

Industrial relations

# Role of social partners in tackling discrimination at work



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*Research carried out prior to the UK's withdrawal from the European Union on 31 January 2020, and published subsequently, may include data relating to the 28 EU Member States. Following this date, research only takes into account the 27 EU Member States (EU28 minus the UK), unless specified otherwise.*

*This report presents the results of research conducted prior to the outbreak of COVID-19 in Europe in February 2020. For this reason, the results do not take account of the outbreak.*

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## Country codes

|    |                |    |            |    |                |
|----|----------------|----|------------|----|----------------|
| AT | Austria        | FI | Finland    | NL | Netherlands    |
| BE | Belgium        | FR | France     | PL | Poland         |
| BG | Bulgaria       | HR | Croatia    | PT | Portugal       |
| CY | Cyprus         | HU | Hungary    | RO | Romania        |
| CZ | Czech Republic | IE | Ireland    | SE | Sweden         |
| DE | Germany        | IT | Italy      | SI | Slovenia       |
| DK | Denmark        | LT | Lithuania  | SK | Slovakia       |
| EE | Estonia        | LU | Luxembourg |    |                |
| EL | Greece         | LV | Latvia     | NO | Norway         |
| ES | Spain          | MT | Malta      | UK | United Kingdom |

# Executive summary

## Introduction

Discrimination on the grounds of age, disability, race and ethnicity, religion or belief, sexual orientation and gender identity remain widespread, both at the workplace and in wider society.<sup>1</sup> Data indicate that discrimination on the basis of race and ethnic origin, in particular, has increased in recent years. This may be viewed in the broader context of the rise of populist, anti-immigration political parties in several European countries.

Discrimination and the lack of workplace diversity bring with them significant human, as well as economic, costs. Social partners have a key role to play in combating discrimination at work (as well as in wider society). Some of the main ways they can do this are: by helping to shape relevant legislation and policy, raising awareness of the rights and obligations of workers and employers, monitoring workplace practices, concluding collective agreements, enforcing codes of conduct, undertaking research, supporting their members in case of litigation concerning equal treatment and/or engaging in strategic litigation.

## EU legal and policy context

The principle of non-discrimination is enshrined in the EU Charter of Fundamental Rights. The European Pillar of Social Rights underlines the right to equal treatment and opportunities for everyone. EU secondary law, in particular the Employment Equality Directive and the Race Equality Directive, prohibits discrimination on the grounds of age, religion, disability, sexual orientation and racial/ethnic origin at the workplace. Both directives call on Member States to ‘take adequate measures to promote dialogue between the social partners, with a view to fostering equal treatment’. Member States must encourage social partners to conclude collective agreements laying down non-discrimination rules, affording at least the minimum protection enshrined in the two EU non-discrimination directives.

This report is based on information gathered with the assistance of the Network of Eurofound Correspondents following an ad hoc request from the European Commission to Eurofound. The underlying aim is to provide an input into the Commission’s upcoming report on the implementation of the two

anti-discrimination directives scheduled for 2021. This exercise was conducted before the United Kingdom (UK) left the EU on 31 January 2020. Where relevant, findings are reported for the current 27 EU Member States, Norway and the UK. This is in line with Eurostat’s guidelines on publishing statistics in the transition period up to the end of 2020 (Eurostat, 2020).

## Prevalence of workplace discrimination

Eurofound’s European Working Conditions Survey (EWCS) is the only EU-level survey providing data on the experience of workplace discrimination on various grounds. Between 2005 and 2015, the share of respondents declaring that they had experienced discrimination in the workplace increased from 5% to 7%, with different levels and trend developments reported across the Member States. Among the forms of discrimination, age discrimination was the most common and was more frequently reported by both younger and older workers.

National-level data – utilising different methodologies and targeting different populations (and hence not comparable) – tend to record higher shares of workers experiencing discrimination in the labour market. Age discrimination also tends to be the most prevalent form here. Both younger and older workers report the highest levels of discrimination experienced during the process of recruitment. For younger workers, there is also an ongoing discussion in a number of Member States linked to differential minimum wage rates for younger workers. Evidence from national surveys and studies also reveals high levels of disability-based discrimination. Combined with shortcomings in the education system, which can place people with disabilities at a disadvantage, discriminatory practices and attitudes in the recruitment process contribute to a disability employment gap of around 20% in the EU (Eurofound, 2018b).

Research based on the submission of fictitious CVs to online vacancy or recruitment websites also demonstrates the persistence of discrimination on the basis of race and ethnic origin in recruitment, with often significant gaps in the likelihood of a callback. Studies from Croatia, Hungary, Portugal and Romania bear out the particular challenges faced by Roma job applicants.

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1 It should be noted that sex discrimination is not specifically covered in this report.



Race discrimination is also evident in employment, experienced through unequal treatment linked to wages and promotion prospects, as well as higher levels of bullying and harassment at the hands of co-workers and customers. There has been less research carried out on the prevalence of discrimination on the grounds of religion or belief in the workplace, perhaps as a result of the issues of race and religion becoming conflated. Where studies exist, a key issue raised relates to the wearing of religious dress and the observance of religious customs in the workplace.

Although most workers report they feel comfortable being open about their sexual orientation in the workplace, Eurofound (2016) demonstrates that the share of those who prefer not to discuss it at work remains high, particularly among transgender and intersex individuals. National surveys and studies show that the experience of workplace harassment on the basis of sexual orientation and gender identity remains unacceptably high and is perceived to be rising in some countries, where a focus on ‘traditional values’ is attaining higher emphasis in the political discourse.

## Recent developments in anti-discrimination legislation and case law

Between 2015 and 2020, Member States implemented a range of changes to legislation pertaining to the prevention of workplace discrimination. These included extensions to the definition of prohibited discrimination and the addition of new grounds of discrimination to existing legislation. Another focus was the prevention of psychosocial risks, including the prohibition of harassment linked to discrimination. Recent amendments to national legislation linked to specific grounds of discrimination addressed issues such as the mandatory retirement age, the use of quotas for the employment of persons with disabilities and workplace adjustments linked to the observance of different religious holidays.

Case law pertaining to age discrimination has revolved around the setting of specific age restrictions linked to recruitment and retirement, as well as age-specific policy measures. With regard to disability discrimination, national courts have issued rulings on justifiable health requirements for the performance of specific jobs, circumstances where unequal treatment does not amount to disability discrimination and the definition of what constitutes ‘reasonable adjustment’ of the workplace and work tasks. Case law on race discrimination has tackled the differential treatment of workers of different ethnic backgrounds in terms of wages. Cases dealing with harassment and bullying have concerned both race and sexual orientation. The *Samira Achbita v G4S Secure Solutions* case has been of

particular significance with regard to the question of wearing religious dress in the workplace: under the ruling, private businesses could decide on the need for neutrality of public image and could choose to ban, under certain conditions, the wearing of headscarves or similar religious dress (CJEU, 2017).

## National-level anti-discrimination policies

In addition to anti-discrimination legislation, policy measures have a role to play in seeking to reduce the occurrence of discrimination. These can take the form of the following actions:

- Detection, monitoring, reporting and awareness-raising around the existence of discrimination; mapping trends in the experience or perception of discrimination and creating a ‘zero tolerance’ environment.
- Raising awareness of existing rights and ensuring effective enforcement, including through the implementation of dissuasive sanctions.
- Issuing advice, guidance and good practice and encouraging good practice sharing, including addressing stereotypes.
- Encouraging others to take action (for example, in collective agreements or at company level).
- Taking steps to overcome issues which contribute to unequal treatment in recruitment and employment – often not non-discrimination measures per se but aim to contribute to reducing unequal treatment in the labour market, such as targeted training measures.
- Recognising achievement through awards, labels, and so on.

## Main challenges in relation to workplace discrimination

Although there are a number of important specific challenges to be addressed to tackle different grounds of workplace discrimination, there is equally an important degree of overlap in this regard. The common challenges can be summarised as follows.

- Persistent stereotypes.
- Low awareness of rights and obligations on the part of employers and workers.
- Challenges with enforcement linked to:
  - unwillingness to make complaints/bring discrimination cases (due to fear of negative employment/career impact, lack of financial and practical support to bring cases, etc.);
  - difficulties in demonstrating discrimination (for example, accessing evidence);



- limited restitution (low financial sanctions or lack of access to/challenges related to reinstatement in cases of discrimination claims linked to dismissals);
- low capacity among agencies responsible for enforcement;
- low capacity among social partners to implement measures and support discrimination cases (increasingly since the implementation of austerity measures).
- Shortcomings in the implementation of legislation and policies to tackle discrimination, such as:
  - insufficient or inadequate design of – and access to – targeted active labour market policy measures for disadvantaged groups also facing discrimination;
  - lack of emphasis in policy action on the benefits of a diverse workforce.
- Limited evidence based on trend developments in workplace discrimination on different grounds.

## Actions of social partners in tackling workplace discrimination

As mentioned above, the Employment Equality Directive and the Race Equality Directive call on Member States to ‘take adequate measures to promote dialogue between the social partners, with a view to fostering equal treatment’. Both trade unions and employers arguably have a common interest in promoting a workplace free from discrimination. Although the first mission of trade unions is to protect and advance the interests of their members in the workplace, their role extends beyond the workplace, not least because advancements in working conditions impact on workers’ living conditions and can thus have spill-over effects for society as a whole. Similarly, equal treatment and non-discrimination, both in the workplace and beyond, is one of the ideological principles underpinning the work of the trade union movement. Having said that, it is recognised by trade unions themselves that, as discrimination is embedded in all structures of society, such views are also present within the trade union movement. This has led an increasing number of unions to address the issue of support for populist and xenophobic ideas and political parties among their membership.

Discrimination harms companies and societies in different ways, for instance by impacting negatively on workers’ performance and placing barriers in the labour market, which can limit access to skills and human capital. The lack of organisational diversity also means that companies fail to reflect the diversity of their customers and this can potentially damage economic success. Thus, the so-called ‘business case’ for non-discrimination has been made.

The information gathering for this ad hoc request focused on the activities of peak-level social partner organisations, although in some countries sectoral initiatives are mentioned. The absence of cross-sectoral collective bargaining in many countries has limited the extent to which relevant collective agreements addressing the issues of workplace discrimination can be identified. The level of activity by cross-industry social partners in this area is also shaped by a number of other factors, such as: the quality of existing legislation and its effectiveness (reflected in the number of cases and complaints of discrimination being brought), the overall level of policy debate on these issues – as influenced by key economic, social and demographic trends – and the level of capacity within social partner organisations themselves.

## Forms of discrimination identified

In light of these provisos, the assessment carried out shows that the issue of workplace discrimination is on the radar of peak-level social partner organisations in most countries (with the exception of Cyprus). In three countries (Belgium, Greece and Norway), all grounds of discrimination were seen to be high on the agenda of the social partners. In Finland, Latvia, Lithuania and Sweden, all grounds of discrimination were considered to be debated, to varying extents. In a number of countries, it is emphasised that diversity more generally is being addressed by the social partners, without there being any specific policies or initiatives on particular individual grounds of discrimination (e.g. Finland). At least four grounds of discrimination are actively debated in Portugal and the UK (age, disability, race or ethnicity and sexual orientation or gender identity), Estonia (disability, race or ethnicity, religion or belief and sexual orientation or gender identity) and Poland (age, disability, race or ethnicity and religion or belief). In all other countries, either age or disability discrimination (or both) are considered to be high on the agenda. Thus, overall, age and disability discrimination are most frequently seen to be on the radar of the social partners at cross-industry level. This was the case in 24 of the 29 countries in relation to disability discrimination and 18 of the 29 countries in relation to age discrimination. This figure drops to 17 out of 29 in relation to discrimination on the basis of race or ethnicity, 13 out of 29 with regard to discrimination on the grounds of religion or belief and 12 out of 29 in relation to sexual orientation or gender identity (see Figure 4 on p. 35).

Where discrimination on the grounds of religion or belief is being addressed, the focus tends to be on questions around the wearing of religious dress and observance of religious customs in the workplace.

The issue of discrimination on the basis of sexual orientation or gender identity has risen to prominence in the broader policy debate in recent years – for example in relation to same-sex marriage and the rights

of same-sex couples in particular – and this form of discrimination is represented to a lesser extent on the agenda of the social partners. This is partly because it is considered as belonging to the private domain, which in and of itself poses important challenges.

## Types of social partner measures

Social partner initiatives aimed at tackling workplace discrimination on the grounds covered by this report were classified into different types of measures based on their various fields of intervention and activity (Figure 1). They are presented here in relation to the following typology.

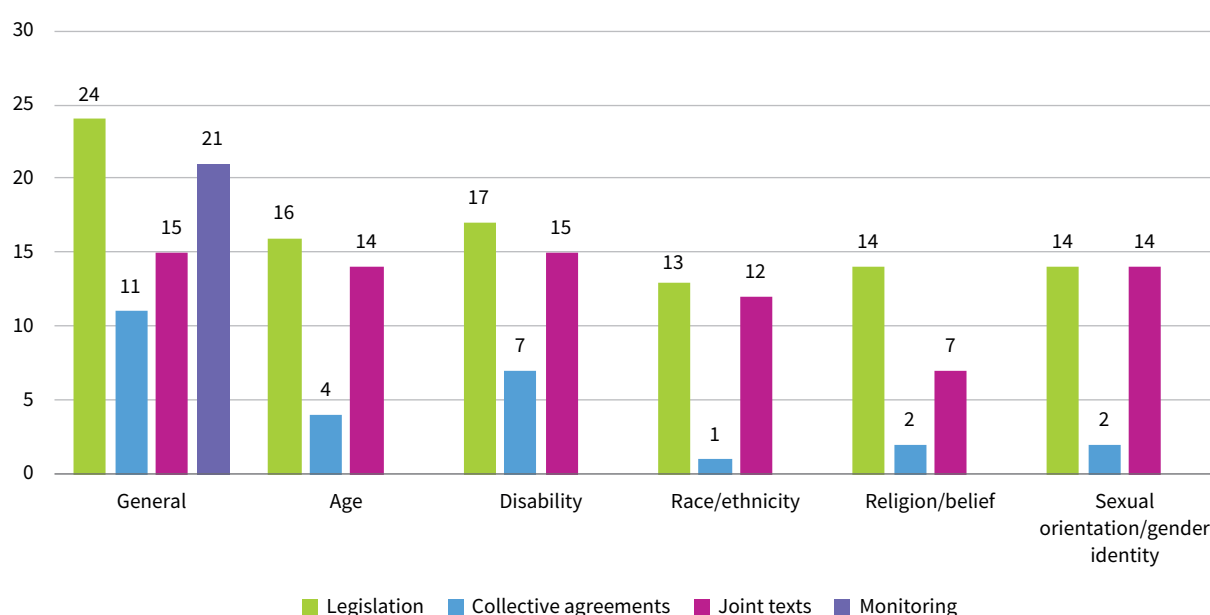
- Influencing legislation and policy:** through their involvement in tripartite decision-making bodies, through bipartite or unilateral policy inputs or through lobbying.
- Collective agreements:** the focus here is on the cross-sectoral level, although some sectoral agreements are also mentioned by the Network of Eurofound Correspondents.
- Drafting of joint texts/projects/activities:** the issuing of joint or unilateral guidance/codes of practice or other texts, the implementation of joint or unilateral projects or other activities, and the gathering and sharing of good practice examples.
- Monitoring of workplace practices and direct support:** for example, involvement in the monitoring of cases of discrimination raised at the workplace and giving direct support in complaints brought forward.

Peak-level social partners are frequently involved in the development of policy and legislation, as well as in lobbying on related matters, although the level of influence and the quality of this involvement varies from country to country. It should be noted that the structure, frequency and quality of social partner involvement in decision-making is greatly influenced by historically determined national industrial relations and policymaking structures, and the extent of this impact can fluctuate depending on the degree of overlap between the agendas of political parties in power and the priorities and internal capacity of trade union and employer organisations.

In 21 countries, social partners – and trade unions in particular – play a role in ‘monitoring’ activities linked to workplace discrimination. This largely relates to providing assistance in the context of complaints, either in mediation or in providing advice or direct support (where possible) in court proceedings. Employer organisations can also play a role in providing advice and supporting their members in such instances, but this is the case in fewer countries.

In almost all the 27 EU Member States and the UK, social partners were also active in drafting texts and guidelines, carrying out projects and implementing other actions. The highest level of activity was reported in relation to guidance covering all forms of discrimination, followed by actions focused first on disability discrimination and next on discrimination on the grounds of age and sexual orientation. Somewhat

Figure 1: Types of social partner actions to tackle workplace discrimination (number of countries)



Source: Author, based on contributions from the Network of Eurofound Correspondents, 2020

fewer initiatives targeted discrimination on the grounds of race or ethnicity and only seven countries reported actions to tackle discrimination based on religion or belief.

Such activities can either be joint or unilateral, but in fact, 56% of actions were carried out by trade unions alone (or in collaboration with other partners such as NGOs), 31% were joint initiatives and around one-fifth were solely planned and implemented by employers.

For the countries that do not have activities in relation to addressing workplace discrimination on different grounds, a number of reasons were put forward as to why cross-industry social partners are not taking action. These often relate to the assessment of the quality of existing legislation and the prevalence of complaints on these issues, which can lead social partners to consider that the issue is either not a problem at the workplace, or has already been sufficiently addressed. This is the most frequently cited reason for the lack of activity in relation to discrimination on the grounds of race or

ethnicity and religion or belief. Another reason frequently given is the lack of capacity on the part of the social partners to address discrimination issues. This is either due to their limited resources requiring them to focus on what they consider to be their 'core responsibilities' or because they lack the expertise to deal with specific issues, such as the challenges facing transgender individuals. Another factor can be the lack of knowledge of the extent to which discrimination is an issue at the workplace (due to a lack of data). Overall, this study (in common with other studies) reflects the different roles and responsibilities of peak-level cross-industrial social partners and sectoral- and company-level social partners: the focus of the former is to try to influence policy and legislation at the national level, as well as draft guidelines, while the latter is more involved in sector- and company-specific practical advice, guidance, projects and practical measures aimed at addressing different forms of discrimination 'on the ground'.



# Introduction

According to a recent Eurobarometer survey, despite some improvements since 2015, an important share of Europeans believe that discrimination is widespread in their country (European Commission, 2019). Perceived discrimination is most significant on the grounds of being Roma (61% of Europeans consider this discrimination to be widespread), followed by ethnic origin and skin colour (59% for both), sexual orientation (53%), being transgender (48%), religion or belief (47%), disability (44%), being too young or too old (40%), being intersex (39%) and being a man or a woman (35%). Almost one in five (17%) Europeans indicated that they felt personally discriminated against or had experienced harassment in the previous 12 months on one or more grounds. This number rises considerably for those who consider themselves to be part of a minority.

Social partners have a key role to play in combating discrimination at work (as well as in wider society). They can do so by – among other things – helping to shape relevant legislation and policy, raising awareness of the rights and obligations of workers and employers, monitoring workplace practices, concluding collective agreements, implementing codes of conduct, undertaking research, supporting their members in case of litigation concerning equal treatment and/or engaging in strategic litigation.

The principle of non-discrimination is enshrined in the EU Charter of Fundamental Rights. The European Pillar of Social Rights underlines the right to equal treatment and opportunities for everyone. EU secondary law, in particular the Employment Equality Directive and the Race Equality Directive, prohibits discrimination on the

grounds of age, religion, disability, sexual orientation and racial or ethnic origin at the workplace.

Both directives call on Member States to ‘take adequate measures to promote dialogue between the social partners, with a view to fostering equal treatment’. Member States must encourage social partners to conclude collective agreements laying down non-discrimination rules, affording at least the minimum protection enshrined in the two EU non-discrimination directives.

The European Commission issued an ad hoc request to Eurofound to provide an input for the Commission’s upcoming report on the implementation of the two anti-discrimination directives, scheduled for the end of 2020. Eurofound invited its Eurofound Network of Correspondents to provide information on the actions and achievements of the social partners in this area, focusing in particular on collective agreements and monitoring workplace practices, including data collection, litigation (strategic and other) and conflict resolution. The network were also asked to look into initiatives across various countries regarding awareness raising and guidance, as well as good practices and debates related to discrimination on the aforementioned grounds.<sup>2</sup> In addition, the research set out to examine the current situation in relation to issues of discrimination in the workplace on different grounds and existing legislation/case law and policy, including the main trends and challenges.

This report summarises the information gathered through a literature review and the inputs provided by the Network of Eurofound Correspondents to the ad hoc request in early 2020.

## Definitions used in the research

**Direct discrimination:** when a person is treated less favourably than another is, has or would be treated in a comparable situation on the grounds of race or ethnicity, religion or belief, disability, age or sexual orientation.

**Indirect discrimination:** where an apparently neutral provision would put persons having a particular race or ethnic origin, religion or belief, disability, age or sexual orientation at a disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim.

**Harassment:** any form of discrimination when unwanted conduct related to any of the grounds of discrimination takes place with the purpose or effect of violating the dignity of a person and creating an intimidating, hostile, degrading, humiliating or offensive environment.

**Source:** Council Directive 2000/78/EC, Articles 2(a), 2(b) and 3

<sup>2</sup> Sex discrimination is not specifically covered by this report. However, gender identity or transgender discrimination is addressed in several places; also, sex discrimination may be included under intersectional measures (addressing various grounds of discrimination).



