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# ANTI-DISCRIMINATION LAW AND CLIMATE CHANGE

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## STRUCTURE

1. Objectives
2. Discriminatory grounds
3. Domains
4. Methods

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## I. OBJECTIVES

1) Inclusion - Protecting the most vulnerable

2) Limiting climate change

and ensuring climate change law is accepted by citizens and their representatives

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## I. OBJECTIVES

1) Inclusion - Protecting the most vulnerable

➤ "It is worst on the poor"

Environmental justice - Climate justice perspective

- Law to combat climate change can further increase inequalities, if existing vulnerabilities are not taken into account (energy, transport, housing...)
- The adverse effects on categories of the population of contemporary transformations of both the conditions of life (resulting from climate change) and the general legal framework (in order to limit climate change) must be taken into account



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## I. OBJECTIVES

- 2) Limiting climate change and ensuring climate change law is accepted by citizens and their representatives
  - New objectives for anti-discrimination law
- Facilitating access to basic goods (water, energy, transport, work...) is not appropriate when consumption should fall...
  - Combatting inequalities in a context of sobriety (restriction of certain activities and consumptions)



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## II. DISCRIMINATORY GROUNDS

- 1) Existing grounds
- 2) New grounds?

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## II. DISCRIMINATORY GROUNDS

### 1) Existing grounds

Gender, race & ethnic origin, disabilities, age, religion, sexual orientation...

Poverty / socio-economic situation

*Disabled or older workers, workers of a certain religions, pregnant women... (members of protected groups) can be disproportionately affected by climate change, and global warming, in particular, and measures to combat it*

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## II. DISCRIMINATORY GROUNDS

### 2) New grounds?

Transport/mobility poverty

Energy poverty

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## II. DISCRIMINATORY GROUNDS

### Energy poverty

A central concept of “Fair transition”

A vulnerable group of individuals, who are, or will be, particularly affected by measures to combat climate change (and to face the energy crisis), which include an increase of energy price, both for transport and heating

A form of poverty affecting not only low-income households, but also lower middle-income households

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## II. DISCRIMINATORY GROUNDS

Decision of the Commission setting up the “Commission Energy Poverty and Vulnerable Consumers Coordination Group” (2022)

“Vulnerable customers, affected by energy poverty, can be identified **on the basis of a range of criteria**, including income levels, the share of energy expenditure of disposable income, the energy efficiency of homes, **critical dependence on electrical equipment for health reasons, age or other criteria**”

Directive proposal on Energy efficiency (2021)

« a household’s lack of access to essential energy services that underpin **a decent standard of living and health**, including adequate warmth, cooling, lighting, and energy to power appliances

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## II. DISCRIMINATORY GROUNDS

➤ Art. 29 of **Directive (EU) 2019/944 on common rules for the internal market for electricity**

Focus on **identification of households** that are affected by energy poverty (in order to provide targeted support)

“Energy poverty is a criterion to identify “vulnerable customers” **which must benefit from adequate protection from the market**, and, in particular, be shielded from disconnection of electricity in critical times

➤ **Decision of the Commission on the “Commission Energy Poverty and Vulnerable Consumers Coordination Group”**

Aims at putting “**consumers**” at the heart of a just energy transition

➤ **Social Climate fund (2022)**

**Mitigating the cost** of the green transition for “those most exposed to fossil fuel increases”, and **compensating the impact of the measures adopted to reduce the use of fossil fuels**.

To fund measures adopted at national level, including temporary **direct income support** measures to tackle the increase in road transport and heating fuel prices, and structural investments (for buildings renovation, namely)

## II. DISCRIMINATORY GROUNDS

Problem with energy poverty as a new discriminatory ground

➤ *Lack of stigma against victims*

➤ *Diversion from more important and long-lasting problems of discrimination, namely against people who have suffered socio-economic disadvantages, and stigma based on these disadvantages*

### III. DOMAINS

- 1) Access to energy / electricity
- 2) Conditions of mobility (national, international)
- 3) Health and safety at work
- 4) Extra-territorial discriminations

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### III. DOMAINS

- 1) Access to energy / electricity
- => Energy poverty as a central concept of fair transition
- Impact on telework

