

The impact of the Racial Equality Directive:
a survey of trade unions and employers
in the Member States of the European Union

Austria

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1. Demographic background

Austria has a population of 8.3m, 16.6% of whom are of non-Austrian origin. Of these, 46% of people with non-Austrian citizenship or born abroad are from non-EU European countries, in particular the successor states of the former Yugoslavia and Turkey, while 40% originate from other countries of the European Union. Just 7.3% of migrants come from Asian countries, and even less (2.9%) from Africa. The percentage of migrant population is highest in Vienna, amounting to one third of the overall Viennese population. In 2007, the labour market participation of persons born abroad, in particular women, was significantly lower than that of persons born in Austria. The most important sectors for migrant workers are tourism and industrial production. In 2007 migrant women were predominantly employed in business-related services (such as industrial cleaning), migrant men in construction, temporary labour and security services (Österreichischer Integrationsfonds 2009, 8, 15, 18, 53).

2. Industrial relations background

Austria has a strongly institutionalised dual system of industrial relations. On the one hand, sector unions negotiate collective agreements, including agreements on minimum wages and sectoral labour conditions. The system of collective agreements is still relatively efficient (compared to other European countries): 95% of all employees are subject to it. On the other hand, the workforce of a company consisting of five or more employees does have the right to elect a works council representing the employees at company level. However works councils may not negotiate collective agreements, and neither may minimum wage increases be regulated in company agreements. Especially in small and medium-sized companies (up to 50 employees) the percentage of companies with works councils is very low. Trade union density is currently about 35% and the membership has been declining over the last few years. This tendency was aggravated as the result of a severe financial scandal that the Austrian Confederation of Trade Unions (Österreichischer Gewerkschaftsbund – OeGB), the umbrella organisation of the nine sector unions and nine regional unions, was involved in (Flecker/Hermann 2009, pp.94).

The Austrian Federal Chamber of Labour as the mandatory representative organisation of employees is another major stakeholder in social partner dialogue. On the employers' side, the Austrian Federal Economic Chamber, a body whose membership is compulsory, is involved in social partner negotiations. The influence of the social partners on policy making on the national level has diminished over the last ten to fifteen years. However, they continue to play a significant role at the level of the federal states and participate in several subcommittees and advisory bodies on social and economic, in particular labour-related, questions at national level.

3. Trade union and employer awareness

The Chamber of Labour was involved in negotiations to transpose the Racial Equality Directive because together with OeGB, it has the right to express employees' points of view on labour-related legislation. Furthermore, both are also represented on the Equal Treatment Commission, the most important body in Austria for handling discrimination cases. During the implementation process a working group among

Austria's trade unions was established, organised by the blue collar Union of Metal, Textile, Agricultural, Food, Beverage and Tobacco Workers (GMTN) but involving several unions. It made proposals aimed at the recognition of education and training attained abroad as well as the consideration of religious celebrations for leave of absence and the need to alter menus in canteens.

All the respondents on the employees' side showed a high level of awareness of the amendments in the Act on Equal treatment following the transposition of the Directive into national legislation. At the same time, they questioned whether the possibility to sue for discrimination on the grounds of ethnic origin would have a significant impact on the structural discrimination of migrant workers in Austria because – as one representative of the Union of Metal, Textile, Agricultural, Food, Beverage and Tobacco Workers (GMTN) put it: *'The labour market itself is discriminating because the worst jobs are allocated to migrant workers.'*

Employers' representatives, the Austrian Federal Economic Chamber and the Federation of Austrian Industries also commented on the draft law on Equal Treatment and are members of the Equal Treatment Commission. Therefore a high level of awareness and understanding of the legislation exists, and it is regarded as an important tool to further equal treatment in the workplace.

Representatives of the private companies interviewed (TNT Austria, Shell) did have a very high awareness of the anti-discrimination law. However, they were chosen exactly because they could show good practices in this field. Thus, a TNT Austria HR Manager comments that:

Always the same names and faces appear in expert rounds or HR events on discrimination and diversity, and that is not only because they have so many clever things to say but because there are very few people in Austria who can say anything at all on diversity issues. There is very little evidence, literature and research in Austria showing whether diversity management can be an advantage for companies or is just an inevitable evil.

