develops between black workers and their unions'."

This is why the Cypriot Building and General Workers' union (BWMGWU) referred to the Equality Body as being a "last resort":

"We must exhaust all means available to us and the Equality Body must be the last resort. It would be an easy solution to pass on such cases of racial and ethnic discrimination, instead of dealing with them through our own action on the ground."

No direct relationship and negative opinions

In some cases the employer organisation had no direct relationship with the Equality Body. The interviewee from the Bulgarian Chamber of Commerce and Industry

knows that in 2007 the Bulgarian Commission against Discrimination received 505 complaints, resolving 95, rejecting 195 and is still considering a further 215, and that the Roma are the main group whose claims of racial and ethnic discrimination have been accepted. Yet, the Chamber itself does not consider that *“the Racial Equality Directive is directly related to our activities”*, so it has no direct relations with the Commission and is not aware of any of its members who have.

This absence of direct contact with representative employer organisations was common. Despite the Racial Equality Directive’s inclusion of the potential for an awareness-raising role in the Equality Body’s various functions, many employers reported a complete absence of relations. The respondent from the Cyprus Employers and Industrialists’ Federation, whose 4,500 members employ 57 per cent of the total workforce, reported that while it had been involved in consultation on the transposition, it had subsequently had no direct contact with the Equality Body of the Ombudsman’s Office. The Romanian National Employers interviewee confirmed: *“They do not contact us, and we have other priorities... As we are busy and have no time to get informed, the relations are weak.”*

Several of the German employers interviewed, however, continued to oppose both the directive and the German Equality Body. The German Metal Manufacturing Employers’ interviewee stated: *“I believe it is totally superfluous, if I am honest. Because the job of keeping the public informed can be done by the government’s press office... I would get rid of it straightaway.”*

Some social partners reported that a lack of independence from government or limitations in the Equality Body mandates made collaborations difficult.

In Ireland the ICTU had two members on the Board of the Irish Equality Authority until they resigned in protest against government-imposed budget cuts and a down-grading of its work.

In the case of Poland, the interviewee from the Polish Confederation of Employers (KPP) reported having attempted to create an advisory body to support an Equality Body during the 2007 Year of Equal Opportunities, but with the creation of an Equal Treatment Plenipotentiary working across government ministries, its proposal was not progressed.

4.3. Low numbers of complaints

The Equality Bodies were allocated an important role in the two Equality Directives of 2000. The intention was to support easier access to litigation, to encourage associations and trade unions to take up cases on behalf of individual and groups of workers, and to publicise the fact that the burden of proof had been moved from the complainant, who experienced discrimination, to the employer. Combined together these changes should have enabled more successful complaints to be made to the courts and have helped accelerate compliance by employers.

However, the numbers of complaints based on the discriminations prohibited by the Racial Equality Directive have remained low or in some countries non-existent, as has the level of success. The employers and trade union interviewees were therefore asked why so few complaints of racial or ethnic discrimination had been taken through their country’s Equality Bodies. Below are the explanations from the representatives of both sides of industry.

Employer explanations

The three main explanations made by the employers were:

- they acknowledged that many workers were frightened of the consequences in terms of risking their jobs;
- they believed that workers were not convinced that the penalties imposed would make a difference;
- they considered that most minority workers were so thankful to have a job they would not recognise the discrimination they were being subjected to.

The Italian Handicraft and Small Firm Association respondent listed nearly all of these factors: *“The fear of losing their jobs, administrative difficulties, lack of knowledge of their rights, knowing that in any event there is no sanction.”* Echoing this argument a respondent from the Padua branch of the Italian National Builders’ Association argued that what inhibited workers from contesting discriminatory practices in smaller firms was *“Fear. The fear of losing their jobs, mainly”*.

The Austrian Chamber of Labour interviewee commented on the two issues for workers of making complaints while still working for an employer:

“If we take up these cases it necessarily will become known to the employer. Another problem is that

being discriminated has become completely normal to migrant workers and to their employers, who have been active for years in the same branches. They do not recognise the injustice of the situation."

The Federation of Austrian Industries interviewee made clear the likely consequences for the victim: *"For most of them it is clear that they will not be able to go back to their former employer, they can just claim compensation."*

Trade union explanations

Explanations from trade unionists about the low numbers of migrant or ethnic minority workers using the Equality Bodies to make complaints can be summarised as follows:

- process and structural obstacles to lodging a complaint;
- limited geographical access to Equality Bodies;
- the political situation of Equality Bodies;
- a lack of awareness of the Equality Bodies;
- ignorance of workers' rights not to experience discrimination;
- the fear of victimisation.

The time taken in processing grievances was frequently referred to as a deterrent to using the Equality Body. Although SIPTU in Ireland did support members in making claims, it believed this and inadequate penalties were problems. The Cyprus Hotel and Catering workers union (SYXKA) expressed disappointment in not receiving any response at all to two complaints it had raised a few years ago.

In some countries the Equality Body was less responsive to approaches by trade unions than in others. The Latvian policeman's union (LAPA) approached the Ombudsman's Office and was informed it could not cooperate with a trade union, but would only deal with complaints by private individuals.

Independence queried

In Italy, a CISL confederation interviewee described the lack of follow-through by the National Office against Racial Discrimination (UNAR) in providing data on monitoring and in supporting training. The interviewee was also critical of UNAR's location within the Prime Minister's Office, throwing its independence into doubt, particularly *"in processing complaints of discrimination that come from within government bodies or as a result of discriminatory laws issued by the government itself"*.

In Malta, a General Workers Union respondent had found the National Commission for the Promotion of Equality was toothless. It did not put out much information and was

"less than helpful... their answer to anything related to racial equality was always 'No'. Even if you have a thousand excuses [for not responding to requests], a No is a No."

In Denmark, although the 3F Federation had won both of the two cases that had gone to the Danish Equality Board, the union was critical of the fact that the Board was situated only in Copenhagen and that its capacity is low and its resources are limited. The result is that only the strongest cases are likely to be supported. The interviewee's analysis was that the government had only implemented the Racial Equality Directive *"on paper... The Equality Board is just showbiz"*.

A similar critique about their Equalities Office appearing geographically isolated came from German trade unionists from VERDI and from the IG BCE. The VERDI interviewee argued:

"The difficulty that exists is that we only have one central office. And compared to say Great Britain where there are about 35 to 36 [Racial Equality Councils]... and where there exist more personnel to deal with such problems... and here there is only one office in the capital... In VERDI's opinion that is not enough."

An interviewee from the IG BCE also complained: *"When you contact them as an individual you are fobbed off. That is not our job". That is my experience anyway."*

One societal factor is the general extent of confidence in and knowledge of the law. In Estonia, an EAKL interviewee believed that generally: *“Legal literacy is at a low level, and very few people start legal proceedings”*. Usually, when members have asked for legal advice from the union, the members would *“often ask us not to start any actions and begin discussions with their employer. They try to cope with their problems themselves.”*

The fear of being identified as a ‘victim’ was also referred to by interviewees. A Luxembourg trade unionist pointed to the fear of complaining among victims of discrimination:

“While they have got work, they refuse to talk about indirect discrimination. They’ve got into a context that means: ‘Say nothing, see nothing, hear nothing... But I go on working.’”

Tolerating discrimination

A sociological factor helping to explain the low numbers of complaints of racial or ethnic discrimination was suggested by the Bulgarian miners’ trade union interviewee. The Podkrepa Miners’ Federation interviewee suggested that ethnic minorities had become accustomed to the forms of discrimination they experienced at work and where they lived, and having internalised and adapted to this experience were unlikely to want to challenge it publicly.

The Latvian Ombudsman’s Office respondent explained the fatalism that many victims of Roma origin experienced:

“Roma people themselves do not come to our Office and do not complain. They are so heavily victimised in Latvia that they even don’t complain!”