# 1 Trends in the experience of workplace discrimination

## EU-level data on discrimination

At EU level, a number of datasets are available which make it possible to chart the trend – or at least produce a snapshot – of the experience of discrimination both at the workplace and in wider society. When looking at the results of such surveys, it must be borne in mind that measuring discrimination is complex: it is a multifaceted concept, with sociological and cultural differences, linguistic and legal definitions, as well as labour market and societal trends playing a role in people's perception of it. Furthermore, all surveys have different samples, target groups and methodologies, which can all impact on the findings.

Despite these caveats, what is clear is that discrimination on various grounds continues to be an issue of concern in Europe, some 20 years after the introduction of the first EU non-discrimination legislation.

## Workplace discrimination

The only EU-level survey which specifically assesses workers' experience of workplace discrimination on different grounds is Eurofound's European Working Conditions Survey (EWCS), which contained questions on the subject in its 2005, 2010 and 2015 editions. Given that the EWCS is a face-to-face survey of workers, this might lead to a degree of under-reporting of the experience of discrimination. The EWCS asks questions about workplace discrimination on the grounds of age, race, ethnic origin and colour, nationality, sex, religion, disability and sexual orientation. Between 2005 and 2015, the share of respondents declaring that they had been exposed to discrimination in the workplace increased from 5% to 7%. Over the same period, the share of workers who report having experienced workplace discrimination increased in 17 Member States and the UK, while five countries reported a decline. In the remaining countries, the proportion stayed the same.

There are significant differences between countries in this respect: in 11 countries (Austria, Belgium, Cyprus, Estonia, Finland, France, Greece, Luxembourg, the Netherlands, Romania and Sweden), over 9% of respondents indicated that they have been subject to workplace discrimination in 2015. In all these countries apart from Greece, the reported level of discrimination

increased above the average between 2005 and 2015. In 15 countries (Cyprus, Czechia, Denmark, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Malta, Slovakia, Slovenia, Spain and the UK), the share of workers reporting having experienced workplace discrimination is between 5 and 7%. The increase was above average in Italy, Latvia and Spain. The remaining countries (Bulgaria, Croatia, Lithuania, Poland and Portugal) reported workplace discrimination below 5% (in 2015).

Among the grounds of discrimination covered in this report, the experience of workplace discrimination was relatively stable. Only discrimination based on race, ethnic origin and skin colour increased marginally between 2005 and 2015 (from 1% to 2%). Age discrimination was found to be the most common form of discrimination, but the proportion remains unchanged between 2005 and 2015 at 3%. A Eurofound (2017a) report on the working conditions of workers of different ages shows that age discrimination is most prevalent among young workers: over 10% for the youngest employees. Being discriminated against for being too young becomes less likely after the age of 35, but transmutes into being discriminated against for being too old after the age of 50. At the age of 60, roughly 7% of employees report discrimination on the basis of their age. Reported levels of discrimination on the basis of disability, sexual orientation and religion remain unchanged at 1%.

The special Eurobarometer survey on discrimination also explores views about equal opportunities in employment (European Commission, 2019). It includes a question on characteristics that might place a candidate at a disadvantage in an application process where two equally skilled candidates are available to an employer. The most significant disadvantage was reported to be a candidate's 'look' (manner of dress or presentation) followed by age (too young or too old), disability or general physical appearance (in each case mentioned by more than 40% of respondents). Being Roma, having a different skin colour and ethnic origin were considered factors for potential disadvantage by over 30% of survey respondents, followed by religious belief, gender identity and sexual orientation. The Eurobarometer survey also specifically assessed the acceptance of LGBTI<sup>3</sup> people at the workplace and found that on average, 82% of EU respondents would

3 LGBTI stands for lesbian, gay, bisexual, transgender and intersex.



feel either totally or moderately comfortable ‘if one of [their] colleagues at work (with whom [they] have daily interactions) was a gay, lesbian or bisexual person’. However, this ranges from 97% in the Netherlands to 41% in Bulgaria. The comparable figures for working with transgender and intersex colleagues are 76% and 77% respectively (EU average), demonstrating that a lack of understanding and discrimination remain significant issues for these individuals.

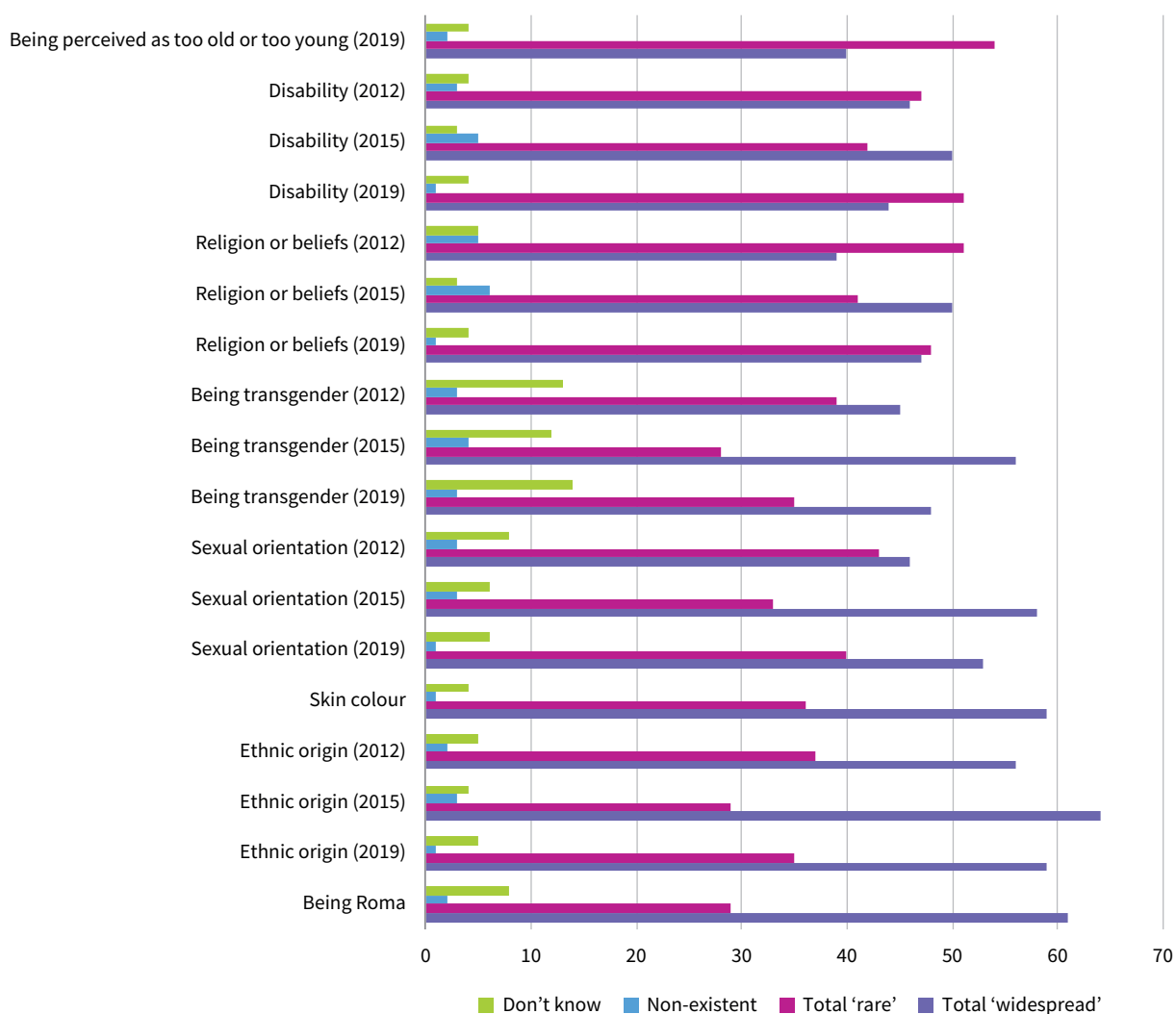
### Discrimination in wider society

When looking at the experience of discrimination in wider society, three special Eurobarometer surveys provide trend data on how widespread respondents perceived discrimination to be in 2012, 2015 and 2019, summarised in Figure 2 below (European Commission, 2012, 2015a, 2019). For each type of discrimination, respondents were asked to indicate whether, in their opinion, it is ‘very rare’, ‘fairly rare’, ‘fairly widespread’ or ‘very widespread’.

In 2019, discrimination based on ethnic origin and skin colour was perceived to be the most widespread (59% of respondents considered it to either very or fairly widespread). Specifically, discrimination based on being Roma was considered to be even more common overall (61%). This was followed by discrimination on the grounds of sexual orientation (53%) and being transgender (48%). Discrimination on the basis of religion or belief and disability was considered to be widespread by 47% of respondents respectively.

As demonstrated below, where comparable figures are available, perceived discrimination increased between 2012 and 2015 and declined between 2015 and 2019 – albeit remaining above 2012 levels in all cases except for disability discrimination. The most significant increase is reported in discrimination based on religion or belief.

**Figure 2: Trends in perceptions of discrimination in wider society, EU27 and the UK, 2012, 2015 and 2019 (%)**



Source: Author, based on European Commission (2012, 2015a, 2019)

**Table 1: Extent to which discrimination is perceived as being ‘widespread’ in society in the EU27 and the UK (%)**

|                | Age | Disability | Ethnic origin | Religion/<br>belief | Sexual<br>orientation | Transgender | Intersex |
|----------------|-----|------------|---------------|---------------------|-----------------------|-------------|----------|
| Netherlands    | 44  | 47         | 76            | 50                  | 60                    | 54          | 34       |
| France         | 54  | 63         | 74            | 69                  | 73                    | 57          | 43       |
| Belgium        | 46  | 51         | 71            | 65                  | 57                    | 49          | 40       |
| Sweden         | 42  | 45         | 70            | 56                  | 42                    | 57          | 34       |
| Denmark        | 25  | 30         | 67            | 61                  | 41                    | 39          | 23       |
| Portugal       | 52  | 58         | 67            | 41                  | 71                    | 59          | 55       |
| United Kingdom | 51  | 52         | 67            | 61                  | 55                    | 56          | 2        |
| Italy          | 46  | 50         | 66            | 48                  | 69                    | 66          | 58       |
| Finland        | 37  | 40         | 65            | 29                  | 42                    | 45          | 32       |
| Greece         | 50  | 53         | 64            | 50                  | 70                    | 57          | 54       |
| EU             | 40  | 44         | 59            | 47                  | 53                    | 48          | 39       |
| Austria        | 37  | 45         | 58            | 47                  | 46                    | 48          | 43       |
| Cyprus         | 40  | 46         | 57            | 48                  | 67                    | 54          | 52       |
| Germany        | 20  | 29         | 55            | 43                  | 36                    | 31          | 24       |
| Spain          | 40  | 39         | 54            | 40                  | 54                    | 58          | 47       |
| Ireland        | 37  | 41         | 54            | 42                  | 48                    | 50          | 39       |
| Hungary        | 41  | 45         | 52            | 31                  | 45                    | 34          | 27       |
| Malta          | 28  | 29         | 51            | 37                  | 38                    | 42          | 37       |
| Romania        | 49  | 50         | 44            | 43                  | 45                    | 34          | 33       |
| Croatia        | 37  | 38         | 41            | 40                  | 52                    | 38          | 37       |
| Czechia        | 40  | 34         | 38            | 24                  | 34                    | 23          | 24       |
| Slovenia       | 32  | 31         | 38            | 33                  | 47                    | 40          | 33       |
| Estonia        | 35  | 32         | 35            | 17                  | 34                    | 24          | 16       |
| Poland         | 26  | 28         | 34            | 29                  | 49                    | 42          | 35       |
| Luxembourg     | 23  | 19         | 31            | 25                  | 27                    | 23          | 17       |
| Bulgaria       | 25  | 34         | 29            | 20                  | 29                    | 23          | 22       |
| Latvia         | 40  | 37         | 25            | 12                  | 30                    | 20          | 17       |
| Slovakia       | 22  | 21         | 24            | 13                  | 25                    | 20          | 19       |
| Lithuania      | 45  | 37         | 18            | 15                  | 50                    | 26          | 28       |

**Note:** Green shading denotes relatively lower levels of perceived discrimination while deep red denotes high levels of perceived discrimination.

**Source:** European Commission, 2019

Table 1 provides an overview at Member State level of the proportion of respondents who indicated that discrimination was widespread on the grounds of age, disability, ethnic origin, religion/belief, sexual orientation, being transgender and being intersex, based on data from the 2019 special Eurobarometer on discrimination (European Commission, 2019).

This shows large differences between countries, with France, Portugal and Greece being the countries where different kinds of discrimination were perceived as most widespread. It is important to bear in mind that perceptions of discrimination are strongly linked to

awareness, meaning that such data are less about the ‘real’ occurrence of discrimination in society, and more about perceptions influenced by the level of awareness and debate on the issue in society. Other results at country level are detailed below.

- Age discrimination (being perceived to be either too young or too old) was considered to be most widespread in France (54%), Portugal (52%), the UK (51%) and Greece (50%).
- Disability discrimination was considered most prevalent in France (63%), Portugal (58%), Greece (53%) and the UK (52%).

- Discrimination on the grounds of ethnic origin was perceived to be widespread in the Netherlands (76%), France (74%), Belgium (71%) and Sweden (70%).
- Discrimination on the basis of religion or belief was perceived to be most widespread in France (69%), Belgium (65%), Denmark and the UK (61%).
- Discrimination on the grounds of sexual orientation was considered to be widespread in France (73%), Portugal (71%), Greece (70%) and Italy (69%).
- Discrimination on the basis of being transgender was considered to be most prevalent in Italy (66%), Portugal (59%) and Spain (58%).
- Discrimination on the basis of being intersex was perceived to be widespread in Italy (58%), Greece (54%) and Portugal (55%).

In a study by the European Union Agency for Fundamental Rights (FRA) on the personal experiences of discrimination of LGBTI persons in wider society, almost half (47%) of survey respondents across Europe stated they had experienced discrimination or harassment because of their sexual orientation (FRA, 2012). Lithuania (61%), Croatia (60%) Poland (57%) and Cyprus (56%) were among the countries with the highest proportions of respondents who had experienced discrimination and harassment, while the Netherlands (30%), Denmark (31%) and Luxembourg (32%) were the countries with the lowest proportion of respondents experiencing discrimination.

According to the FRA report, lesbian women (55%) and bisexual women (47%) were more likely to have experienced discrimination and harassment than gay men (45%) and bisexual men (36%).

The EU-MIDIS II survey (FRA, 2017), which focuses on discrimination on the basis of race, ethnic origin and skin colour, indicates that limited progress has been made since the first wave of the survey. Indeed, Roma people and second-generation respondents of sub-Saharan and North African background report experiencing higher rates of discrimination and harassment motivated by hatred than in the first wave.

In the five years preceding the survey, a quarter (25%) of respondents experienced discrimination because of their ethnic origin, confirming the Eurobarometer's finding that ethnic origin is still the most common grounds of discrimination in Europe. More than one in ten (12%) respondents felt discriminated against on the basis of their skin colour, and the same proportion because of their religious beliefs. This is particularly pronounced in relation to Muslims, as the level of discrimination experienced by respondents has increased in comparison to the survey conducted 10 years ago.

Finally, the European Quality of Life Survey (EQLS 2003, 2007, 2011 and 2016 editions) investigates the perceived tension between different social groups (Eurofound, 2005, 2007b, 2012 and 2018a). Data from 2012 and 2016 show a high and relatively stable level of tension among people from different racial and ethnic groups and different religious groups. The lowest levels of perceived tension were noted in relation to people of different sexual orientation (but still at around 20%). The most marked increase relates to people from different religious groups, where perceived tensions increased by 10 percentage points, from 28% in 2011 to 38% in 2016 (Table 2). The data show differences between 2007 and 2011 and an exacerbation of tensions compared to those perceived in 2007. Austria, Belgium, France, Germany, Italy, the Netherlands, and the United Kingdom were the countries with the highest proportion of people reporting a lot of tension between different religious groups.

Analysis of the European Quality of Life Survey also shows that people with disabilities consistently report lower living standards than those without disabilities and identified this population as one of the most disadvantaged groups in the EU (Eurofound, 2012). This is linked to challenges in accessing the labour market and associated lower employment rates, as well as difficulties in accessing other public services (Eurofound, 2018b).

**Table 2: Perceptions of tensions between different social groups, EU27 and the UK, 2007, 2011 and 2016 (%)**

|  | 2007 | 2011 | 2016 |
|--|------|------|------|
| Different racial and ethnic groups       | 39   | 37   | 41   |
| Different religious groups               | 31   | 28   | 38   |
| People with different sexual orientation |      | 18   | 20   |

Source: Eurofound, 2018a

## National-level data and research

This section summarises the survey and research evidence reported by national experts regarding discrimination in EU Member States and the UK. It begins by exploring relevant data covering all grounds of discrimination and subsequently focuses on evidence regarding discrimination based on age, disability, race and ethnicity, religion or belief, sexual orientation, and gender identity. The evidence presented demonstrates the significant challenge posed by discrimination and the differences that exist between Member States. When looking at this evidence, it should be noted that, due to the different methodologies, timelines and other factors outlined above, the data are largely not comparable.

### Discrimination in general

In the limited number of countries where national survey data are available, the experienced or observed level of workplace discrimination reported on different grounds tends to be significantly higher than that captured by the EWCS. This could be due to sample size, survey methodology and target population, among other things. Some countries only have data on the experience of discrimination in wider society (rather than specifically in the workplace – for example Bulgaria) or only report on workplace discrimination generally without distinguishing between different grounds (for example, the Netherlands). Figures on directly experienced workplace discrimination are available from Estonia<sup>4</sup> and France.<sup>5</sup> In both countries, age discrimination is the most prevalent form (11% and 15.3% respectively). In France, this is followed by discrimination on the basis of sexual orientation or gender identity (14.6%), race or ethnicity (7.6%), disability (5.7%) and religion or belief (2.1%). In Estonia, discrimination on the basis of race or ethnicity is reported by 7% of workers, followed by 3% for discrimination on the grounds of disability and 2% for discrimination based on religion or belief. In Austria, the available data relate to discrimination observed (rather than directly experienced) in the workplace. Here, the most common form of discrimination is based on race (36%) followed by age (19%), religion or belief (15%), disability (10%) and sexual orientation or gender identity (5%) (Schönherr et al, 2019).

A representative survey conducted on behalf of the German Federal Anti-Discrimination Agency (ADS) in 2015 sheds light on specific aspects of the world of work where individuals experience discrimination. Around 27% of all respondents stated that they had

experienced discrimination in the wider world of work within the previous 24 months. Of these, 65% reported discrimination in the workplace, about 35% during the job search/application process and about 10% during vocational training and internships.<sup>6</sup>

Age discrimination is the most prevalent form of discrimination in the workplace and is experienced in almost equal measure by younger and older people. People with disabilities are most likely to indicate that they experience discrimination in the context of vocational training and further training (ADS, 2017). Similarly, discrimination on the grounds of race or ethnic origin is most likely to be reported in vocational training and in internships. Discrimination during job searching is reported less frequently. Apprentices and trainees of Turkish nationality (who may be born and raised in Germany) report discrimination most frequently, followed by apprentices/trainees from the Maghreb region of North Africa, the Near and the Middle East. Interestingly, as far as discrimination at the workplace is concerned, more ‘internal migrants’ – meaning east Germans working in west Germany – and Turkish workers report experiences of discrimination than workers from other countries (Beigang et al, 2017). The same study also finds that workers without any religious affiliation are the most likely to report discrimination on the grounds of religion. Individuals of the Muslim faith are more likely to report cases of discrimination in internships rather than at the workplace.

In terms of cases of discrimination reported to the authorities, data are available from Belgium and Greece. In both cases, disability discrimination is the main reason for bringing cases forward (38% and 14% respectively), followed by race discrimination, age discrimination and discrimination on the grounds of religion or belief and sexual orientation or gender identity.

It is important to note that in many cases, other types of discrimination (not covered by this report) are also measured and are considered to be significant in some countries, such as discrimination on the basis of trade union membership in France.

### Age

After discrimination based on gender (not covered by this report), age discrimination is the most commonly reported form of discrimination and is particularly prevalent in recruitment. This is often linked to stereotypical views about the capability and adaptability of older workers.

<sup>4</sup> The Estonian Work Life Study (2015) measures the experience of discrimination in the workplace. Other grounds include lack of Estonian language skills, political views, trade union membership and pregnancy (Krusell, 2017).

<sup>5</sup> The 10th Barometer of the Defender of Rights measures the experience of discrimination in the workplace (Defender of Rights and ILO, 2017).

<sup>6</sup> The figure exceeds 100% as multiple answers were possible.

It is evident that such attitudes about older workers can affect recruitment decisions. Van Borm et al (2019) find that perceptions around older applicants having fewer technological skills and being less adaptable to changing workplaces explain around 40% of the impact of age on the probability of being called for interview in Belgium. Similarly, a study by the Ombudsman's Office in Croatia confirms the pervasiveness of discriminatory attitudes, reflected in the fact that one third of interviewed persons believe older workers to be less capable than younger workers (Pučki pravobraniteljica, 2017).

Research on discrimination in recruitment in Belgium, based on the submission of fictitious CVs, finds that the likelihood of being called for interview was reduced by 6 and 10 percentage points respectively for 47- and 53-year old applicants, compared to otherwise identical job seekers aged 35 (Lamberts and Eeman, 2012).

