

Enforcement of anti-discrimination law: best practices

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Applying EU Anti-discrimination Law

Seminar for legal practitioners

Riga, 5 May 2022

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This training session is funded under the 'Rights, Equality and Citizenship Programme 2014-2020' of the European Commission.

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Aim of the thematic report

- Identify encouraging and promising practices developed in relation to existing enforcement mechanisms for the system of protection against discrimination based on the Equality Directives.



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

Effectively enforcing the right to non-discrimination

Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives

Including summaries in English, French and German

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“Effective enforcement”

- ✓ Legal provisions, jurisprudence or public policies;
- ✓ Addressing the harm caused at the individual and collective level;
- ✓ Fostering awareness at the societal level.

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‘Promising or encouraging practices’

- Intention to evolve in a positive, promising direction;
- Creatively transposing or going beyond the standard requirements of the Equality Directives;
- Progressive elements built around a victim-centered approach;
- Future-oriented approach of the remedies and institutional mechanisms provided;
- Limitations of the analysis.

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Methodology

- Literature review
- Comparative analysis
- The expert support of the members of the European network of legal experts in gender equality and non-discrimination
- Limitations of the report
- Themes, countries, snapshots

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Main conclusions

- Innovative, promising elements can be identified in every single Member State.
- Even when such promising elements seem to be small and country-specific, all these elements taken together form the foundations of a potential giant leap at the European level.
- Positive developments need to be consistently used and championed, otherwise the risk of dilution and regress or of sham compliance is very real.

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Specific features brought by the Equality Directives

- 2017, Norway – both additive and intersectional discrimination:
Prohibits discrimination on the basis of gender, pregnancy, leave in connection with childbirth or adoption, care responsibilities, ethnicity, religion, belief, disability, sexual orientation, gender identity, gender expression, age or ‘combinations of these factors’, understood as actual, assumed, former or future factors.

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Effective enforcement through adequate protection

- **Italy** – Regulation concerning the solidarity fund for victims of discrimination
 - Created by the national equality body (UNAR).
 - National Lawyers’ Association involved.
 - Providing lawyers with part of the legal costs of actions brought before the courts (about EUR 600 for each level of judicial proceedings).
 - 3 cases per year.

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National Equality Bodies and effective protection against discrimination

- ✓ **Design of the NEBs** – multigrounds, multiple fields covered
- ✓ **Mandate and powers of the NEBs**
 - ✓ Amicus curiae in discrimination cases before national courts or international venues or defending rights in justice through strategic litigation
 - ✓ Investigation: including ex officio,
 - ✓ Equality reviews Irish HR and Equality Commission
 - ✓ Investigative powers supported by fines in case of denial of access to evidence
 - ✓ Mechanisms for monitoring enforcement of decisions
- ✓ **Ease of access and of procedures before NEBs**

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Role of legal entities engaging in anti-discrimination proceedings and in social dialogue

- ✓ providing *locus standi* for non-governmental organisations or trade unions leads to strategic litigation on topics of particular vulnerability or entailing structural discrimination
- ✓ Supporting equality and non-discrimination in their work – Austria, Belgium, Portugal, Sweden, Italy

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Effective, proportionate and dissuasive sanctions

- ✓ „a purely symbolic sanction cannot be regarded as compatible with the correct and effective implementation of Directive 2000/78”
- ✓ Higher compensations including compensations awarded to NGOs
- ✓ Suspending licenses (Norway or Belgium, Portugal) or exclusion from public tenders or public financial assistance (Italy)

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The extra mile – promising practices in unexpected places

- ✓ Equality and non-discrimination as transversal duty in Hungary, Norway, Ireland or Finland
- ✓ Evaluation and self-reflection either as legal duty (Belgium) or as institutional practice
- ✓ Use of equality data – in particular in the COVID related context
- ✓ Tackling discrimination caused by AI

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