An Irish SIPTU respondent also considered that fear helped explain the low numbers of individual complaints to the Equality Authority: *“Ireland is a small community, and victims often fear repercussions in future employment.”* A Netherlands union confederation (CNV) interviewee agreed: *“It’s fear of victimisation”*. The FNV union confederation interviewee added:

“When complaining of racism you place yourself outside the workforce. You are different – you don’t belong. So you decide not to complain.”

Finally, an Austrian GPA-DJP trade unionist pointed to the political inhibitors faced by migrant workers in a society in which not only is it very rare for employers to be taken to court, but is also one in which *“policy makers make racist statements from time to time... and the influence of the public discourse on the Austrian trade unions has been quite conservative.”* The extent of take-up of workers’ rights by minorities experiencing discrimination is thus also shaped by the overall societal and political contexts in which they find themselves.

5. The role of social dialogue

European employers and trade unions exhibit a wide range of relationships in working together to implement the Racial Equality Directive. These range from expressions of a clear desire for collaborative partnership to mutual suspicion. The EU itself, primarily through the EQUAL programme, has played an important role in encouraging joint actions by the social partners building anti-discrimination capacity in line with the directive. Nonetheless, there are some concerns that some very effective interventions are not sustained once EU funding is withdrawn.

Table 4 enumerates the reports of anti-discrimination events, agreements or actions that the interviewees indicated had taken from 2003 to 2008. Inevitably the 'counts' are not exhaustive. They merely reflect examples that the interviewees could recall. The four columns on the left of the table give the numbers of joint actions undertaken by the social partners together. Those on the right indicate the actions reported as having taken place without reference to the other social partner.

5.1. Collaborative social dialogue

In many cases there is clear agreement between the employers and the trade unions on the need to challenge racial or ethnic discrimination. This takes the form either of national-level events or agreements, or of local initiatives at regional or company-level.

The interviewees reported 70 examples of collective agreements dealing with discrimination between unions and employers at national, local and company level. In 2008, the trade unions and employers in the Catalan Region of Spain signed an agreement that referred to the law of 2003 that was introduced as a result of the directive and that is now being implemented by the Catalan Government.

A UK agreement was reached between five trade unions with members in Further Education and the Association of Colleges in January 2008. It is unique in that it specifically refers to the Racial Equality Directive. It commits the parties to celebrating and valuing diversity, and the employing colleges to non-discrimination in recruitment and selection, training and promotion. It also commits the signatories to develop Racial Equality Plans around defined concrete actions.

In Ireland, in the wake of the directive the Equality Authority played a key role in bringing together the employer organisations and the trade unions to

organise an 'Anti-Racism Workplace Week'. The Irish Construction Industry Federation reported that some companies requested additional publicity materials in order to hold workplace meetings called 'toolbox talks'.

Most collective agreements were less explicit about compliance with the directive, but nonetheless when they were reached at branch level they did provide clear guidelines to local negotiators as to what could or could not be done. In the Cyprus construction industry, for example, after the transposition of the directive one clause was introduced in the sector collective agreement providing Provident Fund contributions for the previously excluded migrant workers, and another now states: *"Trade Union activity, religion, race and political beliefs do not constitute reasons for dismissal and neither do they justify any discrimination against employees."*

In France, a National Diversity Agreement was signed by the main French employer associations and trade unions in 2006 after the directive had been transposed. It included a clause enabling a 'diversity committee' in each workplace to meet once a year bringing together management and employee representatives to review the steps taken to challenge discrimination. A French CGT interviewee emphasised: *"That is really important because it also strengthens the role of the employee representatives on racism."* The agreement covered issues of recruitment, posting to particular jobs, salaries, professional training and career development.

Several company agreements included new clauses introducing workplace-level grievance procedures to deal with discrimination, and specifically referred to racial discrimination. This was the case at Gumotex in the Czech Republic and at US Steel in Slovakia. In Belgium a Diversity Charter negotiated after transposition at the Brussels Public Transport Company (STIB) agreed to include two levels of sanction against personnel found to have committed racial discrimination: a three-day suspension followed by dismissal. A union (CSGLB) interviewee reported: *"Two people were disciplined and as a result of having made an example from the start, the problem is now sorted."*

5.2. Difficult social dialogue

The existence of the directive and subsequent national legislation did not necessarily make it easier to secure agreement on joint action against racism between employers and trade unions. Thus, the Danish LO trade union interviewee reported proposing a project called 'Kick-start' to 100 Danish companies with a view to

Table 4: Anti-discrimination actions reported by the social partners, by country

	National collective agreement	Company collective agreement	Conference/Event	Social partner literature	Co-operation with NGOs	Union policy / codes of conduct	Special committee or arrangements	Training	Audit or monitoring	Positive / anon. recruitment	External anti-race discrimination campaigning	
	Joint social dialogue				Individual trade union or company							Total
EE							1	1				2
PL						1	1					2
MT						1	1	1			1	4
BG			1				3	2				6
LV				1	1			3		1		6
HU						3	2	2				7
FR		1	3		2			2				8
LU					3	3		1			1	8
SI	1	2	1			1	1	1			1	8
FI		2				4	3	3		1		13
SK			1	2				9		1		13
CZ	2	1	2	2	1	1	1	1	1	1	1	14
DK	9				4	1	2	4				20
ES	2	2			1	1	8	8				22
CY	1				3	4	4	6		2	3	23
PT	3	1	2	2	2	1	2	4	3	1	4	25
IE	1	1			2	10	3	10		1	1	29
EL	2		5	3	6	10	2	5		1	2	36
IT	3	6	3		4	1	6	3	5	2	3	36
AT	6	2	8	2	5	2	4	3	3	2	3	40
RO		1	5	2	6	4	5	13	1	1	2	40
SE	1		5		2	10	8	10		1	3	40
UK	2	1	2	3	2	5	9	3	6	4	6	43
DE	6	2	2	1	1	9	5	15		4	8	53
NL	6	3	7	10	6	20	13	11	7	8	2	93
Total	45	25	47	28	51	92	84	121	26	31	41	591

Source: FRA, 2010

stimulating a debate about ethnicity and diversity, but having to cancel it when only one company agreed to participate. When LO approached the DA the employers indicated they were ready to come to a collective agreement on gender discrimination, but not on ethnicity, race and age. The LO interviewee complained: *“The employer organisations did not want to make agreements on these issues... Equal pay is straightforward, but these [other] issues can be hard to enter into agreements about.”*

In France, a CGT trade union interviewee recognised the same problem. In pressing for the drawing up of a company agreement against discrimination in line with the Racial Equality Directive: *“I chose to base the company diversity agreement on all the discriminations because it wouldn’t have got through [if] only based on inequality linked to a person’s origin”.*

A contentious area in some countries was trade union promotion of migrant worker rights as a means to recruit more members and exercise greater workplace influence. A Cypriot trade union interviewee from DEOK, who worked with migrant women workers, was convinced it was a key obligation for trade unions to protect ‘foreign’ workers to ensure that they enjoy equal rights with Cypriot workers. He asked rhetorically: *“If Unions don’t do it, who will?”* But the representative of the Padua area of the Italian National Builders’ Association believed the unions had at times paid more attention to non-Italian workers than they should:

“We had to suggest that they should not go overboard in their recognition of the difference between foreign as compared to Italian workers, otherwise we create conditions of racism in reverse... making our own workers feel a little like minority workers.”

A problem in the negotiation process that might explain the lack of progress in some agreements was described by the Dutch trade union De Unie. The respondent noted that strong clauses against racial discrimination and ensuring real equality for minority workers might be included in an initial bargaining package put to the employers, but then they would often be dropped, despite the directive:

“There are many collective negotiations, in which racial discrimination is a subject, [but] when it is hard to come to an agreement, then this is a subject that will disappear.”

The problem of having enabling anti-racial discrimination clauses in agreements at national or sector level, but their not being implemented or embedded in local agreements, was common. A Paris region CFDT trade unionist stated:

“Although there have been national agreements signed, we know that if the local people don’t use them, well, they simply don’t see the light of day. Either the agreements haven’t been sufficiently sold within the organisations, trade union and employer, or they aren’t properly adapted.”