Despite the presence of relevant legislation, vacancy notices themselves are still often found to contain discriminatory elements. In a study for the Dutch Institute for Human Rights, an algorithm was used to track evidence of age discrimination in job vacancies. Using this methodology, 2.3% and 3.5% of cases of direct and indirect age discrimination were identified respectively, although the researchers concluded that the actual share could be as high as 4.3% (Fokkens et al, 2018). In Romania, research conducted as part of the national campaign 'I hire 45+', shows that, while one in three candidates under 45 interviewed for a position is employed, the figure for over-45s is one in four. Paradoxically, at the same time, 72% of employers say they support the employment and promotion of persons aged over 45 (Ipsos, 2019).

In this context, it is interesting to note that in a survey of workers carried out in Belgium, almost one in three respondents considered discrimination on the basis of age at the time of recruitment to be justified (UNIA, 2019).

However, not all studies on age discrimination in recruitment report negative findings. Research based on the number of employers responding to fictitious CVs uploaded to online CV databases in the Netherlands shows that these do not distinguish between younger and older candidates (Panteia, 2019). On a more granular level, Baert et al (2016) found that the level of age discrimination in such experiments depended fundamentally on the older candidates' career patterns. Their study, carried out in Belgium, found that (older) age only affected callback in an important way if the older candidate was previously employed in a job not directly linked to the demands of the vacancy. Having said that, the absence of relevant prior work experience matters less for younger workers.

In terms of direct experience of workplace discrimination when in employment, 12% of older respondents to an Estonian survey indicated that they had experienced work-related unequal treatment in the last 12 months (TNS Emor and Praxis, 2015). This was mainly related to remuneration (35%), the distribution of job tasks (19%), manager's attitude (13%), recognition (15%) and co-worker's attitudes (13%).

Sutela et al (2019) report that 9% of respondents to a survey in Finland had observed discrimination on the grounds of (older) age at their workplace and 3% had personally experienced it, a drop of one percentage point since the previous survey in 2013. A survey carried out on behalf of the Confederation of Finnish Industries (EK) finds a higher level of age-based discrimination in employment, at 12% (Taloustutkimus, 2018). This survey also looked at discrimination in recruitment, with 18% of respondents indicating that they had experienced age discrimination when applying for jobs. Even higher rates of workplace age discrimination were reported in the Equality and Diversity survey carried out by the Irish Central Statistics Office (CSO, 2019). The results show that age discrimination in the workplace was second only to gender discrimination, at 25.9% and 33%, respectively. The share of individuals reporting that they had experienced (older) age discrimination at work was 9.7% in Italy and Latvia, 11% in Poland (in national surveys) and 37% in a company-based survey in the UK. Another UK survey carried out by the Centre for Ageing Better (Centre for Ageing Better, 2018), finds that 11% of respondents have been subjected to comments and jokes from colleagues or managers related to their age. As many as 4% considered leaving their job because of age discrimination and over 30% of current employees felt that they were offered fewer opportunities for training and progression as they get older.

The fact that discrimination is not the only issue affecting older workers in the labour market is illustrated by a study from the Danish Institute for Human Rights (2016) which investigated the issue in Danish municipalities. The findings show that many older workers would be inclined to stay in employment longer if they had access to reduced working hours. Interestingly, although such measures are in place in principle, in many municipalities, these were only effectively used to a limited extent.

A study by the Croatian Youth Network reports that 36% of young people surveyed had experienced direct age discrimination, particularly in recruitment processes (Mreža mladih Hrvatske, 2012). It should be underlined that age-related discrimination is not only reported by older workers but also by younger workers (5% in Finland, 12.3% in Latvia). This is an issue which has been debated in relation to different minimum wage rates for younger workers. While it can be argued that



these are intended to promote the employment of young people (and to some extent reflect their more limited work experience), it can also be perceived as an aspect of wage discrimination.

Eurofound (2019a and 2019b) provides an overview of such seniority-based entitlements and highlights the extent of policy debate in different Member States regarding this issue.

## Disability

Evidence from national surveys and studies reveals that there is significant disability-based discrimination in recruitment and employment.

Data from Luxembourg, the Netherlands and Portugal on disability discrimination at work puts self-reported discrimination at between 0.3% and 2%. However, in other countries where data are available, the level of experienced or observed disability discrimination is significantly higher. This is partly linked to the surveyed target population, with higher rates captured in surveys aimed solely at workers with disabilities. In 2019, a survey carried out on behalf of Aktion Mensch, a not-for-profit organisation in Germany, found that some 51% of respondents experienced discrimination based on their disability, with 58% of this group reporting they experienced discrimination in the workplace, and 20% reporting that it occurred 'very often' (Aktion Mensch, 2019). A survey in Latvia found that 16.6% of working respondents with a disability had experienced workplace discrimination in the previous 12 months (Latvijas Cilvēktiesību centrs, 2014). According to a study carried out by Statistics Sweden, 33% of women and 22% of men with disabilities have experienced workplace discrimination (SCB, 2019). In a 2018 survey of women and girls with disabilities in Lithuania, the Lithuanian Association of People with Disabilities found that 16.7% of women had been discriminated against in the area of work and employment (Lietuvos neįgalųjų draugija, 2018). Around half of these women stated they could not freely choose the job they wanted and one third said that their job did not provide a decent living. In a Finnish survey, 45% of respondents with disabilities indicated that they had experienced workplace discrimination in the last five years (Oikeusministeriö, 2016). The incidence was even higher among those with low levels of education. Most worryingly, 84% of respondents who had experienced such discrimination did not report this to their occupational health and safety representative or to the Ombudsman for Equality.

Research in Estonia points to disconcerting attitudes among employers in recruitment processes (Vainu et al, 2017/2018). It finds that in cases of comparable candidates applying for a position, 44% of employers would prefer to recruit a candidate with 'full work ability'. Furthermore, 70% of employers declared that they would not recruit an applicant with a declared mental health disorder.

A Belgian study seeking to assess the impact of mental health conditions on recruitment found that disclosing a year of inactivity resulting from depression reduced the probability of getting a job interview by around 34% when compared to candidates who had recently been made redundant (Baert et al, 2016). However, the stigma associated with having taken a year off due to depression is not significantly higher than the impact of having an unexplained year of unemployment on a CV.

## Race and ethnicity

Discrimination based on race or ethnic origin in recruitment is widespread, with certain ethnic groups (for example, Roma) and nationalities particularly affected. Although discrimination in the workplace itself is somewhat less commonly reported, it can impact on key aspects of work, such as wages and working conditions.

In a number of Member States, studies have been conducted to assess the extent of discrimination on the basis of race or ethnic origin in recruitment. In practice, this is often coupled with questions regarding discrimination on the basis of nationality, which is a different – but overlapping – issue.

Similar to research on age discrimination, such studies are often carried out by submitting fictitious CVs for vacancies with identical skill and experience profiles but showing different racial or ethnic origin (such as through names, addresses, schools attended and so on). The results not only demonstrate the pervasive nature of discrimination at the recruitment stage, but also the distinctions drawn between different ethnic groups and nationalities. Ahmad (2019) finds that while 39% of applicants with a Finnish name were called back for interview, this drops to 27% for applicants with English names, 23% for those with Russian names and as low as 13% and 10% for applicants with Iraqi and Somali names, respectively. The research also reveals some gender differences, as female non-Finnish applicants generally have better opportunities on the labour market. There are also sectoral differences, with non-Finnish applicants being more likely to be called back when applying for vacancies in the commerce and HoReCa (hotel/restaurant/catering) sectors, which may be linked to shortages experienced in the sector. In Belgium, Lamberts et al (2012) find that applicants of Turkish and Moroccan origin are particularly disadvantaged at the recruitment stage. Interestingly, Baert et al (2017) find that, for each year of experience, discrimination in recruitment reduces by 5.5%.

Various studies in France point to significant differences in the likelihood of obtaining an interview between French applicants and those of a North African background. A study by DARES (2016) indicates a difference in the likelihood of callback of 11 percentage points while a later study (TEPP, 2020) places this figure as high as 20 percentage points. No significant

differences were found between male and female applicants or between employee and managerial positions in these cases.

Studies from Croatia, Hungary, Portugal and Romania demonstrate the particular challenges faced by Roma job applicants and workers. Kunac, Klasnić, and Lalić (2018) find that 28.2% of members of the Roma minority in Croatia experienced discrimination at least once in the previous 12 months. This is particularly prevalent in the area of employment. Of those who experienced discrimination in the past year, as many as 49% experienced it in the sphere of work and employment. Self-reported discrimination was also analysed in the National Study on Roma Communities in Portugal, with 60% of respondents stating they had felt discriminated against at some stage (Mendes et al, 2014). More than 15% of those experiences of discrimination related to employment interviews. In Romania, a study carried out on behalf of the National Council for Combating Discrimination found that 62% of the respondents designated Roma as the most disadvantaged ethnic category when it comes to employment, with particular challenges experienced in the recruitment process (TNS, 2015). The level of discrimination experienced by the Roma community is further highlighted by the findings of the INSOMAR/CNSC study, which reveals that over 25% of respondents would prefer not to work with a representative of this minority (Cugler, 2015).

In the UK, the government-commissioned McGregor-Smith Review on race in the workplace highlights differences in the employment rate and levels of pay between white and ethnic minority workers (UK Government, 2017). While the employment rate for white workers is 76%, it stands at 63% for ethnic minorities. The review estimates the cost to the country of race-based discrimination in employment to be €29 billion each year. In 2019, the Trades Union Congress (TUC) commissioned a 'Racism at Work' Survey which finds that 70% of ethnic minority workers have experienced racial harassment at work in the last five years and 60% declared that they had been subjected to unfair treatment by their employer because of their race (TUC, 2019a). Furthermore, one third of ethnic minority workers report that they had been bullied and 15% of women and 8% of men state that racial discrimination caused them to leave their job. The results show that racism at work clearly has a huge impact on workers' well-being, with almost 30% of respondents stating that experiencing racism at work had led to them taking a period of sick leave.

In Malta, Fsadni (2014) finds that 88% of workers from sub-Saharan Africa noted that their wages were lower than those paid to Maltese workers.

Two qualitative research projects in Germany investigated the integration of refugees in the workplace. Huke and Schmidt (2019) find that while

there is discrimination towards refugees at the workplace, it is not a dominant feature. In fact, the findings show that working fosters social integration, as managers, co-workers and refugees share the same interests in a well-functioning business. However, interviews in other regions also show that even if management is willing to integrate refugees, the process may be hampered by racist and discriminatory behaviour on the part of a few co-workers (Huke and Bormann, 2020). The authors conclude that the rise of the far right impacts on what is happening at the workplace level and makes the job of management very difficult.

## Religion or belief

Relatively limited evidence is available to assess the extent of workplace discrimination based on religion or belief, apart from the debate which has been prominent in some Member States about the wearing of religious symbols and clothing in the workplace (Eurofound, 2017b). This may be because this issue is sometimes conflated with discrimination based on race or ethnic origin, particularly for workers of the Muslim faith. Survey data from Portugal and the Netherlands show that between 0.1% and 0.9% of respondents consider themselves to have experienced discrimination on the basis of religion (Perista, 2017 and TNO, 2017). Higher numbers are reported from the UK, where 3% of workers had experienced discrimination on the basis of religion and 4% of workers said they had been aware of someone else being discriminated against because of their faith (Harrison and Watkins, 2017). Another related issue in the workplace concerns the observance of different religious holidays and practices.

In France, a study assessing the extent of discrimination based on religion in the recruitment process found that the probability for Christians to be called for interview was 30% higher than for Jews and twice as high as for Muslims, with Muslim men encountering the highest level of discrimination (Valfort, 2015). The study was based on applications to vacant jobs with religion able to be inferred from three items of information requested: given name, religious affiliation of the secondary school attended and mother tongue.

## Sexual orientation

Although most workers feel comfortable about being open regarding their sexual orientation in the workplace, the share of those who prefer not to reveal it is still high, particularly among trans- or intersex individuals (Eurofound, 2016). A perceived inability to be open about these issues has implications for job satisfaction and career progression. Having said that, the experience of acts of discrimination and harassment at the workplace based on sexual orientation and gender identity remains unacceptably high and is perceived to be rising in some countries.



A study commissioned jointly by three Danish trade unions (the Danish Confederation of Trade Unions (LO), the Confederation of Professionals in Denmark (FTF) and the Danish Confederation of Professional Associations (AC)) found that 22% of respondents are not open about their sexuality at work (LO, FTF and AC, 2016). Over a quarter of those who felt they could not be open about it indicated that one reason for this was that the 'general mood' between their colleagues was 'not positive towards homosexuality/bisexuality/being transgender'. Over 50% of the total indicated that they are open about their sexuality or open 'to some degree', while around 20% are open 'to a lesser degree'. These findings are confirmed by a follow-up survey carried out in 2017 by the union for IT professionals, PROSA (Christensen and Voergård-Olesen, 2018). This study also reveals a certain degree of tension: for instance, among respondents who did not identify as LGBTI, over 70% considered that there was no workplace discrimination against LGBTI individuals; however, at the same time, almost 45% of the same respondents agreed with the statement that 'it is ok to make anti-gay jokes' as 'there should be space for humor and irony in the workplace'.

Another Danish study (Als Research APS, 2019) finds that the lack of openness and discrimination in relation to one's sexuality in the workplace is linked to a high risk of failing to progress in the workplace. It also notes that transgender individuals are at greatest risk in this regard, followed by lesbians and bisexuals, with gay men least likely to be affected by workplace discrimination. A similar study focusing on teachers concludes that teachers who do not wish to provide information about their sexual orientation in the workplace show lower levels of job satisfaction and do not feel included in the social aspects of their workplace. Aavik et al (2016) report on a qualitative study of LGBTI workers in Estonia which finds that being honest about their sexual orientation in the workplace improved the work environment for respondents and – in most cases – did not have any negative consequences.

A survey-based study by the United Federation of Danish Workers (3F) published in 2017 finds that one in three Danish employees surveyed reported having witnessed someone at their workplace making condescending remarks about homosexual and transgender individuals (3F, 2017). In France, 11% of the cases of 'LGBT phobia' reported to the SOS Homophobie association are related to the world of work (SOS Homophobie, 2019), indicating an increase in homophobic attacks. Similarly, in Lithuania,

Blažytė et al (2016) report an increase in discrimination against homosexuals. According to a survey carried out in 2015, one third of respondents indicated that they would not like to work with a homosexual colleague, and attitudes are considered to have worsened in recent years. Furthermore, a public opinion survey commissioned by the Office of the Equal Opportunities Ombudsperson in Lithuania in 2018 on attitudes towards transgender people shows that around 28% of respondents declared they would feel uncomfortable working with transgender people at the same workplace (OEEO, 2019a).

Survey-based research on workplace discrimination based on sexual orientation commissioned by the anti-discrimination agency in Germany and carried out in 1997, 2007 and 2017<sup>7</sup> found that over the years, homosexual workers have become more outspoken about their sexual orientation in the workplace (Frohn et al, 2017). At the same time, the share of those saying they experienced discrimination at least once has remained almost unchanged, at 74%. Some 8% said they were discriminated against in job application processes or were dismissed because of their sexual orientation. In 2017, the survey also covered transgender workers. Among these workers, discrimination is more likely to be reported in the recruitment process. The authors conclude that transgender workers have a considerably higher risk of direct discrimination, dismissals and unemployment than homosexuals. A qualitative study (Frohn et al, 2019) based on four interviews with intersex workers reveals that the latter are confronted with voyeurism or adverse behaviour on the part of their co-workers and direct discrimination during job searching and at the workplace; moreover, they are excluded from positions with direct customer contact, lack career opportunities and are more fearful of dismissals.

In 2017, the UK's Government Equalities Office (GEO) launched a survey to gather more information about the experiences of LGBT people in the UK (GEO, 2018). Over 108,000 people participated, making it the largest national survey of LGBT people in the world to date. With regard to employment, 80% of respondents aged 16–64 had been in employment at some point in the 12 months preceding the survey. Transgender people were less likely to have had a paid job in the 12 months preceding the survey (65% of transgender women and 57% of transgender men). Nearly 20% of respondents with a job in the preceding 12 months had not been open about their sexual orientation or gender identity with any of their colleagues at the same or a lower level.

7 The surveys were not representative.

Respondents were even more likely to say that they had not been open with any senior colleagues (30%) or any customers or clients (57%). In terms of each respondent's most serious incident, 57% said it was perpetrated by a colleague at the same or lower level (this was often unwanted disclosure of LGBT status or verbal harassment); 22% by customers and clients and 21% by a line manager or supervisor. Most respondents said this most serious incident had not been reported, the main reason for which was that they had thought it would not be worth it, or that nothing would happen or change. Nearly 25% had experienced a negative or mixed reaction from others in the workplace due to being LGBT, or being thought to be LGBT.

Another UK survey commissioned by the charity Stonewall found that almost one in five LGBT respondents who were looking for work said they were discriminated against on the basis of their sexual orientation or gender identity (Stonewall, 2018).

In 2019, the TUC conducted research into the subject of sexual harassment of LGBT people in the workplace, the first study of its kind on this issue (TUC, 2019b). The research focused on LGBT people's experience of sexual harassment at work, the extent to which they had felt able to report it and the impact that it had had on their physical and mental health. The survey uncovered high levels of sexual harassment and sexual assault, with nearly 7 out of 10 respondents having experienced at least one type of sexual harassment at work (68%) and almost 1 in 8 LGBT female respondents (12%) reporting having been seriously sexually assaulted or raped at work. However, this is a hidden problem – two-thirds of respondents who indicated that they had been harassed did not report it, with one in four stating that fear of 'outing' themselves at work was their reason for remaining silent.

In Finland, a regular working conditions survey by Statistics Finland found that the share of respondents who described having experienced discrimination on the grounds of sexual orientation in the workplace has remained more or less unchanged at 2% since 1997 (Sutela et al, 2019).

Evidence of discrimination is also very slight in the Netherlands, where only 0.2% of respondents to a survey (of workers) reported workplace discrimination on the basis of sexual orientation. This figure remained unchanged between 2015 and 2017 (TNO, 2015 and 2017). These figures are similar to those reported in a national survey on working conditions in Portugal, where 0.3% of women and 0.1% of men declared they had experienced discrimination at work on these

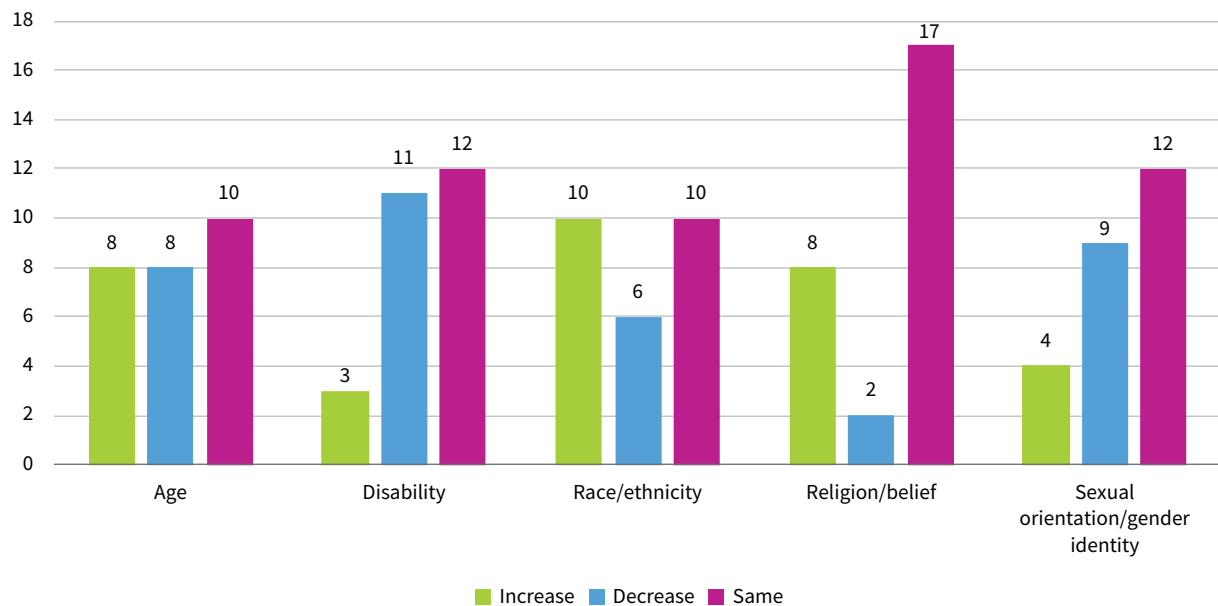
grounds (Perista, 2017). A survey by the Ombudsperson's Office in Croatia provides a picture of workplace attitudes towards LGBTI colleagues (Pučki pravobraniteljica, 2017). When asked to rate the statement 'I would feel extremely embarrassed to find out that one of my colleagues at work is gay or lesbian' on a scale of 1 to 4 (with 4 being not at all embarrassed), the average score was 3.4 in 2016. This score was higher among workers with higher educational qualifications and lower among those with lower levels of education.

A Belgian study finds that when comparing heterosexual and lesbian women in the labour market, young heterosexual women experience a higher degree of discrimination and are 'penalised' in their career for having children more frequently and taking on, on average, more caring responsibilities (Baert, 2014). This effect was found to be driven by age (and fertility) rather than by motherhood and no unequal treatment was found among women in older age groups.

## Assessment of trend developments

Experts from the Network of Eurofound Correspondents were asked to assess (based on literature and interviews) whether the different forms of workplace discrimination studied had increased, decreased or stayed the same in their country, as well as ranking which is most significant with regard to workplace discrimination.

