

COMPARATIVE ANALYSES ON NATIONAL MEASURES TO COMBAT DISCRIMINATION OUTSIDE EMPLOYMENT AND OCCUPATION

**Mapping study on existing national legislative measures – and their impact in – tackling
discrimination outside the field of employment and occupation on the grounds of sex,
religion or belief, disability, age and sexual orientation, VT/2005/062**

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December 2006

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Annex 1: Synoptic Table - Comparative Analysis of National Measures to Combat Discrimination Outside Employment and Occupation

Executive summary

The purpose of this report is to set out in brief form the law across the EU Member States, Bulgaria and Romania relating to discrimination on grounds of sex, sexual orientation, disability, religion and belief and age (the “relevant grounds”), to the extent that such discrimination falls outside the current scope of EC law. The report is drawn up on the basis of detailed reports in respect of each of the countries surveyed, and a further five (“comparator”) countries: Australia, Canada, New Zealand, South Africa and the United States of America. Much of the report focuses on the law of the existing and prospective EU Member states but occasional reference is made to the comparator countries.

1. General

Perhaps the two most striking features of the European countries surveyed are (1) the fact that most countries go well beyond current EC requirements and provide legal protection of some form in respect of much of the discrimination forming the subject matter of this report, and (2) the variety between the countries as to the degree, as well as the nature, of such protection.

A small number of countries (Ireland, Bulgaria, Slovenia, Romania and Luxembourg) have Constitutional or detailed statutory provisions which cover all relevant grounds and the entire material scope covered by Council Directive 2000/43/EC (the Race Directive), and whose definitions of direct discrimination do not allow such discrimination to be justified by reference to a general defence (for example, by prohibiting only “unjustified” discrimination, or discrimination which is not “necessary and proportionate” to the pursuit of a legitimate aim).¹ Instead of such a broad defence, these countries provide discrete exceptions applicable in particular cases.

Another group of countries (Finland, Portugal, Spain, Cyprus, Estonia, Greece and France) do not have comprehensive across-the-board legislation, but do have an amalgam of Constitutional and/or detailed statutory civil and/or penal prohibitions on discrimination and/or other civil or penal provisions which together regulate discrimination on the relevant grounds across a similarly broad scope (social protection, social advantages, education and access to goods and services including housing). The main difference between these countries and those in the first category is that some or all of the latter’s prohibitions on direct discrimination are subject to a general justification defence rather than, or as well as, the particular exceptions permitted by first category of countries. Finland’s approach, for example, is a patchwork of Constitutional and statutory provisions which together regulate discrimination on all relevant grounds in relation to social protection, social advantages, education and access to goods and services including housing but which allow general justification defences in respect of much direct discrimination (the Penal Code, which applies to goods and services, prohibits discrimination on a wide variety of grounds “without a justified reason”, while the Constitution provides that “No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person.”²).

¹ A ‘general justification defence’ may be contrasted with a specific exception covering, for example, discrimination in access to services or education provided by church organisations. General justification defences are invariably available in cases of *indirect*, as distinct from *direct*, discrimination.

² This has been interpreted to cover indirect discrimination.

The third category of countries (Belgium, Austria, Hungary, Lithuania, Slovakia, Poland, Germany, Italy, the Czech Republic, the UK the Netherlands and Sweden) have legislation which covers some or all relevant grounds of discrimination, but which is more limited in its material scope. Belgian federal law, for example, regulates discrimination on all relevant grounds in relation to social protection, social advantages, education and access to goods and services including housing, but community and regional legislation are more limited. Also in this category are countries such as Slovakia and Germany, whose Constitutional or detailed statutory provisions do not extend to the whole field of social protection, social advantages, education and access to goods and services including housing, and those such as the UK and Sweden which do not regulate discrimination on all relevant grounds outside the employment context. Malta and Latvia both to some extent go beyond the requirements of EC law as regards the regulation of discrimination, but do so in more limited fashion as regards both protected grounds and material scope than the other categories of country mentioned above.

2. Coverage by protected ground

Discrimination on grounds of *religion or belief* is the subject of broad protection in Bulgaria, Finland, Ireland, Luxembourg, Romania, Slovenia and Sweden, in all of which countries protection extends across social protection, social advantages, education and access to goods and services including housing. This is almost certain to be the case also in the UK from April 2007. A large number of countries provide significant protection, albeit not quite as comprehensive as that provided by the first group of countries. These comprise Austria, Belgium, Cyprus, Estonia, France, Germany, Hungary, Italy, Lithuania, the Netherlands, Portugal and Spain. The Czech Republic, Denmark, Latvia, Poland, Greece, Malta and Slovakia also provide some protection against discrimination on this ground (in a number of cases by means of a general Constitutional equality clause³ or, in the case of Malta, by incorporation of the European Convention which guarantees freedom of religion and belief and prohibits discrimination on these grounds).

Protection from discrimination on the ground of *disability* in relation to social protection, social advantages, education and access to goods and services including housing is provided by Bulgaria, Ireland, Luxembourg, Romania and Slovenia and the UK. Of these countries, Bulgaria imposes duties of reasonable accommodation in relation to education, Ireland and the UK impose such duties across the board (that is, in relation to social protection, access to goods and services, etc.). Romania and Slovenia do not impose any duties of reasonable accommodation outside employment. In addition, Austria, Belgium, Cyprus, Estonia, Finland, Germany, Hungary, Italy, Lithuania, Portugal and Spain provide a significant degree of protection in this context. Of these, Cyprus, Austria, Germany, Belgium, Finland, Spain and Portugal impose duties of reasonable adjustment in one or more contexts. The Czech Republic, France, Latvia, Malta, the Netherlands, Slovakia and Sweden provide some measure of protection. Of these, France imposes duties of reasonable adjustment in the education context and Slovakia and Malta more broadly. In Denmark, Greece and Poland there is little in the way of legal control of disability discrimination outside the employment context, though Denmark imposes a general principle of equality on public authorities and Poland's Constitution contains specific provisions dealing with the rights of disabled people.

³ Greece (the clause applies only to Greeks who are said to be "equal before the law").

As regards *sex*, Bulgaria, Denmark, Estonia, Finland, Ireland, Lithuania, Luxembourg, Romania, Slovakia, Slovenia, Sweden and the UK have legislation going well beyond the EU minimum requirements in relation to discrimination and providing very broad protection against such discrimination. Belgium, Cyprus, France, Germany, Hungary, the Netherlands, Portugal and Spain also provide measures going beyond EU requirements, albeit in relation to a somewhat narrower material scope, than the first category of countries listed. Austria, the Czech Republic, Italy, Latvia, Malta, Greece and Poland also provide a measure of additional protection through Constitutional or other measures.⁴

Protection from discrimination on the ground of *sexual orientation* is provided in relation to social protection, social advantages, education and access to goods and services including housing by Bulgaria, Ireland, Luxembourg, Romania and Slovenia. In addition, Austria, Belgium, Cyprus, Denmark, Finland, Germany, Hungary, Lithuania, the Netherlands, Portugal, Spain and Sweden provide a significant degree of protection in this context and the Czech Republic, France, Italy, Latvia and Slovakia provide some measure of protection. In Malta, Poland, Greece and the UK there is little in the way of legal control of sexual orientation discrimination other over and above that required by EU law, though this is due to change in April 2007 in the UK.

There is no clear hierarchy of protection from discrimination across the countries surveyed as regards *sex*, religion or belief, sexual orientation and disability, though it is probably possible to say that religion and belief and *sex* are more generally regulated to an extent greater than is required by EU law, sexual orientation and disability less so. There is, however, a clear distinction between these four grounds, on the one hand, and *age*, on the other, age being the ground in respect of which there is least protection outside the employment sphere. Bulgaria, Ireland, Luxembourg, Romania and Slovenia regulate such discrimination across the material scope of the Race Directive and Austria, Belgium, Cyprus, Estonia, Finland, Germany, Hungary, Lithuania, Portugal and Spain also provide a significant degree of protection. Some protection beyond that required by EU law is also provided by the Czech Republic, France, Italy, Latvia and Slovakia. In Denmark, Malta, the Netherlands, Poland, Sweden and the UK protection from age discrimination does not extend further than that required by EC provisions (except to the extent that such discrimination would breach Article 14 of the European Convention or, in some cases, Protocol 12 to the Convention).⁵

3. Material scope

The material scope of the legislation in the various European countries surveyed can be determined by reference to the table which accompanies this Executive Summary.

Social protection and social advantages

Most countries surveyed apply at least a general prohibition to discrimination in relation to social protection and social advantages. In Bulgaria, Romania, Ireland, Finland, Hungary, Luxembourg and Slovenia detailed statutory provisions apply in this context. Austria's detailed statutory provisions apply only to the regional level though it is thought that penal prohibitions on discrimination on grounds including religion and disability may also apply in this context.

⁴ The Greek Constitution contains an express prohibition on sex discrimination as well as the general equality clause mentioned above (fn 3).

⁵ Cyprus, Finland and the Netherlands have ratified this free-standing prohibition on discrimination by public authorities.

Belgian detailed statutory provisions apply only at the federal level and therefore to social security, while healthcare and social assistance are generally provided at regional level. Denmark's detailed statutory provisions applicable in this context do not cover discrimination on grounds of age or disability (though public authorities are bound by a general principle of equality) while the Swedish provisions do not apply to age or disability or the UK provisions to age (or, prior to April 2007, to religion or belief or sexual orientation⁶). In Italy detailed statutory provisions are applicable in this context in relation to disability, religion or belief and sex while in Malta and the Netherlands such provisions apply only in relation to sex (though general prohibitions on discrimination on all relevant grounds also apply at the Constitutional level⁷).

Elsewhere, discrimination in this context, which includes access to healthcare, is regulated by means of Constitutional or other provisions which do not provide detailed definitions of discrimination and/or which permit general justification defences. Further, the scope of "social advantages" is not clear, though in some cases it is possible to say that it is covered because of the generality of the prohibition in domestic law. Portuguese and Spanish Constitutional and field-specific measures apply in this context to all relevant grounds. The Estonian Constitution regulates discrimination on all relevant grounds in "all spheres of life" and so should apply in this context as should French Constitutional and penal provisions and German and Lithuanian Constitutional provisions. The Greek Constitution would apply to protect Greek citizens from discrimination in this context⁸ and the Latvian Constitution would apply to discrimination by state actors other than (it is thought) on grounds of sexual orientation. The Czech Constitutional prohibition on discrimination applies on this context only to social protection to which there is a legal right and does not extend to health. Similarly the Slovakian Constitution prohibits discrimination in this context only in relation to "fundamental rights" which include some but not all social payments. Polish law appears to regulate only discrimination on grounds of sex, marital or family status in relation to social security but to apply more broadly to social assistance. In Cyprus there is some doubt as to whether social advantages, as distinct from social protection, are covered by general prohibitions on discrimination on the relevant grounds.

Education

Ireland, Bulgaria, Cyprus, Slovenia, Luxembourg, Romania, Finland, Italy and Spain regulate discrimination on all relevant grounds in relation to *education*. Sweden and the Netherlands regulate discrimination in education on grounds of disability, sex, sexual orientation and religion or belief but not on grounds of age, and the UK at present regulates such discrimination only on grounds of disability and sex though provisions extending the scope of protection to sexual orientation and religion and belief are expected to be in place by April 2007. Denmark regulates discrimination in the context of education on grounds of sex, sexual orientation and religion or belief (not age or disability) and Malta on grounds of sex and disability alone. Austria regulates discrimination in this context on all relevant grounds at the regional, but not the federal, level, while the reverse is true in Belgium and in Hungary discrimination in this context is regulated on all relevant grounds as long as it is publicly provided or funded.

⁶ The extent of the prohibition on sexual orientation which is likely to take effect on that date is as yet unclear.

⁷ In the case of social security but not other forms of social advantage or social protection discrimination is regulated across all the relevant grounds except disability and age.

⁸ There is no such restriction where the discrimination is on the ground of sex.

Estonian and Lithuanian Constitutional prohibitions on discrimination apply to all relevant grounds in relation to education whether it is provided by the state or a private actor. Portuguese Constitutional and field-specific provisions impose general prohibitions on discrimination in education and Polish legislation contains a general prohibition on discrimination in education by reference to the Universal Declaration of Human Rights 1948, the International Covenant on Civil and Political Rights 1966 and the Convention on the Rights of the Child 1989 but without reference to any particular grounds. Discrimination in this context is regulated in Slovakia explicitly in relation to sex alone and otherwise by the Constitutional prohibition on discrimination on all the relevant grounds. In France, Germany and Greece public education is subject to general Constitutional principles of equality (which under the Greek Constitution apply only to Greek citizens save where the discrimination is on the ground of sex).

The Czech Republic's Constitution similarly applies to education whether publicly or privately provided and regulates discrimination on grounds of sex, religion or belief and disability, but not age or sexual orientation.⁹ Latvia's Constitutional equality clause, which is applicable only against state actors, is not thought to provide protection against discrimination on grounds of sexual orientation in this or any other context, while a field-specific prohibition on discrimination in education does not extend to age, sexual orientation or disability.

Goods and Services

Discrimination in the context of *goods and services* is subject to detailed regulation on all the relevant grounds in Ireland, Bulgaria, Romania, Slovenia, Luxembourg, Lithuania, Spain, Finland, the Netherlands (other than in relation to age), Germany (though only in relation to "mass contracts"), Hungary, Austria, France (in relation to direct discrimination only), Sweden and Denmark (other than in relation to age and disability), Italy (other than in relation to sexual orientation and age) and the UK (except on grounds of age and not yet on grounds of sexual orientation, religion or belief).¹⁰ Detailed Belgian provisions apply only at the federal level. Cyprus regulates discrimination in access to goods and services on all relevant grounds though there are no detailed provisions applicable in this context. A similar position prevails in the Czech Republic where the Law on Consumer Protection covers all agencies involved in the system of public services provision as well as private providers but applies only in relation to persons who acquire goods and services etc. for their own use, and where the operations are conducted or offered publicly for profit.¹¹ In Estonia general Constitutional and criminal anti-discrimination provisions regulate access to goods and services including housing, the Law on Trading prohibiting traders from "illegally ... restrict[ing] or favour[ing] the sale of goods or services"¹² and in Portugal Constitutional and field-specific provisions regulate unjustified discrimination in this context on all relevant grounds. Discrimination as between Greek citizens in this context would breach the general Constitutional equality clause, which binds private as well as state actors. The same is true in Spain in relation to discrimination against Spanish citizens, and Spain also makes detailed statutory provision in this context in relation to disability. Malta regulates discrimination in access to goods and services over and above EU requirements only in relation to disability. No prohibitions apply in Slovakia, Poland or Latvia except possibly in the case of public sector providers.