Thus, despite the existence of the French national agreement, few sector agreements or individual companies have followed up on it to date, and there are currently less than 30, essentially in MNCs like Addeco, Accor, Casino and PSA. Another CFDT trade unionist argued that: *“This reflects the balance of strength inside companies and the lack of a public requirement to negotiate.”*

This raises the more general problem of implementation. In many instances, EU-level, national-level or even company-level social dialogue has established common ground between employers and trade unions on the importance of fully integrating minority-origin workers and of taking steps to help highlight and then end all forms of racial or ethnic discrimination. In most French companies, managements had not gone much further than paying lip-service to it.

Another issue commented on in relation to the French national agreement is the possible difference between notions of ‘diversity’ and of ‘equality’. As one French employer representative indicated, at its most minimal, ‘ethnic diversity’ can imply simply having one non-white person in each workplace. ‘Racial equality’ is broader. It concerns recruitment proportionality between the ethnicity of the local population and those in local employment, as well as the complete absence of indirect discrimination in internal job allocation and promotion with equal access to training for all.

5.3. EU supported actions and dialogue

Many employers, trade unions and NGOs saw the EU as an important source of support for joint social partner interventions at a local level. Some of those programmes described were highly successful, others less so.

Successful programmes included a French EQUAL project, ‘Action and Vigilance’, involving the Paris region of the CFDT trade union with the local employer associations and the City of Paris. One reported outcome was that subsequently, if the union was made aware of discrimination in an affiliated employer, it could do something:

“Things happen differently if the firm where the discriminated people work is a member of

an employer organisation. We can pick up the phone to one of our social partners, "Look, things are pretty bad. Let's look at this together."

Another Paris EQUAL project commented upon favourably by interviewees was aimed at increasing the numbers of equal rights agreements signed in the region in the aftermath of the directive. It was called ATECCOD (Acting in the regions for equal opportunities and against discrimination). Initiated by the Paris region of the CFDT its other partners were the MEDEF region of Eastern Paris and the NGO, the Abbé Pierre Foundation.

In Austria, one trade union (GPA-DJP) interviewee reported favourably of the EQUAL partnerships that had been created with NGOs active in anti-racist policies and struggles. In Italy the AHEAD (Accompanying Handicraft Entrepreneurs against Discrimination) EQUAL partnership led by the Confartigianato (craft employers) included a financial newspaper, a Psychoanalytical Social Research Institute, a cultural group and a bank.

A three-year EQUAL project called 'Leader' was implemented in six different Italian regions directly after the transposition of the Racial Equality Directive. It enabled a regional trade union (CISL) official to develop their *"awareness of the forms of ethnic and religious discrimination found at work"*. The project aimed to support a network of migrant workers and help build

their capacities in challenging discrimination. Another CISL respondent explained how the programme encouraged *"practices designed to eliminate, or at least combat, discriminatory actions in the workplace"*. A CGIL respondent confirmed that the Leader project had helped enable the union to provide *"input, information, answers to queries... Some local regions even took measures on their own at their own legal centres"*. The consensus was that it was highly successful and that the networks created had survived beyond the end of direct project funding.

One EQUAL programme in Hungary was described by an employer organisation participant as 'successful' while it was being supported, but he expressed concern that it had little or no long-term impact. The respondent explained: *"Despite the vocational training provided by the programme the participating Roma had no sustainable enterprises and jobs at the end"*. The employer organisation involved reported not having changed any of its internal policies in the light of the directive or the project.

A concern expressed by one Romanian NGO interviewee is that much funding for information about the directive and other EU policies had only come through the EU. The lack of any national public campaign trying to raise awareness of anti-discrimination legislation was thus possibly *"because the European funds for this purpose have dried up"*.

6. The way forward: views of the social partners

As outlined in Article 17 of the Racial Equality Directive, the FRA is obliged to contribute to the Commission's report to the European Parliament and the Council on the application of the Racial Equality Directive. In light of the information provided, the Commission's report shall include, if necessary, proposals to revise and update the directive.

As a result, employer and trade union respondents participating in this research were asked whether they had suggestions as to how anti-discrimination policies on the ground of racial or ethnic origin could be improved. Around one third of those interviewed had opinions on this issue. Some of the suggestions were repeated by both 'more aware' and 'less aware' social partner organisations, and some by trade union and employer respondents. Most recommendations, however, clearly reflected the particular country context and social partner interest.

This chapter reports on what the interviewees thought needed to be done to improve the impact of the directive on the ground. The first section outlines the views that the whole sample of social partner organisations interviewed held in common. The chapter then highlights the views of the trade unions, followed by that of the employer organisations. Some of the latter, as already mentioned, were openly hostile to any suggestion that laws were appropriate in this area.

6.1. Joint proposals

Rights awareness – more and better communication

There was a widespread consensus among both trade unions and employer organisations that more needed to be done either by the Equality Bodies or by national governments to raise public awareness of the economic and social damage done by discrimination on racial or ethnic grounds. This was important, a Latvian employer argued, to help lay the basis of a democratic society in which instead of "people keeping quiet about these cases... they actually have to shout".

Much greater investment in awareness raising was thus a common recommendation. The publicity given to the FRA EU-MIDIS report provides an example of such awareness raising; the social partners, nonetheless, emphasised the importance of measures at national level to foster greater awareness of equal rights. In this regard, several trade unionists recommended providing much higher levels of publicity about the

illegality of racial and ethnic discrimination. The Italian craft employer association interviewee argued:

"We are not yet at the level of northern Europe. Furthermore, the investment in funding for information, diffusion, for active projects of prevention, has probably been too limited up to now."

The Bulgarian Chamber of Commerce respondent agreed:

"There is a need to promote the legislation, even to make videos. Probably advertising is a strong word – but every employer could disseminate the law, even in the framework of meetings, even if for just a few hours."

The interviews conducted clearly indicate the need for anti-discrimination training to be mainstreamed into the social partner development programmes to strengthen the impact of the Racial Equality Directive.

The importance of investing in ways of bringing people from different backgrounds together was another common argument. A German IG Metall interviewee insisted:

"What we really have to do is to bring people with different backgrounds together to break down the prejudices, and this always costs money. If a local community would be provided with resources if it committed to organising an inter-cultural festival once a year, then this would certainly have an impact. Then, equality laws would not be necessary. The key issue is that those who discriminate have nothing to do with those they discriminate against. They know nothing about their victims – and this is really the biggest challenge to overcome."

In order to counter xenophobia, several interviewees from both the employer and trade union side believed that their national education systems could be improved. A Hungarian employer argued:

"The law has not changed the Hungarian context of racial and ethnic discrimination. Hungarian society is extremely conservative. The process of changing people's minds should start at school. Segregation-free education is the key issue there."

6.2. Trade union proposals

Better transposition

In general, the trade unions which made proposals agreed that, at the level of implementation, there should be less ambit for national interpretations that narrow the scope of the Racial Equality Directive and impact on the independence and powers of the Equality Bodies. The ETUC respondent, however, believed it was “*regrettable*” that discrimination on the grounds of nationality had been taken out of the draft directive:

“The problem today is not the weakness of the directive: it is the weakness of its implementation.”

The French CGT considered that the directive’s transposition into French law had not been sufficiently close to the directive’s intent, allowing racist behaviours to continue without being sufficiently sanctioned. Without success, CGT had proposed to the French employer organisations MEDEF and CGPME that the 2006 National Agreement on Diversity should include the maintenance of recruitment records, in which all accepted and rejected candidates were listed, as well as the trade union to examine these records. By increasing transparency in recruitment – a key area of discrimination – the trade union confederation believed that it would help tackle the problem.

