

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

Luxembourg

Dr. Nouria Ouali

DISCLAIMER: Please note that country reports of each Member State are published in the interests of transparency and for information purposes only. Any views or opinions expressed therein in no way represent those of the Fundamental Rights Agency (FRA). Country reports constitute background information used by the FRA when compiling its own studies.

1. Demographic background

Luxembourg's population and working population is very varied. Its resident population is just under 500,000 including around 220,000 non-nationals living in the Duchy. The largest numbers of non-nationals have Portuguese nationality followed by Italian, and there are also significant numbers of migrants from the former-Yugoslavia. Among the 300,000 workforce, however, only one third are Luxembourg citizens; 40 per cent of the Luxembourg workforce lives in France, Belgium or Germany and crosses the border each day to work; while a quarter are non-nationals living in Luxembourg (including 8,000 international civil servants). The Luxembourgers make up 80 per cent of public sector workers, and non-nationals 80 per cent of the private sector. These non-nationals are particularly over-represented in the hotel and construction sectors (SESOPI, 2007).

Luxembourg is a multilingual country, which recognises three official languages: French, German and Luxembourgish (Lëtzebuergesch). The distribution of the language is not geographical as in Belgium and Switzerland, but depends on the context (administration, Parliament, school, everyday life). French and German are a necessity in written communication while Luxembourgish is the everyday spoken language and a strong symbol of national identity. Although it is used mostly only in oral communication, written Luxembourgish is required for applying for employment in public services.

2. Employment relations background

The Employment relations system in Luxembourg is centred on tripartism. The Tripartite Coordinating Committee, with four representatives from government, four from the employers and four from the trade unions recommends measures for the government to put to parliament to ensure there is consensual action on social, financial and economic actions affecting the country. Trade union membership density has been relatively stable at around 45 per cent for most of the past two decades. The Confederation of Independent Trade Unions (OGB-L) is a group of 16 trade unions with a total of 50,000 members. While socialist in nature and orientation, the OGB-L is not organisationally attached to the Luxembourg Socialist Party. The Confederation of Christian Unions in Luxembourg (LCGB) represents 40,000 members. It groups 16 federations made up of 10 sector federations and six that organise specific target groups (for example, migrant workers and women). As well as these two confederations, an important white collar union (ALEBA) is active in the banking, financial services, and insurance sector. In the public sector the CGFP (*Confédération Générale de la Fonction Publique*) is the most representative trade union. Representativeness is determined by unions securing at least 15 per cent of the votes in the elections for the Trade Chambers for Labour.

Organisational density is also high among employers with about 80 per cent of firms being members of an employers' organisation. The principal private sector industry confederation is the Union of Luxembourg Enterprises (UEL). Membership of one of three employers and three employee Trade Chambers is compulsory, with elections every five years. The vote was extended to non-nationals in 1999 (<http://www.eurofound.europa.eu/eiro/links/luxembourg.htm>).

3. Trade union and employer awareness

Although the government developed an anti-discrimination information campaign from 2002, the transposition of the Racial Equality Directive finally occurred through the law on Equal Treatment of 28 November 2006. The issue was controversial because the linguistic and nationality requirements in the public sector effectively reserved those jobs for the ethnic majority Luxembourgers and had the support of the CFGP trade union.

The trade unions and employers were both consulted on the law directly at national level, as well as through their representatives on the National Foreigners' Committee (*Conseil National pour Etrangers - CNE*). The union interviewees' knowledge of the Racial Equality Directive and the national legislation ranged widely. One experienced interviewee was highly knowledgeable; another had only just learned about the law at a LCGB event where the union's migrant worker service was distributing information about the Centre for Equal Treatment (*Centre pour l'Égalité de Traitement - CET*).

Discrimination and bullying were reported in the cleaning and laundry sectors where there were large numbers of non-nationals; for example, an OGB-L interviewee admitted that the law did not help very much. This was because of the fear of dismissal: *'I would be really happy if tomorrow one of the people I work with told me that she was ready to go all the way. But in general, they are scared because it's very easy to get the sack in that industry.'* The advantage, for an LCGB official, of the new law and of the Equality Body, the CET, is not that there has yet been any significant change, but that a new tool has been added to fight discrimination: *'Since the 2006 law on equal treatment, to be honest, I don't think there's any obvious change. But I now have a much clearer legal basis. What the law brings us is a clarification of the situation and a legal tool to back up our activities.'*

In 2003-2004 the Government Commission for Foreigners (*Commissariat du Gouvernement aux Etrangers - CGE*) initiated a training programme targeting the trade unions, since the priority of the European Commission was the labour market. *'At that time there was no national legislation but we referred to the European directives. On the ground, shop stewards didn't know how to manage the complaints and the federations ignored the know-how about handling files. There was a strong demand to learn the legal instruments because trade unionists were left to themselves. Later, the trade unions organised their own training.'* The CGE also collaborate with the employers' federation, UEL, which took the opportunity to work in partnership and to promote diversity at work in the framework of the European Year of Equal Opportunity in 2007. According to the CGE representative, an awareness campaign on equal opportunity between men and women that took place 15 years ago facilitated other anti-discrimination consciousness-raising campaigns. The question raised is whether the trade unions articulate all discrimination issues since it has been observed that there is a focus on one discrimination matter - gender - compared to the other grounds.