⁹ The relevant provision of the School Law includes "other status" but is not thought to apply to these grounds.

¹⁰ The legislation is expected to be in place in April 2007.

¹¹ Law no. 634/1992 (Collection of Laws 1992, no. 130 p. 3811).

¹² Kaubandustegevuse seadus, RT I 2004, 12, 78, Art.4(2).

Discrimination in *housing* is regulated in similar fashion to discrimination in access to goods and services (see above) except that the Czech and Lithuanian provisions on goods and services do not extend to it and the Italian prohibition applies only to the public sector.

4. Exceptions to the prohibitions on discrimination

Where the prohibitions on discrimination consist of Constitutional equality clauses or field-specific provisions it is common for “discrimination” to be undefined or to extend, implicitly or explicitly, only to *unjustified* or *unfair* discrimination. The discussion of exceptions therefore concerns, for the most part, those countries which do not provide general justification defences to their prohibitions on discrimination.

Particular attention is paid to the exceptions which apply in connection with discrimination by religious organisations, and to prohibitions on age discrimination. Every country permits differences in treatment based on age in relation to access to pensions, and exceptions to prohibitions on age discrimination tend to be broader than those which apply in relation to other grounds.

5. Approaches to the Regulation of Discrimination

A significant number of the prohibitions on discrimination which are considered in the report are of a Constitutional nature. Although the adoption of Constitutional prohibitions on discrimination confirms the acceptance of the principle that such discrimination is unlawful, these provisions sometimes extend only to citizens of the country concerned; generally prohibit only “unjustified” or “unreasonable” discrimination; are regularly applicable only as against the State rather than private individuals; and frequently give rise to real difficulties as regards enforcement. Still other countries regulate discrimination wholly or in part by means of penal provisions some of which apply (as in France, Finland) only to direct discrimination. Such provisions may also give rise to difficulties as regards enforcement and remedy. Thus the fact that most of the European countries surveyed provide protection from discrimination outside the employment context in excess of that required by EU law does not mean that a level playing field exists across Europe in the regulation of discrimination outside the employment sphere.

6. Conclusions

Such is the variety and complexity of the countries surveyed that it is difficult to do other than make a number of very general observations here. It can be said, however, that in a number of countries, the prohibition on discrimination on grounds of sexual orientation, religion or belief, disability, sex and/or age extends well beyond that required by EC law to cover social protection, social advantages, education, goods and services including housing and that the countries surveyed vary greatly in the extent to which they provide legal protection against discrimination on the relevant grounds beyond that currently required by EU law. It can further be said that all the European Countries surveyed exceed EU requirements in at least some respects, and that in many cases the protection provided in excess of EU requirements is very significant.

Discrimination on grounds of religion or belief and sex appear to attract the greatest level of protection across the European countries surveyed in addition to that required by EU law, with discrimination on grounds of sexual orientation and disability somewhat less likely to be regulated outside the employment sphere and discrimination on the grounds of age significantly less likely to be. Having said this, most countries surveyed did provide protection in excess of EU requirements to most or all of the relevant grounds.

I. Introduction

The purpose of this report is to set out in brief form the law across the EU Member States, Bulgaria and Romania relating to discrimination on grounds of sex, sexual orientation, disability, religion and belief and age, to the extent that such discrimination falls outside the current scope of EC law (Directives 2000/43/EC and 2000/78/EC). The analysis is based on detailed reports in respect of each of the countries surveyed, and a further five (“comparator”) countries: Australia, Canada, New Zealand, South Africa and the United States of America.

In section II the report provides brief descriptions of the legal context in all the countries surveyed. Except where expressly stated (that is, in relation to social protection and education), the regulation of discrimination on grounds of sex is not considered in the report. Because of the focus of the report, Constitutional provisions are discussed only where they fill gaps which would otherwise exist in domestic law and not where they duplicate detailed statutory protection. This approach is taken because, while Constitutional provisions do indicate acceptance of the principle that discrimination on particular grounds should be regulated in the contexts covered by the Constitution, the effectiveness of these provisions in challenging day-to-day discrimination is often open to question. So attention is drawn to Constitutional provisions where they are the sole or main source of regulation but not where more detailed statutory provisions exist.

Section III consists of a brief discussion of the personal scope of the legislation and the extent to which service providers may be held liable in the various countries surveyed for discrimination by their employees or by third parties (other students, for example, in the context of education, or other patients in the case of healthcare). This is a significant question because there will often be limited scope for remedy where the discriminator is a private individual unless legal responsibility can be attributed to his or her employer or (in the case of discrimination by other students, patients, customers, etc.) to the education, healthcare or service provider.

Section IV considers the extent to which the countries surveyed impose duties of reasonable accommodation in relation to disability and/or the other relevant grounds.

A brief discussion follows (section V) on the question of material scope. This is dealt with also in section II, which deals with the European countries individually. In section VI the focus is on the overview of coverage across the countries surveyed and, in particular, on specific exceptions provided in relation to prohibitions on discrimination in various contexts. Section VI considers some commonly occurring exceptions to the prohibitions on discrimination and Section VII makes some concluding observations on the current scope of discrimination law in the European countries surveyed, to the extent that that law extends beyond current EU requirements.

The research on which this report is based included Canada, the USA, South Africa, Australia and New Zealand as well as the current EU Member States and Bulgaria and Romania. The focus of the report is on the European countries, however, and the comparator countries will be discussed only where they make significant contributions to the analysis herein. Further, the focus is on substantive legal provisions rather than on questions of enforcement or remedies. Few “soft” measures are discussed by this report.

The exceptions are Codes of Practice which are found in Ireland and the UK and which, although not legally enforceable as such, have persuasive value before the courts and may be taken into account in the determination of whether a respondent has breached any provision of discrimination law. There are several examples elsewhere of voluntary codes but these have no legal effect though (as is the case with Poland's codes of professional ethics of journalists of public radio and television, which contain also anti-discrimination clauses¹³), they may be quite significant in promoting non-discriminatory standards in public life. Considerations of space preclude their discussion.

All references to "discrimination" in this report are to direct *and* indirect discrimination, unless otherwise stated.

¹³ Principles of Professional Ethics in Polish Radio S.A., Principles of Journal Ethics in Polish Television S.A.

II. Domestic regulation of discrimination across the EU, Romania and Bulgaria

In **Austria**, detailed federal protection from discrimination extends beyond current EC requirements on grounds of disability in relation to goods and services. Austrian administrative penal law also protects social groups characterised by their race, ethnicity, nationality, religion and disability against unjustifiable “disadvantage”.¹⁴ “Disadvantage” is unrestricted and could in principle extend to discrimination in relation to social protection or social advantages, although the law has to date only been enforced against service providers such as bars and restaurants.¹⁵ In such cases the alleged victim of discrimination is a witness rather than a party to the action and cases are dealt with by local authorities. Few cases are taken and the maximum penalty for perpetrators is a fine of 1090 Euro.

Regional legislation provides significant protection against discrimination on the part of provincial governments which are very significant providers of social protection etc., social advantages and education (the provincial acts typically reflect Council Directive 2000/43/EC (the Race Directive) but apply to all relevant grounds). Such legislation prohibits age discrimination with exceptions always only related to the employment sphere and there are no exceptions permitting minimum and/or maximum age requirements in relation to access to healthcare, social advantages or other matters outside the fields of employment and occupation. Discrimination in social protection and advantages could also be contested by the application of the Constitutional equality clause.¹⁶

The new federal Disability Equality Act includes protection in relation to the supply of goods and services and access to new buildings (in addition a plan to reduce barriers will be implemented until 2013). It is unclear whether its goods and services provisions apply to housing. All the regional legislation dealing with access to and supply of goods and services quote the Directive in restricting it to goods and services available to the public so it seems that private associations are exempted from the obligation of equal treatment. Housing would however generally be covered and the provincial governments are important providers of housing. It appears (though there is no caselaw) that the regional provisions extend to prohibit discrimination (for example harassment) by neighbours on the relevant grounds.

Belgian federal legislation covers all the relevant grounds¹⁷ and uses the same definitions of discrimination as the directives. It prohibits discrimination in employment, the provision of goods or services offered to the public; reference in an official document; access to and participation in, as well as exercise, of an economic, social, cultural or political activity normally accessible to the public. Jurisdiction is split in Belgium between the federal state, the Communities and the regions, and only that which falls within the federal jurisdiction is subject to the comprehensive prohibitions on the relevant grounds though regions/ Communities have some provisions especially in relation to education.

¹⁴ Art. IX par. 1 lit. 3 Introductory Law to the Administrative Procedures Code 1925 [Einführungsgesetz zu den Verwaltungsverfahrensgesetzen' 1925, EGVG].

¹⁵ The Federal Equal Treatment Act prohibits discrimination outside employment only in relation to race. The Federal Disability Equality Act regulates disability discrimination outside the employment sphere.

¹⁶ Art. 7 of the Federal-Constitution Act [B-VG].

¹⁷ The Protection Against Discrimination Act of 25 February 2003 is open-ended as a result of the decision on 6 October 2004 by the *Cour d'arbitrage* (Case n° 157/2004) that the list approach it originally adopted was discriminatory (language and political convictions not being included).

Social security is in principle regulated by legislation adopted at the federal level while healthcare, education and social aid are essentially a competence of the Communities (though to the extent that they are within federal competence the 2003 Act would cover “social advantages” provided by private or public actors to the general public).

The goods and services provisions apply to the private housing market¹⁸ but public or social housing (housing policy) is a regional competence subject only to the Constitutional prohibition on discrimination.¹⁹ Legislative moves to recognise same-sex partners are under way and steps are being taken to overhaul discrimination legislation generally. Legislation is also planned to require access for guide dogs to public places.

Bulgaria has detailed statutory provisions (the Protection Against Discrimination Act 2003) covering all EC grounds and many others²⁰ which use the relevant EC definitions of discrimination across the board and expressly cover, apart from employment and occupation, the exercise of any other right or freedom provided for under the Constitution and domestic laws (primary and secondary legislation and ratified international law which is an integral part of domestic law under the Constitution).²¹ The Act provides detailed regulation of discrimination in employment and access to goods and services and otherwise states that “The prohibition of discrimination shall be binding on all in the exercise and protection of the rights and freedoms provided for under the Constitution and laws of the Republic of Bulgaria”. It is regarded as covering discrimination on all relevant grounds across the material scope of the Race Directive as well as other fields.²² In addition, there is disability legislation of very wide scope.²³

Bulgarian legislation governing the police, armed forces and other security institutions distinguishes on grounds of age, disability, and gender. This legislation is in conflict with the Protection Against Discrimination Act and, so far as it provides for direct sex discrimination, the Constitution.²⁴

Cypriot law incorporates Protocol No. 12 of the European Convention on Human Rights into domestic law. In 2002 Cyprus’ Supreme Court accepted that the violation of human rights was actionable in the civil courts against both public and private parties, and that just and reasonable compensation could be recovered for pecuniary and non-pecuniary damages arising from the breach.²⁵

¹⁸ Judgment of 19 April 2005 of the President of the First Instance Court of Nivelles.

¹⁹ Articles 10 and 11 of the Constitution guarantee equality before the law and enjoyment without discrimination of the rights and freedoms recognized to all.

²⁰ Together with nationality, origin, education, convictions, political allegiance, personal or public status, family status and property status and “any other grounds established by law, or international treaty the Republic of Bulgaria is party to”.

²¹ Arts. 6, 5(4).

²² Case law based on the Protection Against Discrimination Act has found discrimination, and granted redress, in a number of areas, such as education, service provision (hotels, restaurants, discotheques, bars and coffeehouses, electricity provision, swimming pools, shops), employment, criminal justice, and public and political life (hate speech cases).

²³ The Integration of Persons with Disabilities Act 2004 is applicable to all fields.

²⁴ Art.6.

²⁵ Case of *Yiallourou v Evgenios Nicolaou*, 2002.

No claims have been brought since the decision, but the Commissioner for Administration is empowered to tackle “discrimination forbidden by law”, which is defined to include discrimination in the private or public sector on all grounds regulated under the Protocol to the ECHR (hence all relevant grounds²⁶), and covers social protection, social security, medical care and education.²⁷ Art.6(2)(e) of the Law appointing the Ombudsman as the national Equality Body defines “discrimination prohibited by law” as treatment, behaviour, provisions, conditions, criteria or practices in the private or public sector without any exceptions.²⁸ It is not clear whether social advantages fall within the jurisdiction of the Commissioner other than in relation to race discrimination though, to the extent that “social advantages” are state-provided, the Commissioner is empowered to deal with discrimination in this context within its powers (as Ombudsman) to examine allegations for maladministration. The Commissioner also has jurisdiction over discrimination on relevant grounds in relation to education. In addition, the Law on Persons with Disabilities 2000 regulates discrimination on grounds of disability across “services and facilities”.