Coverage of both private and public sectors

A second area of consensus among trade unions related to the fact that the laws transposing the legislation should cover both the public and private sectors. Equality impact assessments should be generalised and introduced in those parts of the private sector where they do not currently operate. In doing so, establishments should be expected to yearly account for the racial and ethnic profiles of their workforce and propose detailed initiatives aimed at ensuring greater equality among their staff.

In addition, several trade unions thought that all private establishments tendering for public contracts within the EU should be required to demonstrate their compliance with the Racial Equality Directive. Proceeding as such would guarantee that anti-discrimination practice will be included as a public procurement requirement.

Access to justice

A third area of recommendations concerned improving access to justice: not only should access to justice be free (in those countries where charges are imposed for advice and/or for taking legal proceedings), but the trade unions should be given the right everywhere to take up ‘collective’ legal actions on behalf of whole groups of employees rather than having to base cases on individual ‘victims’ of discrimination. An IG Metall interviewee commented:

“There is a need to improve the way the EU directives were transposed. I could imagine they could be more effective, for example, by making it easier for a person to take action who has a problem – this could involve offering financial resources. That I believe is the biggest problem because even a tough law will just sit there.”

Independence of Equality Bodies

The VERDI interviewee in Germany insisted that the Equality Office had to gain more independence. Italian trade unionists put forward the same argument, considering the UNAR “*not an autonomous body*”. A CISL respondent proposed that the directive should require governments

“to equip themselves with autonomous bodies where Civil Society participates and does the monitoring.”

The interviewee also wanted a European level requirement for EU Member States to take positive action against racial discrimination.

Higher penalties

Many trade unionists felt that Equality Bodies should be permitted to impose the reinstatement of the directive’s provisions as well as higher penalties, which together would act as a more significant deterrent to other employers. The Polish FZZ trade union confederation suggested that not only financial penalties should be imposed since

“currently employers are not afraid of financial fines because they can treat them as costs.”

The respondent believed that if criminal sentences were permitted this would be more effective in changing employer behaviours.

One respondent from the French CFDT criticised the low levels of positive judgements on racial discrimination issues and the “insulting” level of fines. Shifting the burden of proof had not changed the situation significantly regarding a positive outcome of cases since the employee was still responsible for providing most of the information required to win a case. Another French CFDT interviewee believed that it would be important to link any outcomes of racial discrimination cases in Employment Tribunals to requiring changes within the company. Imposing the reinstatement of the legal provisions was one option to proceed; the trade unionists, however, believed that more effective ways must be established to ensure that the outcome of discrimination has a positive impact on employer practices.

Better access to Equality Bodies

Finally, in at least two countries under examination in this study social partner organisations argued that the number of access points to the Equality Bodies in each country should be increased. Information was one thing, but being able to physically discuss an issue with an Equality Body counsellor was, the union respondents thought, more likely to be effective both in resolving or in pursuing the case.

6.3. Employer proposals

The employer organisations interviewed within the scope of this research were more divided than the trade unions in their views on how to improve the impact of the Racial Equality Directive on the ground. In cases where they had clear views about ways of improving anti-racial discrimination practices, the employers, on the whole, tended to argue for greater reliance on general education in society and voluntarism. These assessments often coincided with more general affirmations made by the trade unions and have been referred to in the Joint recommendations.

On the other hand, some employers wished to see the Racial Equality Directive removed or at least the burden of proof change reversed. More generally, the employers would prefer to see the role of the law being reduced rather than strengthened.

Clearer regulation

The argument in favour of additional support in the directive for positive measures was made by the London Fire Brigade interviewee. He argued for the legal right to appoint ethnic minority workers without any restrictions:

“We are given recruitment targets but then one hand is tied behind our backs in order to reach those targets. The kind of thing that we would like to do is, maybe, if we’ve got 50 people waiting to come in and eight of those people are BME,⁴² to bring them in first, in the first tranche, so that we can start making the organisation look and feel different, because we think that’s important.”

In Germany, the BMW respondent also believed that legislation should better emphasise how stronger positive action could be introduced:

“It would be important to say that it is necessary to consider how certain measures to promote minorities could be allowed.”

Other employers felt that the courts had to give much clearer guidance on tackling racial discrimination. One of the interviewees from the Spanish Building Industry Federation drew a stark contrast between the judgements in relation to the gender equality legislation, which had significantly affected management practices, and the total absence of legal action in relation to racial or ethnic discrimination, despite the adoption of the Racial Equality Directive six years earlier. The respondent of Spain’s Promsa cement manufacturing company established the same contrast, reporting that the national government sent out strong messages regarding discrimination in relation to disability and gender but not in relation to ethnic origins.

More resources for implementation of the directive

The Finnish construction employers made a similar plea:

“More information, more resources and more specific allocation of [support for] monitoring are the most important elements that can improve the effectiveness of the law.”

A Bulgarian BIA employer association respondent suggested that companies should allocate responsibility for non-discriminatory practices to a single person:

42 Black and minority ethnic.

"In all large organisations, in government administration, in large enterprises one person should be appointed to give information about all employees in the organisation, to monitor the employed men and women. In most cases it should be the human resources manager of the organisation."

Incentivising compliance

A recurrent theme, among some of the employer organisations, was the requirement for clear incentives to be set out in the directive. A Dutch employer organisation respondent believed:

"The advantages of diversity must be highlighted. But to change behaviour: people will only do this if there is something it for them and they get an advantage from it."

The Hungarian AFEOSZ co-operative employer association was still more explicit in relation to resolving the discrimination against the Roma:

"As far as the Roma employment is concerned, the government should provide subsidies to hire them. That's so simple. In a capitalist system the 'money goes around'. Positive discrimination is only possible if it is worthwhile for the companies."

Less regulation

Not unexpectedly, given its opposition to the Racial Equality Directive and its national transposition in the first place, the German metal working employer (Gesamtmittel) representative stated: *"I would prefer that the law did not exist."* The Confederation of German Employers' Associations, the BDA, was more specific, wishing the reversal of the burden of proof:

"The very first thing we would remove is the burden of proof. Then, this bureaucratic effort that employers have to deal with would be abandoned. It would be a great relief if that was removed."

The interviewee of the Confederation of German Industry, the BDI, supported the argument:

"If someone wants to complain then I believe it is for them to prove it, that this has happened or that one's legal rights have been breached. One cannot always say "Yes (I have been discriminated against), [but] I cannot prove it". I do not think it is legally correct to elevate this principle."

Finally, the EK Finnish employer organisation interviewee believed that the law on these issues *"should be germinated from the basis of the national legislation"*, criticising the Racial Equality Directive for *"not allowing enough national latitude"*.

Conclusions

The above presented views of the social partners on the impact of the Racial Equality Directive will form part of the FRA synthesis report on the application and challenges of the directive to be submitted to the European Commission, as required by Article 17.

Assessing the effectiveness of the Racial Equality Directive in the field of employment is not straightforward in the light of changes in the European labour markets. As highlighted in Chapter 1.4, several discrete political and economic developments were commented on and referred to by the interviewees as complicating any assessment.

Two Equality Directives

Since the two Equality Directives⁴³ were passed within months of each other and in many instances they were transposed in a single piece of legislation, for many interviewees, the two pieces of legislation became largely indistinguishable. Many companies and trade unions found supporting 'Equality' was altogether easier than challenging 'racial discrimination'. Equality could also be assimilated more easily with the gender equality steps that were much more widespread and with which the actors were much more familiar.

Many interviewees kept talking about steps they had taken in relation to gender equality, even when it was explained to them that the research focus was on their awareness of and actions taken to combat racial and ethnic discrimination. Partly, this was because their responses to racial and ethnic discriminations were much more limited, but also it was because they were much less confident in this area. As this report has shown, the definition of direct racial discrimination is not standard across different countries and among different social partners. Furthermore, the meaning of 'indirect' racial or ethnic discrimination is still more elusive.

The outcome of this blurring of understandings was viewed by some respondents as leading to the downplaying of taking specific measures to combat racism without, necessarily, there being a higher priority given to challenging the other four EU discrimination strands.