A Shell HR manager regarded the law itself as a positive step and as both an improvement for employees and a crucial tool for HR managers to act against discrimination because *'behaviour which was previously regarded as trivial has now become an offence that leads to prosecution.'*

Public employers, such as the City Administration of Vienna and the Vienna University of Fine Arts, are by law obliged to either establish an anti-discrimination body (City Administration: Anti-Discrimination Office) or to include the protection of employees affected by ethnic discrimination into already existing structures to promote equality (University of Fine Arts). For this reason, both organisations had already achieved a rather high level of awareness of the legislation. The City of Vienna's Anti-Discrimination Office was founded in 2004 as a result of the implementation of the two European anti-discrimination directives into municipal law (Vienna Anti-Discrimination Act).

4. Comments on the Equality Body

In Vienna, in particular, the cooperation of the social partners with the Commission for Equal Treatment and the Ombudsman for Equal Treatment is extensive. Both social partners are members of the Commission's senates. Besides, the Chamber of Labour as well as the sector unions themselves take up cases of discrimination in labour-law related issues on the grounds of ethnic origin, even though there are very few cases. The same procedures are applied as in any other labour-related legal issues. One particularity of discrimination is that the people discriminated against are usually neither aware of the discrimination itself nor of the legal possibilities to combat discrimination: usually they approach the union with other grievances. Only during the consultation process with a union officer does discrimination become an issue. Two substantial critiques were articulated by the employees' representatives: one refers to the regional concentration of the Equality Bodies in Vienna, which makes it more difficult for claimants from other (in particular Western) parts of Austria to call on the Equality Body. Another point of criticism was the very long waiting time (of up to two years) to be invited to speak in front of the Equal Treatment Commission.

Private employers interviewed had not had any contacts with the Equal Treatment Commission in relation to discrimination issues on the ground of ethnic origin. The department against discrimination of the Vienna City Administration, a public employer, cooperates closely with various Equal Treatment bodies on federal and regional level in order to make it easier for complainants to get into and keep contact. Employers' organisations (Federal Economic Chamber, Federation of Austrian Industrialists) are also represented on the Equal Treatment Commission. Although the legislation itself is seen as a milestone to promote equal treatment and to fight discrimination, preventive measures to raise awareness of discrimination and the promotion of diversity management are crucial as well because, as indicated by the representative of the Federation of Austrian Industrialists:

To address the Commission is seen as a last chance of claiming a discriminatory incident. Most of the clients have to bring themselves to take this step and have already given up solving the conflict with their employer in a less confrontational manner. For most of them it is clear that they will not be able to return to their former workplace, they can just claim compensation.

5. Trade union and employer policies and measures

5.1 Trade union policies and measures

Union practices have somewhat changed with the possibility, since 2006, of electing non-EU nationals as employee representatives. But anti-discrimination policies in relation to race and ethnicity still do not have high priority, despite increasing reports of discrimination against migrant workers as one Austrian Confederation of Trade Unions representative stressed:

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 took place. Since then it is very quiet around the issue although the situation has not changed significantly.

All interviewees reported that discrimination had become an issue over the past five to ten years but also argued that it seemed to be hard to anchor anti-discriminatory practices and to incorporate migrant workers into trade union bodies. Especially since the implementation of the Directive, various initiatives have been taken up and brochures on equal treatment have been published to raise awareness of the topic. Representatives are trained in equal treatment legalisation, covering labour law in both general and specific courses. Training in anti-discrimination on the grounds of ethnic origin is particularly necessary; for a representative of the Union of Metal, Textile, Agricultural, Food, Beverage and Tobacco Workers (GMTN) the question remains, however, how to reach representatives with pronounced prejudices:

You have to be aware that with respect to ethnic discrimination, representatives have a lot of problems themselves. Especially in blue collar workers' unions. Representatives often arrive with well developed prejudices. And we have heated discussions on whether a certain kind of behaviour is discriminating or whether we Austrians have our home base here and the others have to conform to our perspectives and interpretations. So [the amendment of the Equal Treatment Legislation] was not a question of offering a legal tool that could support representatives ready to actively combat discrimination but of overcoming massive prejudices. And that would still be the central task today.

A representative of the Austrian Confederation of Trade Unions (OeGB) conceded:

People's interest in the topic [discrimination and equal treatment] still needs to be aroused and spread. Other events and problems, such as the financial and economic crisis, the scandal surrounding BAWAG [formerly a union owned bank sold after financial mismanagement], or elections, always seem to be more important than tackling structural problems and pressing issues – such as the representation of migrants within the federation. Campaigns around migration and integration should be organised on a bigger scale and more sustainably in order to reach and sensitize people. (Migrant) employees do not feel they are taken seriously when brochures are only translated into Turkish or Serbian and Croatian just a few weeks before elections while the rest of the time they are not addressed at all.