The mandate of the Equality Body covers discrimination in “access to and provision of goods and services” and housing on the relevant grounds. There is no caselaw but the prohibition is thought to be general and it applies equally to the public and private sector.²⁹

In July 2006 the Cypriot Constitution was amended to give precedence to EU directives and regulations.³⁰

The **Czech** Anti-discrimination Bill, which was intended to impose a broad prohibition on discrimination, as well as to transpose existing EC discrimination directives, failed to become law in May 2006. The Constitution prohibits discrimination on the relevant grounds³¹ but can be relied upon directly only where the discrimination concerns basic civil and political rights, as distinct from economic or social rights. Where it can be relied upon, it can be enforced against private as well as state actors, though only the state can be sued in the Constitutional Court. The Constitutional prohibition on discrimination does not extend to social protection unless there is a legal right to the matter in respect of which discrimination is alleged and does not extend to education or health, and there is little caselaw dealing with the application of Constitutional protections to the relevant grounds.

²⁶ Disability and sexual orientation are not listed but included implicitly and the same is probably true for age: note, however, that all discrimination under the Protocol is capable of justification.

²⁷ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law N.42(I)/ 2004 (19.03.2004).

²⁸ Law N.42(I)/2004.

²⁹ N.59(I), which governs race discrimination, and N43(I), which provides the powers of the Equality Body, provide for explicit legal prohibition of discrimination on the ground of race in “access to and provision of goods and services, including housing”. The N.43(I) is interpreted as extending the same prohibition to the other grounds too and Art. 6(1) of the Law on Persons with Disabilities N.127(I)2000 expressly prohibits disability discrimination in accessing goods, services and facilities.

³⁰ New Art.1A.

³¹ Lists sex, race, colour, language, religion or belief, political or other conviction, national or social origin, membership of a national or ethnic minority, property and birth or other status and age, sexual orientation and disability are accepted as implicitly included.

No specific legislation exists in relation to social protection or advantages or access to and supply of goods and services on the relevant grounds, though a general anti-discrimination clause is provided by the School Law (which applies to everything except vocational third level education) which prohibits discrimination on the relevant grounds except, perhaps, age and sexual orientation (there is an open list which does not include either ground but which does refer to "other status"³²). The Law on Consumer Protection covers all agencies involved in the system of public services provision as well as private providers but applies only in relation to persons who acquire goods and services etc. for their own use, and where the operations are conducted or offered publicly for profit.³³ It does not apply to housing.

The Czech Republic's Anti-discrimination bill, if it became law, would provide protection against discrimination on the relevant grounds in relation to all the areas covered by the Race Directive. It is not clear if or when this is likely to occur.

Denmark has complex detailed statutory provisions regulating discrimination outside employment which cover the grounds of sex, sexual orientation and religion or belief in the provision of goods and services and, in the case of sex, discrimination in public administration and occupational and general activities, healthcare and education.³⁴ "Discrimination" for the purposes of the Act on Prohibition against Discrimination on the basis of Race, etc. (which regulates discrimination on grounds of sexual orientation and religion or belief in the provision of goods and services) is conceptualised along the lines of the Convention on the Elimination of all Forms of Racial Discrimination³⁵ and does not specifically cover direct and indirect discrimination, harassment or reasonable accommodation, and all the caselaw involves direct discrimination. Much discrimination in relation to social protection is regulated by the general principle of equality which binds public authorities.³⁶

The prohibition against discrimination does not cover strictly private affairs. The caselaw under the Act on Prohibition against Discrimination on the basis of Race, etc., typically relates to race, colour, national or ethnic origin and, in particular, the refusal of ethnic minorities by doormen to enter nightclubs. The fines are modest. The Act on Prohibition against Discrimination on the basis of Race, etc. covers the area of housing, except the situation where an individual in his or her private capacity in a non-commercial capacity provides housing, for instance renting out a room in his or her private home.

³² Law no. 561/2004 (Collection of Laws 2004, no. 190 p. 10 324).

³³ Law no. 634/1992 (Collection of Laws 1992, no. 130 p. 3811).

³⁴ The Act on Prohibition against Discrimination on the basis of Race, etc (Consolidated Act 1987-09-29 No. 626, which also regulates discrimination on grounds of political opinion, social origin and, in the employment field, disability and age), regulates discrimination on the grounds of race, colour, national or ethnic origin, religious belief and sexual orientation, the Act on Equal Treatment of Women and Men (Act no. 338 of 30 May 2000) discrimination on grounds of sex.

³⁵ That is, as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life" (CERD, Article 1.1).

³⁶ The unwritten principle of equality applicable under general administrative law requires that like cases must be treated alike.

Estonia has detailed statutory provisions dealing with sex discrimination which apply to all areas of social life with very few exceptions³⁷. In addition, although there are no detailed statutory provisions in relation to other grounds, the Constitution prohibits discrimination on the relevant grounds, amongst others,³⁸ in “all spheres of life”.³⁹ This is directly applicable against state and private actors⁴⁰ and applies to social protection, including social security, social assistance and healthcare, social advantages and education. There is no caselaw on the subject.

General Estonian Constitutional and criminal anti-discrimination provisions and the Law on Gender Equality regulate access to goods and services including housing. The Law on Trading prohibits traders “illegally to restrict or favour the sale of goods or services”.⁴¹ There is no distinction between goods and services available to the public and those only available privately and there are no exceptions to any prohibitions on discrimination in relation to goods and services. Further field-specific legislation applies to public transport and to taxi-drivers who are prohibited from refusing a fare without good reason.⁴²

Finland has various detailed statutory provisions together with Constitutional law, administrative law, civil law and criminal law which regulate discrimination either generally or in particular spheres. The Non-Discrimination Act prohibits discrimination in relation to employment, occupation and education in relation to a non-exhaustive list of grounds.⁴³ Sex discrimination is also extensively prohibited except in relation to the religious practices of established religious communities and matters that are of purely private nature.⁴⁴ In addition, penal provisions regulate discrimination on the relevant grounds, among others, in the provision of goods and services and the arrangement of public events and meetings.⁴⁵

Field-specific legislation prohibits discrimination in relation to healthcare and social services⁴⁶ while the Penal Code prohibits discrimination *inter alia* in the discharge of public duties and public bodies are under a Constitutional duty to provide their services on a non-discriminatory basis.⁴⁷ Discrimination in access to social protection is regulated by the combination of field-specific legislation⁴⁸ and the Constitutional prohibition on discrimination, and discrimination in access to social advantages is also covered by the Constitution and, to the extent that it involves the exercise of a “trade or profession, service of the general public ... official authority or other public function or ... the arrangement of a public amusement or meeting”, by the Penal Code.⁴⁹

³⁷ The Law on Gender Equality (*Soolise võrdõiguslikkuse seadus*, RT I 2004, 27, 181).

³⁸ Article 12 of the Constitution covers ethnic origin, race, colour, sex, language, origin, religion, political or other opinion, property or social status, or on other grounds including (implicitly) age, disability and sexual orientation.

³⁹ Decision of the Constitutional Review Chamber of the National Court of 6 March 2002; published RT III 2002, 8, 74.

⁴⁰ Katri Lõhmus, *Võrdsusõiguse kontroll Riigikohtus ja Euroopa Inimõiguste Kohtus* (Control over Equality in the National Court and in the European Court of Human Rights), *Juridica* no.2, vol. 11 (2003), p.109.

⁴¹ *Kaubandustegevuse seadus*, RT I 2004, 12, 78, Art.4(2).

⁴² The Requirements for Carriage by Bus, Tram or Trolleybus and for Taxi Service and for Carriage of Baggage (adopted by the decree of the Minister of Economy and Communications).

⁴³ The protected grounds include age, ethnic or national origin, nationality, language, religion, belief, opinion, health, disability and sexual orientation.

⁴⁴ The Act on Equality Between Women and Men (609/1986).

⁴⁵ *Rikoslaki* (391/1889), 11:9. It is not thought that this applies to indirect discrimination.

⁴⁶ Sections 3 and 4(1) respectively of the Act on the Status and Rights of a Patient and the Act on the Rights and Status of the Recipient of Social Welfare Services.

⁴⁷ S.6.

⁴⁸ S. 4(1) of the Act on the Rights and Status of the Recipient of Social Welfare Services (812/2000) provides that a recipient of services is entitled to be “treated well and without any discrimination.”

⁴⁹ S. 11:9.

The Constitutional prohibition of discrimination also applies to education as does the Non Discrimination Act.

Discrimination in access to goods and services (including housing) on grounds of sexual orientation, religion or belief, disability and age, amongst others, is regulated by the Penal Code which prohibits differential treatment “without a justified reason” by “a person who in his/her trade or profession, service of the general public, exercises of official authority or other public function or in the arrangement of a public amusement or meeting”. There have been only a few cases where this section has been invoked in relation to discrimination on the relevant grounds but one successful claim was brought by a guide dog user denied entrance to a restaurant.⁵⁰ The law distinguishes between goods and services available to the public (e.g. in shops, restaurants, banks) and those only available privately (e.g. limited to members of a private association),⁵¹ although it is not entirely clear where exactly is the line between “public” and “private”.

On implementing the race and employment directives, Parliament instructed the government to prepare a new proposal for such equality legislation which would take as its point of departure the equal treatment of all grounds of discrimination.⁵²

French penal law prohibits direct discrimination on all relevant grounds and others⁵³ in relation to 1) refusal to supply goods or services; 2) obstructing the normal exercise of any given economic activity; 3) subjecting the supply of goods or services to a condition based on one of the regulated factors; and 4) refusing to accept a person onto a professional or technical training course or voluntary work in associations of public interest. In addition to these penal provisions, French civil law regulates discrimination in access to tenancies on the same grounds through field-specific legislation (covering both direct and indirect discrimination).⁵⁴ There is no express prohibition of discrimination in education but the area is subject to the general principles of equality contained in the Constitution and other laws.⁵⁵

The French penal code establishes a general prohibition against direct discrimination in access to goods and services. The law makes a distinction only as to the level of penalty between discrimination in relation to goods and service available to the public and those only available privately.⁵⁶

German law has undergone considerable change in recent months. Prior to the adoption of the 2006 Anti Discrimination Act, protection against discrimination on the relevant grounds outside employment/ occupation was largely the result of the application of general principles of Constitutional and civil law (the former being directly applicable only against the state).⁵⁷

⁵⁰ District Court of Vaasa, 27.9.2005.

⁵¹ By enumerating the situations which fall within section 11:9 of the Penal Code.

⁵² PTK 107/2003 vp, p.7, TyVM //2003 vp.

⁵³ Articles 225-1, 225-2, 225-3, 225-4 and 432-7 of Penal Code regulate discrimination on grounds of origin, sex, family situation, physical appearance or family name, health, genetic characteristics, morals, political opinions, union activities, or their membership or non-membership, true or supposed, of an ethnic group, nation, or race.

⁵⁴ Article 1 of Act 89-462.

⁵⁵ Eg Article L1110-3 of the Code of public health. The Grenoble Court of Appeal has condemned a mayor for refusing to register children of North African origin in schools and school cafeterias.

⁵⁶ Article 225-2 of the penal code.

⁵⁷ The Constitutional equality clause (Art.3) explicitly mentions (but is not restricted to) sex, parentage, race, language, homeland and origin, faith, disability or religious or political opinions.

The Constitutional guarantee of equality applies in respect of social protection etc. and social advantages, and to health care whether publicly or privately provided. Most education in Germany is public and so is covered by the Constitutional principles of equality. There is an explicit prohibition in the Basic Law (*Grundgesetz*) on discrimination according to income by private schools that function as a substitute for public schools⁵⁸ and special regulations for autochthonous (i.e., indigenous) minorities in Germany which provide special protection of cultural identity, and the use of language in schools.⁵⁹

The old regime did not regulate discrimination by private sector actors other than in relation to disability discrimination: whereas, for example, the general principles of civil law could in theory apply to make a discriminatory refusal to let a flat null and void because contrary to the good faith, it was by no means clear that this would in fact be the case where the discrimination was on grounds other than race and, in any event, a null decision does not necessarily give rise to a remedy. Under the new law, discrimination on the prohibited grounds is prohibited "in establishing, fulfilling and terminating civil law contractual relations ... if the contractual relation: 1) is such that it is typically established under similar terms in multiple cases, or 2) has private law insurance as its purpose.

Greece has a variety of Constitutional provisions including a general equality clause governing all grounds of discrimination and all areas ("All Greeks are equal before the law"⁶⁰) together with an express prohibition on sex discrimination and a provision favouring positive action.⁶¹ Constitutional provisions are effective horizontally as well as vertically.⁶² Discrimination on the relevant grounds in relation to social protection and advantages and education, goods and/or services and housing would be unconstitutional insofar as the discrimination was between Greek citizens, though there is relevant case-law. There is little equality litigation outside the areas of employment and social security, or on grounds other than sex.

Greek legislation provides that protection against discrimination on the relevant grounds can be extended to other fields by Presidential Decree⁶³ but no steps have yet been taken to make such an extension and there is no national debate on the necessity for such an expansion.

Hungary has detailed statutory provisions prohibiting discrimination on the relevant grounds, amongst others,⁶⁴ which apply to public sector actors and, so far as is relevant, to private actors who (i) who publicly offer to contract (e.g. by advertising the availability for rent of an apartment) or call for an open tender; (ii) provide services or sell goods at premises open to customers; or (iii) who (as self-employed persons, legal entities or organisations without a legal identity) receiving state funding in respect of their legal relations established in relation to the usage of the funding.

⁵⁸ Art. 7.4.

⁵⁹ Land laws include e.g. *Gesetz zur Ausgestaltung der Rechte der Sorben (Wenden) im Land Brandenburg, Staatsvertrag über die Errichtung der "Stiftung für das sorbische Volk, Sächsisches Gesetz- und Verordnungsblatt, and Gesetz über die Rechte der Sorben im Freistaat Sachsen, Gesetz- und Verordnungsblatt.*

⁶⁰ Art. 4(1).

⁶¹ Arts. 4(2) and 116(2) respectively.

⁶² Art. 25.

⁶³ Art. 27 of Act 3304/2005.