The result is that distinguishing behavioural changes concerning racial and ethnic issues from similar steps taken to counter discriminations related

to disability, age or sexual orientation became more difficult, and nearly impossible in relation to discrimination on the grounds of religion or belief.

Enlargement

In 2004 and 2007 the EU expanded by a total of 12 new EU Member States. According to the assessments of the national experts, there is a noticeable gap in awareness of the directive between the respondents from the EU-15 and EU-12, with the latter being less aware of and less responsive to the new legislation.

Many respondents from the EU-12 Member States saw the directive and initiatives of anti-discrimination as western ideology, bringing about discussion on issues that did not take place in their countries and only creating unnecessary confusion.

Roma

In relation to Roma populations, both employers and trade unions displayed a limited understanding of the relevance of the directive to the Roma. In the EU-12 Member States the Roma were often referred to, but their treatment was more often not conceptualised as racial discrimination. Equally, in the EU-15 countries, very few respondents conceptualised their Roma populations as being a minority ethnic community protected by the directive. Thus, in both situations, with few exceptions, the Roma generally were not acknowledged as 'deserving' of protection under the directive.

Migration

In some cases increased migration can lead to the situation of potential tension between the struggle for better pay and working conditions for 'national' workers and the struggle against discrimination on the grounds of race or ethnicity. This may explain why trade unions have not mobilised against racial discrimination in some countries.

The coincidence of a new presence of migrant workers in the labour force with the passage and transposition of the directive created a second huge confusion. For many social partners the meaning of the directive was reduced to the formula: discrimination against third country nationals is wrong.

Thus, a factor that has created difficulty has been the assumption in some countries that the directive primarily addresses the need to provide equal treatment for

43 Namely the Equality Directives: Council Directives 2000/43/EC and 2000/78/EC.

migrant workers, while in other countries it is assumed that it is actually only about equality for workers who are 'visibly' different. The result has been that in some countries, considerable attention was reported in relation to the directive encouraging social partner activities aimed at the integration of recent migrants; while much less attention was reported about actions aimed at the full inclusion of EU citizens of minority racial or ethnic origin. In a parallel equally misplaced understanding of the directive, in some other countries the absence of significant populations of black citizens led social partners to conclude that the directive did not apply to them, despite the presence of minorities who experienced considerable discrimination.

Economic crisis

In the midst of the economic crisis, the social partners interviewed often reflected that the 'crisis' and 'jobs' had a higher priority than respect and real racial and ethnic equality.

The timing of this research thus added to the complexity of the assessment. There was considerable evidence presented of steady, if slow, progress towards a more tolerant, inclusive approach to 'other' workers among both employers and trade unionists – up until the crisis. But in the face of the downturn, this advance is facing growing scepticism in much of central and eastern Europe, and a failing enthusiasm in parts of the EU-15.

Islamophobia

The 11 September 2001 terrorist attacks in New York unleashed world-wide condemnation. But it also led to a sharp increase in the numbers of media, verbal and physical attacks on Muslim people and ideas in many EU Member States in the very period the Racial Equality Directive was seeking to marginalise discriminatory ideologies and employment practices fuelled by them.

The ETUC respondent made it clear that: *"Much changed before and after 9/11. Before, we were making considerable progress; afterwards things became much more difficult." "There was a change in the whole climate of anti-racial discrimination actions. Achieving results became much more difficult."*

Despite these difficulties in the assessment and in using the same measures across 27 Member States, this report and accompanying national reports do permit an overall **mixed assessment** to be drawn of the directive's impact on employment opportunities and practices.

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Annexes

Annex 1

Table A1: Name of interviewers, by country

Country	Interviewers
AT	Bettina Haidinger
BE	Nouria Ouali
BG	Vassil Kirov Maria Ivanova
CY	Anthoula Papadopoulou
CZ	Soňa Veverková Aleš Kroupa
DK	Sille Lundfos Thuesen Nicolas Christiansen Svend Møballe Rikke Hove
EE	Anu Laas
FI	Pertti Jokivuori
FR	Rachid Bouchareb
DE	Michael Whittall Anna Müller Waldtraut Lotz
EL	Anna Paraskevopoulou
HU	László Neumann
IE	Deirdre Curran Mary Quinn
IT	Rossana Cillo Francesco Della Puppa

Country	Interviewers
LV	Aija Lulle
LT	Charles Woolfson
LU	Nouria Ouali
MT	Anna Borg
NL	Tanja van den Berge
PL	Julia Kubisa
PT	Maria da Paz Lima
RO	Oana Stoian Daniel Pop
SK	Ludovit Cziria
SI	Andreja Poje
ES	Paolo Leotti
SE	Annette Thörnquist Birger Simonson
UK	Sonia McKay Peter Cooper Mary Davis Marc Craw Anna Paraskevopoulou Eugenia Markova Steve Jefferys
EU Level	Steve Jefferys Tessa Wright

Annex 2

Table A2: Number of organisations interviewed, by country

Country	Employers	Trade unions	Equality Bodies or NGOs	Total
MT	2	3	1	6
EE	1	4	1	6
LU	1	4	2	7
PT	3	4		7
CY	4	4		8
EU level	2	4	2	8
SK	4	4		8
SI	4	4		8
CZ	4	3	2	9
LT	2	2	5	9
BG	4	6		10
HU	5	5		10
IE	5	5		10
AT	6	6		12
DK	6	6		12
FI	6	6		12
EL	5	5	2	12
SE	7	5		12
LV	5	6	2	13
NL	6	6	1	13
PL	5	7	1	13
RO	4	8	3	15
BE	8	8		16
FR	6	10	1	17
UK	11	9		20
DE	9	10	1	20
IT	10	10		20
ES	9	8	3	20
Total	144	162	27	333

Annex 3

Table A3: Number of organisations declining interviews, by type and country

Country	Trade union peak organisation	Employer peak organisation	Trade union branch/sector or regional organisation	Employer branch/sector or regional organisation	Individual trade union	National employer	Non-national multinational employer	National Equality Body	National NGO	Local NGO	Total
HU			1								1
MT					1						1
LU	1										1
CY	1										1
SI	1										1
PT				2							2
UK					1	1					2
BG		3									3
AT			1			2					3
EE				1			3				4
PL					2	1			1		4
DE				1			3				4
CZ					1	3			1		5
EL				1		2	2				5
FR		2	2	1			2				7
DK			3	5							8
NL	1	1			4	1		1			8
RO	1	9	6	19	12	9	3				59
ES		2	4	34		23	10		1	1	75
Total refusals	5	17	17	64	21	42	23	1	3	1	194

Annex 4

Trade union interview schedule

Introduction

Thank you for agreeing to be interviewed. We are conducting this research for the European Union Agency for Fundamental Rights. One purpose is to find out how much you are aware of the EU's Racial Equality Directive and anti-discrimination law passed here. Another is to find out your union's policies on racial/ethnic discrimination – including national and language and religious discriminations – and whether these policies have changed over the last five years.

These questions are being put to trade unionists in all 27 EU Member States and your answers will help provide a picture of what is happening in this area.

With your permission the interview will be recorded in order to allow us to be sure of taking down everything you say. We will not put your name in the written report of the interview, although we will name the trade unions in our final report and the report will say that we have interviewed anonymous national officers. We may like to use quotations from the interview on this basis and we will ask you to sign a form giving your consent to the use of the material in this way at the end of the interview.

Establish that the interviewer is agreeable to the recording of the interview and these conditions.

