

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

France

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1. Demographic background

France has been a country of considerable national and ethnic diversity for many centuries. As of 2006, the French National Institute of Statistics (INSEE) estimated that of the approximately 61.5m population, 4.9m are foreign-born immigrants (8%) while the number of French citizens with foreign origins is generally thought to be around 6.7m. According to a 2004 study (Meurs et al 2005), there were some 14m persons of foreign ancestry living in France, defined as either migrants or people with at least one parent, grandparent, or great-grandparent who had migrated. Of these, 5.2 million were from Southern-European origins (Italy, Spain, Portugal and former Yugoslavia); and three million from North Africa.

2. Industrial relations background

French employment relations are structured around four main principles that have nonetheless been under question and nearly continuous reform since the early 1980s: the institutionalisation of pluralism (despite the weakness of representative employer and employee organisations); a dual system of workplace representation of workers; tripartism at the level of national collective agreements and in the running of national welfare institutions linked to work; and the concept of publicly-guaranteed minimum employment rights that provide protection to individual workers and a hierarchy of agreements such that local terms of employment cannot be worse than those established for the sector or nationally.

The national social partners currently comprise five national trade union confederations that were automatically recognised at all levels until 2008 (CGT, CFDT, FO, CFTC, CGC), and three employers' associations (including the MEDEF and the CGPME), but there are also other trade unions and other employers' organisations that may negotiate locally. In 2008, new laws were introduced to determine the representativity of employee organisations. The CGT and CFDT are the two largest trade unions, with an estimated one million members between them, and FO is the third largest.

The MEDEF is the main employers' organisation, with some 700,000 members affiliated to sector and local branches, including all of France's largest companies. It claims to represent employers with about 60 per cent of the French workforce. The CGPME has some of the same audience as the MEDEF, but focuses on the interests of small and medium-sized employers with fewer than 500 members. Collective bargaining coverage in France is very high since sector collective agreements are usually extended to all working in the sector by the Ministry of Labour.

3. Employer and trade union awareness

The MEDEF interviewee suggested a high level of awareness of the importance of anti-discrimination. Most large firms had signed company agreements on “diversity” since 2004, and the MEDEF encourages its regional bodies to mainstream diversity in dealing with and raising awareness of all of the discrimination strands. At the national level the MEDEF is also involved in many bodies focusing on discrimination: these range from the French equality body, the HALDE (*Haute autorité de lutte contre les discriminations*), where the trade unions are also represented, to, for younger workers, the AFIJ (*Association pour Faciliter l'Insertion professionnelle des Jeunes diplômés*), and to the corporate social responsibility organisation, *IMS-Entreprendre pour la cité*, which advocates ‘diversity and inclusiveness in the workplace’, including a diversity audit, interactive training units and tools for awareness-raising. The MEDEF’s main argument is that firms should diversify their recruitment in order to improve their performance and image, but this conception is not based on anti-discrimination planning or assessments.

However, the research conducted for this project with various employer and trade union representatives at several decision-making levels including national, regional and departmental, suggests that the MEDEF’s position is more ambiguous than this. There is a strong discourse in favour of diversity, but this is often at the expense of the right to equality. Thus despite requests from the trade unions for an evaluation of the outcomes of the Joint Agreement against Racial Discrimination signed in February 2007, the MEDEF has not so far agreed to one, according to one CFDT respondent.

The CGPME interviewee also considered that awareness had risen as a result of an increased flow of information, consultation and training on concrete steps to deal with discrimination: *‘The employers are talking more about it. Many people are talking more and more about discrimination and how to fight it.’*