⁶⁴ Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities: (ETA) which came into force on 27 January 2004, regulates discrimination on grounds of racial origin, colour, nationality, national or ethnic origin, mother tongue, state of health, opinion (religious or other similar philosophical conviction, political or other), gender identity, family status, motherhood (pregnancy) or fatherhood, financial status and any "other status, attribute or characteristic".

The legislation covers direct and indirect discrimination and harassment. The provisions cover housing and the same definitions of discrimination apply to all grounds and all fields.

Ireland has detailed statutory provisions regulating discrimination on all the relevant grounds, among others,⁶⁵ in relation to employment and occupation, access to goods and services, accommodation, transfer of property and education. Definitions of discrimination are in line with EC definitions. The Equal Status Acts, 2000-2004 apply to state services as well as to the private sector but make provision that nothing in the legislation shall be construed as prohibiting the taking of any action that is required by any enactment or order of a court.⁶⁶ They prohibit discrimination in education (private and public) with a number of exceptions (see below) and also prohibit discrimination on all the relevant grounds in relation to membership of clubs which hold a certificate of registration which allows the club to sell alcohol to members and certain visitors,⁶⁷ subject to exemptions discussed below.

Italy's Constitution (Article 3) recognises equal dignity and equality under the law without distinctions on grounds of sex, race, language, religion, political opinions, and personal or social conditions, and calls upon the State to remove the social and economic obstacles which limit the freedom and equality of the citizens and prevent full human development. Detailed statutory provisions go beyond the requirements of EC law in the case of disability and religion/ belief which are regulated along the lines of the race directive.⁶⁸ Social protection and advantages etc. are regulated by statute on grounds of gender, religion and belief and disability as are goods and services (public and private), housing and education. It is also generally assumed that the Italian rules relating to access to primary and secondary schools and to public housing would prevent at least direct discrimination on any ground in these contexts. Shopkeepers and those who offer services to the public for commercial purposes are prohibited from denying their services to the public,⁶⁹ as are public authorities.⁷⁰

Recent legislation gives government the power to enact, within one year, decrees aimed at the coordination of all rules on equal opportunities (all grounds, included gender),⁷¹ and a number of Italian regional assemblies have introduced laws prohibiting discrimination though federal government has attempted to have declared void such laws on one occasion.⁷²

⁶⁵ The Equal Status Acts 2000-2004 also regulate discrimination on grounds of marital status, family status, race and membership of the Traveller community.

⁶⁶ S. 14 (1)(a).

⁶⁷ S. 8-10.

⁶⁸ By the law 67/2006 on "Measures for the judicial protection of persons with disability who are victims of discrimination" and the 1998 Immigration Act respectively.

⁶⁹ This is by virtue of the general principles applicable to contracts: The "offer of services to the public" is considered under Article 1336 of the Civil Code to be a proposal to contract which, if accepted, completes the contract (Article 1326). It follows that a refusal to deliver a service or good offered to the public amounts to a breach of contract. Further, those who perform entrepreneurial activities which require licences are bound by Article 2597 of the Civil Code to contract without discrimination, and shopkeepers are bound by Article 3 of legislative decree 1998/114 to sell to anyone, taking into account only the temporal sequence of orders. Equality rules exist also in legislation governing specific fields (banks are, for example, bound by Article 8 of legislative decree 1986/64 to provide equal treatment).

⁷⁰ Article 328 of the Penal Code prohibits any public official or person "in charge of a public service" to refuse, without legitimate reason, to perform an act which is within his/her duties. Public authorities are also bound by Article 3 of the Constitution and also by Article 97 which requires that "public offices are organised ... so to ensure ... the impartiality of the administration".

⁷¹ *Legge 28 novembre 2005 n. 246. Semplificazione e riassetto normativo per l'anno 2005*, published in *Gazzetta Ufficiale*, n. 280 of 1 December 2005, art. 6.

⁷² *Legge Regionale Toscana 15 novembre 2004, n. 63 Norme contro le discriminazioni determinate dall'orientamento sessuale e dall'identità di genere*, Bollettino ufficiale della Regione Toscana n. 46 del 24 Novembre 2004.

In **Latvia** the Constitutional equality clause, which refers to “discrimination of any kind”, can be directly relied on as against state actors.⁷³ In addition, field-specific measures prohibit direct and indirect discrimination in relation to social services, defined as measures ensured by state or municipality in the form of monetary or material support or other “services to promote the full realization of person’s social rights”.⁷⁴ This guarantee is also thought to apply in relation to healthcare, in short, the whole field of social protection and social advantages within the public sphere (though this has not been established by litigation). Neither it nor the Constitution, however, applies to services provided in the private sphere or to goods and services even in relation to race, and there are no express prohibitions of discrimination on grounds of sexual orientation (though it is thought that this *may* be implicitly covered under “other circumstances”). Again, this has not been established by litigation.

The Constitutional prohibition on “discrimination of any kind” would appear to apply to goods and services including housing in the public sphere.⁷⁵ As far as the private sphere is concerned, some protection from discrimination is provided by penal law which prohibits intentional discrimination on the basis of race, religion or belief in any sphere,⁷⁶ and civil law: in one case the user of a wheelchair who had twice been refused entry into a nightclub won a ruling that he had been discriminated against on the basis of his disability, thus offending his honour and reputation.⁷⁷ Draft amendments to the civil law would prohibit differential treatment⁷⁸ in relation to services and goods available to the public, but it is thought unlikely that these amendments will be passed, in part because the regulation of discrimination on grounds of sexual orientation is a politically controversial issue.

The Latvian Law on Education applies to both the public and private sphere and prohibits discrimination on the basis of a closed list not including age, sexual orientation or disability (except by way of “health condition”).⁷⁹ The Constitution will also apply, at least in theory, to regulate discrimination by public bodies.

Lithuania has a Constitutional prohibition on discrimination which applies to religion or belief and to gender, and which is binding against the state and private actors.⁸⁰ In addition, discrimination on all relevant grounds is regulated by statute which covers discrimination by the state, educational institutions, providers of goods and services, advertisers and employers in relation to 1/ state and municipal institutions’ and offices’ activity in adopting legislature, preparing various programs and means for guaranteeing equal opportunities; 2/ education; 3/ employment; and 4/ access to goods and services.⁸¹

⁷³ Art. 91.

⁷⁴ Art.2.1. of the law on Social Security prohibits discrimination on grounds of race, colour, gender, age, disability, health condition, religious, political or other conviction, national or social origin, property or family status or other circumstances (which, it is expected, would extend to sexual orientation).

⁷⁵ Though it is not considered likely to extend to requiring accessible housing, for example, for wheelchair users.

⁷⁶ Arts. 78 and 150.

⁷⁷ Riga regional court 11.07.2005 judgment in case No. C04386004 *Raimonds Smagars v SIA “Vernisāžas centrs”*

⁷⁸ On the grounds of gender, age, race, skin colour, ethnical origin, religious conviction, political or other conviction, or other circumstances not expressly spelled out, including disability and sexual orientation.

⁷⁹ Art. 3.

⁸⁰ Art. 29 provides that “All persons shall be equal before the law, the court, and other State institutions and officers” AND THAT “No one’s rights may be restricted nor any privileges may be granted to anyone on any ground such as sex, race, nationality, language, origin, social status, religion, convictions, or opinions”.

⁸¹ The Law on Equal Opportunities came into force on 1 January 2005 and applies to equality discrimination on grounds of age, sexual orientation, disability, race and ethnic origin and religious beliefs. The Law on Equal Opportunities for Women and Men came into force on 1 March 1999 and applies to gender discrimination.

Social protection is covered as are social advantages and goods and services not including housing.

The position in **Luxembourg** has changed significantly in recent months as a result of the adoption on 26 October 2006 of a package of measures designed to extend protection against discrimination on the relevant grounds across the scope required by EU law and significantly beyond. As far as discrimination outside employment is concerned, prior to the adoption of the new laws Luxembourg had penal provisions regulating discrimination in economic activities and the provision of goods and services including advertising on a wide range of grounds including the relevant grounds with the exception of age.⁸² "Belief" was not covered in terms but "religion" and "philosophical opinions" were.) The relevant provisions prohibited discriminatory refusal of supply or of enjoyment of goods and discriminatory refusal to supply a service,⁸³ and defined discrimination as "any difference of treatment" on the protected grounds.⁸⁴ Social assistance and social advantages were thought not to be covered by the penal provision, though it did not define "services", while healthcare was thought to be covered and education not. In addition, Luxembourg's Constitution contains a general equality provision to the effect that all Luxembourgers are equal before the Law⁸⁵ which has been interpreted to prohibit unjustified discrimination.⁸⁶ No distinction was made between goods and services provided publicly or by private providers and age was subject only to Constitutional regulation which permitted a general justification defence.⁸⁷

Bill 5518 on private relations, including employment and Bill 5583 on public service, extend the scope of protection in relation to all the relevant grounds across the material scope of the Race Directive.⁸⁸ Liability in respect of discrimination in goods and services will remain exclusively penal, a fact which has been criticized by the Council of State.

In **Malta** detailed statutory provisions go beyond EC requirements in relation to sex and disability.⁸⁹ The disability provisions apply to education and access to goods and services. No distinction is made between goods and services available to the public and those only available privately. The prohibition on sex discrimination applies to education, employment, the provision of services by banks and financial institutions and in relation to advertising, but not otherwise in access to goods and/or services, social protection or assistance, etc.⁹⁰

⁸² Art. 454§2 of the penal code regulates discrimination on grounds of "racial or ethnic origin, skin colour, sex, sexual orientation, family situation, state of health, disability, customs, political or philosophical opinions, trade union activities ... membership, actual or supposed, of an ethnic group, nationality, race or specific religion".

⁸³ Art. 455 of the Penal Code.

⁸⁴ Art. 454 of the Penal Code.

⁸⁵ Art.10 bis. Art. 111 also states that "Any alien on the territory of the Grand Duchy shall enjoy the protection accorded to persons and property, without prejudice to exceptions established by law".

⁸⁶ Constitutional Court Judgment 2/1998 of 13.11.98, Mémorial (Official Gazette) A - no. 102 of 8.12.98, page 2499.

⁸⁷ Permitting, for example, differential treatment which is "necessary and proportionate" to the pursuit of a legitimate aim). A 'general justification defence' may be contrasted with a specific exception covering, for example, discrimination in access to services or education provided by church organisations. General justification defences are invariably available in cases of *indirect*, as distinct from *direct*, discrimination.

⁸⁸ Bill 5518 on private relations, including employment and Bill 5583 on public service, adopted on 24 October 2006.

⁸⁹ Equality for Men and Women Act, 2003 (Chapter 456 of the Laws of Malta) and the Equal Opportunities (Persons with a Disability) Act, 2000 (Chapter 413 of the Laws of Malta).

⁹⁰ The Equality between Men and Women Act.

Malta also has a variety of Constitutional provisions which are directly enforceable against the state and which cover, so far as relevant here, equality clauses covering race, place of origin, political opinions, colour, creed or sex.⁹¹ Malta also gives effect to the ECHR, Article 3(1) of the European Convention Act, 1987 providing that the substantive provisions of the Convention are enforceable as part of the law of Malta. In some cases of discrimination by the state victims can seek to protect their rights by invoking the right to protection from discrimination under the Constitution and under the 1987 Act.

Malta has attempted to pass legislation to govern discrimination more generally outside the context of employment. The legislation, which is not publicly available, aims to implement directives 2000/43/EC and 2000/78/EC with respect to discrimination outside the field of employment in relation to all relevant grounds not already regulated by Maltese Legislation. The legislation has however been vetoed and the directives are to be implemented piecemeal though the Government is planning to enact legislation in the near future to cover discrimination in education more comprehensively.

In the **Netherlands** detailed statutory provisions govern discrimination on grounds of sex, sexual orientation and religion or belief in “offering or permitting access to goods or services (including housing, social services, health care, cultural affairs and education)⁹² in concluding, implementing or terminating agreements on the subject, and in providing career orientation and advice or information regarding the choice of educational establishment or career”. The prohibition on discrimination applies to all offers which are made publicly, whether in a newspaper, on a billboard or on a website, and no distinction is made between a private individual offering to sell a second hand bicycle on E-bay and an insurance company advertising on national television. The law specifically includes public authorities where they offer goods or services. In addition, the Penal Code prohibits intentional discriminatory conduct on the ground of race, belief, conviction, sex or heterosexual or homosexual orientation or disability in occupation or profession. Disability was added to the other grounds on 1 January 2006.

Discrimination in access to social protection including social advantages and social security is not regulated except on the ground of race. The Constitutional prohibition on discrimination is on open-ended grounds⁹³ and internationally agreed provisions such as the ICCPR form part of domestic law.⁹⁴ Constitutional provisions are enforceable only against the state, however, and do not trump formal legislative provisions.⁹⁵

Poland regulates discrimination outside the employment sphere mainly by means of general Constitutional provisions some of which are applicable only to Polish citizens, and field-specific provisions providing rights (for example) to social security, healthcare, etc. The Constitution contains an equal treatment clause concerning access to health care services which specifically provides for special health care in the case of children, pregnant women, disabled people, mentally ill people and persons of advanced age,⁹⁶ and provides the right to education without discrimination.⁹⁷

⁹¹ Arts. 32 and 45.

⁹² Equal Treatment Act (Algemene wet gelijke behandeling).

⁹³ “On the grounds of religion, belief, political opinion, race, sex or on any other ground”.

⁹⁴ Arts. 93 and 94 of the Constitution and see the decision in *Centrale Raad van Beroep*, 25 January 2005, LJN AS4163, discussed below.

⁹⁵ Art. 120.

⁹⁶ Art. 68.

⁹⁷ Art. 70.

In theory these provisions are directly enforceable against the state but in practice Constitutional provisions are rarely invoked directly. There are no definitions of discrimination outside the employment context. In addition, international treaties including the ICCPR, the IESCR, CERD, CEDAW and the ECHR⁹⁸ are directly applicable in Polish law. Discrimination on grounds of sex, marital status, and family status is regulated in relation to social security⁹⁹ while the Act on Social Assistance prohibits discrimination without reference to any particular grounds.¹⁰⁰ The Constitution imposes upon public authorities an obligation to create policies enabling them to meet the housing needs of citizens,¹⁰¹ But Polish domestic legislation does not specifically regulate discrimination in housing.