- Respondent details
- Name of Respondent
- Name of Trade Union
- Job Title
- Number of Years in current job
- Number of Years with union

Background/Context issues such as:

- The law on racial/ethnic discrimination at work
- Experiences of such discrimination in the workplace
- Main factors reinforcing racial/ethnic discrimination

A. Union policies and practices on racial/ethnic discrimination

1. Was your union (confederation/national union) involved in consultations with government on the introduction of or amendment of [name of national racial/ethnic legislation] following the 2000 EU Racial Equality Directive? (follow up)
2. What do you consider are the most important changes to racial/ethnic rights brought about by the new laws or the associated greater awareness of the issue?
3. The legislation now encourages trade unions to be more active on anti-discrimination issues. Do you think this is helpful? Does the union have policies and/or procedures/structures to deal with discrimination against migrant and ethnic minority members and workers in the workplace, in civil society or within the trade union itself. If so, were these policies/procedures introduced or amended as a result of the Directive? Is it possible to have copies?
4. As a result of the introduction of the new laws has the union introduced or changed any of its education and (awareness) training for paid officials, representatives or members?
5. In reflecting on the changes that have taken place in this area can you think of any event or individual action that helped bring them about?
6. Has the union publicised the legal framework and rights arising from the new laws among its members, workers and the general public, and if so in what ways?

Ask for examples

7. How far has the union raised the new anti-racial/ethnic discrimination laws at different levels of the union?
8. Does your union have any contact or relationship with your country's Equality Body?

B. Social partner dialogue

9. Has the union participated in collective bargaining, social dialogue or awareness-raising with employers or at Works Councils arising from the introduction of the Racial Equality Directive and [name of national racial/ethnic legislation]?

If there are formal agreements or procedures is it possible to have copies?

10. Do you think the new laws or climate on anti-discrimination laws stimulated employers to adopt equality, anti-discrimination or diversity management policies?

C. The union and its members

11. As a result of the introduction of the new laws or of heightened awareness of anti-discrimination measures what, if any, changes has the union made to the support it offers to members who indicate they have experienced discrimination?
12. Could you give some examples of cases taken up by the union and what happened – and why do you think workers do (or don't) raise grievances in this area?
13. Where the union has the right to take up cases on behalf of the victims of discrimination has the union actually supported these workers in employment-related cases?
14. Do you think that the Racial Equality Directive and [name of national racial/ethnic legislation] raises any specific issues for women workers?

If you think it does could you give some examples?

15. Have any of these changes had an impact on levels of recruitment to or involvement of minority ethnic workers in the union?

Again, please could you give some examples?

D. Awareness

16. How aware would you say that ethnic minority workers are of their rights under the Racial Equality Directive and [name of national racial/ethnic legislation]?
17. Are you aware of any government information campaigns to raise public awareness on racial/ethnic legislation?
18. Are you aware of what other trade unions are doing on issues of racial/ethnic? Could you give any examples?

E. The impact of the legislation

19. Do you think that the Racial Equality Directive and [name of national legislation] has really improved protection against racial/ethnic discrimination in employment? Why?
20. Are there any other or additional measures that you think could be taken that would be more effective?

Annex 5

Employer interview schedule

Introduction

Thank you for agreeing to be interviewed. We are conducting this research for the European Union Agency for Fundamental Rights. One purpose is to find out how much you are aware of the EU's Racial Equality Directive and anti-discrimination law passed here. Another is to find out your organisation's policies on racial/ethnic discrimination – including national and language and religious discriminations – and whether these policies have changed over the last five years.

These questions are being put to employers in all 27 EU Member States and your answers will help provide a picture of what is happening in this area.

With your permission the interview will be recorded in order to allow us to be sure of taking down everything you say. We will not put your name in the written report of the interview, although we will name the employers interviewed and will say that we have simply interviewed representatives of the organisations. We may wish to use quotations from the interview on this basis and we will ask you to sign a form giving your consent to the use of the material in this way at the end of the interview.

Establish that the interviewer is agreeable to the recording of the interview and these conditions.

- Respondent details
- Name of Respondent
- Name of Organisation
- Job Title
- Number of Years in current job
- Number of Years with organisation
- Numbers of workers at European and national levels
- Number of workplaces at national and European level
- Proportion of foreign and ethnic minority workers
- Trade organisation and/or employee representation within the organisation

Where possible secure organisational information in advance. If there is information available on demographic breakdown of the workforce, operations at national and European level ask if it is possible to have copies.

Background/Context issues such as:

- The law on racial/ethnic discrimination at work
- Experiences of such discrimination in the workplace
- Main factors reinforcing racial/ethnic discrimination

A. Employer policies and practices on racial/ethnic discrimination

1. Was your organisation at any level involved in consultations with government on the introduction of or amendment of [name of national racial/ethnic legislation] following the 2000 EU Racial Equality Directive?
2. What do you consider are the most important changes to racial/ethnic rights brought about by any new laws or the associated greater awareness of the issue?
3. The legislation encourages employers to be more active on anti-discrimination issues. Do you think this is helpful? Does the organisation have formal policies and/or procedures/structures to deal with discrimination against migrant and ethnic minority members and workers and if so, were these policies/procedures introduced or amended as a result of the Directive?

If there are formal procedures ask if it is possible to have copies?

4. As a result of the introduction of the new laws or climate of awareness has the organisation introduced or changed any of its education and (awareness) training for senior managers, supervisors, line managers or staff?
5. In reflecting on the changes that have taken place in this area can you think of any event or individual action that helped bring them about?
6. Has the organisation publicised the legal framework and rights arising from the Racial Equality Directive and [name of national racial/ethnic legislation] among its employees, and if so in what ways?
7. Has the organisation raised the need to comply with higher standards on anti-discrimination policy internally, and if so, at what levels?
8. What kind of contact does your organisation have with your country's Equality Body?

B. Social partner dialogue

9. Has the organisation participated in collective bargaining or social dialogue or awareness-raising with the trade unions or employees arising from the new laws?

If there are formal agreements or procedures is it possible to have copies?

10. Do you think the new laws or climate on anti-discrimination laws stimulated the trade unions to adopt different equality and anti-discrimination policies?

C. Discrimination in the workplace

11. As a result of the introduction of the new laws or of heightened awareness of anti-discrimination measures what, if any, changes has the organisation made to the support it offers to employees who consider they have a racial discrimination grievance?
12. Could you give some examples of cases and what happened – and why do you think workers do (or don't) raise grievances in this area?
13. Do you think that the Racial Equality Directive and [name of national racial/ethnic legislation] raises any specific issues for women staff?
14. Do you think that any of these changes had an impact on levels of recruitment to or involvement of minority ethnic workers in the organisation?

D. Awareness

15. How aware would you say that ethnic minority workers are of their rights under the Racial Equality Directive and [name of national racial/ethnic legislation]?
16. Are you aware of any government information campaigns to raise public awareness on racial/ethnic legislation?
17. If your organisation is part of a multinational, how aware are you of the racial/ethnic policies and anti-discrimination practices of the company in other countries?
18. What are other employers you know of doing on issues of racial/ethnic discrimination?

Could you give any examples?

E. The impact of the legislation

19. Do you think that the Racial Equality Directive and [name of national legislation] has improved protection against racial/ethnic discrimination in employment?
20. Are there any other or additional measures that you think could be taken that would be more effective?