As shown in Figure 3 below, for all grounds of discrimination, the extent to which it is present in the workplace was most likely to be considered to have stayed the same (on average). This is particularly true for discrimination on the basis of religion or belief. On the face of it, this may seem surprising given the reported rise in Islamophobia and anti-semitism. The most commonly reported increase in discrimination across the countries studied was on the basis of race or ethnic origin, with discrimination on the grounds of religion or belief, race and ethnicity more likely to be judged to have increased rather than decreased. According to the country experts, disability discrimination was the form that increased the least, with most arguing that it had in fact decreased (due to improved legislation, policies and workplace practices, as well as changing public perceptions of disability) or stayed the same. An equal share of experts reported that age discrimination had decreased or increased. Discrimination based on sexual orientation or gender identity was perceived as having declined.

**Figure 3: Status regarding workplace discrimination at national level (number of countries)**

**Notes:** Assessments were not provided for all countries. The question asked was: 'Has workplace discrimination on different grounds increased, decreased or stayed the same in your country over the past five years?'

**Source:** Author, based on contributions from the Network of Eurofound Correspondents

However, country-level differences are significant in this regard. Table 3 presents more detailed findings regarding the countries that reported increases and decreases in different forms of workplace discrimination.

The reasons given for the perceived rise or decline in workplace discrimination on different grounds varies with regards to the different forms of discrimination. Countries indicating that age discrimination had declined mainly attributed this to demographic and labour market changes, with demographic ageing contributing to a 'normalisation' of the higher participation of older workers in the labour market. Furthermore, emerging labour shortages are also seen to contribute to more favourable conditions for older workers in recruitment processes. Legislative changes were only referenced as contributing to improvement in

one country (Romania). A rise in age discrimination was attributed to employers increasingly preferring younger workers as workplaces become more digitalised and the prevailing perception that older workers find it harder to adapt to and learn new technologies.

The improved labour market situation as well as positive changes in public attitudes were the main reasons cited for the perceived reduction in disability discrimination. On the other hand, increased discrimination on the basis of race (and to some extent religion) were attributed to negative trends in public attitudes, fuelled by an anti-immigration political discourse in a number of countries. Interestingly, changing societal attitudes were mentioned as being among the key drivers for both positive and negative trend developments in discrimination experienced by the LGBTI community.

**Table 3: Trends in workplace discrimination on different grounds over the last five years**

| Discrimination based on: | Age                                    | Disability                                     | Race/ethnicity                         | Religion/belief  | Sexual orientation/gender identity             |
|--------------------------|--|--|--|--|--|
| Increased                | BG, EE, ES, IE, IT, SE, SI, SK         | DK, IE, IT                                     | AT, BE, IE, IT, LT, LU, MT, NL, SE, UK | AT, BE, DE, EE, IT, LT, LU, NL                                     | BG, DK, HU, LV                                 |
| Decreased                | AT, EL, HR, HU, LT, NL, PL, RO         | DE, EE, EL, ES, HR, HU, LT, MT, NL, PL, RO     | BG, EE, EL, ES, HU, PL                 | BG, EL   | EL, ES, HR, IT, LU, MT, NL, PL, SI             |
| Stayed the same          | CY, CZ, DE, DK, FI, FR, LU, LV, MT, UK | AT, BG, CY, CZ, FI, FR, LU, LV, SE, SI, SK, UK | CY, CZ, DK, FI, FR, HR, LV, RO, SI, SK | CY, CZ, DK, ES, FI, FR, HR, HU, IE, LV, MT, PL, RO, SE, SI, SK, UK | AT, CY, CZ, DE, FI, FR, IE, LV, RO, SE, SK, UK |

**Note:** Assessments were not provided for all countries.

**Source:** Author, based on contributions from the Network of Eurofound Correspondents

In terms of the significance of the issue of workplace discrimination (in terms of its scale), age discrimination was most likely to be ranked as being either the most or second most significant, followed by disability, race, sexual orientation and religion.<sup>8</sup> This ranking is most likely due to the share of workers affected by these different types of discrimination.

The report does not cover the issue of multiple discrimination and intersectionality,<sup>9</sup> but this is obviously a significant issue which accentuates the impact of unequal treatment on the individuals affected.

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<sup>8</sup> While more countries considered race to be the most significant compared to disability, more countries ranked disability to be either the most or second most significant grounds of discrimination in their country.

<sup>9</sup> According to the Oxford English Dictionary, intersectionality is 'the interconnected nature of social categorisations such as race, class, and gender as they apply to a given individual or group, regarded as creating overlapping and interdependent systems of discrimination or disadvantage'.

## 2 Legislative and policy context

### At EU level

#### EU-level legislation

EU primary and secondary legislation provides protection from discrimination in employment based on sex, racial and ethnic origin, religion or belief, disability, age and sexual orientation.

Article 2 of the Treaty on European Union (TEU) establishes the non-discrimination principle as one of the fundamental values of the Union. The Treaty on the Functioning of the European Union (TFEU) provides the European Union with a mandate to combat discrimination based on sex, racial and ethnic origin, religion or belief, disability, age and sexual orientation (Article 19 of the TFEU). Article 10 of the TFEU specifies that in defining and implementing its policies and activities, ‘the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation’.

The principle of equal treatment is also proclaimed in the Charter of Fundamental Rights of the European Union. Article 21 of the Charter prohibits discrimination on a broader (non-exhaustive) list of grounds – including sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political (or any other) opinion, membership of a national minority, property, birth, disability, age or sexual orientation. However, the Charter is only applicable where a matter falls within the scope of EU law, which means that it is only binding for Member States when implementing EU law.

In secondary legislation, prior to 1997, EU non-discrimination law was largely confined to the sphere of employment and to addressing unequal treatment based on sex. Following the inclusion of Article 13 in the Treaty of Amsterdam in 1997 (becoming Article 19 of the TFEU), the EU adopted the so-called Employment Framework Directive (2000/78/EC), which establishes a general framework to ensure equal treatment in the workplace on grounds of religion or belief, disability, age or sexual orientation. The Racial Equality Directive 2000/43/EC (adopted prior to Directive 2000/78/EC) provides for equal treatment based on racial or ethnic origin both within and outside the employment area (it also covers education, social protection including social security and healthcare, social advantages and the access to and supply of goods and services). Moreover, the Directive requires all Member States to designate an equality body to promote equal treatment, with a mandate to provide concrete assistance to victims of discrimination, conduct independent surveys

concerning discrimination and publish reports with recommendations on racial discrimination.

In both directives, discrimination is understood as a concept encompassing direct and indirect discrimination, harassment and instruction to discriminate. A specific role is accorded to social partners in the application of the principle of non-discrimination in two identical provisions: Article 11 of Directive 2000/43/EC and Article 3 of Directive 2000/78/EC. These require Member States to ‘take adequate measures to promote dialogue between the social partners, with a view to fostering equal treatment’. Member States are called upon to encourage social partners to conclude collective agreements laying down non-discrimination rules, affording at least the minimum protection enshrined in the two EU non-discrimination directives. Therefore, social partners are responsible for fostering dialogue on equal treatment by – for instance – monitoring workplace practices, drawing up collective agreements and codes of conduct, and researching or exchanging experiences and good practices.

#### EU anti-discrimination policies

The EU has also developed a wide range of policies to promote equality. The European Year of Equal Opportunities for All in 2007 represented one of the biggest campaigns to date in the fight against discrimination. Political leaders made a commitment to equal opportunities in their countries. A few years earlier, the Commission launched the campaign ‘For diversity, against discrimination’ to raise awareness about existing non-discrimination legislation and to promote the benefits of diversity. More recently, EU strategies have put the accent on specific protected grounds under EU law. EU action has focused on combating discrimination against people with disabilities and the Roma Community, in particular, by launching the European Disability Strategy 2010–2020 and the EU Framework for National Roma Integration Strategies up to 2020, respectively. In 2015, a list of actions to advance LGBTI equality was published, and annual reports have reported on progress towards these actions since then. Furthermore, specific activities have been implemented to combat racism, xenophobia, anti-semitism and Islamophobia, and to tackle online hate speech, among other things. The principle of equal opportunities has also been recognised in other recent initiatives: for example, the 2016 Communication on ‘New Skills Agenda for Europe – Working together to strengthen human capital, employability and competitiveness’ recognised that ‘inclusive labour markets should draw on the skills and talents of all’.



The European Commission also recently published a *Practical guide to launch and implement a diversity charter*, encouraging and guiding all Member States to introduce a diversity charter at national level (European Commission, 2015b). In its Recommendation of June 2018, the Commission called for stronger national equality bodies to fight discrimination and presented a set of measures aimed at ensuring that equality bodies did so effectively (European Commission, 2018).

The EU renewed its commitment to the principle of equal opportunities and access to the labour market in the European Pillar of Social Rights. In the chapter on equal opportunities and access to the labour market, the importance of the principle of equal opportunities – regardless of gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation – is emphasised in the areas of employment, social protection, education, and access to goods and services.

## At national level

### Recent changes in anti-discrimination legislation

Between 2015 and 2020, Member States implemented a range of changes to legislation on the prevention of discrimination in the workplace. While some of these amendments or new provisions are of a general nature (pertaining to all grounds of discrimination or extending protections to new grounds of discrimination), others address a specific ground of discrimination covered by this report. The following sub-sections provide a very brief overview of the focus and direction of these legislative actions, which are shaped first and foremost by EU legislation and jurisprudence.

#### Legislative amendments covering all grounds of discrimination (or extending the grounds covered)

Legislative amendments in Finland, France and Sweden added new grounds of discrimination to existing legislation. In Finland, the Non-Discrimination Act (1325/2014), which came into force in 2015, now covers discrimination on the basis of age, origin, nationality, language, religion, belief, opinion, political activity, trade union activity, family relationships, state of health, disability, sexual orientation and other personal characteristics. In Sweden, amendments to the Discrimination Act (2008:567) dating back to 2008 added age and gender identity as potential grounds of outlawed discrimination in employment. More recently (since January 2017), new provisions on active measures were introduced in the act. As a result, employers and educational institutions are obliged to initiate preventive and promotional work to combat discrimination and otherwise promote equal rights and opportunities, regardless of gender, gender identity or expression, ethnic affiliation, religion or belief, disability

and sexual orientation or sexual disability (this was previously limited to gender, ethnic affiliation and religion or belief).

In Finland, workplaces with over 30 employees must have an action plan to implement any necessary measures to ensure non-discrimination. This action plan must be negotiated and agreed on by management and employee representatives. Elected worker representatives or occupational safety delegates have the right to access information on the actions an employer has taken to promote equality in the workplace. However, a first-impact assessment shows the limited implementation of such plans in 2017 and argues that such plans are often of poor quality, with other issues of discrimination simply integrated into gender equality plans without specific elaboration (SAK, STTK, AKAVA, 2015).

In France, Article L1132-1 of the Labour Code extended the field of prohibited discrimination. It stipulates that no person may be excluded from a recruitment or appointment procedure or from access to a training course and no employee may be sanctioned, dismissed or be the subject of a direct or indirect discriminatory measure on the grounds of one or more of the following: origin, sex, morals, sexual orientation, gender identity, age, family situation or pregnancy, genetic characteristics, vulnerability resulting from a person's economic situation, a person's membership or non-membership (real or supposed) of an ethnic group, nation or alleged race, political opinions, trade union or mutualist activities, exercise of a local elective mandate, religious convictions, physical appearance, surname, place of residence or bank address, state of health, loss of autonomy or disability, ability to express himself or herself in a language other than French.

One of the goals of this new definition is to help tackle discrimination based on gender identity, origin (acknowledging that a place of residence or bank address can indicate a town with a large share of migrants in its population) or the ability to express oneself in a language other than French (which can indicate a foreign origin). Furthermore, Law No. 2017-86 of 27 January 2017 on equality and citizenship stipulates that in any company employing over 300 employees and in any company specialising in recruitment, those responsible for recruitment assignments must receive training in non-discrimination in recruitment at least once every five years.

The new Lithuanian Labour Code also places additional requirements on employers with more than 50 employees, who are called upon to adopt and publish measures for the implementation and enforcement of equal treatment and non-discrimination policies. New provisions in Estonia, the Netherlands and Portugal focus on the prevention of psychosocial hazards and the prohibition of harassment, including harassment linked to discrimination.

### Legislative amendments covering specific grounds of discrimination

Legislative amendments linked to specific grounds have addressed issues such as mandatory retirement ages, the use of quotas, adjustments linked to the observance of different religious holidays and the wearing of religious dress and symbols. Another area of intervention which impacts on rights linked to employment includes the need for greater recognition of the rights of same-sex couples and transgender individuals.

Legislative amendments pertaining to **age** discrimination in Bulgaria, Denmark, Greece, Ireland, Romania and the UK have focused on the permissibility (or otherwise) of a mandatory retirement age and differences in treatment based on age in employment, including in recruitment and selection for redundancy. In general, the move has been towards the abolition of mandatory retirement ages, although in Bulgaria, a legislative change (of Article 328, paragraph 1 item 10 of the Labour Code) dating back to 2012 which eliminated compulsory retirement was reversed in 2016. In Denmark, the 2016 anti-discrimination legislation rendered individual contracts stipulating a mandatory retirement age null and void, unless based on a legal provision in an applicable collective agreement. In Ireland, the Equality (Miscellaneous Provisions) Act of 2015 states that different retirement ages can be permissible if these are objectively and reasonably justified by a legitimate aim and if the means of achieving them are appropriate and necessary. In Romania, working beyond retirement age is now also explicitly permitted, providing that appropriate requests are made within set time frames and with the employer's approval. Greece has moved to outlaw maximum recruitment ages for specific occupations and sectors (e.g. specialist doctors in the national health system).

Legislative changes targeting the prevention of **disability** discrimination have highlighted or increased the use – and implementation of – quotas (Bulgaria, Croatia, Greece and Malta) and the legitimisation and promotion of specific measures to encourage the integration of people with disabilities into training measures and employment (Greece, Slovenia, Spain). In Belgium, a Royal Decree of 28 October 2016 added new provisions for the occupational rehabilitation of workers following long-term health-related absences to the Royal Decree of 28 May 2003 concerning the reinstatement of unfit workers. It also restricted the ability of employers to terminate employment contracts on the basis of medical force majeure to situations where targeted re-integration measures fail to achieve re-insertion into the workplace.

Other changes relate to transposing the UN Convention on the Rights of Persons with Disabilities. In Germany, the Federal Participation Act (*Bundesteilhabegesetz*)

2016 transposed the Convention into the German Social Code Book IX and improved the position of workers with disabilities in the workplace. The amendment stipulates that the employer must appoint an employee in a managerial capacity to perform the role of 'inclusion officer', whose role is to monitor the integration of workers with disabilities. The amendment also increased the number of elected worker representatives for such workers in companies with more than 100 workers (1 elected representative per 100 disabled workers). Employers are not allowed to dismiss a worker with a disability without consulting their worker representative.

Only limited changes were reported in legislation specifically dealing with discrimination on the grounds of **race or religion** (beyond those mentioned under 'general measures' above). In Romania, the Labour Code grants two holiday days for two religious celebrations each year, to be taken according to the faith of the employee (amendment of 2017). In this context, it is worth noting that in eight EU countries, the 'duty of reasonable accommodation' included in the Directive for persons with disabilities has been extended in different ways to discrimination on the grounds of religion and belief (Bulgaria, Croatia, Denmark, France, Germany, Romania, Spain, Sweden).

In relation to the prohibition of discrimination on the basis of religion, it is important to note that, as the CJEU found in the *Samira Achbita v G4S Secure Solutions* case, the prohibition of religious discrimination laid down in Directive 2000/78 includes discrimination based on the manifestation of religion, such as the wearing of religious dress and veils (CJEU, 2017). In this case, the Court considered that a religious headscarf ban imposed by employers, although constituting indirect discrimination on the grounds of religion, may be justified by the necessity to promote a 'neutral image' in a business. This leaves the door open for Member States to adopt general headscarf bans. France was the first country to do so, which has led to heated public debates. In total, five countries have put in place national general bans on religious dress (Austria, Belgium, Bulgaria, Denmark and France), and four countries introduced specific bans (Denmark, France, the Netherlands and Spain). In Austria and Germany, legislation banning face-covering in public spaces was adopted in 2017, and a similar bill is in the process of being adopted in Latvia (FRA, 2017). These bans have challenged the provisions on non-discrimination on the grounds of religion (Eurofound, 2017b).

Hungary, Ireland, Malta, Portugal and Spain have introduced measures seeking to prevent discrimination on the grounds of **sexual orientation and gender identity**. In Spain, a Royal Decree of 2015 incorporates non-discrimination based on sexual orientation as a basic workers' right. Portugal added gender identity to the prohibited grounds of discrimination in its Labour



Code in 2015. In Germany, until 2017, Article 1 of the Basic Law (*Grundgesetz*) prohibited discrimination on the grounds of 'gender' but not 'sexual' identity. On 10 October 2017, the constitutional court ruled that Article 3 of the Basic Law should also cover persons who do not identify as either male or female, and that their individual rights are affected if they have to register as either the one or the other. This decision sparked debates on ways to address this at the workplace level (a third type of bathroom with different signage, for example).

The legal status of same-sex couples was enhanced by provisions in Hungary and Ireland ensuring access to family-based rights for employees. Generally speaking, concerning the rights of same-sex couples, an increasing number of countries have recognised same-sex unions in recent years. As of the present, 14 European countries legally recognise and permit same-sex marriage (Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Luxembourg, Malta, the Netherlands, Portugal, Spain, Sweden and the UK). An additional eight European countries legally recognise some sort of civil union, such as registered partnership (Croatia, Cyprus, Czechia, Estonia, Greece, Hungary, Italy and Slovenia). Only Bulgaria, Latvia, Lithuania, Poland, Romania and Slovakia do not recognise any form of same-sex union.

Changes to Maltese legislation focused on improving the rights of transgender individuals. In terms of legal recognition procedures for gender identity, processes vary significantly from Member State to Member State. Belgium, Denmark, France, Greece and Ireland offer legal gender recognition procedures based on self-identification. In line with the CJEU case law on gender reassignment (CJEU, 2018), 10 Member States have explicitly codified the prohibition of discrimination due to gender reassignment (Belgium, Bulgaria, Czechia, Finland, Lithuania, Malta, Portugal, Slovakia, Sweden and the UK). In light of the recent policies adopted by several Member States, it can be noted that there has been a change of attitudes towards gender identity, gender expression and gender characteristics. In Austria, Denmark, Germany, Luxembourg and Malta, for example, governmental action plans are currently reshaping legislation and drawing up national strategies to recognise transgender individuals and reduce discrimination.

## Dispute resolution and case law

No collective disputes were identified regarding the issue of workplace discrimination. However, individual disputes and relevant case law have an important role to play in providing an indication of the practical interpretation of regulations by the courts, in setting precedents and ultimately in influencing organisational policy. Scrutinising the substance of non-discrimination case law linked to the workplace also provides an

indication of the main areas in which disputes arise (and are brought before the courts).

This section provides an overview of these key areas, with recent examples of case law regarding each grounds for discrimination.

Disputes linked to **age** discrimination centre around the following issues:

- the use of minimum or maximum age limits for recruitment and objective justifications which can be used to defend the use of such limits
- redundancy selection based on age
- the permissibility (or otherwise) of compulsory retirement ages
- the use of age limits for entitlements to certain benefits
- the question of when specific age-based provisions or policies are permissible
- the effective implementation of non-discriminatory practice in recruitment

**Disability** discrimination cases primarily centre around the following issues:

- defining what constitutes 'reasonable accommodation' of the workplace or work tasks
- what should be interpreted as a 'disproportionate burden' on the employer in making such adjustments
- types of unequal treatment that do not constitute discrimination (for example, in offering specific training to certain groups)
- the requirement to consult a worker representative when hiring or firing a worker with a disability
- what constitutes a justifiable health requirement to carry out a specific job (that might exclude certain individuals with disabilities)
- the requirement for public buildings to be accessible to allow a worker with a disability to pursue their duties
- access to disability benefits for gig economy workers (definition of self-employed versus employee)

Cases surrounding the issue of discrimination on the basis of **race or ethnic origin** often revolve around overt racial or ethnic bias in recruitment. In a number of countries (such as Czechia, Hungary and Romania) these mainly relate to the refusal to recruit individuals of Roma background. Other issues raised include:

- racist stereotypes in addressing workplace issues or complaints
- lack of employer intervention in addressing acts of racism and racist harassment
- differential treatment of workers of different ethnicity in terms of wages and terms and conditions

A few cases also relate to the specific treatment of illegal migrant workers, which is at the intersection of issues of race discrimination and other issues, including undeclared work and human trafficking.

Court cases addressing discrimination on the grounds of **religion or belief** have tended to focus on respect for different religious practices, including religious holidays and the wearing of religious dress or symbols. In a few countries (for example, Austria and Romania), court cases have precipitated changes in legislation to accommodate access to different religious holidays (outside the need to take one's own entitlement to annual leave). The issue of wearing religious dress was addressed in the above-mentioned *Samira Achbita v G4S Secure Solutions* case, which made it possible for private businesses to determine the need for neutrality of public image and, as a result, to refuse the wearing of headscarves or similar religious dress. This judgment is echoed in a number of court cases in different Member States. A number of cases relate to discriminatory practices. The ability of organisations run by religious communities to refuse applicants of a different faith has also been rejected (any reasons for rejection objectively and reasonably justified by a legitimate aim have to be approved by the labour courts). Finally, a number of cases reported deal with discrimination on the basis of particular (political or ethical) beliefs, rather than religion.