4. Comments on the Equality Body

It was only in September 2008 that the Luxembourg equality body, the Centre for Equal Treatment (*Centre pour l'Égalité de Traitement*), was finally established. It deals with all six main equality strands and its five-strong directorate is elected by the Chamber of Deputies. Six months later it had opened 38 cases, of which six involve issues of race/ethnicity and one of religion.

According to the UEL: *'The Centre is a very young institution which must find its path. With respect to the other Equal opportunity bodies in Europe, CET is not on equal footing since it cannot be party to legal proceedings. But it was a political will not to give it this right.'*

Trade unions considered the limitation of its judicial capacity as a major obstacle to fighting discrimination. If they welcomed its creation and envisaged a close cooperation in terms of training and handling of complaints, they regret the fact that victims still have to take individual initiatives or mandate a trade union or any authorised association to act in her/his name. For the OGB-L, the Centre is an additional means for individual defence although it favours collective bargaining. The appeal to the CET can only be done when the negotiation process has failed. On the other hand, the establishment of CET is real progress in terms of collecting and handling complaints, as well as in advising and orientating victims of discrimination.

An LCGB full-time official thinks that the creation of the Centre for Equal Treatment obliges social partners to put discrimination on their agenda and to develop cooperation with the Centre. In addition, the law and the Centre contribute to reinforcing the union fight for equal treatment: *'It is too early to assess the effectiveness of the CET, which has just been set up at the beginning of this year. Things drag out, this is why there are so few discrimination cases on the grounds of origin.'*

Before the creation of the CET, the Government Commissioner for Foreigners was jointly in charge of discrimination cases (handled by the *Commission spéciale permanente contre la discrimination raciale*) with the Labour and Mines Inspection (*Inspection des mines*). Unfortunately, neither was equipped to deal with the complaints: *'We were running round in circles since there was no institution taking care of the victims' complaints. We received many complaints but they were just filed. They were passed on as soon as the CET was founded. Now, our role is to set up a network of NGOs authorised by the Ministry of Justice to act for justice in the name of the victims.'*

5. Trade union and employer policies and measures

5.1 Trade union policies and measures

For many years Luxembourg's trade unions have been claiming equal treatment for migrant workers, and have fought racism and discrimination and demanded cultural rights as well as naturalisation and voting rights in local elections. The discrimination issue, however, still remains a taboo subject that has only been raised largely thanks to the European directives.

Currently, trade unions fight discriminatory legislation relating to cross-border workers (*frontaliers*) and employees with mixed-careers in different European countries (freedom of movement). Although they have no competences to act in the public sector, they have been calling for more access to the public employment for foreign workers. According to the CGE representative, the CGFP which is also a member of the National Foreigners' Council (*Conseil national des Etrangers*) has been opposing opening access to public services to foreigners: *'We planned to organise a specific awareness campaign with the public services and the CGFP. I guess that it would not be easy to address the issue.'*

The OGB-L anti-discrimination fight has been focused on disabled workers. Discrimination on race or ethnicity grounds does not seem to be really significant. On average OGB-L manages 3 or 4 cases of discrimination a year mainly on the basis of nationality (border workers), gender or disability. No discrimination case has been put to the court by the federation. The trade unionist noted that the financial and economic crisis has increased unemployment which increases nationalism and protectionism among resident workers (both Luxembourgers and Portuguese). The OGB-L official was very sceptical about the employers' will in relation to discrimination against foreign workers: *'Is there a deliberate intention to discriminate? I believe not. For me it is rather the will not to deal with these people in the companies. Personally, I do not consider it as a real discrimination because it is not founded on the characteristics of the people. People are insulting them in terms of using phrases such as "bloody negro" or "bloody Portuguese or French" but we did not register any true act. We can just presume the discrimination exists since no employer writes that he/she lays off a person because he/she is black. They will put another reason like "restructuring".'*