Annex 6

Table A4: Name of employer organisations, by level and country

Country	Peak organisation	Branch/sector or regional organisation	National employer	Foreign-owned multinational
AT	2 Federation of Austrian Industrialists Austrian Federal Economics Chambers		2 Academy of Fine Arts City of Vienna	2 TNT Shell
BE	1 FEDERGON (Employment partners' federation)	3 BECI (Brussels Commercial and Industrial Businesses) FEDIS (Retail Employers Federation) FEBELFIN (Finance and Banking Employers Federation)	2 SELOR (public recruitment office) Brussels Public Hospital	2 Carrefour Rail Gourmet
BG	3 SSI (Union for Economic Initiative-UPE) BSK (Bulgarian Industrial Association- BIA) BTTP (Chambers of Commerce and Industry BCCI)		1 Taxi S Express	
CY	2 OEB (Cyprus Employers and Industrialists Federation) CCCI (Cyprus Chambers of Commerce and Industry)	2 OSEOK (Federation of Building Contractors Associations of Cyprus) PASYXE (Cyprus Hotel Association)		
CZ			4 Gumotex Thomayer Hospital BV Elektronik STAMONT – Metal International	
DK	3 DI (Confederation of Danish Industry) DA (Confederation of Danish Employers) KL (Local Government Association)	3 DMA (Association of Media Employers) DM (Federation of Master Painters) DB (Construction Association)		
EE			1 Ministry for Populations and Ethnic Affairs	
EU level	2 Business Europe UEAPME			
FI	3 EK (Confederation of Finnish Industries) KT (Commission for Local Authority Employers) VTML (State Employer's Office)	2 SKL (Federation of Finnish Commerce) RT (Confederation of Construction Industries)	1 City of Jyväskylä	

FR	3 MEDEF (Movement of French companies) UPA (Craft professional union) CJDES (Centre of young managers in social economy)	2 CGPME (Confederation of small and medium-sized enterprises) FIFEL – ZUS (Federation Ile-de-France of Entrepreneurs and liberal professions in urban zones) MEDEF West Paris region	1 Insurance company	
DE	2 BDI (Confederation of German Industry) BDA (Confederation of German Employers' Associations)	2 Gesamtmetall (Metal and Electronic Employers Association) KA (Municipal employers association)	5 Dussmann Deutsche Bahn Deutsche Post BMW City of Munich	
EL	1 SEV (Hellenic Federations of Enterprises)	1 Municipality of Komotini	3 Athens International Airport S.A Coco Mat Techni Pantelos	
HU	3 MGYOSZ (Confederation of Hungarian Employers and Industrialist) ÁFÉOSZ(National Federation of Consumer Co-operatives) IPOSZ(National Federation of Craftsmen Boards)		2 Anon	
IE	2 IBEC (Irish Business and Employers Confederation) ISME (Irish Small and Medium Enterprises Association)	3 CIF (Construction Industry Federation) IHF (Irish Hotels Federation) HSE-EA (Health Services Executive Employers Association)		
IT	2 Confcooperative-Federsolidarietà (Cooperatives Association) Confartigianato (National Craft Association)	4 Agricultural Employers' Association Doc Service Hoteliers' Association ANCE – Padua (National Builders' Association) Fòrema Unindustria – Padua (Industrial Employers)	4 Global Garden Products Gruppo Veronesi Marmi Santa Magherita Azienda Ospedaliera di Verona	
LV	2 LDDK (Employers' Confederation of Latvia) LTRK (Latvian Chamber of Commerce and Industry)	1 Association of Latvian Builders	2 Maxima (retail company) Lietiskas Informācijas Dienests	
LT	2 LPK (Confederation of Industrialists) LVDK (Confederation of Lithuanian small firms)			
LU	1 UEL (Union of Luxembourg Enterprises)			

MT	1 MEA (Malta Employers Association)	1 MHRA (Malta Hotels and Restaurants Association)		
NL	2 VNO-NCW (Confederation of Netherlands Industry and Employers) AWVN (General Employer's Association)	2 LTO Noord (Nothern Employers' Organisation for Agriculture and Horticulture) VNG (Association of Dutch Municipalities)	2 Albert Heijn LECD (Dutch Royal National Police Force)	
PL	3 KPP (Konfederacja Pracodawców Prywatnych) PKPP (Polska Konfederacja Pracodawcow Prywatnych 'Lewiatan') ZRP (Związek Rzemiosła Polskiego)			2 JW Construction AlterFM
PT	2 CPP (Portuguese Trade and Services Confederation) CIP (Portuese Confederation of Industry)		1 Portugal Telecom	
RO	1 ACPR (Alliance of Employers' Confederations of Romania)		1 Strametz & Partner Commodo	1 Accenture
SK		1 ZSPSR (Association of Mechanical Engineering)	1 UPSVAR (Central Office of Labour, Social Affairs and Family)	2 US Steel Košice Slovnaft – MOL Group
SI	2 GZS (Chamber of Commerce and Industry of Slovenia) ZDS (The Association of Employers of Slovenia)	1 ZDOPS–GIZ (Association of Employers in Craft and Small Businesses of Slovenia)	1 Žito dd	
ES		3 Foment Del Treball (Catalan branch of CEOE) CECOT (Catalan Business Confederation) CNC (National Building Federation)	6 Promsa Escorxadors de Girona GAG (Guissona Food Group) Rotecna Bodegas Torres Telefónica	
SE		1 Swedish Construction Federation (Byggnads)	6 Skanska University of Uppsala Uppsala Hospital Uppsala City Council Gothenburg City Council Uppsala Police Authority	
UK	2 CBI (Confederation of British Industry) CIPD (Chartered Institute of Personnel Development)		8 HSBC BT Royal Mail Tesco Borough of Haringey London Fire Brigade Department of Work and Pensions Borough of Hackney	1 EDF Energy

Annex 7

Table A5: Name of trade union organisations interviewed, by level and country

Country	Peak	Sector/branch or regional	Individual
AT	3 ÖGB (Austrian Confederation of Trade Unions) (2x) Austrian Federal Chamber of Labour	3 GPA-DJP (Union of Salaried Private Sector Employees and Union of Printers, Journalists and Paper Workers) GMTN (Metal, Textile, Agricultural, Food, Beverage and Tobacco Workers Union) ÖGB – OÖ (Upper Austrian Confederation of Unions)	
BE	3 FGTB – ABVV (General Federation of Belgian Labour) CSC – ACV (Confederation of Christian Trade Unions) CSGLB – ACLVB (General Confederation of Belgian Liberal Trade Unions)	4 FGTB – Brussels Diversity Counselling FGTB – Brussels Diversity Coordination CSC – Brussels Area CSC – Brussels Region	1 CSC – Brussels Clerical Workers Union
BG	2 KNSB (CITUB – Confederation of Independent Trade Unions of Bulgaria) KT "Podkrepa" (Confederation of Labour Podkrepa)	4 CITUB - Federation of Independent Food Industry Trade unions CL Podkrepa - Federation of Miners CITUB - Federation of Independent Trade Unions of the Power Industry CL Podkrepa - Federation of Education	
CY	2 PEO (Pancyprian Federation of Labour) DEOK (Democratic Labour Federation of Cyprus)	2 SYXKA (Cyprus Hotels and Catering Establishments Employees Trade Union) BWMGWU (Cyprus Building, Wood, Mine and General Workers Union)	
CZ			3 OS KOVO (Metal Workers' Union) OS STAVBA (Trade Union of Building Workers) OSZSP ČR (Trade Union of Health Service and Social Care)
DK	2 LO (Danish Confederation of Trade Unions) AC (Danish Confederation of Professional Associations)	4 3F (Fagligt Fælles Forbund) HK (Commercial and Clerical Workers' Union) NNF (Danish Food and Allied Workers' Union) TIB (Timber, Industry and Construction Workers' Union)	
EE	2 EAKL (Estonian Trade union Confederation) TALO (White Collar trade union confederation)	2 EAKL (Services and Commerce) TALO (Broadcast & Media Workers)	
EU level	ETUC (European Trade Union Confederation)	EMF (European Metalworkers Federation) Eurocadres EPSU (European Public Sector Union)	
FI	3 SAK (Central Organisation of Finnish Trade Unions) STTK (Finnish Confederation of Salaried Employees) AKAVA (Confederations of Unions for Academic Professionals)	3 PAM (Service Union United) Rakennusliitto (Construction Trade Union) UIL (Union of Professional Engineers)	