The five representative trade union confederations were consulted about the passage of the Racial Equality Directive in a process that led to the 16 November 2001 law. This declared it illegal for employers in the private sector to exclude or penalise anyone, directly or indirectly, *‘because of his or her real or assumed ethnicity, nationality or race, political opinions, union activities, religious convictions, physical appearance, family name, health or disability’*. The unions criticised the limited way in which the change in the burden of proof was implemented. For the worker still has to prove the discrimination against him without having access to company data concerning the rest of the workforce on issues like wages and career paths. It was another three years before, on 30 December 2004, the change was extended to the public sector, and then only concerning direct discrimination on grounds of national origin, ethnicity and race. The new law also created the HALDE, the Board of which includes representatives from the unions, the employers and the government. It has the power to conduct investigations into individual cases, and to run training programmes on issues relating to all forms of discrimination. A third law was passed on 27 May 2008, but it too ignored indirect discrimination and just listed specific situations. A CFDT interviewee explained the problem: *‘Indirect discrimination doesn’t have clear motivations, besides in the European text it focuses on the outcomes, not on the motives.’* Another criticism by the trade union

interviewees was that the financial and legal penalties were too weak to encourage companies to respond better.

4. Comments on the Equality Body

The small and medium-sized employers' association, the CGPME, confirmed the importance of the HALDE as a deterrent. Aware of the need to combat denial as well as to stimulate its members' consciences, the interviewee explained how it was sometimes necessary to warn employers undergoing training that the HALDE is now conducting ten discrimination at recruitment tests in every department every year: *'So then I say to them: "Watch out. You've given the wrong answer to that question and you could end up with a fine if the HALDE catches you". If the type doesn't do anything, it's his problem.'*

The MEDEF representative also reported positively about the HALDE, commenting that it has representatives who participate in its working groups with the other social partners. The leading French company Accor's HR Director has a seat on the main HALDE Board, which is chaired by the former President of Renault. However, the extent of the employer participation in the HALDE is questioned by the unions, who claim that the employers are now absent from the Social Dialogue committee established by the HALDE.

An FO interviewee reported that the trade unions are very much in favour of working with the HALDE, and are disappointed with the extent of the employers' involvement: *'The MEDEF and the CGPME don't come any more... They make speeches on diversity, but there, where it is about concrete work to construct something together, we find just the trade unions meeting together. If we don't have a partnership, it means that negotiations aren't very fruitful.'* A CFDT interviewee contrasted the relatively low priority placed by the MEDEF on anti-discrimination with the more positive attitude being taken by several large companies.

5. Trade union and employer policies and measures

5.1 Trade union policies and measures

Despite their criticisms, the unions confirmed that the laws passed since 2000 had reinforced awareness of the existence of discrimination and improved the legal framework. Both the CGT and the CFDT had previously taken part in and managed EU-funded research on racial discrimination. The CFDT undertook research on racial discrimination in 1995, with the participation of the sociologist Philippe Bataille. The CGT conducted several research projects with the URMIS CNRS institute from 1996. The results helped them to organise training for their activists, to edit a guide for union delegates, and to negotiate at the workplace. In 1999, the five representative union confederations from the Rhone Alpes Region, in the south east of France, signed an agreement together with the regional employers' organisations, where they committed

themselves to fighting against all kinds of discrimination. This agreement was a first in France, and involved 90 different companies over the project's 18-month life-time.

The union interviewees considered, however, that their actions against discriminations in general and racial discrimination in particular had become more systematic since the Racial Equality Directive and its transposition that raised the possibility of taking cases to court. A CGT interviewee reported that the establishment of HALDE enabled more exchanges to take place between the unions concerning combating discrimination. In 2006 the union confederations the CGT, the CFDT, the CFTC and the CGT-FO signed a National Multi-sector Agreement on Diversity with the employers, the MEDEF and CGPME.

The CFDT also launched a campaign called '1000 agreements for equality' (*Opération 1000 accords pour l'égalité*) to encourage representatives to reach local agreements on racial diversity. The achievements of this campaign are more difficult to assess. The problem in today's economic crisis is that many trade unionists are dealing with other issues than discrimination. One CFDT interviewee explained: *'The main concern of our militants today is to defend the basics. Only after that is it the daily issues such as discrimination, work rights or health and safety.'* At the same time, however, an increased sensitivity to discrimination cases is clear. The same regional-level interviewee commented: *'Now, and it was the objective, the team in the workplace often come to us saying "we've got a discrimination issue".'*

The CFDT also initiated another EU-funded EQUAL programme called ATECCOD (*Agir sur les territoires pour l'égalité des chances et contre les discriminations*) that sought to secure more local anti-discrimination agreements. Interestingly, in this joint trade union-employer campaign, the employers were reported as happier to speak about *'acting for equal opportunities'* than they were about *'fighting discrimination'*.