However, there were also reports of certain sections of unions, particularly in Upper Austria, doing more. The Upper Austrian Confederation of Trade Unions (OeGB-OOe) is the only section of the Austrian Federation of Trade Unions to establish a so-called 'centre of competence for migration issues' in March 2009, whose chair is also on the union's regional executive board. The Upper Austrian section of the Federation of Trade Unions has had a strong standing on migration issues since the 1980s. At that time the organisation began to provide counselling for migrant workers (guestworkers) in Upper Austria and helped to found an independent association with strong linkages to the Union. The association still exists and currently employs 26 staff members, most of them with migrant background. Another union, GPA-DJP (Union of Salaried Private Sector Employees and the Union of Printers, Journalists and Paper Workers), set up so called interest groups following a structural reform of

the organisation, one of them work@migration, whose board is directly elected by the members and who is entitled to send their deputies to the federal executive board of the Union of Salaried Private Sector Employees and the Union of Printers, Journalists and Paper Workers (GPA-DJP).

All unions have taken on more staff with multi-lingual competences for their counselling centres, with some unions (such as the Union of Metal, Textile, Agricultural, Food, Beverage and Tobacco Workers (GMTN) and the Union of Salaried Private Sector Employees and the Union of Printers, Journalists and Paper Workers (GPA-DJP)) even employing persons with migrant background to address and reach into particular groups of migrant workers.

All trade union interviewees emphasised the important role of workers' representatives for reaching, informing and winning people over to anti-discriminatory initiatives in the workplace. The representative of the Union of Salaried Private Sector Employees and the Union of Printers, Journalists and Paper Workers (GPA-DJP) explained:

They [shop stewards] are multipliers in transporting union ideas. They are also in a key position to transport this particular topic [anti-discrimination] – if they are interested themselves and willing to do so. On the one hand, they could act as mediators between native workers and migrant workers. On the other hand they could raise interest in trade unions among migrant workers themselves. A big problem of the trade unions at the moment is attracting (active) members. As the structure of workforce changes, union representatives should be open for new clienteles with perhaps different demands and concerns than the traditional ones.

The Austrian Federation of Trade Unions in Upper Austria, for instance, increasingly encourages migrant workers to run for positions as workers' representatives in companies. Additionally, projects and intercultural courses as well as 'tandem seminars', which Austrian workers' representatives can only take part in together with a workers' representative with a migrant background, are held to reduce the reluctance of Austrian workers' representatives to endorse the participation of migrant workers.

The Union of Salaried Private Sector Employees and the Union of Printers, Journalists and Paper Workers (GPA-DJP) have launched a campaign to secure more migrant worker representation within companies. A union organiser for GPA-DJP explained how he established personal contact to try and build the union both in big multinational retail chains and in ethnic businesses:

Workers often did not know about the existence of a union – even in companies where works councils are elected. All in all there is a huge need for information and explanation of the unions' functions. The first conversation is important to find common interests, to deepen trust. I am always returning to intensify talks with the workforce.

There were also examples given of unions participating in EQUAL projects funded by the EU in cooperation with social partners and NGOs.

5.2 Employer policies and measures

The employers interviewed were often very committed to anti-discrimination measures. The private companies studied more often rely on diversity-management strategies and ethical Codes of Conduct or International Framework Agreements rather than the specific promotion of disadvantaged groups. Shell, for instance, runs a regular Diversity and Inclusion (D&I) Focus Group of about 15 staff to improve awareness of discriminatory behaviour. There are several contact points to raise cases of discrimination: the HR manager, the workers' representatives, members of the D&I focus group. In addition, staff members can anonymously deposit cases of discrimination in a 'D&I post box'.

TNT's manager reported that Diversity Management is a business principle for the company:

We are a sort of microcosm; our 300 employees represent Austria on a small scale – with all diverse political and personal opinions. However, I believe that someone used to discriminating against other people will not feel comfortable in our company because he/she will not be able to avoid the confrontation with different kinds of people.... [It] is important that the entire enterprise, starting from the very top, clarifies that discrimination is not tolerated and that it is also keen to announce this fact. When new staff members are introduced, we present our values – and diversity is an important part of that. When recruiting new staff members we are especially interested in whether the candidate is someone who accepts a multicultural environment.

The representative of the Federation of Austrian Industrialists also gave an example of a multinational cleaning company where a head scarf has been included in the uniform of all female staff to overcome discrimination issues. However, the same company was criticised by the trade union for poor employment practices in terms of social security and employment segmentation, with all the non-Austrians grouped at the bottom.