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### III. DOMAINS

#### 2) Conditions of mobility (national, international)

➤ Mobility poverty

Access to affordable and sustainable transport  
Impact on access to work (and other basic goods)

➤ Climate migrations / Climate refugees

Protection and rights of those displaced by climate change

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### III. DOMAINS

#### 3) Health and safety

Impact of temperature on health and safety

**“Heat stress” particular impact on most vulnerable groups of workers (ILO report 2019)**

“heat stress could entrench existing inequalities in the world of work, notably by worsening the working conditions of the many women working in agriculture, and of male workers on construction sites. It may also act as a push factor for migration by prompting people to leave rural areas in search of better prospects in the cities of their country or in other countries

”

“Heat at work” Guidance for workplaces, EU-OSHA 15/05/2023

“Spain to ban some **outdoor working** during extreme heat conditions” 10/05/2023

Agriculture, construction, transport, tourism...

Impact on telework

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### III. DOMAINS

#### 4) Extra-territorial discriminations

Corporate sustainability reporting directive (CSRD), 2022/2464

Commission proposal for a directive on corporate sustainability due diligence, 23/02/2022

Activities of EU corporations outside EU borders are to be taken into account

Sustainability includes Human rights/Labour law dimension

Equal treatment, non-discrimination at work, diversity are mentioned by both texts  
(directly or indirectly)

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### IV. METHODS

Fair transition should be guided by principles of distributional justice, which requires taking into account most affected persons and groups, and **compensating** for the adverse effects of both climate change and measures to address it

1) Funds

2) Substantive equality – Distinction and accommodation

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## VI. METHODS

### 1) Funds

#### ➤ Social Climate fund (2022)

Aims at mitigating the cost of the green transition for “those most exposed to fossil fuel increases”, and is presented as necessary to **compensate** the impact of the measures adopted to reduce the use of fossil fuels

The Fund is meant to finance a series of measures adopted at national level, including **temporary direct income support measures** to tackle the increase in road transport and heating fuel prices, and structural investments (for buildings renovation, namely)

#### ➤ The Directive proposal on Energy efficiency

Member States are encouraged to support building renovations, as well as “replacement of appliances, financial support and incentives for energy efficiency improvement measures, (...) or energy audits” and set up an Energy Efficiency National Fund

#### ➤ The (recast) Electricity Directive mentions **social security benefits to ensure the necessary supply in energy to vulnerable customers**

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## IV. METHODS

### 2) Substantive equality – Distinction and accommodation

Need to accommodate => extension of (reasonable) accommodation

The concept of reasonable accommodation as a source of inspiration on the possible forms and scope of a duty to accommodate workers affected by climate change and climate change law

Reasonable accommodation of disabled persons includes effective and practical measures to **adapt the workplace**

For example, adapting premises and equipment, patterns of working time, the distribution of tasks or the provision of training or integration resources

ECJ: measures can be organizational, and may include reassignment to another position, if that is necessary to allow a person to remain in employment (*HR Rail, 2022*)

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## IV. METHODS

### 2) Substantive equality – Distinction and accommodation

#### Accommodating for **energy poverty**

A possible reference for accommodation of workers facing adverse impacts of climate change to justify specific measures, either individual or collective, ensuring that they can have access to basic goods, esp. employment

Adjustments in case of **telework is required** for those facing energy poverty

Adaptation of support granted by employers for the cost of **transportation to the work place** or for shifting to transportation modes that contribute to decarbonization

Limits to **mobility clauses in work contracts**, which impose rapid adaptations of workers to variations of times or places of work

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## IV. Methods

### 2) Substantive equality – Distinction and accommodation

#### Accommodating for **heat stress**

Regulatory measures such as flexible working hours, worker rotation, changes to the dress code or changing the location of a business can effectively protect both indoor and outdoor workers against heat stress (ILO report, 2019)

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## CONCLUSION

- Anti-discrimination law can (should) contribute to social justice in the context of climate changes reforms  
« Fair transition » requires action against discrimination
- But the objectives, grounds, domains, methods of anti-discrimination law are transformed, in this new context
  - These transformations of anti-discrimination law are still related to market access
  - Is the market paradigm adapted to the reduction of the impact of human activity on the planet?

Or is a more radical transformation of anti-discrimination law needed to limit the exploitation of natural resources?

Equal retreat from the market (instead of equal access)?