While anti-discrimination training used to focus on understanding discrimination against trade union activists, the agenda has now become much wider. An interviewee from FO indicated that places on their equality training courses were full: *'This proves the appetite of the activists on this subject. They often find themselves on their own in the firms dealing with discrimination. They're coming on courses to try and get on top of these issues and with a view to either progressing cases through the courts, if it is possible, or of intervening within the firm to get the discrimination issue resolved.'* All the unions have put a great deal more effort into equality training. A CFDT interviewee gave an example of how this had helped: *'For example, for summer jobs, if they're reserved for the firm's own workforce, that's indirect discrimination, since other young people can't get access, and certainly not any unemployed parents. We explain to them that this is indirect discrimination, and then they start to understand certain things.'*

Another CFDT interviewee explained that although it was now possible to take discrimination cases to court, this wasn't the key to dealing with them: *'Let's imagine you are a personnel delegate in a company and a woman or a person of colour reports a situation of discrimination. You're going to put that on the agenda of the Personnel Delegates' meeting, and get it settled! So since you've dealt with it, why should the*

discrimination become visible? Since 2003 the CGT had undertaken several cases to the courts where they could show by comparing individuals' career trajectories that certain large firms were practising an ethnic division of labour and opportunities that discriminated against workers on the basis of their origins. A questionnaire distributed by the CFDT in Paris in 2007 had shown that between 30 and 40 per cent of those responding considered they had been discriminated against on grounds of their origins – either by the line manager, or by clients or service users, or by other colleagues. In turn this allowed the union to provide its activists with evidence to use with the employers.

The trade unionists interviewed also considered that their own internal organisations were now reflecting more closely the diversity of their memberships than before. A CFDT interviewee explained: *'Our last meeting had a majority of women and was more diverse (EU and non-EU) and had a more youthful composition as well as a completely different approach. It focused on equality, saying it wasn't fair, not normal. This was contrary to what happened before when it was almost all through and through French and then they didn't listen.'* This North African origin trade unionist added: *'Before you had a ghetto. It was enclosed. It was about a grievance of just one person, and you couldn't raise issues beyond your own immediate network. Today we're put into contact with different issues and national union secretaries.'*

The CGT National Executive was changing more slowly than some of the committees closer to the membership. Although there were now five migrants on it (out of 54 people), an interviewee explained, *'there is not a single black person there'*. He emphasised: *'There are two levels of action: internal and external.'* One North African origin woman trade unionist believed there was still too little awareness of the problems of racial discrimination. She reported: *'I've the impression they are still embarrassed by the issue... At the last conference everything was focused on disability and nothing was said about diversity. I had to take the floor to raise the issue... I wish that the trade unions, and especially their leaderships, really become aware about the reality of racial discrimination.'*

The unions were not unanimous about their approaches to discrimination: the FO was in favour of laws, policies and agreements that condemned equally all forms of discrimination. According to one FO interviewee, *'Our motto at FO is "equality of rights", without differentiation. It is access to rights and equality that will produce diversity. Starting from there we are unhappy about ideas of quotas or of ethnic monitoring.'* The FO also contrasts *'little pretty diversity agreements'* with *'really working on discriminations'*.

One CGT interviewee reported his union's opposition to ethnic monitoring: *'It is not real. You can't base an approach on something that goes against the laws of our Republic.'* The CGT also opposed the introduction of anonymous CVs, arguing that *'I shouldn't need to rub out my name, my forename, in order to go and get a job... It makes me the guilty one, not the other person'*.

The CGT and CFDT were more in favour of using the legislative tools and anti-discrimination agreements (such as those at Adecco, Accor and PSA) wherever

possible to make racial discrimination more visible where it occurs. These agreements, they argued, make it easier to challenge it effectively in the workplace and if these challenges failed it was then possible to take the issues to the courts. However, one FO interviewee described how a local agreement was reached in 2008 in one finance sector company: *'I chose to focus the agreement on company diversity on all the discrimination issues because otherwise it wouldn't have got through'*.