In Poland a debate on same-sex partnerships took place in 2004 in the context of draft legislation designed to regulate the legal situation of gay men and lesbians by providing them with inheritance rights after the death of the partner, the right to alimony after the partnership has ended, the right to be informed about the health condition of a partner in hospital and to participate in treatment decisions. The draft law did not extend to adoption or "family" taxation, but it was so controversial that the legislative process was stopped by the lower chamber of Parliament and the draft law is thought unlikely to be adopted.

Portugal has detailed statutory provisions on race¹⁰² and provisions on religious freedom.¹⁰³ Efforts are being made to provide detailed statutory regulation in relation to disability, a framework law having been passed in 2004.¹⁰⁴ At present the law, which has yet to be implemented, covers housing, transport, and goods and services, using the definitions of direct and indirect discrimination in the Race Directive and imposing obligations to take reasonable steps to accommodate the needs of a disabled person, in the employment and non-employment fields.

Portuguese Constitutional provisions and field specific legislation prohibit unjustified differential treatment in social security¹⁰⁵, social protection, social assistance, education, healthcare,¹⁰⁶ social advantages, housing or goods and services available to the public.¹⁰⁷ Goods and services available through private associations are excluded from the prohibition on discrimination under the principle of freedom of association, but access to membership itself cannot be based on discriminatory criteria.¹⁰⁸

⁹⁸ Respectively, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of all forms of Racial Discrimination and the International Convention on the Elimination of all Discrimination against Women.

⁹⁹ Art. 2a.1 Act on System of Social Security 1998.

¹⁰⁰ Art. 119.2(3) of the Act of 12th March 2004.

¹⁰¹ Art. 75.1.

¹⁰² Law 134/99 of 28 August 1999 and Law 18/2004 of 11 May 2004 transposing Council Directive 2000/43 into Portuguese Law.

¹⁰³ Law 16/2001.

¹⁰⁴ Law 38/2004.

¹⁰⁵ The Law 32/2002, Art. 8.

¹⁰⁶ Law 48/90, modified by Law 27/2002.

¹⁰⁷ The general Constitutional equality clause covers ancestry, sex, race, language, place of origin, religion, political or ideological beliefs, education, economic situation, social circumstances or sexual orientation. This list is not exhaustive and covers disability age and sexual orientation. It is not entirely clear whether the Constitutional prohibition applies to private bodies.

¹⁰⁸ Decree-law 594/74 of 7 November, as amended by Decree-law 71/77 of 25 February.

The Constitution provides that the law may only restrict rights, freedoms and guarantees in cases expressly provided for in the Constitution and such restrictions shall be limited to those needed to safeguard other rights and interests protected by the Constitution, while the Civil Code states that in case of conflict of rights that which is considered to be of higher value must prevail.

The current Portuguese government has placed the adoption of anti-discrimination law as an important goal and has bound itself to impact-assessing every legislative proposal with reference to gender and disability. Proposals have recently been made to impose minimum sex requirements of 33.3% on candidate lists for election to municipal government and to the national and European Parliaments.¹⁰⁹ Other proposals would (*inter alia*) equalise the age of consent for heterosexual and homosexual sex and the criminalisation of sex discrimination along the same lines as currently apply to racial and religious discrimination; and the adoption of a Plan of Action on Integration of Disabled and Incapable Persons concerning education, healthcare, employment and occupation, and accessibility.

Romania has statutory provisions regulating discrimination on the relevant grounds, amongst others,¹¹⁰ in relation to a wide variety of rights including economic, social and cultural rights, in particular, the right to housing, the right to health, medical assistance, social security and social services; the right to education and to professional training; the right to take part in cultural activities and sport in conditions of equality and the right of access to all public places and services.¹¹¹ This legislation was most recently amended in July 2006 to increase its scope and to transfer the National Council for Combating Discrimination from the control of the Government to that of Parliament. In addition, penal provisions prohibit “incitement to hate” and define as aggravating circumstances motivation on the same grounds. Broadly the same definitions are used across the board (with some inconsistencies). During the last few years, several field-specific laws (health insurance and social assistance) have made specific reference to their non-discriminatory enforcement. In relation to goods and services no distinction is made between public and private providers.

Enforcement of antidiscrimination legislation is, however, very weak, particularly in the case of disability-related rights, and there is a great deal of intolerance of gay men and lesbian women.

In **Slovakia** detailed statutory provisions regulate discrimination on grounds of sex in relation to social protection and social advantages, education and access to goods and services, including housing,¹¹² and the Constitution also prohibits discrimination on the relevant grounds, amongst others,¹¹³ in relation to fundamental rights.

¹⁰⁹ The draft Law 221/X on parity approved by the Assembly of the Republic on 19 April 2006.

¹¹⁰ Ordinance 137/2000, as amended by Law No 48/2002, Law 77/2003, Law 27/2004 and Law 324/2006, regulates discrimination on grounds of race, nationality, ethnicity, language, social category, non-contagious chronic disease, HIV infection or belonging to a disadvantaged category or any other ground.

¹¹¹ Art. 1.

¹¹² The Act of 20 May 2004 on Equal Treatment in Certain Areas and Protection against Discrimination.

¹¹³ Art. 12 regulates discrimination on grounds of race, colour, language, political affiliation or other conviction, social origin, nationality or ethnic origin, property, lineage or any other status: there is no direct reference to the grounds of disability, age and sexual orientation in the Constitution but grounds not mentioned explicitly in the Constitution are covered by reference to “any other status.”

Such fundamental rights do not include access to goods and services or to housing, but do include the right to education, to adequate material security in old age as well as in cases of incapability for work and death of the breadwinner of a family, and the right of a person suffering material need to assistance that is necessary to secure a basic standard of life. Other social payments fall outwith the Constitution and are protected from discrimination on the ground of sex alone. Education and healthcare are also covered by field-specific prohibitions on discrimination on the relevant grounds.¹¹⁴ New buildings are required to be accessible to the disabled.

In **Slovenia** detailed statutory provisions regulate direct and indirect discrimination on 14 grounds including the relevant grounds¹¹⁵ in all areas of social life.¹¹⁶ The Act Implementing the Principle of Equal Treatment (IPETA) does not distinguish between goods and services available to the public and those only available privately. There are no exceptions from the prohibition on discrimination in relation to goods and /or services. Housing is implicitly included within the Act though housing laws allow the imposition of many conditions on tenancy agreements which can lead to discrimination on the basis of some personal circumstances, e.g. against Roma who are very severely disadvantaged.

In **Spain**, field of application specific provisions are favoured on the principle of mainstreaming (education, social security etc., and healthcare¹¹⁷). These do not tend to include definitions of discrimination. There are, in addition, detailed statutory provisions dealing with disability,¹¹⁸ and the government is required to draw up an impact assessment of all proposed legislation, and directly applicable Constitutional provisions prohibit differential treatment between Spaniards without objective and reasonable justification “on the grounds of birth, race, religion, opinion or any other condition or personal or social circumstance” in all areas, public and private, even in the absence of specific statutory provisions.¹¹⁹ National legislation may be developed by the Autonomous Regions may also introduce further benefits and social advantages.¹²⁰

¹¹⁴ And the others listed in the previous footnote.

¹¹⁵ The Act implementing the Principle of Equal Treatment 2004 regulates discrimination on grounds of “personal circumstances such as nationality, racial or ethnic origin, sex, health state, disability, language, religious or other conviction, age, sexual orientation, education, financial state, social status or other personal circumstances”.

¹¹⁶ Slovenia also has a directly applicable general equality clause human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other conviction, material standing, birth, education, social status, disability or any other personal circumstance.

¹¹⁷ Organic Law 2/2006 of 3 May on Education, Arts. 1 and 80 and Organic Law 6/2001, of 21 December, on Universities, Arts 42, 45 and 48; Legislative Decree 1/1994 of 20 June adopting the Consolidated Text of the General Social Security Law, Art. 2; and Law 14/1986 of 25 April – General Healthcare Law, Art. 3. In addition, Royal Decree 801/2005 of 1 July adopting the 2005-2008 National Plan to promote public access to housing, although of universal scope, specifically targets groups that have particular difficulty in gaining access to decent housing.

¹¹⁸ Law on the Social Integration of the Disabled (Law 13/1982) and Law 51/2003 of 2 December on equal opportunities, non-discrimination and universal access for the disabled (Law 51/2003).

¹¹⁹ Arts.1.4, 14. Case-law includes disability, age and sexual orientation as “any other condition or personal or social circumstance” (respectively, Constitutional court decisions Judgment nº 269/1994 of October 1994, Judgment nº 184/1993 of 31 May and Judgement nº 41/2006 of 13 February 2006).

¹²⁰ Spain’s Constitutional general equality clause provides that “Spaniards are equal before the law and may not in any way be discriminated against on the grounds of birth, race, sex, religion, opinion or any other condition or personal or social circumstance” and equality is said to be one of the “higher values of the legal system” established by the Spanish Constitution of 1978 together with liberty, justice and political pluralism. Disability, age and sexual orientation are implicitly included. The Constitution also imposes positive obligations regarding equality specifically (but not exclusively) with regard to disability, and protects freedom of religion. Constitutional equality and anti-discrimination provisions are directly applicable and can be enforced on both public and private actors.

Draft legislation in **Spain** includes a bill designed to transpose Directives 2002/73 and 2004/113 (the Equal Treatment Amendment Directive and the Recast Gender Directive) into national law and another which would criminalise any infringements of disabled people's rights to equal opportunities, non-discrimination and universal access involving direct or indirect discrimination, harassment or non-compliance with requirements for accessibility and reasonable accommodation, along with non-compliance with legally established positive action measures, especially where there are economic benefits for the offender. Another draft Bill recognizes Spanish sign language as a language of those deaf people in Spain who freely decide to use it, and to provide and guarantee support for communication by deaf, hearing-impaired and deaf-blind people and additional legislation is planned to improve social protection for disabled people and elderly dependent women and to give rights of recognition to gender-reassigned persons.

Sweden has detailed statutory provisions governing discrimination outside the workplace on the relevant grounds with the exception of age.¹²¹ Different grounds have different levels of protection: religion and belief and sexual orientation are protected in relation to social protection and social advantages, education and access to goods and services including housing,¹²² while disability discrimination is regulated only in relation to education and the professional provision of goods, services and housing¹²³ (as are the other grounds with the exception of age) and sex is covered except in relation to social assistance.¹²⁴ In addition, penal provisions ban unlawful discrimination by merchants in the provision of goods and services, and by employees at the state and local authorities in their capacity as employees, on grounds of religion and homosexual orientation.¹²⁵ This is thought to apply to discriminatory treatment by public actors in relation to health care, education and social security, but there is no case law on this point.

A new Swedish law has been proposed to replace the sector-specific laws and the ombudsmen responsible for them with a single Act and a single ombudsman. It is proposed that seven grounds of discrimination will be covered: gender, gender identity, ethnicity, religion or other belief, disability, sexual orientation and age and that age discrimination will be prohibited in working life and other activities related to working life as well as parts of the educational system. The prohibition of discrimination would apply to various new areas of social life such as the entire field of education, public gatherings and public displays, compulsory military and civil service as well as public appointments and public assignments as well as to their current spheres and the new protection would extend beyond natural persons to legal persons where justified.

¹²¹ The 2003 Law Prohibiting Discrimination (2003:307), the Law on Equal Treatment of Students in Higher Education (2001:1286) and the Law banning discrimination and other degrading treatment of children and students (2006:67).

¹²² By the 2003 Act which regulates discrimination on grounds of ethnic origin, religion or belief, sexual orientation and gender outside the area of employment and education (ss.9 to 13 cover discrimination in access to goods and services including housing (s.9, which applies to discrimination in relation to ethnic background, religion or other belief, sexual orientation or disability); social services, etc., social insurance, unemployment insurance and health and medical care (ss.10 -13, which apply to discrimination connected with ethnic background, religion or other belief). Laws 2001:1286 and 2006:67 apply to all relevant grounds except age.

¹²³ By the 2003 Act.

¹²⁴ By the 2003 Act.

¹²⁵ By Penal Code 16:9.

The prohibition on discrimination concerning goods, services and housing will apply to anyone, including private persons, who provides such items to the public and the starting point would be to equalise protection as far as possible.¹²⁶ The proposed law would extend the scope of positive action on grounds of race and sex (to higher education), would regulate discrimination against trans gendered people, and would provide rights to reasonable accommodation of disability beyond the employment field and significant further measures are being introduced in connection with race equality.

The **UK** has detailed statutory provisions which govern or are expected within the next few months to govern discrimination on the relevant grounds, with the exception of age, across the material scope of the Race Directive. In Great Britain (which excludes Northern Ireland) discrimination on grounds of sex, race and disability are regulated in relation to education, the supply of goods and services¹²⁷ and housing and the performance of public functions, as well as employment. The provision of social advantages other than by public authorities is regulated only if they comprise “goods and services” but this is likely to be the case. The prohibitions on discrimination apply only to persons “concerned with the provision (for payment or not) of goods, facilities or services to the public or a section of the public”. At present, discrimination on grounds of religion or belief and sexual orientation is regulated in Great Britain only in relation to employment and third level education but legislative provisions extending protection in the case of religion or belief across the same material scope as applies in relation to the other relevant grounds are expected to be implemented in April 2007¹²⁸ and the same legislation has put in place the necessary powers to extend protection similarly in the case of sexual orientation. Those powers are also expected to be exercised by April 2007. There is a lack of consistency as to definitions across the board but they broadly follow the race and employment directives.