Case law addressing discrimination based on **sexual orientation and gender identity** primarily deal with instances of harassment or bullying in the workplace. There are fewer cases addressing discrimination in recruitment based on sexual orientation (presumably largely because such questions do not arise in the recruitment process), but discrimination in this area does affect transgender individuals, a number of whom have successfully proven discriminatory treatment. In Greece, the state was required to revise its recruitment literature and tests for the armed forces which referred to 'gender identity' as a 'disorder' and 'mental condition' which should prevent individuals from joining the forces.

Cases of discrimination have also arisen in situations of 'assumed sexual orientation'. Finally, a number of cases focus on the dismissal of workers who took part in pride marches and other LGBTI-related political activity in their own time.

## National-level anti-discrimination policies

In addition to anti-discrimination legislation, policy measures also have a role to play in reducing the occurrence of discrimination. This can take different forms, which can be categorised in the following way:

- detection, monitoring, reporting and awareness-raising around discrimination and trends in the experience or perception of discrimination and creating a 'zero tolerance' environment

- raising awareness of existing rights and ensuring effective enforcement, including through the implementation of dissuasive sanctions
- issuing advice, guidance and good practice and encouraging good practice sharing, including addressing stereotypes
- encouraging others to take action (such as in collective agreements or at company level)
- measures to overcome issues which contribute to unequal treatment in recruitment and employment (these are often not directly non-discrimination measures, but seek to contribute to reducing unequal treatment in the labour market, such as targeted training measures)
- recognising achievements through awards, labels and so on

The following sections summarise and provide examples of the types of policies that have been implemented at Member State level under these approaches.

### Detection, monitoring, reporting and awareness-raising

In order to effectively address workplace discrimination, it is essential to identify and bring to light existing discriminatory practices. This can be difficult – as the relatively limited number of reported cases shows – due to the challenges associated with effectively proving discriminatory practices. Research has also highlighted that discrimination remains particularly prevalent in recruitment, where it is often even more difficult to demonstrate and prove, due to the absence of documented evidence.

In Belgium, various regions and sectors have therefore authorised the use of 'mystery shopping', whereby labour inspectors or other authorised bodies contact either service users (in the case of service vouchers, for example) or employers to detect and report directly or indirectly discriminatory requirements or practices. Where such practices are detected, they can be reported and discrimination cases launched following further investigation.

Research and the monitoring of trends in perceived and observed discrimination, as well as cases reported, has an important role to play in raising awareness and helping to shape effective policy responses. In Denmark and the Netherlands, for example, research is a specific part of the implementation of non-discrimination action plans. While in the Netherlands, this has focused on age discrimination, in Denmark, research has been carried out on the barriers to openness for LGBTI people in the workplace, which has demonstrated the feared and actual scale of workplace discrimination. As reported above, a number of studies are also available at European and national level charting trend developments over time, although as previously

indicated, such surveys have been – and must be – understood within their methodological, cultural, political, regulatory and socio-economic context.

### **Raising awareness of existing rights and ensuring effective enforcement, including through sanctions**

In addition to raising awareness of the existence of discriminatory workplace practices, actions have also been implemented to ensure workers and job seekers are aware of their rights. Lack of such awareness is one of the key barriers to effective enforcement. Specific awareness-raising actions have, for example, been implemented in Estonia, Hungary, Luxembourg and the Netherlands in respect of different grounds of discrimination.

Enhanced enforcement and sanctioning have a critical role to play in ensuring that existing legislation at the EU and national level meets its objectives to prevent and tackle discriminatory practices in the labour market and wider society. This can be hampered by a number of factors in addition to the lack of awareness of rights, such as low detection rates, resource issues in the public bodies responsible for detection, difficulties in accessing proof, lack of financial and practical support in bringing cases, fear of retaliation, negative financial impact or the feeling that ‘nothing will be done’, and lack of dissuasive sanctions, among other things.

An interesting ‘naming and shaming’ practice was identified in Belgium, where employers found guilty of discriminatory practices have to inform employees, board members and clients about such convictions for a period of time. Managers in such companies are often asked to attend compulsory non-discrimination training and draw up company-wide non-discrimination plans.

### **Issuing advice, guidance and good practice and encouraging good practice sharing, including addressing stereotypes**

A set of measures taking a ‘voluntarist’ approach includes the issuing of advice and guidance and the development and exchange of good practices. This can include guidelines on the effective implementation of legislation, as well as advice on how to enhance inclusiveness and diversity practices. Good practice examples are often used to illustrate how other organisations have (successfully) addressed these issues. Such measures can either be initiated by governments, NGOs or social partners – or be developed jointly.

### **Encouraging others to take action (such as in collective agreements or at company level)**

Particularly in countries where social partners have an important role to play in the shaping and implementation of policy, governments have elected to encourage other actors – and in particular social

partners – to negotiate and implement actions at the sectoral or company level, using their knowledge of their particular environments. In the Flanders region in Belgium, for example, the Flemish parliament asked the Flemish government to call on the social partners to take initiatives to combat discrimination on the labour market, in addition to the federal social dialogue within the framework of the Flemish social dialogue and, in particular, sector covenants (see Box 3 on p. 39).

In Sweden, new provisions on active measures were introduced in the Discrimination Act (2008:567) in 2017. These provisions mean that employers and educational institutions must now conduct preventive and promotional work to combat discrimination and otherwise promote equal rights and opportunities regardless of gender, gender identity or expression, ethnic affiliation, religion or other beliefs, disability, sexual orientation and sexual disability. Previously, the provisions on active measures in working life included only gender, ethnic affiliation and religion or other beliefs. All seven grounds for discrimination must now be included in prevention and promotion work. The new regulation also contains instructions for how the work should be carried out in different stages. The previous requirement to develop a plan was replaced by a general requirement that all work in this area must be documented.

### **Measures to overcome issues that contribute to unequal treatment in recruitment and employment**

The most commonly reported policy actions are initiatives which do not have tackling discrimination as their primary goal, but which are implemented to seek to reduce unequal treatment in the labour market. This is done by addressing factors which might make certain target groups less attractive to employers (in terms of recruitment) or might put them at greater risk of unequal treatment once in employment. Such measures are primarily targeted at older and younger workers and at workers with a disability; for job seekers among these target groups they include (but are not limited to):

- specialist job counselling
- training or re-training
- mid-career reviews offered by the public employment services
- work experience placements
- employment subsidies
- support for workplace adaptations on recruitment

For persons with disabilities, the measures also include quotas, with different associated thresholds (in terms of the size of the employer) of the number of such workers to be employed, and varying levels of enforcement and sanctions. Some countries utilise funds raised via sanctions specifically to support training and adaptation measures for workers with disabilities.

For migrant groups in particular, this can also include language training, support for the recognition of qualifications gained in another country or the validation of existing competencies.

Once in employment, some national policy measures or collective agreements also ensure the provision of ongoing training – particularly for older workers – and workplace adaptation measures for older workers or workers with disabilities.

In a number of countries, the implementation of such policies is associated with a multiannual policy strategy and indeed the programming of European Cohesion Fund support (such as Croatia, Cyprus, Estonia, Malta, the Netherlands, Romania, Slovenia and Spain).

### **Recognising achievements through awards and labels**

Another approach to encourage the implementation of effective anti-discrimination and diversity practices is through recognition of achievement. In times of rising labour shortages, ways in which employers can distinguish themselves as an attractive place to work are arguably becoming more important and the presence of a diversity label or similar award could play an important role in attracting high-calibre candidates. They can also act as a signpost to specific groups that an employer has relevant practices in place that can help to ensure non-discrimination, or effectively address such issues where they occur. In addition to awareness-raising and the issuing of guidelines and good practice, such ‘voluntary’ approaches tend to be favoured by employer organisations as effective ways of demonstrating the benefits of diversity.

By 2020, 24 countries had implemented a Diversity Charter on the basis of the European Commission’s initiative. For instance, in 2016, Portugal adopted the Diversity Charter, thus making a voluntary commitment for employer organisations in Portugal to become more inclusive, more diverse and more competitive. The signatory organisations of this Charter commit to diversity as an ethical imperative guiding all of their activities, both internally and externally, as part of their core values and institutional identity. In July 2017, there were 198 signatory organisations in Portugal. The social partners in Lithuania agreed on their Diversity Charter in 2018. The Charter brings together organisations from various sectors that are working towards positive changes in the area of equal opportunities. About 30 companies have signed the Charter so far.

Slovenia implemented a specific charter acknowledging employers who offer employment to persons with disabilities. In Estonia, the label ‘Diverse Workplace’ was developed by the Ministry of Social Affairs in cooperation with the Estonian Human Rights Centre. It has been issued to companies since 2018, and is a quality label that indicates that the company is an attractive employer, one which values their employees irrespective of their gender or background. The centre provides support and guidance for companies to develop diversity practices by delivering counselling, auditing situations within companies and providing training on topics such as diversity management, diversity planning and dealing with discrimination disputes. In 2018, labels were issued to 17 companies. The next labels will be issued in the autumn of 2020.



# 3 Main challenges in relation to workplace discrimination

The data presented in the previous chapter demonstrate that a number of challenges clearly remain in tackling workplace discrimination. This section first gives an overview of the cross-cutting challenges identified, which can be considered to be relevant to all grounds of discrimination, and subsequently discusses some remaining issues linked to the specific grounds of discrimination.

## Cross-cutting challenges

A high degree of overlap was found among the key challenges remaining across all grounds of discrimination that are linked to tackling workplace discrimination. These can be classified as follows:

- the persistence of stereotypes
- low awareness of the rights and obligations on the part of employers and workers
- challenges with enforcement linked to:
  - unwillingness to make complaints/bring discrimination cases (due to fear of negative employment/career impact, lack of financial and practical support to bring cases, etc.)
  - difficulties in demonstrating discrimination (for example, accessing proof)
  - limited restitution (low financial sanctions or lack of access to/challenges related to reinstatement in cases of discrimination claims linked to dismissals)
  - low capacity among agencies responsible for enforcement
  - low capacity among social partners to implement measures and support discrimination cases (increasingly since the implementation of austerity measures)
- shortcomings in the implementation of legislation and policies to tackle discrimination, such as:
  - insufficient or inadequate design of – and access to – targeted active labour market policy measures for disadvantaged groups also facing discrimination
  - lack of emphasis on policy action regarding the benefits of a diverse workforce
- limited evidence base on trend developments in workplace discrimination on different grounds

## Challenges relating to different grounds of discrimination

In addition, a number of remaining challenges were highlighted, linked to specific forms of discrimination, which are summarised below.

### Age

For older workers, discrimination is often linked to stereotypes related to the perceived higher likelihood of older workers taking time off sick and their perceived inability or unwillingness to learn new skills and adapt to changing workplace tasks and situations. In countries with highly seniority-based pay systems (for example, Austria and Belgium), the perceived higher cost of recruiting older workers can also act as an obstacle to effective labour market re-integration. Examples of case law reviewed in this report also demonstrate that discrimination based on such attitudes and perceptions continues to play a role in the difficulties experienced by older workers in obtaining new employment once unemployed. In a number of countries, it is highlighted that the extent to which older workers experience such challenges in the recruitment process is linked to economic cycles and tends to diminish in a buoyant economy.

Stereotypes can also impact on younger workers, who are perceived as lacking the experience and appropriate skills for the workplace.

In Hungary, a change in the taxation system, which means that employing pensioners in the private sector is exempt from taxes and duties (with the exception of personal income tax) has further disadvantaged older workers of pre-pension age, as it is now more financially advantageous for employers to recruit pensioners rather than older individuals of pre-pension age.

Other age-related challenges include:

- more limited access to (in-work) training opportunities for older workers due to the stereotypical attitudes of employers and workers themselves
- discriminatory selection processes for redundancy, leading to older workers being more likely to lose their jobs
- lack of clarity among employers on the criteria that can be used to determine selection for redundancy or wage-setting systems



- lack of employer and public policy support for internal and external job-to-job transitions for older workers
- low emphasis on lifecycle approach to support work ability (for example, actions to ensure protection of safety and health, ongoing access to training to avoid skills obsolescence and ongoing workforce engagement)
- limited access to material and immaterial workplace adaptation for older workers, who are more likely to be affected by chronic diseases
- lack of access to flexible working practices for older workers, particularly those with caring responsibilities
- limited access to gradual transitions to retirement
- difficulties in overcoming 'early retirement culture' (for both employers and workers)
- lack of access to quality employment contracts for young workers

## Disability

Remaining challenges linked to this grounds of discrimination can be summarised as follows:

- lack of dissuasive sanctions for employers not respecting quotas for the employment of persons with disabilities (where such quotas are in place) and the absence of quotas in the private sector; lack of a direct link between fines linked to the non-observance of quotas and funding for adaptation measures
- lack of access to quality education, which subsequently impacts access to the labour market
- discrimination at recruitment stage linked to the perceived costs of workplace adaptation (and lack of employer access to public support for adaptations)
- low levels of access to material and immaterial workplace adaptation (including spatial flexibility)
- lack of government funding (or of knowledge of such funding) for workplace adaptation
- lack of knowledge and understanding of the concept of 'reasonable accommodation'
- inadequately developed reintegration systems for returning to work following medical absence
- lack of synergies/transitions between sheltered employment and employment in the open labour market
- lack of access to employment opportunities in sheltered employment
- lack of support measures targeted to the needs of specific health conditions
- lack of knowledge of different conditions and misconceptions about limitations to work ability associated with them
- remaining issues with physical access to workplaces
- low availability of accessible transport systems
- issues around assessments of 'medical fitness' to work and perform specific tasks

## Race and ethnicity

Discrimination linked to race and ethnicity remain a challenge and have become a growing concern. The following aspects have been identified as issues to be addressed, not all of which are directly linked to discrimination:

- particular discrimination faced by individuals from the Roma community (linked to stereotypes, lack of access to education and knock-on effects on access to quality employment)
- low awareness of what constitutes discrimination on the basis of race/ethnicity in ethnically relatively uniform societies
- discrimination in recruitment (based on early exclusion from recruitment processes for individuals with 'foreign sounding' names or those with addresses known to have a high concentration of families from specific ethnic backgrounds)
- lack of provisions for the delivery of language skills – for example, for asylum seekers
- difficulties in obtaining recognition of qualifications gained in other countries and validation of skills and competencies
- lack of information on where to seek assistance for refugees and asylum seekers facing discrimination
- provisions barring asylum seekers from working
- lack of clarity on rules prohibiting access to employment for asylum seekers
- impact of the broader political/societal environment contributing to more xenophobic attitudes in the workplace

## Religion or belief

Religion or belief is rarely mentioned as a separate challenge, but rather, it is intermingled with racial discrimination. Issues are identified in some countries and sectors regarding the wearing of religious dress/symbols and observance of religious customs in the workplace, as already reflected in the review of legislation and case law in Chapter 2.



## Sexual orientation and gender identity

While homophobia persists in a number of countries, the main challenges identified relate to a continued lack of understanding and recognition linked to gender identity. These challenges can be summarised as follows:

- continued prevalence of homophobia and lack of understanding of issues regarding gender identity, leading to workers feeling unwilling or unable to disclose and discuss their private life in the workplace
- lack of understanding and support for the requirements of individuals in the process of transitioning
- the ‘hidden’ nature of this form of discrimination, as many LGBTI individuals choose not to disclose and are therefore unable to live the full expression of their identity

- the requirement for sensitisation and awareness-raising
- lack of legal recognition of individuals who have changed gender (in Cyprus, for example) leading to exclusion from certain rights and protections
- gender identity not being treated as a separate grounds for discrimination (in Lithuania, for example), and as a result such individuals being particularly vulnerable in employment relationships
- barriers for transgender people to access some professions, such as the legal profession

Against the background of persistent workplace discrimination, despite the presence of a strong legal acquis, the next chapter explores the measures taken by the social partners – trade unions and employer organisations – to help address workplace discrimination within their national and organisational context.



## 4 Actions of social partners to tackle workplace discrimination

The mega-trends of globalisation and technological, demographic and environmental change are impacting on European societies and shaping socio-economic developments and the accompanying political debate. These trends are already impacting – and have the potential to have even more of a substantial influence – on developments contributing to the emergence of discrimination in society and in the workplace. To give just one example, the last five years have demonstrated the impact of geopolitical developments on global migration flows, which in turn have shaped the political debate in many European countries and contributed to a rise in Islamophobia and discrimination based on race, ethnicity and religious beliefs. Without drastic policy intervention, it is clear that climate change will trigger significant global migration flows in the future, triggering distributional issues, which have in the past been seen to impact on levels of tolerance within society.

Discrimination in society is unfortunately an enduring issue, but in recent years, increasingly polarised political debate, the rise of ‘new nationalism’, right-wing movements and anti-migration attitudes have given increased relevance to social partner actions to tackle discrimination, both in the workplace and in wider society. While it cannot be denied that xenophobic sentiments and discriminatory behaviour are also an issue among employers, workers and workers’ organisations, arguments in favour of a diverse society hold sway for ethical and economic reasons.

As mentioned earlier, the Employment Equality Directive and the Race Equality Directive call on Member States to ‘take adequate measures to promote dialogue between the social partners, with a view to fostering equal treatment’. Both trade unions and employers arguably have a common interest in promoting a workplace free from discrimination. Although the first mission of trade unions is to protect and advance the interests of their members in the workplace, their role extends beyond the workplace, not least because advancements in working conditions affect workers’ living conditions and can thus have spill-over effects for society as a whole. Similarly, equal treatment and non-discrimination, both in the workplace and beyond, is one of the ideological principles underpinning the work of the trade union movement.

However, it is also recognised by trade unions themselves that as discrimination is embedded in all structures of society, so it is within the trade union movement, leading an increasing number of unions to

target – among other things – right-wing ideas and racism that can also be found in their own membership. Discrimination harms companies and societies in different ways: for instance, it can impact negatively on workers’ performance and place barriers in the labour market that can limit access to skills and human capital. The lack of diversity in an organisation also means that companies fail to reflect their customers, damaging economic success. Thus, the so-called ‘business case’ for non-discrimination has also been made.

### National social partner initiatives

The evidence shows that the prevalence of workplace discrimination remains high. This section looks at the extent to which this issue is being prioritised by social partners at the national level. It begins by exploring whether workplace discrimination on different grounds is on the radar of the social partners. It then goes on to look at the nature and type of measures introduced by trade union and employer organisations to address workplace discrimination.

When considering this information, it is important to note a number of factors that influenced the extent to which relevant actions have been identified.

- The account is based on the views and initiatives reported by the Network of Eurofound Correspondents, based on a review of literature, web-based resources and interviews with peak-level social partner organisations.
- The information request focused on the views of – and initiatives implemented by – social partners at the cross-sectoral-level. This means that, to a certain extent, the number of workplace-focused practical actions and agreements is limited, since at this level the direct link with day-to-day workplace issues is more limited than at the level of the sectoral social partners. On the other hand, at peak level, the level of involvement in the national policy discourse tends to be greater. Since there is no cross-industry collective bargaining in many Member States, this limits the extent to which collective agreements addressing non-discrimination issues have been identified. It should be noted that some experts have highlighted relevant sector-level collective agreements. These have been included in the account below, but this should not be interpreted to mean that such sectoral agreements do not exist in other countries, as they may simply not have been reported (if, for example, the sectoral level was not the focus of the information request).

- It was emphasised in a number of countries that the focus of social partner action is on promoting diversity and equal treatment more generally, rather than addressing individual grounds of discrimination. As a result, a specific category of ‘general’ initiatives has been identified, taking this holistic approach and emphasising the importance of accounting for multiple discrimination/intersectionality.
- In some countries, the level of activity in this area by cross-industry social partners is based on their assessment of the quality of existing legislation and the levels of complaints linked to workplace discrimination raised through relevant channels. Where legislation is perceived to be of good quality and the number of complaints is low, the extent to which social partners engage with this issue can also be limited, despite the fact that the number of formal complaints lodged may not in fact reflect the actual experience of workplace discrimination. As previously indicated, a low number of complaints can be due to several factors: lack of awareness of the law, reluctance to come forward, fear of negative repercussions, lack of resources or practical support to pursue cases, absence of dissuasive sanctions or the fact that such issues are addressed directly at workplace level.
- The level of activity by cross-sectoral social partners can also be linked to the overall level of policy and public debate on the issue, which varies significantly from country to country and can ebb and flow according to the legislative agenda, the existence of high-profile cases or other factors such as economic and demographic trends (including migration).
- Lack of capacity can also play a role, as social partners tend to focus their attention on what is considered to be their ‘core business’ (depending on the Member State, this can be involvement in collective bargaining and/or the broader policymaking process).
- Based on the answers to the question of whether the issue of workplace discrimination is high on the agenda of the cross-industry social partners, it is difficult to assess clearly whether this applies to both trade unions and employer organisations. Therefore, when discussing whether the issue is on the radar of the social partners, no distinction is made here between employer and trade union organisations. It is, however, notable in the presentation of social partner actions that there is a significantly higher share of trade union activities in this area. This could be due to the fact that such actions are more likely to be implemented at individual employer level, rather than by employer organisations.

### Grounds of workplace discrimination on the radar of cross-sectoral social partners

The box below provides an explanation of how countries were ranked with regard to the question of the extent to which the issue is on the radar of the social partners.