5.2 Employer policies and measures

The employers also had disagreements about how best to challenge racial discrimination. The MEDEF supported the idea of instituting a 'diversity label' that firms could sign up to. The CGPME opposed this as it was too costly and shouldn't be needed after the National Inter-professional Agreement of 2006: *'My president said that the CGPME has signed an agreement. We undertake to put that in place, so that all our members much respect it. If they don't, then, we will be the first to say "Stop"'*.

Following the 2006 diversity agreement, the Paris Region of the CGPME participated with the Mayor of Paris in an EQUAL project, *'Action et Vigilance'*, which was coordinated by the CFDT. Its objective was to sensitise and train the elected industrial tribunal judges and company managers on racial discrimination at work, developing distance learning materials with computer software. This was the first time the CGPME had worked with a trade union on racial discrimination and represented a strong commitment by the employers. Their perspective, in on-going work creating self-diagnostic and training tools, was to encourage the company owner to become self-aware: *'You get the employer to discover by himself without telling him what he doesn't know. Then it's necessary to involve him in a project that validates him, that allows him to admit at a certain moment: "I'm not doing this well, I must do something. If I am to react, what should I do?" Then he needs the tools.'*

The anti-discrimination position of the MEDEF may be understood as trying to play down the idea of a 'struggle against discrimination', involving support for legal measures and collective agreements, while substituting managerial diversity actions at the level of the firm. This puts the driver of change into the hands of the human resource managers, and effectively defines the issue of discrimination as a problem of managing recruitment in ways that help make the firm appear as more 'socially responsible' simply because its workforce is more diverse. Once this 'diversity' has been achieved the issues of fighting for equal treatment and struggling against indirect discrimination are accorded a much lower priority.

This 'diversity slogan' approach was questioned by one of the CGPME interviewees. He believed it was necessary to go beyond adding a handful of minority employees to more sustainable measures: *'There is more openness. But what bothers me is the "diversity" alibi, that is to hire a "Black" in a branch office simply to promote diversity. But how many "Blacks" are there across all of the branch network?'*

Another employer response to racism was also stimulated by the EQUAL programme, coordinated by another trade union federation, UNSA. This programme involved the

CJDES (Young Social Economy Sector Managers association), which had previously promoted the Social Audit within firms. It developed a self-diagnostic tool, 'Against discrimination and for diversity' to be used by firms where discrimination exists to raise awareness and hence change behaviours. A CJDES interviewee explained: *'This tool isn't about the victims, it's aimed at the potential for discrimination, at those who participate in organisations that discriminate... (tackling) the system that creates victims'*.

6. Views on how to tackle discrimination better

The union interviewees considered that the levels of fines on the few firms that had been found guilty in the courts were much too low. While anti-discrimination law has been strengthened, too many cases are simply not followed through, and there is no real pressure on employers to negotiate on discrimination. A CFDT interviewee explained: *'There are few legal constraints. The few guilty verdicts there have been have led to derisory fines (4,000 euros). That's nothing for a company. They aren't dissuasive enough for business. The legal texts exist, but they aren't applied.'* A CGT interviewee argued that one problem with using the courts was that there were so few French magistrates trained in the relevant EU law.

Another problem for one of the CGT interviewees was that of the developing racial segmentation of the labour force: *'There is an ethnicisation of tasks, and so it's people of the same colours, the same who are women cleaners, and so on.'* A CFDT retail representative explained that in many public-facing jobs in sales and other services client contact jobs are reserved for some people while logistics jobs go to the others. *'At the point of sale they don't want 'tanned' people, but workers of the right colour, with the exception of one or two just to make the point.'* The unions believed it is not good enough to talk about 'diversity' – which certainly does exist. The employers must take steps to challenge discrimination including job segmentation.

The employers' approach was quite different. The CGPME thus argued for moving away from penalising employers. Its interviewee explained: *'The HALDE is already doing more on sensitising and information than repression in relation to companies.'* He also argued for continuing funding of Equal projects in this area. The MEDEF interviewee proposed that the best way of moving forward was to try and persuade companies to question how far their employees were representative of the local labour markets.

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