In Northern Ireland the regulation of discrimination on grounds of sex, race, age and disability is very similar to that in Great Britain and discrimination on grounds of sexual orientation is expected to be regulated imminently on lines similar to those in Great Britain. Differences arise in relation to religion and belief, Northern Ireland’s provisions having no application to primary or secondary education (which remain for the most part segregated along religious lines). Further, public bodies are only prohibited from discriminating *directly* on grounds of sex or religion or belief in relation to functions which are different in kind from those carried out by private sector actors (in Great Britain this prohibition applies also to indirect discrimination). Northern Ireland applies the same approach to race and disability discrimination in public functions as does Great Britain.

Single equality laws are planned in Great Britain and in Northern Ireland which may result in removal of some of the existing anomalies.

¹²⁶ However, though as far as protection in relation to goods, services and housing, public meetings and public events, the social insurance system and social services, health and medical services, etc., from age discrimination is concerned, further investigations are considered to be required before the discrimination prohibition can be formulated.

¹²⁷ Widely defined to include (as is the case in Australia) services to prisoners such as access to prison work (*Alexander v Home Office* [1988] ICR 685).

¹²⁸ The Equality Act 2006.

III. Personal scope

1. Natural and legal persons

Many countries do not distinguish between legal and natural persons as far as *protection* from discrimination is concerned (Belgium, Bulgaria, Cyprus, Luxembourg, the Czech Republic, France, Greece, Hungary, Malta (except under the Constitution), Poland, Portugal, Slovakia, Spain, probably also in the case of Austria, Latvia and Estonia). Denmark Sweden and Finland however apply protection only to natural persons (though there are proposals to change this in the case of Sweden) as does Germany except in the case of religion, Ireland, Italy, except where discrimination against legal persons in effect leads to indirect discrimination between natural persons, Romania and Lithuania.

Most countries do not distinguish between legal and natural persons as far as *liability* for discrimination is concerned. In the Czech Republic, however, legal persons have no criminal liability and Cyprus, Portugal and France provide for different levels of fine in the case of natural and legal person,. Romania at least in theory for sanctions halting the operation of legal persons found to have discriminated unlawfully.

2. Vicarious liability (legal responsibility for the actions of others)

In many cases where civil liability is at issue, a prohibition of discrimination will be significantly more effective if companies, employers etc. are held responsible for the discriminatory actions of those under their control whether direct (in the case of employees) or indirect (in the case, for example, of clients).

Most countries surveyed provide that employers are liable for the actions of their employees where those employees discriminate against, for example, clients or customers. Exceptions to this general rule include Luxembourg, Spain and Lithuania while Austria's legal order penalises only those who discriminate or who instruct others so to do and Romanian legislation does not provide for specific mechanisms that would make legal persons liable for the conduct of their employees except in the case of a person entitled to represent the institution, and establishing vicarious liability for employees is legally possible but complex.

Considerably less common is the imposition of liability on service providers for the actions of third parties such as other clients or customers. Belgian law makes schoolteachers liable for the acts of their pupils and Bulgarian law imposes vicarious liability in the case of educational institutions for discrimination committed by a student where the institution has failed in its duty to prevent discrimination at the place of study. Similarly, in Sweden, educational providers are held responsible for continued harassment regardless of its source as well as, as employers, for the acts of their employees. Individual employees cannot be held personally liable under civil law. More broadly, Irish law requires a person who is responsible for a service, the provision of goods or accommodation or an educational establishment not to permit a person who is seeking to avail himself/herself or availing himself/herself of any of these to be sexually harassed or harassed, subject to a defence that reasonably practical steps were taken to prevent the sexual harassment or harassment. In the Netherlands, caselaw establishes that employers and service providers can be liable for discrimination/ harassment by patients/ clients and in the Czech Republic service providers are vicariously liable for the actions of clients or customers as well as staff.

IV. Reasonable accomodation

The previous section provided a broad overview of the coverage by country of discrimination on the relevant grounds outside the sphere of employment and occupation. In this section the focus turns to the approaches taken to “discrimination” by the countries surveyed, and, in particular, to the extent to which positive steps are required to advance equality. In the disability context these steps tend to take the form of a duty of reasonable adjustment. In relation to other relevant grounds, some countries permit or require special measures to be taken to advance equality. These may be regarded in some cases as positive action/ positive discrimination; in other cases as reasonable accommodation, and in other cases as neither of these but, rather, as ways of enforcing ordinary (negative) prohibitions on discrimination.

None of the countries surveyed would prohibit the making of reasonable accommodation to the needs of disabled people as a form of discrimination. But there is a significant degree of variation across the countries as to whether public and/or private service providers are *required*, as distinct from *permitted*, to take such measures. The only countries which impose duties of adjustment as such beyond disability are Germany and Slovakia, though a prohibition of indirect discrimination does result in practice in obligations to adjust to the needs of members of groups disadvantaged by reference to the protected ground. (So, for example, a prohibition on sex discrimination will frequently require the adjustment of practices which serve to disadvantage women, though the adjustment would have to be applied to all those disadvantaged by the practice rather than simply to women.)

This section also discusses building and other accessibility regulations which, although they do not define failure to comply as “discrimination”, nevertheless promote equality for disabled people by facilitating their access to the built and other environments.

General duties of reasonable adjustment

Germany and Slovakia alone impose duties of reasonable adjustment *as such* in relation to grounds other than disability. Slovakia’s Anti-discrimination Act provides that compliance with the principle of equal treatment requires the adoption of such anti-discrimination (protective) measures as are reasonable given the specific circumstances of the person who is prohibited from discriminating. It thus appears to provide for reasonable accommodation across all regulated grounds, though this has yet to be confirmed by litigation and more detailed provisions on reasonable accommodation apply only to disability and only in the employment context. The School Act, in addition, obliges primary and secondary schools to make reasonable accommodation to the needs of disabled students though it is reported that difficulties in terms of finance mean that the vast majority of schools are not accessible to the disabled, and the Constitution guarantees the right of juveniles and disabled persons to special assistance in training and provides for special support for socially disadvantaged and disabled students. Specific legislation outside the sphere of discrimination law also obliges providers of universal telecommunication services to secure access of disabled people to telecommunications services and to appropriate access to pay phones with special equipment, and the Slovak Railways to ensure upon request transport of a person with limited orientation and movement ability and buildings regulations also apply to new and renovated publicly accessible and residential buildings.¹²⁹

¹²⁹ S.50 Act No. 610/2004, s. 28 of Act No. 164/1996.

German law prohibits disability discrimination by public bodies and obliges such bodies to provide hindrance-free access (public buildings, public transport, public streets, means of communication). In addition, private service providers have duties to make reasonable accommodation under various statutory provisions covering, for example, barrier-free access to restaurants and bars and the *Länder* have passed laws on building standards which relate to the reasonable accommodation of public buildings at *Land* level for the disabled, older people and people with small children. The duty to make accommodation extends beyond the ground of disability: special legal regulations and case law deal with the reasonable accommodation of various religious beliefs, including by way of exceptions from general laws, as an aspect of freedom of religion guaranteed by the Basic Law. So, for example, public authorities are under a duty to take the special needs of religious communities and the individuals constituting these communities into account.¹³⁰

Disability-specific duties

A number of other countries (Spain, the UK, Austria, Belgium, Malta, Ireland, the Netherlands, Cyprus, Portugal and Lithuania) impose duties of reasonable adjustment in relation to disability well beyond the employment sphere. Spanish law defines a failure to make reasonable accommodation to the needs of the disabled as discrimination, defining “reasonable accommodation” as “measures to adapt the physical, social and attitudinal environment to the specific needs of disabled people and which, in an effective and practical way and without imposing a disproportionate burden, facilitate a disabled person’s access or participation on equal terms with other citizens.”¹³¹ The disability law, which applies to “telecommunications and the information society”; urban public spaces, infrastructure and building; transport; goods and services available to the public and relations with the public authorities, provides that “in determining whether or not the burden is proportionate, account shall be taken of the measure’s cost, the discriminatory effect for disabled people if it is not adopted, the structure and nature of the person, entity or organization that is to put it into practice, and the possibility of obtaining official funding or any other type of aid. To this end, the competent authorities may establish a system of public grants to help cover the costs arising from the obligation to make reasonable accommodation.”¹³² The disability law also provides that, within a period of two years, the government shall establish the basic framework for accessibility to and non-discrimination by public authorities; access to and use of goods and services available to the public; access to and use of technologies, products and services related to the information society and social media; access to and use of transport, and access to and use of urban public spaces and buildings. These provisions are at an advanced stage of preparation and negotiation. Also interesting to note in this context is Law 26/1992 which provides that “every effort will be made to provide food that complies with Islamic dietary laws to Muslim interns in public centres or establishments and military barracks, and to Muslim pupils in public schools and state-subsidized private schools, at their request, and to adapt meal times during the month of Ramadan”.

¹³⁰ In BvR 1783/99, 15.1.2002 the Federal Constitutional Court held that Articles 2.1, Articles 4.1 and 4.2 of the Basic Law provide a right on the part of Muslim butchers to perform ritual slaughter.

¹³¹ Art. 7.c, Law 51/2003.

¹³² Art.7.c, Law 51/2003.

The UK imposes duties of reasonable accommodation in relation to disability in access to goods and services including premises, education and transport, and accessibility standards have been imposed in relation to the built environment and transport (trains and trams, buses and coaches). In addition, public authorities are under obligations to promote equality on a number of grounds including (in Great Britain) sex, race and disability. Austrian regional legislation imposes duties of reasonable accommodation in relation to disabled people across the same material scope as the Race Directive (that is, in relation to social protection, social advantages, etc.). Federal disability law also prohibits indirect disability discrimination which it defines to cover “features of designed areas [which] would put persons with disabilities at a particular disadvantage compared with other persons”,¹³³ and imposes duties of reasonable accommodation subject to a “disproportionate burden” defence.¹³⁴ In addition, national and other standards regulate access by the disabled to buildings, information, education and other services.

Belgian federal law imposes duties of reasonable accommodation in relation to disabled people and defines a failure to comply with an obligation to make reasonable accommodation as an instance of disability discrimination. In addition, buildings regulations require accessibility to disabled people. And Maltese law provides that, where refusal of access to a disabled person is the result of premises or facilities having been designed or constructed in such a way as to render them inaccessible to a person with a disability, the refusal will not be regarded as unlawful where any alteration of such premises or facilities would impose unjustifiable hardship on the service provider. Early application of this law has been robust but is on appeal, and exceptions are provided where access to goods and services would be impracticable or unsafe and could not be made practicable and safe by reasonable modification to rules, policies or practices, or the removal of architectural, communication or transport barriers or the provision of auxiliary aids or services. Maltese law also permits (but does not require) positive discrimination in favour of disabled people.

Irish law imposes duties of reasonable accommodation in relation to disabled people across the material scope of the Race Directive, though a failure to make such accommodation is not considered discrimination where the cost involved to the service provider of doing so would be more than nominal. So, for example, the Equality Tribunal has ruled that there was no obligation to make public buses wheelchair-accessible where the cost would have been in the region of € 150,000 per bus.¹³⁵ The Disability Act 2005 also requires government departments to produce outline sectoral plans in relation to the particular department’s approach to disabilities issue (the Department of Transport considers issues in relation to bus, rail, taxi and air travel and the National Disability Authority has produced IT accessibility guidelines and guidelines for accessibility of the built environment). Building regulations also deal with accessibility for people with disabilities and have legal effect.¹³⁶

In the Netherlands amendments to Dutch criminal law which came into effect on 1 January 2006 prohibit intentional disability discrimination by companies and services and requires that they must be accessible to disabled persons unless there is a valid reason for their inaccessibility. Reasonable supplementary measures may be required as long as they do not lead to a disproportionate burden.

¹³³ The Disability Equality Act, BGBl I Nr. 82/2005, Federal Law Gazette I Nr 82/2005.

¹³⁴ § 6/2/6.

¹³⁵ DEC-S2003-046, *Hennessy v Dublin Bus*.

¹³⁶ Building Regulations (Amendment) Regulations Statutory Instrument 179 /2000.

It is envisaged that the Act on Equal Treatment on the grounds of Disability or Chronic Illness (which currently applies only to employment) will be extended to public transport by road in 2010 and rail transport in 2030. Dutch law imposes, in addition, accessibility requirements in relation to buildings and university exams and guidelines exist for building web pages accessible to disabled people.¹³⁷ A code of conduct has been developed for transport of wheelchair users and a plan of action has been developed by the Ministry of Agriculture and Conservation to increase the accessibility of recreational facilities to persons with disabilities. The government did, until 2004, provide financial support to disabled persons using public transport but the level of support was dramatically reduced in that year. A human rights challenge to the reduction will be decided in 2007.¹³⁸

In Cyprus the Law on Persons with Disabilities 2000 defines as “discrimination” the failure to alter services or facilities where their use by a person with disability is impossible or unjustifiably difficult.¹³⁹ What is a “reasonable measure” in any particular case turns on the nature and extent of the cost involved, the financial means of the person required to take these measures, public finances (if the party required to take the measures is the state), the existence of state or other subsidies towards the cost of taking measures and the socioeconomic situation of the disabled person affected.¹⁴⁰ The duty to make reasonable accommodation also does not affect any measures for, *inter alia*, the protection of “health and the rights and freedoms of others” and does not prevent the introduction or maintenance of regulations for the protection of health and safety at the workplace, or measures aimed at creating or maintaining requirements or facilities intended to preserve or encourage the inclusion of persons with disabilities.¹⁴¹ Accessibility to housing, to the built environment and to transport is mentioned in Art. 4(2) of the 2000 Law as one of the rights of persons with disabilities, although the failure to implement this right does not amount to discrimination. The Law also provides that means of public transport must be adjusted so as to be accessible by persons with disabilities, though the implementation of this provision is by special regulations yet to be issued by the Council of Ministers¹⁴² and provides for preferential parking for disabled people.