In the public sphere, managements are required by law to monitor the observance of equality. In Vienna's city administration, whose 60,000 employees make it the largest employer in the capital, a special department for integration and diversity was created in 2004. One manager explained how the previous policy, which had merely included 'integration', was extended towards positive discrimination:

Diversity means to acknowledge the diversity of the Viennese population – in particular resulting from immigration in the 90s – as normality, to appreciate and to adapt to these changes as a public administration, and to represent the entire population also in administrative structures. The analysis began with mainstreaming the personnel, the service sector and the organisation. In accordance with this analysis a diversity policy and diversity management comparable to positive action was implemented.

Additionally, the Vienna City Administration's integration and diversity department offers traineeships for ethnic minorities during the summer and promotes apprenticeships for ethnic minorities within the Vienna City Administration, with

approximately 800 apprentices trained in 30 different professions within the City Administration. Also due to the fact that many apprentices are taken on as staff members, the City Administration focused on admitting apprentices with a migrant background, in particular for training administrative clerks who are most frequently in contact with customers within the City Administration.

Another public sector employer, the Academy of Fine Arts, was obliged by law (University Act 2002) to establish an equality body, the Equal Opportunity Working Party. This body monitors the observance of relevant decisions on equal treatment and can intervene in cases of discrimination. Following the new legislative situation, in 2005 a working group dealing with the issue of anti-discrimination at the Academy was installed. Important tasks of this working group were and are the development of an anti-discriminatory works agreement, which came into force in 2007; a status-quo analysis of the mechanisms of discrimination at the Academy; an analysis of structural discriminatory mechanisms in the admission procedures for students; an analysis of personnel recruiting to promote the employment of persons of all systematically discriminated groups. Besides a detailed procedure in cases of discrimination, the anti-discriminatory works agreement also provides suggestions for anti-discriminatory strategies, such as awareness-raising measures against discrimination, the analysis of structural power imbalances at the Academy and practical equal opportunities measures, such as the recognition of informal learning and previous qualifications and occupational experiences or the favouring of candidates from disadvantaged groups with equal qualification.

Employers' organisations' efforts to introduce the issue of discrimination in the workplace included the establishment of a platform, a 'migrascope', by the Federation of Austrian Industrialists for enterprises willing to put migration and integration on the (political) agenda and a mentoring programme for migrants launched by the Austrian Federal Economic Chamber.

6. Views on how to better tackle discrimination

Employee representatives were somewhat sceptical about the enforcement of the legislation and its effectiveness. A representative of the Federal Chamber of Labour regretted:

The legislation just states that fines are to act as a deterrent; but the level of the fines is not specified... What the directive foresaw was an easy, uncomplicated and cheap approach to enforcing the anti-discrimination law. From my point of view it is easy, it is cheap but, for claimants, after two years of waiting for a decision most of what has happened is buried.

Another unionist engaged in the Austrian Confederation of Trade Unions in Upper Austria (OeGB-OOe) explained that it is still the employee who bears the consequences of discrimination even when a discrimination case is brought to court:

If an employee starts to fight for his rights he is dismissed in any case. And the employer just faces a fine that is no more than petty cash for him. I therefore acknowledge that the law is a step into the right direction but as long as the consequences are not severe enough it remains a toothless law.

One unionist from the Union of Metal, Textile, Agricultural, Food, Beverage and Tobacco Workers (GMTN) felt it would be better to be able to group cases of ethnic and racial discrimination rather than have to present them one by one. In order to eliminate the systematic discrimination of migrant workers it is not enough to prosecute individual cases as provided by the equal treatment legislation. Rather, it is necessary to fulfil the union mission to fight for better working conditions for all employees and to develop strategies to put pressure on companies that systematically discriminate against migrant workers.

A staff member of the Vienna City Administration's integration and diversity department stated that the implementation of the Directive in Austria has improved the protection of migrant workers against discrimination but is sceptical about its effective implementation into practice:

It is not clear enough who a person who feels discriminated against can turn to and what is going to happen if he/she takes this step. Legal protection is available in theory but does it function in practice? Do people have access to the authorities in charge? Do they have money to take legal action? Regarding these questions much more needs to be done – also in Vienna: more resources, more information, more campaigns.

The employers felt that in general a more active approach to diversity needed to be adopted. The HR manager at TNT was clear: *'We are moving within a multicultural society and I think an active approach to handling this issue is required.'*

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