#### Box 1: Criteria used for ranking importance of workplace discrimination for social partners

The issue is considered to be high on the agenda of social partners at national level if the issue is discussed in the specific context of the need to address workplace discrimination, both at cross-sectoral and other levels.

Workplace discrimination is seen to be on the radar of the social partners ‘to some extent’ if relevant actions are discussed, but in a different context – for example, the need to integrate older people and people with disabilities is discussed in the context of labour shortages. The same applies to measures that are only indirectly linked to addressing workplace discrimination (collective agreements providing for additional leave days for workers with disabilities or older workers, for example). Other reasons for rating the issue as only addressed ‘to some extent’ include:

- the number of initiatives implemented are very limited or have a limited impact (as they are focused on just a few employers)
- emphasis is placed on the issue for a limited period of time, for example in the context of a relevant legislative initiative, with few actions having taken place since, despite the persistence of instances of workplace discrimination

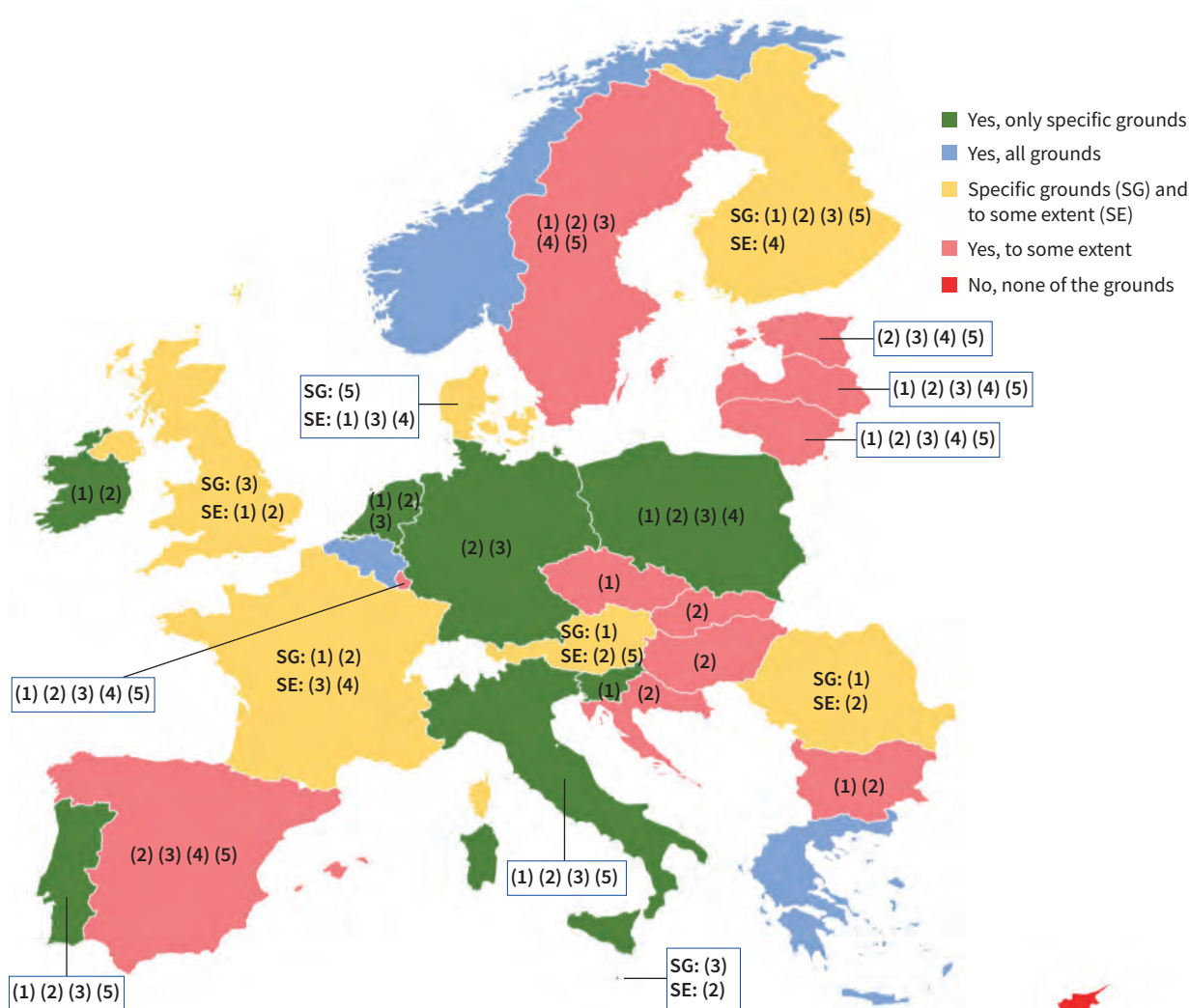
Bearing these provisos and rating criteria in mind, Figure 4 demonstrates that there is only one country (Cyprus) where workplace discrimination was not considered to be on the radar of the social partners. In three countries (Belgium, Greece and Norway), all grounds of discrimination were seen to be high on the agenda of the social partners. In Finland, Latvia, Lithuania and Sweden, all grounds of discrimination were considered to be debated to varying extents.

In a number of countries, it is shown that diversity in general is being addressed by the social partners, with no specific policies or initiatives on particular individual grounds of discrimination (Finland, for example). At least four grounds of discrimination are actively debated in Portugal (age, disability, race/ethnicity and sexual orientation/gender identity), the UK (age, disability, race/ethnicity and sexual orientation/gender identity), Estonia (disability, race/ethnicity,

religion/belief and sexual orientation/gender identity) and Poland (age, disability, race/ethnicity and religion/belief). In all other countries, either age or disability discrimination (or both) are considered to be high on the agenda. Thus, overall, age and disability discrimination are most frequently seen to be on the radar of the social partners at cross-industry level. This was the case in 24 of the 29 countries with regards to disability discrimination and 18 of the 29 countries in relation to age discrimination. This figure drops to 17 out of 29 in relation to discrimination on the basis of race/ethnicity, 13 out of 29 with regard to discrimination on the grounds of religion/belief and 12 out of 29 in relation to sexual orientation/gender identity.

Where discrimination on the grounds of religion/belief is being addressed, the focus tends to be on questions around the wearing of religious dress and observance of religious customs in the workplace.

**Figure 4: Different grounds of discrimination on the radar of the social partners**



**Notes:** N=29. (1) Age; (2) Disability; (3) Race-Ethnicity; (4) Religion-Belief; (5) Sexual orientation-Gender identity.

**Source:** Author, based on contributions received from the Network of Eurofound Correspondents, 2020

The issue of discrimination on the basis of sexual orientation/gender identity has risen to greater prominence in recent years in the broader policy debate (in relation to same-sex marriage and the right of same-sex couples, in particular) and appears to a lesser extent on the agenda of the social partners, partly because this is still considered a private matter, which in and of itself poses important challenges, as indicated earlier in Chapter 1.

## Prevalence and types of activity

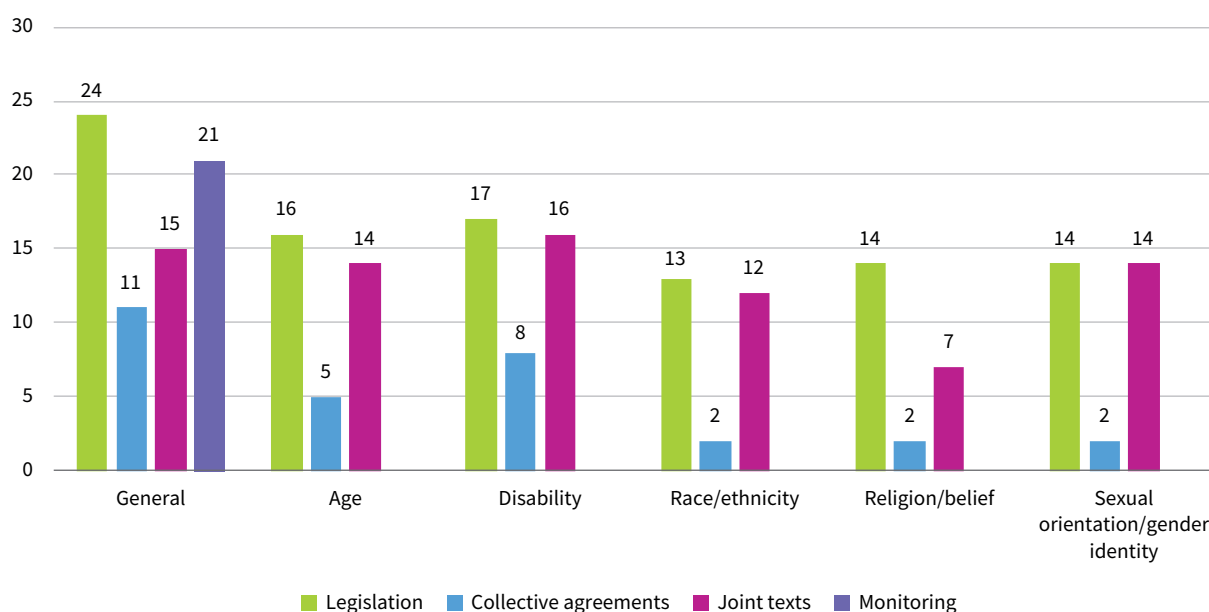
Social partner initiatives aimed at tackling workplace discrimination on the grounds covered by this report can be classified into different types of measures based on their various fields of intervention and activity. They are presented here in relation to the following typology.

- influencing legislation and policy (either through their involvement in tripartite decision-making bodies, bipartite or unilateral policy inputs or lobbying)
- collective agreements (the focus here is on the cross-sectoral level, although some sectoral agreements are also mentioned)
- drafting of joint texts/projects/activities (the issuing of joint or unilateral guidance/codes of practice or other texts, the implementation of joint or unilateral projects or other activities, gathering and sharing of good practice examples, and so on)

- monitoring of workplace practices and direct support (such as involvement in the monitoring of cases of discrimination raised at the workplace and support in complaints brought forward)

As shown in Figure 5, social partners are frequently involved in the development of policy and legislation, as well as in lobbying on related matters, although the level of influence and the quality of this involvement varies from country to country. The structure, frequency and quality of social partner involvement in decision-making is very much impacted by historically determined national industrial relations and policymaking structures. The extent of their impact can fluctuate, depending on the degree of overlap between the agendas of political parties in power and the priorities of trade union and employer organisations. When looking in more detail at the countries where social partners were seen to have participated (to some degree) in the legislative and policy debate, it must be borne in mind that for some countries, there have been no relevant legislative or policy initiatives relating to different grounds of discrimination in the past five years. Therefore, where experts indicate that social partners are normally involved in consultations around legislative processes (even if there has not been any legislation in the last five years), this is included under the 'general' activities. When looking at the specific grounds of discrimination, only those countries where there have been recent legislative changes in which social partners have been involved are included. In a limited number of cases, such legislative changes were implemented without consulting the social partners.

Figure 5: Different types of social partner activities to tackle workplace discrimination (number of countries)



Source: Author, based on contributions received from the Network of Eurofound Correspondents, 2020



In 21 countries, social partners – and trade unions in particular – play a role in monitoring activities linked to workplace discrimination. This largely relates to providing assistance in the context of complaints, either in mediation or in providing advice or direct support (where possible) in court proceedings. Employer organisations can also play a role in providing advice and supporting their members in such instances, but this is the case in fewer countries. In France and Ireland, for instance, employer organisations play a particular role in monitoring discrimination claims (Ireland) or measuring perceptions in equal opportunities and equal treatment at the workplace (France). However, overall, the role of social partners in the systematic monitoring of discrimination cases and claims is limited. This task tends to be carried out by an independent or quasi-governmental equality body, ombudsman, or another agency.

In almost all EU countries and the UK (27 out of 28), social partners were also active in drafting texts and guidance, carrying out projects and implementing other actions (Slovakia being the exception). The highest level of activity was reported in relation to guidance covering all forms of discrimination, followed by actions focused on disability discrimination and then on discrimination on the grounds of age and sexual orientation.

Somewhat fewer initiatives targeted discrimination on the grounds of race and ethnicity and only seven countries reported actions to tackle discrimination based on religion or belief.

Such activities can either be joint or unilateral, but in fact, 56% of actions were carried out by trade unions alone (or in collaboration with other partners, such as NGOs), 31% were joint initiatives and around one fifth were solely planned and implemented by employers.

Table 4 provides a breakdown of relevant actions implemented by social partners in different countries, classified according to different forms of discrimination. As previously indicated, in a significant number of cases, these activities address all areas of discrimination, rather than being targeted towards specific forms of discrimination. This is particularly true for monitoring activities linked to social partner support for members in cases of dispute or complaints, which are available in relation to all grounds of discrimination and are therefore only mentioned in the category of measures covering all or multiple grounds of discrimination. The table uses italics to indicate countries with unilateral trade union initiatives and bold for countries with employer measures. Countries that are underlined have both unilateral trade union and employer initiatives

**Table 4: Actions by cross-sectoral social partners aimed at tackling workplace discrimination, 2015–2020**

|  | Influencing legislation and policy   | Collective agreements                      | Joint texts/projects  | Monitoring of workplace practices   |
|--|--|--|---|---|
| <b>Covering all/multiple grounds of discrimination</b> |  |  |   |   |
| <b>Yes</b>   | BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LV, MT, NL, PL, PT, RO, SI, SK, UK | AT, BE, BG, CZ, DE, EL, ES, FR, LT, PT, SE | AT, BE, BG, CZ, DE, EL, ES, FI, FR, LV, <i>MT</i> , NL, <b>PL</b> , SE, <i>SI</i>   | <i>AT, BE, BG, CY, CZ, DE, DK, EL, ES, FI, <u>FR</u>, HR, HU, <u>IE</u>, LT, LV, PT, RO, SE, SI, UK</i> |
| <b>Age</b>   |  |  |   |   |
| <b>Yes</b>   | BE, <i>BG</i> , DK, EE, EL, ES, FI, <i>HR</i> , IE, IT, LT, NL, RO, SE, SI, SK, UK                 | AT, DK, ES, FR, IT                         | AT, DE, DK, EE, <u>ES</u> , <b>FR</b> , <i>HR</i> , HU, IE, PL, <i>PT</i> , RO, <i>SI</i> , <u>UK</u>   |   |
| <b>Disability</b>                                      |  |  |   |   |
| <b>Yes</b>   | BE, BG, CZ, EL, ES, FI, HR, HU, LT, MT, NL, PT, RO, SE, SI, SK, UK                                 | AT, BG, CY, EL, ES, FR, IT, RO             | AT, <b>CY</b> , CZ, <i>DE</i> , <b>EE</b> , <i>EL</i> , <u>ES</u> , <b>HR</b> , HU, IE, IT, LU, <b>MT</b> , <b>PL</b> , <i>PT</i> , <i>UK</i> |   |
| <b>Race/Ethnicity</b>                                  |  |  |   |   |
| <b>Yes</b>   | BE, EL, ES, FI, FR, HU, LT, LV, NL, PT, RO, SE, SI   | ES, IT                                     | <i>AT, DE, DK, EL, ES, FI, FR, HR, HU, MT, PL, UK</i>   |   |
| <b>Religion/Belief</b>                                 |  |  |   |   |
| <b>Yes</b>   | BE, EL, FI, FR, HR, IE, LT, LV, NL, PT, RO, SE, SI, UK   | EL, ES                                     | <i>AT, BE, <u>ES</u>, FR, HR, PT, UK</i>  |   |
| <b>Sexual orientation/Gender identity</b>              |  |  |   |   |
| <b>Yes</b>   | BE, DE, ES, FI, FR, HU, MT, NL, PT, RO, SE, SI, SK, UK   | ES, HR                                     | <i>AT, <b>BE</b>, <b>CZ</b>, <i>DE</i>, <i>DK</i>, <i>ES</i>, <i>FI</i>, <b>FR</b>, HR, HU, <i>LT</i>, <i>NL</i>, <i>PT</i>, <i>UK</i></i>    |   |

**Notes:** N=28. *Italics indicate that these are unilateral initiatives: Bold italics indicate unilateral employer initiatives and simple italics indicate trade union initiatives. Underlining indicates both unilateral trade union and employer initiatives.*

**Source:** Author, based on contributions received from the Network of Eurofound Correspondents, 2020

(but no joint actions). Countries which are not underlined or italicised have both joint and unilateral initiatives. As indicated above, in relation to ‘influencing legislation and policy’, insufficient information is available to distinguish between the level of involvement of employer and trade union organisations. Collective agreements are – by their very nature – necessarily joint initiatives.

Joint texts and actions are most commonly adopted and implemented with regard to guidance or statements relating to all forms of discrimination. Joint activities are also relatively commonly implemented in order to address age discrimination. Most actions targeting workplace discrimination on the grounds of race, religion and sexual orientation are implemented unilaterally. The highest number of unilateral employer actions target disability discrimination.

The following sub-sections discuss social partner activities linked to three areas: influencing legislation and policy, collective agreements, and the preparation of joint (or unilateral) texts, guidance or projects aimed at addressing workplace discrimination. The analysis starts with ‘general’ measures addressing all grounds of discrimination and then covers those focused on discrimination related to age, disability, race or ethnicity, religion or belief, sexual orientation and gender identity.

## All grounds of discrimination

### Influencing legislation and policy

As indicated above, in the majority of Member States, social partners are consulted in relation to proposed changes to anti-discrimination legislation, though the level and quality of such consultations varies significantly and is impacted by historically determined national industrial relations and policymaking structures. The extent of their impact can vary,

depending on the degree of overlap between the agendas of political parties in power and the priorities of trade union and employer organisations.

An assessment of the contributions of peak-level social partners to national employment, social and economic reforms carried out by Eurofound in 2019 is summarised in Table 5. While this did not specifically focus on non-discrimination policies, it provides an insight into patterns of involvement in different countries. Unless otherwise indicated, the assessment applies to both trade union and employer organisations (Eurofound, 2019c).

### Collective agreements

In addition to activities seeking to influence policymaking, collective agreements are arguably the most effective way in which social partner organisations can influence workplace practice. The level of impact of such agreements obviously depends not only on their content, but also on industrial relations frameworks and organisational density, which affect the share of employers and workers covered by such provisions.

The number of collective agreements which include a focus on non-discrimination provisions is relatively low. As mentioned earlier, this is partly due to the fact that the information request focused on collective agreements negotiated at cross-industry level. The conclusion of collective agreements at this level is relatively rare, in general, and examples of such agreements focusing specifically on discrimination are therefore all the more limited. Only Greece and Spain have national, cross-industry level collective agreements addressing the issue, with the Greek agreement particularly emphasising the importance of monitoring, while the Spanish agreement seeks to encourage inclusion of the topic within sectoral- and company-level agreements.

**Table 5: Level and nature of involvement of social partners in policymaking (with specific emphasis on European Semester process)**

| Extent of involvement      | Frequent and meaningful  | Formal, not meaningful               |
|----------------------------|--|--------------------------------------|
| <b>Full involvement</b>    | BE, BG (employer organisation), DK, FI, FR, LU, MT, SK   | EE                                   |
| <b>Partial involvement</b> | AT*, BE (trade union), CY, CZ, DE, HR (employer organisation), IE, LT, LV, NL, PT, SE, SI and the UK (trade union) | EL, ES (trade union), HU, IT, PL, RO |

**Note:** \*Assessment relates to the period before 2018.

**Source:** Eurofound (2019c)

## Box 2: National cross-sectoral collective agreements on combating workplace discrimination on all grounds

**Greece:** Addendum I in the National General Collective Agreement 2017 on combating discrimination in the workplace, as well as the express reference to the new National General Collective Agreement, acknowledges the need for new actions in order to raise workplace awareness with regard to diversity and to foster a multiracial and interdependent modern society. With a view to contributing to an effective fight against racism, xenophobia and intolerance in the workplace, the signatories stress the need to record incidents of racist violence and encourage their reporting to the Racist Violence Reporting Network, which was established by the United Nations High Commissioner for Human Rights and the National Commission on Human Rights.

**Spain:** The Third Agreement for Employment and Collective Bargaining 2015, 2016 and 2017 – signed by the Trade Union Confederation of Workers' Commissions (CCOO), the UGT (General Workers' Confederation), the Spanish Confederation of Business Organizations (CEOE) and the Spanish Confederation of Small and Medium Enterprises (CEPYME) – commits its signatories to contribute to the establishment of non-discriminatory recruitment through collective bargaining practices and employment conditions in relation to all grounds. The aim of the agreement with regard to equal treatment is that 'the establishment of shared criteria and guidelines makes it possible to face collective bargaining processes in better conditions in the current economic and employment situation'.

All other country examples indicated in Table 5 (that is, from Austria, Belgium, Bulgaria, Czechia, France, Germany, Lithuania, Portugal and Sweden) are sectoral collective agreements. As information on the content of sectoral-level collective agreements is difficult to come by in countries without a central registry, and information on sectoral agreements was not specifically requested as part of this information collection exercise, this list cannot be considered to be exhaustive. Only Czechia provided information about the share of collective agreements with relevant provisions. Based on a registry of collective agreements established by the Ministry of Labour in 1993, 18% of higher-level collective agreements and 33% of company-level collective

agreements explicitly prohibit discrimination on different grounds.

Where sectoral collective agreements include provisions on this issue, they tend to incorporate the following:

- stress that discrimination on all grounds is to be prevented
- refer to the statutory provisions outlawing discrimination on different grounds
- underline the rules regarding the prevention of harassment at work

A number of examples of such agreements are provided in Box 3.