The LCGB has been involved for 15 years in gender anti-discrimination action. In 2002, the organisation developed a *Gender Equality Network* composed of Equal Treatment delegates acting in firms of more than 15 people. The network aims to gather together full-time officials in the union dealing with discrimination cases on all grounds. In addition, the LCGB manages moral and sexual harassment cases and created an association (*Mobbing*) devoted to this issue, including racial harassment. The training programme for Equality Treatment delegates includes information about the national anti-discrimination law promulgated in 2006 and will be organised in cooperation with the Centre for Equal Treatment. Concerning the issue of country of origin, many cross-border employees from France or Belgium, North Africans and Sub-Saharan Africans, have worked for a very long time in Luxembourg: *'Despite the Luxembourg multicultural approach having existed for years, there are always cases of employers refusing foreigners, but they will not do it in an open way'.*

Trade unions also pointed out that the construction and cleaning sectors only recruit ethnic minority workers like Portuguese or Yugoslavs, which makes it difficult for other ethnic groups or Luxembourgers to access these jobs. One official asked rhetorically: *'Should we have to consider that it is a case of racial discrimination? I don't think so. For me a real discrimination comes when with equal qualification an employee is not hired because he/she is black, foreigner or a woman. But it is also all the exclusion processes existing in daily life'*.

5.2 Employer policies and measures

The employers' federation, the UEL, was less active on anti-racism than on equal opportunities. Its interviewee believed: *"Diversity management" is something exotic. It really isn't something that preoccupies us at the moment.'* Its main priority at the time of the interview was the April 2009 launch of a Certificate of Equal Opportunities, but it was planning a conference on diversity at the end of 2009. This programme *'is in effect one of the results of the European directives'*. It would also be organising company-level training on diversity, with the support of the EU, and will develop a tool to help managers identify issues of discrimination. However, it deliberately decided to do so without first involving the unions.

The anti-discrimination policy of the UEL falls under the social responsibility project of the firms that include a section related to 'professional equal opportunities'. It is supposed to enhance diversity at the work place. Diversity is seen as an economic advantage increasing attractiveness, performance and the image of the firm. *'The diversity policy is not seen as a constraint. We put ourselves in the spirit of "best practices" and excellence. We want to extend them to other grounds in order to improve firm management.'*

The employers' federation brings its support to the field of communication and anti-discrimination awareness-raising for employees and management. It provides a brochure on equal opportunity, recommendations and a model of action plan and its evaluation. For HRM, information and training sessions on legislation were organised but UEL considers that is not really its role. It emphasises more its action on the dissemination of diversity philosophy than on legal rules. It gives support to firms in answering their questions, giving advice and in encouraging them to make good practice more visible. *'In some sectors, we had to be more insistent whereas in others that fitted in with what they always did. Initially, we wanted to define standards and we wanted to involve more employers in the project. This is ambitious but it is the right way'*.

6. Views on how to tackle discrimination better

An LCGB full-time official considered that to embed anti-discrimination more clearly in Luxembourg the State needed to invest more in migrants, improving their language training and the opportunities they have to get better qualifications. She thought: *'Integration will take time, like happened with the Italians. But I'm more pessimistic than before, and now it is the message of solidarity that must prevail over*

protectionism.' An OGB-L official considered there was already a dangerous renaissance of xenophobia in the air through the developing economic crisis: *'I am already hearing the Luxembourgers and even the Portuguese saying that the "dirty cross-border workers are coming here and taking our jobs".'*

According to an Equal Treatment delegate, employers discriminate continually against workers because they don't care about the legislation and they have a complete impunity. That it is why the Authorities should improve the effectiveness of the law. *'The only thing that the ministry must do is to create legislation to protect us from abuses of rights. The legislation protects the employers too much on these matters. It will be necessary to have a legislation which constrains them more and sanctions their discriminatory practices.'*

The Government Commissioner for Foreigners places greater emphasis on the lack of expertise: *'It is true, now we've got law, that it still would be necessary to enforce it. We are inexperienced legal experts in discrimination and there is no jurisprudence because people know each other and they are afraid. Our role is to sensitise and create a legal expertise.'*

References

Besch Sylvain, Bodson Lucile, Hartmann-Hirsh Claudia, Legrand Michel (2005), *Discrimination à l'emploi*, Rapport au Commissariat du Gouvernement aux Etrangers, version synthétique, Octobre.

Commissariat du Gouvernement aux Etrangers (2007), *Notre Luxembourg: Diversité et Citoyenneté*, Conférence nationale pour Etrangers, Luxembourg, Octobre.

European Foundation, *European Industrial Relations Observatory on-line*, <http://www.eurofound.europa.eu/eiro/links/luxembourg.htm>

Kollwelter Serge (2005), *Current immigration debates in Europe: A publication of the European Migration Dialogue. Luxembourg*, Migration Policy Group.

SESOPi (2007), *Chiffres clés sur la population du Luxembourg*.

Union des Entreprises Luxembourgeoises (2008) *Rapport annuel de l'UEL 2008*.