Portuguese law imposes duties of reasonable accommodation outside the employment context, though not with the detail which is provided in their application to employment.¹⁴³ It also permits, but does not require, the taking of positive measures in relation to access to education for the disabled, and economic and financial difficulties have prevented this provision from being implemented except through the allocation of places in public transport, reservation of parking places, and provision of loans with reduced interests rates and support in setting up businesses. Buildings accessibility regulations also apply.¹⁴⁴

¹³⁷ See: www.drempelsweg.nl (“Remove barriers”)

¹³⁸ The Supreme Court is due to hear an appeal from the decision in *CG-Raad and others v the Netherlands* (District Court The Hague, 9 July 2004, KG 04/722 and High Court The Hague, 31 March 2005, 04/1015 KG).

¹³⁹ Art. 6(2) sets out examples of suitable adjustments.

¹⁴⁰ *Ibid* Art.6(1)(b).

¹⁴¹ Cypriot law also contains a provision for preferential parking of vehicles for persons with disabilities and a bill has been tabled in Parliament, scheduled to be discussed in October 2006, further enhancing the preferential parking scheme for persons with disabilities.

¹⁴² Art.7.

¹⁴³ By Law 38/2004.

¹⁴⁴ By Law 38/2004.

Lithuania's Law on the Social Integration of the Disabled imposes an obligation on service providers to make reasonable accommodation for disabled people, requires that buildings are designed, constructed and altered so as to be accessible to the disabled, and applies also to public transport.¹⁴⁵ In addition, the Law on Equal Treatment imposes duties on public authorities to implement equal treatment not only by ensuring that legislation does not discriminate on grounds of age, sexual orientation, disability, racial or ethnic origin religion or beliefs, but also to draft and implement programmes and measures designed to ensure equal treatment on these grounds.

Limited disability-specific duties of reasonable adjustment

Other countries (France, Finland and Bulgaria) impose duties of reasonable across a more limited context. So, for example, French law requires that schools take positive measures to make themselves accessible to disabled students¹⁴⁶ and accessibility requirements are being imposed incrementally in relation to buildings, public transport and television.¹⁴⁷ Finland's Non Discrimination Act imposes duties of reasonable accommodation on employers and educators in relation to persons with disabilities by the Non Discrimination Act and a variety of buildings standards regulations apply in relation to accessibility.¹⁴⁸ And Bulgaria's Protection Against Discrimination Act imposes duties to make reasonable accommodation for the disabled in the fields of employment and education. In the educational context it expressly permits (but does not require) differential treatment of persons with disabilities aimed at meeting their special educational needs in order to equalise their opportunities. Such treatment might include special medico-social rehabilitation and support services, specially adapted learning tools, technologies or materials, additional teacher support and positive measures such as financial and admission preferences designed to encourage disabled students' integration in education.¹⁴⁹ Under the Higher Education Act persons with permanent disabilities and a loss of working ability of 70% or more, as well as persons with military disabilities are entitled to preferences in admission to universities.

Greece and Sweden do not impose any explicit duties of reasonable adjustment as such outside the employment context, but they do require positive action more generally (this would apply at least in theory to require accommodation of the needs of the disabled) or the taking of positive measures to promote equal rights (which might in practice have similar effect). Thus the new Greek Constitution, which entered into force on 17 April 2001, requires positive action in relation to all relevant grounds and provides a further Constitutional basis for action in favour of the disabled (special welfare and social security benefits, price reductions, wage subsidies, compulsory placement and employment quotas). Recent years have witnessed efforts to make school and other public buildings accessible to the disabled.

¹⁴⁵ Lietuvos Respublikos Invalidų socialinės integracijos įstatymo pakeitimo įstatymas. Official Publication Valstybės žinios, 2004, No. 83-2983.

¹⁴⁶ The law of February 11, 2005 on disability, articles 19, 20, 21 and 22 of the Act, and HALDE deliberation of February 6, the 2006 (n°2006-24).

¹⁴⁷ Also by the 2005 Act.

¹⁴⁸ The Land Use and Building Act (132/1999) and Land Use and Building Decree (895/1999) require that buildings that are used by the administration, service providers or businesses (subject to certain conditions) have to be accessible to persons with disabilities.

¹⁴⁹ Art.7 (1.10).

And while Swedish law does not impose any duties of reasonable accommodation in relation to the disabled outside the employment field, the ban on disability discrimination is asymmetric so positive action in this field is not subject to limitation and universities are required to take active measures in relation to all the relevant grounds to promote the equal rights of students irrespective of their belonging to any of the protected groups. Buildings regulations apply in relation to accessibility.

Countries in which no duties of reasonable adjustment apply outside employment

The final category of countries (Denmark, Slovenia, Luxembourg, Romania, Latvia, Estonia, Italy) do not impose positive obligations or duties of reasonable accommodation in relation to disability (or otherwise), though most of them do impose some accessibility standards at least as regards buildings. Thus, for example, in Denmark, which does not prohibit disability discrimination except in relation to employment, and so imposes no duties of accommodation outside this sphere, the Act on Social Service provides that persons with disabilities are entitled to have necessary amendments made to their residence within reasonable limitations, there are legal accessibility standards for buildings, and Danish students with disabilities are offered special educational assistance to enable them to complete their education in a mainstream setting. And, at present, Slovenia imposes duties of reasonable accommodation in relation to disability only in the employment context, though but draft legislation aims to ensure that buildings, information and public transport are made accessible to disabled people.

Italy imposes legal requirements as regards accessibility of buildings¹⁵⁰ and provides integrative measures in relation to the education of disabled children while Romanian and Latvian laws provide a right of access for mobility-impaired people to public spaces and recently constructed buildings respectively, although in practice accessibility is a significant problem for disabled people. Estonian legislation also requires that buildings for public use are accessible to the disabled, but does not impose any duties of reasonable accommodation as such in relation to any relevant ground and does not define the violation of the access provisions as "discrimination".¹⁵¹ Polish law makes special provision for the education of disabled children and those with special needs, assists with transportation costs and includes many national technical standards aimed at facilitating disabled persons which cover access to public and multi-housing buildings, postal and telecommunications services and the internet, pedestrian crossings, road use and transportation and education. And Hungarian law provides that disabled persons shall have the right to an accessible and safe environment. A rolling programme is in place to make public buildings accessible¹⁵² and to require that disabled persons, their family members and helpers are entitled to information of public interest, as well as to information on the rights of disabled persons and the services available to them and traffic systems; and that public transport and premises open for passengers are suitable for use by disabled persons.¹⁵³

¹⁵⁰ Legge 9 gennaio 1989, n. 13 Disposizioni per favorire il superamento e l'eliminazione delle barriere architettoniche negli edifici privati, in Gazzetta Ufficiale, 26 gennaio 1989, n. 21; Decreto del Presidente della Repubblica 24 luglio 1996, n. 503, in Gazzetta Ufficiale, S.O., 27 settembre 1996, n. 227.

¹⁵¹ Decree of 28 November 2002 by the Minister of Economic Affairs and Communications.

¹⁵² It was envisaged that, by 1 January 2005, all public buildings would be accessible, but only 20% of them are accessible and the government has announced the postponement of the deadline to 2010-2013.

¹⁵³ The Disabled Persons Act.

In the Czech Republic the current prohibitions on discrimination outside the employment field do not include as yet any obligation to make reasonable adjustments in relation to disability, though such a duty is proposed by the draft new legislation and buildings regulations are aimed at securing improved quality of life for disabled persons.

V. Material scope

In this section the focus is on particular issues which arise in connection with the various areas discussed, and on the particular exceptions which have been provided by those countries which have regulated discrimination, as opposed to the more general exceptions considered in Section VI below. More information on material scope can be gained from the accompanying table.

1. Education

General Remarks

Discrimination in education is regulated by many of the countries surveyed. Ireland,¹⁵⁴ Bulgaria, Slovenia, Romania, Finland, Luxembourg, Italy and Spain regulate such discrimination on all relevant grounds and without any general justification defence (though note the specific exceptions discussed below). The UK, Sweden and the Netherlands provide no general justification defence¹⁵⁵ but do not prohibit discrimination in this context on grounds of age (or, in the case of the UK, as yet on grounds of religion, belief or sexual orientation, though this is expected to change by April 2007.). Denmark regulates discrimination in the context of education on grounds of sex, sexual orientation and religion or belief (not age or disability) and Malta on grounds of sex and disability alone. Other countries such as Estonia, Greece, the Czech Republic, Portugal, Slovakia, France, Germany, Latvia,¹⁵⁶ Lithuania, Poland and Cyprus allow a general justification to direct discrimination in this sphere,¹⁵⁷ as in others, although some provide, in addition, for specific exceptions discussed below. The same is true in the case of Belgium, Austria and Hungary whose statutory provisions apply only to Federal government and private persons in the case of Belgium, to regional government in the case of Austria and to state provided or state funded education in the case of Hungary. The Czech Republic, too, provides a general justification defence and does not appear to regulate discrimination on grounds of age or sexual orientation in this context, while Luxembourg regulates discrimination in education only by virtue of the Constitutional equality provision.

Legal challenges to alleged discrimination in the education context appear to be rare despite the widespread regulation across the countries surveyed and the relatively commonplace nature of single-sex and religious schools, all or (in the case of religious schools) most of which operate admissions criteria which refer explicitly to sex and religion respectively. In the US, by contrast, litigation in the education context has been significant and, for example, the statutory prohibition on sex discrimination in education has been interpreted so as to require parity in men's and women's intercollegiate athletics.¹⁵⁸

¹⁵⁴ Note that Ireland provides exceptions in relation to third level or adult education establishments operating different treatment in regard to admission fees, attendance or the allocation of places as between nationals of an EU State and other persons, third level or adult education establishments which offer to particular categories of persons (a) assistance by way of, for example, scholarships having regard to "traditional and historical considerations" or (b) allocation of places based on an exchange programme within an educational establishment in another jurisdiction, and different treatment in the allocation of places to "mature students".

¹⁵⁵ Except, in the case of the Netherlands, in relation to disability which is only covered by penal provisions and not by the Equal Treatment Act.

¹⁵⁶ Latvia's Constitutional equality clause, which is applicable only against state actors, is not thought to provide protection against discrimination on grounds of sexual orientation in this or any other context, while a field-specific prohibition on discrimination in education does not extend to age, sexual orientation or disability.

¹⁵⁷ In addition the Greek Constitutional prohibition on discrimination protects only Greek citizens.

¹⁵⁸ Title IX Civil Rights Act 1964.

Sex and Religion in education

All those countries which regulate discrimination on grounds of religion or belief in education without a justification defence (Ireland, Bulgaria, Slovenia, Romania, Finland, Italy, Spain, the UK, Sweden, the Netherlands, Denmark) would prohibit discrimination against religious minorities in access to public and private schools in the absence of a specific exception. So too would those countries which regulate discrimination on grounds of religion or belief in education with a general justification defence (Estonia, Greece, the Czech Republic, Portugal, Slovakia, France, Germany, Latvia, Lithuania, Poland, Cyprus, Belgium, Austria and Hungary, the Czech Republic), except in cases where *either* the discrimination was regarded as justifiable or a specific exception applied. Most countries, however, allow some religious discrimination in access to private schools, and a number allow such discrimination by state-funded schools too. This is true not only in Europe but across the comparator countries regardless of whether strong prohibitions on discrimination on grounds of religion exist.¹⁵⁹ So, for example, in Canada, the anti-discrimination legislation in each jurisdiction (federal and provincial) provides that private schools that are designed specifically for groups defined by reference to protected grounds are exempt from the prohibition of discrimination on the ground for which the school was established. Note, however, that a refusal by a Catholic school to allow a gay student to bring his boyfriend to a school social function was quashed by the Ontario Superior Court of Justice on the basis that it breached the student's Constitutional right to equality.¹⁶⁰

The UN's Convention against Discrimination in Education provides (Article 2) that maintaining separate educational systems or institutions for male and female pupils shall not be regarded as discriminatory "if these systems or institutions offer equivalent access to education, provide a teaching staff with qualifications of the same standard as well as school premises and equipment of the same quality, and afford the opportunity to take the same or equivalent courses of study". The Convention also permits the "establishment and maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil's parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level".¹⁶¹

France prohibits selection by sex or religion of students in public or private schools and bans headscarves and other "conspicuous symbols" in state schools.¹⁶² In Latvia and Sweden, although some private religious schools do exist, they are not permitted to discriminate on grounds of religion or belief in relation to access.

¹⁵⁹ In New Zealand, for example, the Private Schools (Conditional Integration) Act 1975 permits state funding of schools which reflect, through their teaching and conduct education with a "special character".

¹⁶⁰ Hall (Litigation guardian of) v. Powers (2002), 59 O.R. (3d) 423.

¹⁶¹ Under US federal Constitutional law public educational institutions can only draw lines on the basis of sex if the gender classification is substantially related to an important government purpose: *US v Virginia*, 518 U.S. 515 (1996) (holding that Virginia's policy of only admitting men into its military academy violated the Equal Protection Clause). Same-sex schools are technically allowed under Title IX if the school district can show equality of educational opportunity and the need for separate sex environment but there were only 24 single sex public schools in the USA.

¹⁶² Law of March 15, 2004. On July 19, 2005 the Administrative Court of Appeal of Paris ruled that there was no discrimination on ground of religion when a student who wore a Sikh turban was expelled from school. In Canada publicly funded schools and private schools which provide services to the public must permit students to conform with religious dress codes in order to avoid discriminating on the basis of religion (*Shedev v Bayview Glen Junior Schools Ltd.* (1988), 9 CHRRD/4881 (Ontario Board of Inquiry)). The Board noted that if the school had been a religious one its uniform policy might have been justified).

The same appears to be true in Portugal where religious schools are said not to select their students on the basis of religion. Romanian legislation allows religious selection in access to education only at high school level, and in university education for those who want to become specialised personnel in various churches. (Similar third-level exceptions apply in Slovenia and in Ireland.)