## Box 3: National sectoral collective agreements addressing discrimination on all grounds

**Belgium:** At regional level, the Flemish Parliament asked the Flemish Government to 'call on the social partners to take initiatives to combat discrimination on the labour market', in addition to the federal social dialogue within the framework of the Flemish social dialogue and, in particular, in the sector covenants. There were 35 sector covenants in 2018–2019. In this context, it was recommended that a system of self-regulation be developed, including the use of targeted sampling as an awareness-raising tool, especially if this approach is appropriate in the sector. Sector covenants are collaboration agreements between sectors and the government of Flanders, committing all social partners of a sector to targets in the field of increasing diversity and non-discrimination (among other things). When sector covenants are approved by the Flemish government (for a period of 2–3 years), the sector receives funding for the recruitment of sectoral consultants (diversity consultants) who assist the social partners in the implementation of their sectoral plan. All sector covenants are monitored and evaluated annually by the Flemish government. In the implementation of the sectoral covenant, training organisation for the wood sector Woodwize and 20 other sectors have drawn up an intersectoral manual on a non-discrimination code of conduct, aimed at providing guidelines for organisations on how to develop their non-discrimination policy and draw up a code of conduct. The initiative was introduced in 2019 and supported with regional funds.

In 2011, a collective agreement was negotiated in the temporary employment sector which includes a code of conduct to prevent discrimination. This code of conduct imposes specific actions on temporary employment agencies, such as investing in awareness training for employees on discrimination and appointing a contact person for agency employees to inform on non-discriminatory regulations in cases of discrimination and to report cases of noncompliance to the competent authorities.

**France:** The Employers' Organisation of the Social Economy (USGERES) concluded a collective agreement on gender equality and discrimination (all grounds of discrimination) on 23 May 2011. In this framework, social partners developed a handbook focusing on preventing discrimination to raise awareness within companies in the sectors covered.

**Portugal:** Collective agreements in the hospitality, catering and tourism sectors, as well as in the utilities sector and for driving schools, include employer obligations to prevent discrimination and harassment at work.

### Joint texts/projects/other activities

Fifteen countries report the presence of social partner texts, projects and other activities covering all grounds of discrimination. As indicated in Box 3 above, many of these are joint activities by trade unions and employer organisations. They primarily include awareness-raising actions, the development of joint guidelines or policy papers, as well as good practice sharing with the goal of inspiring sectoral- or company-level practices to prevent and combat workplace discrimination and to address these issues where they arise. Such joint campaigns have been implemented in Belgium (through radio spots and other multimedia activities) and Bulgaria (in the form of seminars). A joint policy paper on social partner actions aimed at supporting the implementation of anti-discrimination legislation has been issued by the five national social partners representing employees (GSEE) and employers (SEV, GSEVEE, ESEE, SETE) in Greece.

Joint guidelines for the drafting of company-level diversity plans have been issued by cross-industry social partners in Finland, the Netherlands and Sweden.

In France, diversity committees have to be set up in companies with more than 50 employees. These committees meet annually (involving all representative unions) to decide on collective actions against discrimination at company level. The committee is also responsible for monitoring the company's performance on diversity.

Another area of joint activity is the acknowledgement and sharing of good practices in tackling workplace discrimination. In Austria, cross-industry social partners have been involved in devising, participating in and adjudicating on entries to the Meritus prize for diversity, which is awarded bi-annually. In Spain, events for sharing good practices have been organised at regional level.

Among the actions implemented by trade unions to address all grounds of discrimination are studies identifying and monitoring the experience of workplace discrimination (Austria and Belgium) and the publication of legal and broader good practice guidance (Austria, Belgium and Bulgaria).

New learning platforms are also being used to communicate the importance of non-discriminatory workplace practices, such as the use of e-learning tools jointly developed by the trade unions Kommunal and Vision in Sweden: 'En arbetsplats för alla' (A workplace for all people).

Employer organisations are also active in this area, including through monitoring activities and the issuing of guidance for the development of company-level action plans. Box 4 presents examples of employer activities aimed at addressing all grounds of discrimination.

## Box 4: Awareness-raising and good practice initiatives tackling all grounds of discrimination

**Belgium:** Employers within the service voucher sector – a scheme created to boost the services sector by promoting the uptake of personal and household services – started to run mystery calls following an agreement concluded in March 2017 between employer organisations in the sector and the Flemish government. As part of a plan to carry out actions on non-discrimination and to ensure workplace diversity, ‘mystery calls’ were introduced to encourage members to pursue a policy that counteracts discriminatory questions from customers. The mystery calls are part of a broader policy of self-regulation and are, first and foremost, aimed at raising awareness. In the event of repeated evidence of discrimination being detected, the results are communicated to the Supervision and Enforcement Department of the Department of Work and Social Economy. As of 1 January 2017, a proportional sanction instrument was introduced. In addition to the withdrawal of recognition, criminal and administrative sanctions are also imposed.

**Finland:** In 2018, the Confederation of Finnish Industries (EK) started a campaign entitled ‘Work does not discriminate’, seeking to raise awareness of discrimination by engaging with employers. Companies can register on the campaign website and commit to non-discrimination in the workplace. They can use the tools provided on the website, but are not required to deliver any information on actions taken. So far 400 companies have taken part in this campaign.

**Poland:** In 2019, the Foundation Cooperation Fund (Fundacja Fundusz Współpracy) published a guide on equal opportunities in companies, providing information on good practices for employers. Three of them focus on discrimination, in particular. They include setting up a procedure to prevent harassment and discrimination, providing training to recruiters on non-discriminatory hiring practices, ensuring that job ads are written in non-discriminatory language and the inclusion of issues of equality and non-discrimination in onboarding training. The guide is complemented by a series of training videos for managers, employers and unions, available on the ‘equal at work’ platform.

## Age discrimination

### Influencing legislation and policy

A number of trade unions have been involved in championing the abolition of compulsory retirement ages (in Bulgaria and Ireland, for example). In Croatia, the Union of Autonomous Trade Unions of Croatia collaborated with Youth NGOs in lobbying to limit the use of an initiative for professional training without commencing employment (PTCE), favouring instead the re-introduction of internships. In Czechia, social partners contributed to the development of the National Action Plan for the Promotion of Positive Ageing (2013–2017) and the National Action Programme for Ageing (2008–2012), which included measures aimed at addressing age discrimination in the workplace. Trade unions in the Netherlands were particularly involved in developing action plans supporting the recruitment of older workers. In Spain, the UGT campaigned for the abolition of a labour reform allowing for the fair dismissal of workers after several medically certified periods of sick leave. The CCOO campaigned to implement workplace reductions for primary and secondary teachers over the age of 55.

### Collective agreements

The presence of collective agreements addressing the issue of age discrimination was only indicated in five countries. Rather than addressing age discrimination as

such, the focus of such agreements tends to be measures allowing for the specific treatment of older workers: for instance, with regard to offering additional leave days or reduced working hours (particularly in the run-up to retirement). In Denmark, a collective agreement in the industrial/metalworking sector provides the option for agreements on the (voluntary) reduction of working hours for older workers five years prior to retirement. In Spain, a 2019 collective agreement in the private healthcare sector of the Balearic Islands signed by the Federation of Employees of Public Services of the UGT (FESP-UGT), Health Services Federation of the CCOO (FSS-CCOO), Health Technicians Union (USAE), Nursing Union (SATSE) and the Balearic Union of Health Entities (UBES) recognises the occupational right of personnel older than 55 years to avoid night shifts. An agreement in the concrete derivatives sector of Madrid, signed in 2018 by the National Association of Manufacturers of Prepared Concrete (ANEFHOP), the Association of manufacturers of concrete derivatives of Madrid, the European Federation of the Precast Concrete Industry (BIBM), the General Union of Construction and Agriculture Workers (UGT-FICA) and the CCOO, ensures that workers older than 55 years are prioritised for workplaces of lowest effort.

A number of agreements highlighted in Box 5 focus more specifically on supporting the recruitment of older workers through various means. Similar agreements are also in place in France.



## Box 5: Collective agreements to encourage the recruitment of older workers

**Austria:** In the Austrian retail sector, the social partners – Union of Private Sector Employees, Graphical Workers and Journalists (GPA-djp) and the Federal Economic Chamber (WKO) sectoral section commerce – agreed a new collective agreement for over 400,000 white-collar workers in July 2017. The agreement comprises a uniform wage table for the whole territory of Austria and raises the starting wage for qualified employees (with commercial training) to €1,600 (gross) per month, which should lead to a fairer wage distribution over the life course and to the elimination of age discrimination. The new agreement is to be implemented by December 2021.

**Spain:** The Third Agreement for Employment and Collective Bargaining – signed by the CCOO, the UGT, CEOE and CEPYME – commits members to promote the employment of workers over the age of 45. The third national collective agreement of the industry, technology and services of the metal sector (2019) – signed by the Spanish Confederation of Metal Business Organisations (Confemetal), the CCOO Industry and the Federation of Industry, Construction and Agriculture of the UGT (FICA-UGT) – establishes neutral criteria in recruitment, promotion and work processes and environments, in order to avoid age discrimination. The agreement also obliges companies to design diversity plans to support integration and prevent age discrimination.

In Italy, the interconfederal agreement of 9 March 2018 (the 'Factory Pact') – between Confindustria and the Italian General Confederation of Labour (CGIL), the Italian Confederation of Workers' Trade Unions (CISL) and the Italian Labour Union (UIL) – includes a section (6b) on training and a specific focus on lifelong learning to support the adaptation of competencies to accompany the different stages of working life and technological and organisational innovations.

### Joint texts/projects/other activities

Joint actions by social partners at Member State level have focused on two key areas: the implementation of the European autonomous cross-sectoral social partner agreement on active ageing and the inter-generational approach (for example, Estonia, Poland, Hungary) and the issuing of joint guidance and knowledge sharing. In Ireland, the social partners negotiated a Code of Practice on Working Longer with the government, aimed at encouraging employers to retain older

workers. In Romania, trade unions collaborated on a project on sustainable employment and effective internal and external transitions for older workers with unions in a number of other countries. In Austria, the social partners worked jointly on a project to establish a knowledge database for the age-appropriate re-organisation of work processes, using national and international examples.

Employer initiatives have focused on guidance relating to non-discriminatory recruitment practices (Austria) and guidance on health and safety issues in the workplace, with a particular focus on older workers (Spain). Box 7 highlights proposals for a Senior Index in France to allow for the monitoring of the performance of workplace practices to ensure the equal treatment of older workers.

Trade union initiatives have focused on the analysis of relevant case law and associated guidance (Austria and Romania).

## Box 6: Initiatives to boost policies to reduce discrimination and retain workers at work longer

**Norway:** The tripartite Centre for Senior Policy (SSP) seeks to provide, develop and disseminate knowledge and experience that will contribute to the increased participation of workers over the age of 50 in employment. The centre has focused on senior policies since 1990. The Integration Agreement was signed by all peak organisations in 2001 and renewed several times since. It also has a broader scope: it aims to keep more people in work for longer by implementing initiatives to reduce sickness absence and encourage the return to work after long-term absences, as well as increasing incentives for older workers to keep working, thus raising the average retirement age. The work of the SSP is linked to the goals of this agreement. Training of local trade union representatives aimed at uncovering discrimination on different grounds is provided by different trade unions.



## Box 7: Initiative aimed at assessing companies' policies towards older workers

**France:** On 10 September 2019, the National Association for HR Directors (ANDRH) proposed the creation of a 'Senior Index', along the lines of the Gender Equality Index. The latter consists of a self-assessment tool for companies, based on various criteria, that delivers a score out of 100. Companies that score below a certain number of points must take corrective measures to improve their score. The 'Senior Index' would take into account companies' performance in relation to indicators such as the turnover of older workers, access to gradual retirement measures, access to vocational training, the difference between the rate of sick leave taken by older workers and the average across the company and the rate of retirement after the statutory retirement age.

In two countries (Portugal and Slovenia), trade unions have emphasised the enhanced involvement of younger workers in union activities, with the goal of addressing some of the challenges linked to poor employment contracts and work quality facing many entrants to the labour market. In Slovenia, the trade union for young workers launched an initiative entitled 'decent work' that aimed to underline the importance of quality employment, decent wages and social protection in a labour market where non-standard forms of employment are increasingly common for younger workers.

### Disability discrimination

#### Influencing legislation and policy

In a number of countries, the social partners have been involved in the drafting of new or revised legislation (for example, in Finland and Spain) and policy priorities.

In Croatia, social partners were involved in the preparation of the new Act on vocational rehabilitation and employment of disabled persons (Text No. 3292). In Czechia, they were consulted on the National Plan for the Promotion of equal opportunities for persons with disabilities 2015–2020, approved by Government Resolution No. 385 of 25 May 2015.

#### Collective agreements

Several sectoral collective agreements include provisions providing for additional leave entitlements for workers with disabilities. For instance, a collective agreement for pre-school and school education in Bulgaria includes a provision granting additional annual leave days for non-teaching staff with disabilities. Specific provisions also govern the dismissal of workers with disabilities. In Germany, a specific worker representative for such workers must be consulted in these instances. Similarly, in the health sector in Romania, a collective agreement stipulates that consultation must take place prior to the dismissal of any worker with a disability.

## Box 8: Research, guidance and awareness-raising activities

**United Kingdom:** In 2014, the Trade Union Congress (TUC) produced a report, *Age immaterial: Women over 50 in the workplace* (TUC, 2014). This report addresses the challenges faced by older women in employment and provides a set of policy recommendations on aspects of discrimination. As well as charting trends in the participation of older women in the labour market, it covers issues such as precarious work, the gender pay gap, the challenges of combining care with working, flexible working, and age and sex discrimination. Examples of relevant case law illustrate the types of behaviours and treatment encountered in the workplace that could be viewed as discriminatory.

The trade union also launched a website and app entitled 'WorkSmart'. Intended as a career coach to help workers achieve their career ambitions, the tool also contains specific guidelines for non-discrimination and individual's rights and entitlements in recruitment and employment. It covers age discrimination, as well as other grounds. A series of questions orientate visitors to access further information on specific topics around equal treatment and non-discrimination.

## Box 9: Collective agreements on non-discriminatory recruitment and harassment of workers with disabilities

**Spain:** The third national collective agreement of the industry, technology and services of the metal sector (2019), signed by Confemetal, the CCOO of Industry and FICA-UGT, establishes neutral criteria in recruitment, promotion and work processes and environments, in order to avoid discrimination towards persons with disabilities. Also included is the obligation to prepare a relevant diversity plan.

The national collective agreement for the real estate sector (2019), signed by the Federation of Real Estate Employer Associations (FADEI), the State Federation of Health of Workers' Commissions (FES-CC.OO) and the Federation of Services, Mobility and Consumption of the UGT (FeSMC-UGT), and the national collective agreement for the radio-broadcasting sector (2019), signed by the Spanish Association of Commercial Broadcasting (AERC), FES-CC.OO and the FeSMC-UGT, specifically consider the harassment of people due to their disability as a very serious fault and hence a reason for dismissal.

In France, social partners negotiate collective agreements at sectoral or company level on integration and retention in the employment of people with disabilities. Such agreements must be made at least every four years in the framework of the compulsory negotiation on quality of life at work and gender equality.

In Italy, an industry-wide agreement for the banking sector was signed on 19 December 2019 by the Italian Banking Association (ABI) and the Autonomous Federation of Italian Bankers (FABI), the Italian Federation of Tertiary Services Networks (FIRST-CISL), the Italian Federation of Trade Union Insurance and Credit Workers of the Italian General Confederation of Labour (FISAC-CGIL), the Italian banks, insurance and tax collecting employees trade union affiliated to the Italian Labour Union (UILCA) and the trade union Falcisilcea-Sinsub or 'Unisin'. This agreement covers 'the inclusion and benefits for differently able persons'. Confirming their commitment to develop policies in favour of people with different abilities, the parties urge companies to promote the adoption of a 'disability friendly' organisation, including the removal of obstacles and architectural barriers and the installation of adequate workstations and support devices. As well as providing for specific roles in workplaces to address the issue of disability, such as the appointment of a disability manager, companies should also inform the workplace trade union about the measures taken and, if they undertake joint initiatives, about the progress of such initiatives.

In Czechia and Greece, collective agreements were highlighted addressing the working conditions of workers caring for individuals with disabilities.

### Joint texts/projects/other activities

Joint activities by cross-industry social partners to address workplace disability discrimination are being implemented in Austria, Hungary, Ireland and Luxembourg. In 2017, the Austrian Chamber for Workers and Employees (AK) and the Austrian Trade Union

Federation (ÖGB) published a guidebook (ÖGB and Arbeiterkammer, 2017) on equal treatment of persons with a disability. In Ireland, the Irish Congress of Trade Unions (ICTU) and the employer organisation Ibec (the Irish Business and Employers Confederation) developed a 'Workplace passport scheme', which requires workplaces to record information about reasonable adjustments and ensure it is regularly updated and adapted to the needs of the individual. In Luxembourg, a 'Common Charter to promote equal opportunity in the labour market for persons with disabilities' was signed by the cross-industry social partners in 2015. In 2010, the Salva Vita Foundation in Hungary introduced the Disability Friendly Workplace Awards to support job matching between people with disabilities and 'open-minded' employers. Each year, the award is presented jointly by the Ministry of Human Resources, the American Chamber of Commerce in Hungary, the Hungarian Partner of the European Foundation for Quality Management (EFQM) and the Salva Vita Foundation, to employers who meet the eligibility criteria. Disability-friendly workplace recognition is based on continuous improvement. The employers who are using the Disability Friendly Workplace logo are examined in relation to the concept developed by the Excellence Model of the EFQM. Social partners are involved in the award process.

Joint projects implemented in Estonia, Croatia and Luxembourg seek to raise awareness, highlight good practice and prevent discrimination in the recruitment of persons with disabilities.

Trade union activities have focused on issuing guidance (Greece, Portugal, Spain and the UK), providing training for workplace representatives/works counsellors (Austria) and issuing recommendations for the inclusion of the issue in collective bargaining (Czechia). Employer organisations have also issued guidance (Spain) and good practice (Austria and Estonia). Specific issues linked to the employment of workers with disabilities have also been addressed in conferences and events.

## Box 10: Retaining workers with reduced work ability

**Estonia:** The Estonian Employers' Confederation (ETKL) together with the Estonian Human Resource Management Association (PARE) is implementing a project entitled 'Organising employers'. Funded by the Ministry of Social Affairs and co-funded by the European Social Fund (ESF) (2017–2020), the aim of the project is to create a network of companies employing persons with reduced work capacity. The goal is to increase awareness, knowledge, skills and readiness to take into account the different needs of employees, and reduce employer prejudice and concerns regarding the employment of persons with disabilities. Several activities have been carried out under the project, such as a 'Work ability round table', where 50 employers and persons with reduced work capacity discussed solutions to increase the engagement of people with disabilities, shared experiences from the perspective of employers and employees (leading to the preparation of a thematic paper), and introduced international best practices to HR managers. Another aim is to establish an employers' community, members of which would promote and support the employment of persons with disabilities and pledge to treat them equally. A collection of good practices is also being prepared as part of the project.

In 2018, the Cyprus Employers and Industrialists Federation (OEB) organised a meeting with stakeholders, which included a debate on the employment and job retention of people with chronic diseases, as well as the workplace arrangements that facilitate this in the case of people with multiple sclerosis. In 2014, the Polish Confederation Lewiatan established the Diversity Council. The Council works under a definition of 'diversity' that includes gender, age, disability, religion, sexual orientation and race/ethnicity. In 2015, all meetings were dedicated to the recruitment and employment of people with disabilities.

In Italy, the health and safety protocol of the Factory Pact was signed by Confindustria, CGIL, CISL and UIL on 12 December 2018. The protocol includes a section (No. 10) on the re-insertion of workers who are no longer able to perform the activities for which they were recruited. The parties underline the need to consider – in view of supporting the re-insertion of workers – technological, organisational and contractual solutions to eliminate or reduce the factors which make re-employment impossible or difficult. They consider that re-insertion should be financed by a special fund managed by INAIL (the National Institute for Insurance against Accidents at Work), but demand new rules and leaner procedures to ensure the timeliness and effectiveness of such a measure.

### Discrimination on the grounds of race or ethnicity

#### Influencing legislation and policy

The Croatian social partners were involved in the preparation of the Operational Programme for National Minorities (2017–2020). In Czechia, the social partners were consulted on the Roma Integration Strategy.

#### Collective agreements

The only collective agreements with relevant provisions on this issue were identified in Spain and Italy. In Spain, these are linked to general agreements providing for the establishment of practices to prevent discrimination in recruitment on all grounds (including race) and to consider harassment on various grounds (including race) a serious offence. In Italy, a sectoral agreement for commerce and services between the Italian General Confederation of Enterprises, Professions and Self-Employment (Confcommercio) and the Italian Federation of Workers of Commerce, Hotels, Canteens and Services (FILCAMS-CGIL), the Italian Federation of Trade Unions, Trade Services, Associates and Tourism (FISASCAT-CISL) and UILTCCS-UIL was signed on 30 July 2019. Article 173 of the industry-wide agreement is about foreign workers. The parties acknowledge the growing relevance in the sector of workers of foreign nationality and agree to promote initiatives aimed at the integration and training of, and provision of equal opportunities for, foreign workers, including through research activities and studies to define targeted measures at the various bargaining levels (national, territorial, company).