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FR	3 CFDT (Democratic French Workers' Confederation) CGT (General Workers' Confederation) FO (Workers' Power)	4 CFDT – Paris region CFDT – Ile de France region CGT - Rhône Alpes region FO - Northern region	3 CFDT – Paris Retail FO – Northern Finance Union FO – Paris Transport Union
DE	1 DGB (German Confederation of Trade Unions)	8 IG Metall (Industrial Union of Metalworkers) x 3 Ver.di (Public and Service Sector Union) IG BCE (Mining, Chemicals, Energy) IG BAU (Construction, Agricultural and Environment Union) GP (Police Union) NGG (Food, Beverages and Catering Union)	1 IG Metall - BMW works council
EL	2 GSEE (General Confederation of Greek Workers) ADEDY (Confederation of Public Servants)	2 OLME (Organisation of Secondary Education Teachers) POE – OTA (Federation of Workers in Municipalities and Local Communities)	1 EKA (Athens Labour Union Organisation)
HU	2 LIGA (Democratic League of Independent Trade Unions) MSZOSZ (National Association of Hungarian Trade Unions)	3 KASZ (Trade Union of Commercial Employees) HVDSZ (Local Government and Municipal Workers' Union) VDSZSZ-Szolidaritás (Free Trade Union of Railway Workers)	
IE	1 ICTU (Irish Congress of Trade Unions)		4 INO (Irish Nurses Organisation) SIPTU (Services Industrial Professional and Technical Union) IBOA (Irish Bank Officials' Organisation) MANDATE (Shop and Bar Workers' Union)
IT	3 CISL (Confederation of Italian Workers' Trade Unions) RdB (Rank and File Deputation) CGIL (Italian General Confederation of Labour)	7 FILLEA-CGIL (Construction workers' union) CISL- Venice Region CGIL – Venice Region UIL - Italian Workers Union – Venice Region FIM-CISL (Metalworkers' Union) FPS-CISL (Public Sector and Healthcare Workers' Federation) ACLI-COLF (Domestic Workers' Union)	
LV	1 LBAS (Free Trade Union Confederation of Latvia)	5 LIZDA (Education and Science Workers Trade Union) LAPA (United Trade Union of Policemen) VSADA (Health and Social Care Workers Trade Union) "Energija" (Energy sector trade union) LKDAF (Trade Union Federation for People Engaged in Cultural Activities)	
LT	2 LPSK (Lithuanian Trade Union Confederation) Solidarumas Lithuanian Trade Union		
LU	3 OGB-L (Confederation of Independent Trade Unions) x2 LCGB (Confederation of Christian Unions in Luxembourg)		1 LCGB – Cleaning branch

MT	1 GWU (General Workers Union)		2 UHM (United Workers Union) MUMN (Malta Union of Midwives and Nurses)
NL	2 CNV (National Federation of Christian Trade Unions) FNV (Federation of Dutch Trade Unions)		4 AFMP/FNV (General Association for Military Personnel) De Unie (The Union) NU'91 (Nurses and caretakers trade union) NPB (Dutch Police Union)
PL	5 OPZZ x 3 FZZ (Forum Związków Zawodowych) NSZZ (Solidarnosc national level)	2 NSZZ Solidarnosc (Electronics Industry Union) ZNP-OPZZ (Teachers Union)	
PT	2 CGTP (General Confederation of Portuguese Workers) UGT (General Workers' Union)	2 FESAHT (Trade Union Federation of Agriculture, Food, Beverage, Hotel and Tourism) FEVICOM (Portuguese Federation of Trade Unions of Construction, Ceramics and Glass Industry)	
RO	4 Cartel ALFA (National Trade Union Confederation) CSDR (Democratic Trade Union Confederation of Romania) Fratia (National Confederation of Free Trade Unions of Romania)	1 The National Confederation of Retired Persons Trade Unions	3 Sanitas Federation (Healthcare Trade Union) Columna (Federation of Employees from the Central and Local Public Administration) The Free Trade Union Federation of Commerce
SK		2 OZŽ (Railway Workers Trade Union Association) IOZ (Integrated Trade Union Association)	2 ZO OZ Metalurg (Metal Trade Union Association) ZO OZ Chémia (Chemical Trade Union Association)
SI	3 ZSSS (Association of Free Trade Unions of Slovenia) KSS Pergam ZDSS Solidarnost	1 SSS (Free Trade Union of Slovenia)	
ES	2 UGT (General Workers' Union) CCOO (Confederation of Workers Commissions)	6 CCOO (Catalan region of Confederation of Workers' Commissions) x 2 USO (Workers' Union Catalan Region) CCOO- Andalusia CGT- Branch of Barcelona UGT- Branch of Murcia	
SE		3 Union of Commercial Employees Swedish Construction Workers' Union Swedish Municipal Workers' Union	2 Swedish Metal Workers' Confederation, No 36 Union of Commercial Employees, No 36
UK	1 TUC (Trades Union Congress)		9 CWU (Communication Workers Union) FBU (Fire Brigades Union) GMB UNITE UNISON PCS TSSA (Transport Salaried Staffs Association) NASUWT (National Association of Teachers: Union of Women Teachers)

Annex 8

Table A6: Names of NGOs and Equality Bodies interviewed, by country

Country	Equality Body	National NGO	Local NGO
CZ		1 Multicultural centre Prague	1 Regional Authority of the Usti Region
EE	1 Gender Equality and Equal Treatment Commission		
EU level	Equinet	ENAT (European Network against Racism)	
FR		1 CJDES (Center of young leaders in social economy)	
DE			1 Ausländerbeirat München (City of Munich Advisory Board for Foreigners)
EL		2 HLHR-KEMO (Hellenic League for Human Rights and Research Centre for Minority Groups) Antegoni (Information and documentation centre on racism, ecology, peace and non-violence)	
LV	1 Ombudsman's Office	1 LCC (The Latvian Centre for Human Rights)	
LT		5 Lithuanian Human Rights Monitoring Institute House of National Communities Institute of Social Research, Centre of Ethnic Studies Department of Ethnic Minorities and Lithuanians Living Abroad	
LU	1 CET (Center for Equal Treatment)	1 CNE (General Commission for Foreigners)	
MT	1 NCPE (National Commission for the Promotion of Equality)		
NL		1 EARN (European Anti-Racism Network)	
PL		1 SIP (Legal Intervention Society)	
RO	1 National Council for Combating Discrimination	2 Center for Juridic Resources Equal Opportunity Commission-representing the Cantemir Association	
ES		2 CEPAIM (Foundation with a seat inside Spanish equality body) Fundación Tripartida (Training foundation)	1 Ombudsman of Catalonia

Annex 9

Country groups

EU-15 15 EU Member States prior to enlargement in 2004 (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom)

EU-12 12 New Member States, 10 of which joined the EU in 2004 (Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia) – and are sometimes referred to as the NMS10 – and the remaining two in 2007 (Bulgaria and Romania)

EU-27 27 EU Member States

Table A7: Country codes

Country code	Country name	Country code	Country name
AT	Austria	LV	Latvia
BE	Belgium	LT	Lithuania
BG	Bulgaria	LU	Luxembourg
CY	Cyprus	MT	Malta
CZ	Czech Republic	NL	Netherlands
DK	Denmark	PL	Poland
EE	Estonia	PT	Portugal
FI	Finland	RO	Romania
FR	France	SK	Slovakia
DE	Germany	SI	Slovenia
EL	Greece	ES	Spain
HU	Hungary	SE	Sweden
IE	Ireland	UK	United Kingdom
IT	Italy		

European Union Agency for Fundamental Rights

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The Racial Equality Directive (2000/43/EC) is the key piece of EU legislation combating discrimination on the grounds of race or ethnic origin. It encourages employers and trade unions to engage in social dialogue to promote diversity and challenge racial and ethnic discrimination. Social dialogue initiatives at various levels established common ground between employers and trade unions on the importance of fully integrating minority-origin workers, as well as of taking steps to end all forms of racial or ethnic discrimination. Nevertheless, geographical differences in the awareness of the directive and corresponding national legislation remain among the social partners in the 27 EU Member States. Their views on the directive also differ, with trade union representatives generally showing a more positive assessment of the directive. These are the findings of the FRA research on the views of the social partner organisations in the EU concerning the application of the Racial Equality Directive in practice, with a sole focus on the area of employment.

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