#### Joint texts/projects/other activities

The number of cross-sector social partner activities aimed at tackling discrimination on the basis of race and ethnicity in the workplace is relatively limited. The only joint activity that has been identified is from Croatia, where social partners were involved in round table discussions on the definition of mutual priorities and goals relating to the integration of Roma people.

No unilateral employer activities have been identified. The work of trade unions has focused on studies, the preparation of guidance materials and courses for worker representatives (Austria, Denmark, France, Spain and the UK).

## Box 11: Campaigns and projects to address race discrimination

**France:** The French Democratic Confederation of Labour (CFDT) carried out a study to gain an insight into how its affiliates deal with discrimination on the grounds of race/ethnic origin (CFDT, 2013). The study contains findings on initiatives implemented at local level to raise this issue. For instance, some trade unionists have built inclusion policies within companies for young people of foreign origin and enabled them to raise discrimination problems with management.

**Germany:** The initiative, ‘Don’t turn on my buddy! – for equal treatment, against xenophobia and racism’ (Gelbe Hand – Mach meinen Kumpel nicht an!), was established in Germany by the DGB Youth Section in 1986 following the example of a similar French initiative. The association is an independent initiative, but is closely supported by trade unions. The steering and management board of the association consists of persons from major trade unions such as the DGB (German Trade Union Confederation), the German United Services Trade Union (ver.di), IG Metall (Industrial Union of Metalworkers), IG Bauen-Agrar-Umwelt (IG BAU), and the IG Bergbau, Chemie, Energie (IG BCE). It was initially mainly aimed at addressing racism experienced by Turkish migrant workers in the country and included large public anti-racism campaigns that were also supported by well-known German actors, politicians and musicians. Since then, the ‘Don’t turn on my buddy!’ initiative has supported many types of actions organised jointly with trade unions and young workers, in companies wishing to tackle racism and discrimination on ethnic origin grounds in the workplace. Over time, the association has developed a large body of learning material for campaigns, workshops and seminars in companies and vocational training schools. The initiative targets – in principle – young workers and apprentices, although it also targets all workers. Since 2005, the initiative has organised a project competition for young workers and apprentices, awarding a prize to a project/initiative that tackles discrimination at work or initiates a preventive action against racism. From 2017 onwards, another project was initiated with the support of the federal funds for ‘living democracy’ called ‘Active in companies for democracy and diversity’. The project develops tailor-made modules on democracy building, anti-racism work and conflict resolution for vocational schools, which are then tested and integrated into the training curriculum in accordance with the wishes and framework conditions of the participating project companies (and the participating apprentices). The material developed is evaluated and integrated into model modules, which can also be transferred to other companies.

In the context of the increase in migration and the rise of far right groups, a number of trade unions have focused on the impact of migration and have sought to

emphasise the positive contribution of migrants and the challenges associated with the rise in xenophobic attitudes.

## Box 12: Addressing stereotypes and misinformation and providing assistance to migrant groups

**Spain:** In 2019, the CCOO published a report on labour migration flows, xenophobia and racism, highlighting how migrant workers contribute to the production and consumption of goods and services in Spain, as well as economic growth and the maintenance of the welfare state. The report is part of a CCOO campaign to de-mystify false information about immigration and to isolate the racist discourse of radical right movements, as well as to encourage government dialogue with unions on the promotion of measures to tackle discrimination at work. Similarly, in 2019, the UGT published a report on the participation of migrant workers in Spain, underlining their economic contribution and denouncing discrimination on the grounds of ethnicity.

Likewise, the union urges political parties to respect their rights and avoid false information about migration that serves to increase xenophobia and discrimination. The Industry, Construction and Agriculture Federation of the UGT in Catalonia (FICA-UGT de Catalunya) initiated a project in 2019 to prevent, monitor, support and eradicate any type of labour discrimination against Roma people. The project got off the ground at a local level in Baix Llobregat (Barcelona), with the goal of implementing it across the rest of Catalonia.

**UK:** Following the Brexit referendum, the TUC, the Equality and Human Rights Commission (EHRC), the Advisory, Conciliation and Arbitration Service (ACAS), the Confederation of British Industry (CBI) and other employer organisations joined forces to provide practical advice and guidance for employers. In addition, the TUC

developed a specific action plan entitled ‘Challenging racism after the Brexit referendum’, which makes key recommendations, including:

- swift government action on hate crime
- zero tolerance of racism and harassment at work
- strengthening anti-discrimination rights and protection
- increasing support and advice at work

**Denmark:** FIU-Equality (FIU-Ligestilling) is a partnership between the Danish Metalworkers’ Union (Dansk Metal), the National Federation of Trade Unions in the Service Sector (Serviceforbundet) and the United Federation of Danish Workers (3F). The partnership develops campaigns, courses and information materials on diversity and equality. Among its initiatives is a mentorship programme developed for migrants coming to Denmark to get them involved in trade union activities and help the unions tackle workplace discrimination.

Specific programmes have also been developed to tackle discrimination against Roma people. In Hungary, the Integrom programme (2014–2016), developed by the Autonomia Foundation, aims to help educated young Roma to find employment in major companies, primarily in administrative positions. The project mediated between private sector actors and young Roma individuals, and thus has been instrumental in the fight against discrimination faced by Roma people by helping to break down prejudices.

## Discrimination on the grounds of religion or belief

### Influencing legislation and policies

No specific social partner involvement in the revision of legislation and policies was indicated beyond their ongoing consultation on such issues in most Member States.

### Collective agreements

Spain and Greece highlight collective agreements in this area, which while addressing all grounds of discrimination also underline the importance of action on tackling discrimination on the grounds of religion or belief.

### Joint texts/projects/other activities

In France, peak-level social partners have been involved in the drafting of handbooks on tackling discrimination on the grounds of religion or belief, while in Croatia the social partners took part in a round table discussion on how to tackle the issue at workplace level. In Austria, Belgium, Portugal, Spain and the UK, trade unions have drafted guidelines and introduced awareness-raising measures. In Belgium and Spain, the activities have particularly emphasised raising awareness on ways to accommodate different religious practices at workplace level.

## Box 13: Cross-sectoral and sectoral collective agreements aiming to address discrimination on the basis of religion or belief

**Spain:** The Agreement for the Management of Diversity was signed in 2011 by the CCOO, UGT and CEPYME, the Association of Long-term Care Services for the Elderly Sector (ASISPA), the Official Chamber of Commerce and Industry of Madrid, the Coordinator of Farmers and Livestock Organisations (COAG), the Spanish Federation of Hotels and Restaurants (FEHR), Forética – Association of companies and professionals of social responsibility in the company, and a number of companies including IKEA, Improving work life, ISS Facility Services Spain, Marco Aldany, Minority Communication, Global Bridges, Securitas Aviation and Global Talent. The agreement served as a basis for negotiation between companies and workers' representatives to develop more flexible schedules to facilitate the observance of religious practices where possible (Ministerio de Trabajo e Inmigración, 2011).



### Box 14: Awareness-raising initiative on how to accommodate different religious practices

**Belgium:** The union ACV/CSC has implemented awareness-raising activities and concrete workplace support for Muslim workers and other workers and members of society with specific requirements linked to their religious observances, for example in relation to working hours, prayer areas and specific meals. These actions are the result of a multi-year project which began with a workshop for trade union representatives on raising awareness of the issues and included the issuing of specific guidance for trade union negotiators on safeguarding the diversity of beliefs and freedom of expression in the workplace. It also established a specific department focused on diversity and anti-discrimination, which created a video ‘Stop racism au boulot’ aimed at raising awareness by shocking the viewer with its message.

### Discrimination on the grounds of sexual orientation or gender identity

#### Influencing legislation and policy

In most countries, there has been no specific social partner involvement in the revision of legislation and policies beyond their ongoing consultation on such issues in most Member States.

In Spain, the CCOO and UGT have lobbied extensively on this issue and signed a document urging approval of the LGBTI Equality Law that recognises the rights of lesbians, gays, bisexuals, transgender and intersex individuals and that contains measures in areas of social, educational, health and employment policy.

#### Collective agreements

The research found the existence of collective agreements aimed at tackling discrimination on the grounds of sexual orientation or gender identity only in Croatia and Spain. In Croatia, as part of the ‘Alliance for LGBTI workplace equality’ project, a working group consisting of representatives of unions and civil society organisations discussed the possibilities and ways in which collective agreements can be used to protect and improve the rights and interests of LGBTI workers. This resulted in the drafting of guidelines and a draft collective agreement.

### Box 15: National and regional collective agreements against discrimination on the grounds of sexual orientation and gender identity

**Spain:** The National collective agreement of the textile industry – signed by members of the Confederation of Textile Industry employers (TEXFOR), the Association of Textile Entrepreneurs of Valencian region (ATEVAL), the Spanish Grouping of the Knitwear and National Group of Stockings Manufacturers, the Spanish Federation of Employers of Confection, the National Employers' Association of Businessmen of the Textile Industry of Polyolefins and Hard Fibres (APOYFIDE), the National Union of Carpet Manufacturers, CCOO Industry and UGT-FICA in February 2019 – undertakes the prevention of discriminatory practices on the grounds of sexual orientation or gender identity.

The regional collective agreement of private healthcare sector of Salamanca (2020), signed by CONFAES-AESCAP, CCOO and the UGT, provides for the creation of a joint committee to control discriminatory practices on the grounds of sexual orientation.

The regional collective agreement of the commerce sector of Madrid (2019), signed by the general confederation of Spanish small and medium firms (Copyme), the UGT and CCOO, endorses non-discriminatory behaviour on the grounds of sexual orientation or gender identity and also promotes equality in this area.



### Joint texts/projects/other activities

Joint cross-industry social partner activities in Austria and Croatia have focused on gathering evidence on the extent of LGBTI discrimination at workplace level, raising awareness and providing guidelines to address this issue.

Employers in Belgium, Denmark, France and Hungary have also developed guidelines, toolboxes and other materials for use by individual employers. Trade union guidance materials have been developed in Austria, Denmark, Portugal and Spain. Some of these initiatives are summarised in Box 16.

## Box 16: Good practice initiatives for equal treatment of LGBT people and for creating an inclusive working environment

**Croatia:** Since 2015, the Poreč Centre for Civic Initiative, in co-operation with local social partners, has organised various activities for secondary school students aimed at raising awareness about LGBT rights as well as highlighting problems LGBT persons face in their private and public life. These activities include the screening of documentaries about LGBT rights, talks and Q&A sessions with LGBT activists about their experiences. In 2016, information leaflets were distributed to teachers on how to make schools a safer place for LGBT students.

**Czechia:** The Pride Business Forum (PBF) is the only platform in Czechia where employers are able to exchange experience and good practice in terms of implementing LGBT equality in the workplace. The aim of PBF is that every employer in Czechia treats LGBT employees fairly, provides them with equal conditions and creates an environment in which they can fully develop their personal potential. In 2019, a 'Memorandum on support for LGBT diversity and inclusion in the workplace' was signed, with support of several major companies and institutions – altogether representing 3,570 employees in Czechia. These include Allen & Overy, ExxonMobil, the British Council, Citibank, Johnson & Johnson and Microsoft. The current signatories of the Memorandum are Accenture, Amazon, Clearstream Operations, innogy, Vodafone CR, Hilton Hotel Prague, IBM, Ogilvy, SAP CR, SAP Services, Ariba Czech, Concur, Prague Pride and Business for Society.

**Germany:** The United Services Trade Union (ver.di) in Germany supports lesbian, gay, bisexual, transgender and intersex (LGBTI) workers through a specialised online forum for its LGBTI members and a gay working group. The latter has researched discrimination against HIV-positive employees and lobbied on behalf of LGBTI workers in Catholic institutions who have reported discrimination by their employers.

**Hungary:** The purpose of the 'Creating LGBTQI-friendly workplaces programme' is to show that it is necessary to address this issue at the workplace and to motivate employers to be inclusive by creating an environment that sees this group as a full part of society at work. This programme is run by the Hungarian Employers' Forum on Equal Opportunities (MEF) and the Háttér Társaság (Background Society). A booklet published by the programme contains recommendations for creating a workplace that promotes equal treatment for LGBT people.

**Spain:** In 2018, CCOO developed a guide entitled *Sexual and gender diversity: A trade union issue*. The union also prepared an analysis of current legislation on LGBTI rights in 2019.

A presentation on the principles of conduct of United Nations against labour discrimination of LGBTI persons was organised by CEOE together with the Ministry of Foreign Affairs, the Ministry of the Presidency, Association of companies and professionals of corporate social responsibility (Forética) and Business Network for Diversity and Inclusion LGBTI + (REDI) in 2018. The presentation of these principles seeks to help companies to examine their policies and practices, as well as to establish new strategies to respect and promote the rights of LGBTI people at work.

**United Kingdom:** In 2020, the Confederation of British Industry (CBI) established a LGBT+ Network, bringing together business leaders to work on promoting inclusive workplaces at both policy and workplace levels.

The Trade Union Confederation (TUC) publishes guidance for workplace representatives on equality for LGBT people at the workplace (TUC, 2013). For all workers, it provides an outline of the law pertaining to discrimination on the grounds of discrimination and gender identity on its WorkSmart website, including actions that should be taken if a worker is exposed to such discrimination.

## Reasons for the absence of actions

Table 6 outlines reasons why cross-industry social partners are not taking action in those countries that do not have any activities – or only limited activities: for instance, linked to being consulted on legislation or policy measures – in relation to addressing workplace discrimination on different grounds. Countries where social partners are taking action are excluded from Table 6, unless such initiatives date back a number of years or only relate to monitoring or policy consultation activities. As indicated earlier, the reasons can relate to the assessment of the quality of existing legislation and the prevalence of complaints on these issues, which can lead social partners to consider that the issue is either not a problem at the workplace, or has already been sufficiently addressed. This is the most frequently cited reason for the lack of activity in relation to discrimination on the grounds of race and ethnicity and religion or belief. Another reason frequently provided is

the lack of capacity on the part of the social partners to address discrimination issues. This is either due to constrained resources requiring the social partners to focus on what they consider to be their core responsibilities, or because they lack the expertise to deal with specific issues, such as the challenges facing transgender individuals. Another factor can be the lack of knowledge of the extent to which discrimination is an issue at the workplace (due to a lack of data) or the perception that while, for instance, the ageing workforce is an issue, there are no links made between this and the impact of (potential) discrimination.

The evidence demonstrates that social partner organisations at peak level (cross-industry organisations) and at sectoral level assume different responsibilities in relation to tackling workplace discrimination. Cross-sector organisations are more focused on seeking to influence policy and legislation while sectoral organisations are more involved in drafting practical advice and guidelines tailored to the circumstances in their sector or organisation.

**Table 6: Reasons why cross-industry social partners do not take action in relation to workplace discrimination on different grounds**

|   | Age                                 | Disability                       | Race and ethnicity                                 | Religion or belief   | Sexual orientation/ gender identity |
|---|-------------------------------------|----------------------------------|--|--|-------------------------------------|
| Issue not considered to be a significant problem/has already been addressed | BG*, CZ, DE, FI, MT, NL, PT, SE, SI | BG*, CZ, <i>EE</i> , FI, SE, SI  | AT, BG, CZ, <b>DK</b> , FI, IE, PL, SE, SI         | AT, BG, CZ, DE, DK, EE, FI, HR**, HU, IE, IT, MT, NL, <b>PL</b> , RO, SE, SI | AT, CZ, FI, IE, MT, PL, SE, SI      |
| Lack of capacity/ other priorities take precedence                          | CY, HR**, LT, LV, PT                | <b>DE</b> , HR**, LT, LV, NL, PT | CY, <b>DE</b> , EE, <b>HU</b> , LT, LV, NL, PT, RO | CY, EE, LT, LV, PT, RO, <b>UK</b>  | CY, DE, EE, LT, LV, NL, PT, RO      |
| Lack of knowledge/ awareness of discrimination as a specific issue          | SK                                  | <b>PL</b> , SK                   | RO, SK   | RO, SK   | <b>HR</b> , HU, RO, SK              |

**Notes:** \* Initiatives have been undertaken in the past, but not in recent years. \*\* Activities are relatively limited. **Bold** indicates that this assessment only applies to employer organisations. *Italics* indicate it only applies to trade unions.

**Source:** Author, based on information from the Network of Eurofound Correspondents, 2020

## 5 Conclusions

Discrimination on the grounds of age, disability, race and ethnicity, religion or belief, sexual orientation and gender identity remain widespread, both at the workplace and in wider society. Discrimination and the lack of workplace diversity bring with them significant human, as well as economic, costs. Social partners have a key role to play in combating discrimination at work (as well as in wider society). They can do so by – among other things – helping to shape relevant legislation and policy, raising awareness of the rights and obligations of workers and employers, monitoring workplace practices, concluding collective agreements, implementing codes of conduct, undertaking research, supporting their members in case of litigation concerning equal treatment and engaging in strategic litigation.

The principle of non-discrimination is enshrined in the EU Charter of Fundamental Rights. The European Pillar of Social Rights underlines the right to equal treatment and opportunities for everyone. EU secondary law, in particular the Employment Equality Directive and the Race Equality Directive, prohibits discrimination on the grounds of age, religion, disability, sexual orientation and racial/ethnic origin at the workplace. Both directives call on Member States to ‘take adequate measures to promote dialogue between the social partners, with a view to fostering equal treatment’. Member States must encourage social partners to conclude collective agreements laying down non-discrimination rules, affording at least the minimum protection enshrined in the two EU non-discrimination directives.

Eurofound’s European Working Conditions Survey (EWCS) shows that between 2005 and 2015, the share of respondents declaring that they had experienced discrimination in the workplace increased from 5% to 7%, with varying levels and trend developments reported in different Member States. Among these grounds, age discrimination was the most common, and was more frequently reported by both younger and older workers. National-level data utilising different methodologies and targeting different populations (and hence not comparable) tend to record higher shares of workers experiencing discrimination in the labour market.

Despite the development of EU- and national-level legislation aimed at countering workplace discrimination, a number of important and specific challenges remain to be addressed in order to tackle different grounds of workplace discrimination, and there is equally an important degree of overlap in this regard. Common challenges include the persistence of

stereotypes and low awareness of rights and obligations on the part of employers and workers. There are also challenges with enforcement, linked to:

- unwillingness to make complaints/bring discrimination cases (due to fear of negative employment/career impact, lack of financial and practical support to bring cases, and so on)
- difficulties in demonstrating discrimination (for example, getting proof)
- limited restitution (low financial sanctions or lack of access to/challenges related to re-instatement in cases of discrimination claims linked to dismissals)
- low capacity among agencies responsible for enforcement
- low capacity among social partners to introduce measures and to support discrimination cases (increasingly, since the implementation of austerity measures)

Shortcomings in the implementation of legislation and policies to tackle discrimination include insufficient or inadequate design of (and access to) targeted active labour market policy measures for disadvantaged groups facing discrimination, the lack of emphasis in policy action on the benefits of a diverse workforce, and limited evidence based on trend developments in workplace discrimination on different grounds.

Both trade unions and employers arguably have a common interest in promoting a workplace free from discrimination. Although the first mission of trade unions is to protect and advance the interests of their members in the workplace, their role extends beyond the workplace, not least because advancements in working conditions impact on workers’ living conditions and can thus have spill-over effects for society as a whole. Discrimination harms companies and societies in different ways, for instance by impacting negatively on workers’ performance and placing barriers in the labour market that can limit access to skills and human capital. A lack of organisational diversity also means that enterprises fail to reflect their customers, with knock-on negative economic effects. Hence, the so-called ‘business case’ for non-discrimination has been made.

Research carried out for this report found that the issue of workplace discrimination is on the radar of social partner organisations in most countries, with variations on the focus placed on different forms of discrimination. Overall, age and disability discrimination are most frequently seen to be on the radar of the social partners at cross-industry level, with discrimination on the basis of religion and belief and sexual orientation/gender identity considered to be on the radar of cross-industry

social partners in less than half of EU Member States (despite the latter rising to higher prominence in recent years).

In terms of the type of activity and involvement, peak-level social partners are frequently involved in the development of policy and legislation, as well as in lobbying on related matters, although the level of influence and the quality of this involvement varies from country to country. In the majority of countries, trade unions in particular play a role in 'monitoring' activities linked to workplace discrimination. This largely relates to providing assistance in the context of complaints, either in mediation or in providing advice or direct support (where possible) in court proceedings.

Furthermore, in almost all EU Member States, Norway and the UK, social partners were also active in drafting texts and guidance, carrying out projects and implementing other actions. The highest level of activity was reported in relation to guidance covering all forms

of discrimination, followed by actions focused on disability discrimination, and then by discrimination on the grounds of age and sexual orientation.

The majority (56%) of actions were carried out by trade unions alone (or in collaboration with other partners, such as NGOs), 31% were joint initiatives and around one fifth were solely planned and implemented by employers.

Overall, this and other studies reflect the different roles and responsibilities of peak-level cross-industrial social partners and sectoral- and company-level social partners, with the former focusing on seeking to influence policy and legislation at the national level as well as drafting guidance, and the latter more involved in sector and company-specific practical advice, guidance, projects and practical measures seeking to address different forms of discrimination at the workplace level – 'on the ground'.

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This report assesses the role of the social partners in tackling workplace discrimination. Against the background of EU and national anti-discrimination legislation, it highlights the extent to which the need to tackle discrimination on different grounds is on the radar of cross-sectoral social partners. It also provides an overview of the measures taken to deal with the persistent incidence of discrimination on the grounds of age, disability, race or ethnic origin, religion or belief and sexual orientation or gender identity.

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