In the UK,¹⁶³ the Netherlands,¹⁶⁴ Hungary¹⁶⁵ single sex schools are protected by means of a specific exception to the prohibition on discrimination. Elsewhere, as in Poland, Portugal, Sweden, the Czech Republic and Romania, single-sex schools or classes appear to be regarded as lawful even in the absence of specific exempting provisions while in Greece, where all schools are co-educational and the law requires boys and girls to take courses together,¹⁶⁶ in practice private religious schools separate classes by sex.

A number of countries require particular religious education in schools, though some permit students to “opt out” or be withdrawn on their parents’ request. So, for example, Spanish law requires that education in Catholicism be provided by schools, though take-up by pupils is on a voluntary basis. The Spanish state has also entered into agreements with the Spanish Federation of Religious Bodies, the Spanish Federation of Jewish Communities and the Spanish Islamic Commission to offer education in the relevant denomination at schools at which it is requested by a minimum number of pupils. In Denmark, Cyprus and Poland, where schools are required to offer religious instruction, parents (and/or older children) can opt out of religious education (though in Cyprus only in secondary school).¹⁶⁷ In Portugal parents (children at 16) are permitted to choose the education of their children, in accordance with their own religious convictions but no school may discriminate on grounds of religion in terms of access. In Romania, by contrast, the study of Orthodox religion is mandatory, together with that of a few (but not all) of the 18 recognized religions.

Daily collective worship is a legal requirement in schools in England and Wales, though children can be excused by their parents or at age 16 on their own wishes. Such worship must be “wholly or mainly of a broadly Christian character” unless the school receives a “determination” permitting the act of worship to reflect the predominant major world faith found in the school, or the range of faiths. Most state schools are Anglican though a significant minority are Catholic and there are a small number of Jewish, Muslim and Sikh schools in the state sector as well as a variety of private religious schools. All religious schools can discriminate on grounds of faith in determining access, the recent prohibition on discrimination on grounds of religion or belief in education effectively excluding “faith-based” schools from the scope of the provisions. Despite disquiet at the growth of “mono-cultural” schools the UK’s Education Bill 2006 appears to encourage faith-based schools.¹⁶⁸

¹⁶³ Sex Discrimination Act, s.26. Note also that single-sex schools in New Zealand are regarded as *prima facie* discriminatory but justifiable. Section 58 of the Human Rights Act allows schools to be maintained wholly or principally for students of one sex, race, or religious belief, or for students with a particular disability, or for students in a particular age group.

¹⁶⁴ In practice, however, single-sex schools have not been established.

¹⁶⁵ Art. 28(1) ETA.

¹⁶⁶ Art.2(5) of Act 1566/1985.

¹⁶⁷ A bill proposed by the Cypriot government in 2006 to enable parents of primary school pupils to request exemption of their child from religious instruction class was withdrawn in July 2006 having been met with strong resistance from parents and religious organisations.

¹⁶⁸ Note that in November 1999 the United Nations Human Rights Commission found a policy of funding only Catholic but not other private denominational schools to be discriminatory under the International Covenant on Civil and Political Rights: *Waldman v Canada* No. 694/1996, 7 IHRR 368 (1999).

In Northern Ireland, where Catholics and Protestants have traditionally existed as separate communities, discrimination on grounds of religion or belief is regulated only in further and higher education while there is widespread segregation in the education system.¹⁶⁹ A significant minority of publicly funded (but Church managed) schools are Catholic while the State sector is, in practice Protestant. There is also a growing “integrated” school sector in which there is a balance between Protestant/unionist and Catholic/nationalist students. Similarly Cyprus operates separate education systems for the two large communities (Greeks and Turks), each having its “official” religion (Christian Orthodox and Vakf for the Muslim Turks). Article 110 of the Cypriot Constitution provides for the complete autonomy of religious organisations.

Private schools can select on the basis of religion in Belgium, Poland, Austria, Finland, Ireland, Germany, Bulgaria and Spain. In Hungary specific exempting rules permit schools to select students by religion or ethnic affiliation where the education is of equal value to that provided to other students and the concentration of such groups of students in particular schools is voluntary. Hungarian legislation’s general justification clause has also been found to apply to a university which issued a general declaration claiming that “the church may not approve of [...] the education, recruitment and employment of pastors and teachers of religion who conduct or promote a homosexual way of life”.¹⁷⁰ In the Supreme Court’s view, the exclusion of homosexuals from theological education could objectively be considered reasonable in the case of a denominational university due to the fact that its admission practices reflected the moral teachings of the associated church, which the state was not entitled to judge in any way.

In Slovakia the right to establish a church school is open only to registered churches and one of the conditions for registration is a membership in Slovakia of 20 thousand adults. And in Lithuania Article 10(4) of the Constitution provides that Lutheran churches and organisations (alone) may co-found schools, differential treatment recently upheld by the Constitutional Court in the face of challenge under the Constitutional equality clause.¹⁷¹ Direct discrimination can be justified under the Netherlands’ Non Discrimination Act which provides that it “shall not affect the freedom of a private educational establishment to impose requirements governing admission to or participation in the education it provides which, having regard to the establishment’s purpose, are necessary for the fulfilment of its principles; such requirements may not lead to discrimination on the sole grounds of political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status.”¹⁷² Discrimination that is not justified by the identity of the educational provider is unlawful. This provision has been applied to permit a Catholic school to exclude a Muslim student who insisted on wearing a headscarf in violation of the school uniform policy,¹⁷³ and the providers of a course on Judaism, aimed at promoting knowledge about Judaism among Jews in the Netherlands, to refuse admission to a non-Jewish man.¹⁷⁴

¹⁶⁹ Similarly the Canadian Constitution specifically allows the provinces to provide separate Catholic and Protestant school systems.

¹⁷⁰ Decision no. Legf. Bír. Pfv. IV. 20.678/2005., published in the Collection of Judicial Decision (BH2006. 14).

¹⁷¹ Ruling of 13 June 2000, Official Publication Valstybės žinios, 2000, No. 49-142.

¹⁷² Art.1792) ETA.

¹⁷³ Equal Treatment Commission, 5 August 2003, 2003-112.

¹⁷⁴ Equal Treatment Commission, 30 September 2002, no. 2002-157.

Disability and education

Most countries favour the integration of students with disabilities into mainstream education whether or not they prohibit “discrimination” in this context. Among these countries are Estonia, Poland, Spain, Slovakia, Cyprus, Malta, Portugal, Denmark, Romania, Italy, Hungary, France, Bulgaria, Finland, Sweden, though there are many reports of practical difficulties in access by the disabled (Estonia, Slovakia, Romania, Italy, Latvia and Hungary¹⁷⁵) and most countries make provision both for special and integrated education for students with disabilities whether or not these are required by law. In Luxembourg, by contrast, special schools are the norm for disabled students and Austria has special schools for slow learners, physically disabled pupils, pupils with language problems, “difficult” pupils and severely disabled pupils,¹⁷⁶ though mainstream schools are increasingly attempting to integrate disabled children into standard classes and funding is available from the Ministry of Education to promote and facilitate this approach. In Estonia students with special needs may be educated in mainstream or special schools, and special classes operate in mainstream schools for children with physical and sensory disabilities, speech impairments, sensory disabilities and mental disorders.¹⁷⁷

The question whether special schooling of disabled students is “discriminatory” has been considered by the courts of a number of comparator countries. In *Eaton v. Brant (County) Board of Education*, the Supreme Court of Canada held that the school board’s decision to place a disabled student in a segregated classroom did not violate her Charter-protected equality rights since it was in her best interest, though it did accept that there was a general presumption in favour of integration and that, accordingly, the school board had to justify excluding a child from the regular classroom.¹⁷⁸ In New Zealand, by contrast, a challenge to a policy of mainstreaming failed on the basis that the general prohibition on discrimination was accepted by the High Court as *prohibiting*, rather than *requiring*, differential treatment on the protected grounds.¹⁷⁹ In Australia the obligation not to discriminate against disabled students has been declared subordinate to schools’ overarching duty of care towards staff and students which permits discrimination where there is a threat to the health and safety of staff or students.¹⁸⁰

Ireland requires all providers of education to make reasonable accommodation with respect to pupils with disabilities unless compliance in relation to a student with a disability would, by virtue of the disability, make impossible or have a seriously detrimental effect on, the provision of services to other students.¹⁸¹ Many students are not, however, integrated into the main stream: in 2003/2004 there were 128 special needs schools at primary level serving 6,700 pupils with special needs while 9,300 pupils with special needs were in mainstream primary schools. The UK prohibits discrimination against students with disabilities but imposes only limited duties of accommodation on schools.¹⁸²

¹⁷⁵ Only 20-25 % of elementary schools are physically accessible, and the majority of disabled children are educated either in special institutions.

¹⁷⁶ § 25 of the Act on the Organisation of Schools.

¹⁷⁷ Art.21, Law on Basic School and Upper Secondary School.

¹⁷⁸ [1997] 1 SCR 241.

¹⁷⁹ *Daniels v Attorney-General* (High Court Auckland, M1615-SW 99, 3 April 2002).

¹⁸⁰ *Purvis v New South Wales (Department of Education and Training)* [2002] FCA 503.

¹⁸¹ Equal Status Acts, 2000 - 2004; s.7(4).

¹⁸² Disability Discrimination Act s.28C, but the Special Educational Needs and Disability Act 2001 provides for the provision of targeted assistance to children with special educational needs. The Education Act 1996 provides (s.316(3)) that children with special educational needs must be educated in mainstream (integrated) schools except where this would be incompatible either with the wishes of the parent or the provision of efficient education for other children.

And French law entitles disabled children to be registered under the ordinary regime, in the school nearest to their residence unless the school is not adapted to the reception of the child.¹⁸³ France's discrimination authority (HALDE) has declared discriminatory a school's refusal to admit a child with reduced mobility on the basis that it would not be able to accommodate him: the school, HALDE found, could have accommodated him by taking reasonable steps.¹⁸⁴ Finland's Non-Discrimination Act also requires all providers of education to make reasonable accommodation with respect to pupils with disabilities and Swedish law makes similar provision, though only in relation to accessibility of premises.¹⁸⁵

Danish students with disabilities are offered special educational assistance to enable them to complete their education in a mainstream setting but the level of completion is low for upper secondary education. Poland, too, makes special provision for the education of disabled children and those with special needs and assists with transportation costs. And Belgian law provides for certain positive measures in education in respect of disabled students as well as those from under-represented groups.¹⁸⁶

Legal efforts have been made in Greece to make school buildings accessible¹⁸⁷ and Spanish law provides for support measures for disabled pupils, such as the development of special programmes for their integration into normal schooling, measures to help them go on to post-compulsory education, and courses adapted to the requirements of pupils with specific needs who cannot meet the educational demands of, or get places in, vocational training for the disabled. Spanish schools are also required progressively to apply accessibility measures including the removal of physical barriers and a "design for all" curriculum is currently being prepared for application in all educational syllabuses, including in universities, for the training of professionals in the fields of design and construction of the physical environment, building, infrastructure, public works and transport, communications, telecommunications and information society services.¹⁸⁸ The Portuguese Constitution provides a right to education and "equal opportunities and to access to and success in school",¹⁸⁹ and requires the State to promote and support disabled citizens' access to education and to support special education when necessary, and requires that specific measures shall be adopted by the State, in order to assure the access to education and training of disabled citizens. In Germany, too, there are obligations to make reasonable accommodation for disabled children.¹⁹⁰

Since the mid-nineties Malta started implementing the concept of inclusion and witnessed a substantial increase in disabled pupils attending the mainstream schools and a decrease in students in special schools, thus enabling a more specialised and individualised service for the latter, while at the same time allowing disabled persons who do not need to attend specialised schools to integrate with pupils who do not have disabilities.

¹⁸³ Under the law of February 11, 2005 on disability.

¹⁸⁴ Deliberation of February 6, the 2006 (n°2006-24).

¹⁸⁵ Having said this, other provisions require the provision of suitable books, methods of communication etc for children with disabilities.

¹⁸⁶ Art.2.6. of the 19 March 2004 Flemish Act on the student's status.

¹⁸⁷ S.28 of Act 2381/2000 provides that buildings in which education is provided should be constructed or altered so as to be accessible to persons with special needs.

¹⁸⁸ Law 51/2003.

¹⁸⁹ Arts. 73 (1) and 74 (1).

¹⁹⁰ In the leading case on integrated schooling (BVerfG 96, 288) the German Federal Constitutional Court held that the decision to put a child in a special school for disabled persons against the will of the parents breached of Article 3.2(2) of the Basic Law, if his or her special needs could be fulfilled using existing means and other interests worthy of protection, especially of third parties, did not weigh against integrated schooling.

Disability discrimination is prohibited in education subject to an exception where admission would necessitate the procurement of services or facilities that are not required by students who do not have a disability, the provision of which would impose unjustifiable hardship on the educational institution or authority concerned.

2. Goods and services

General Remarks

Discrimination in this context is prohibited on the relevant grounds without any general justification defence in Ireland, Bulgaria, Romania, Slovenia, Luxembourg, Lithuania, the Netherlands (other than in relation to age), Germany (though only in relation to “mass contracts”), France (in relation to direct discrimination only), Sweden and Denmark (other than in relation to age and disability) the UK (except on grounds of age and not yet on grounds of sexual orientation, religion or belief), and Spain (disability only). The concept of “services” does not appear to be restricted in general to those provided for payment.¹⁹¹ Prohibitions also operate, though subject to general justification defences, in Hungary, Finland, Austria,¹⁹² Belgium, Cyprus, Estonia, Malta (on the ground of disability only), Sweden (in relation to disability), Italy (other than in relation to age and sexual orientation) and probably the Czech Republic (though this is uncertain prior to the passage of draft law). It should be noted that Hungarian law does not apply to some private actors, Belgian law to regional governments and Austrian law to federal government (except in the case of disability). Detailed Belgian provisions apply only at the federal level. No prohibitions apply in Slovakia, Poland or Latvia except possibly in the case of public sector providers and it is unclear whether the Portuguese and Greek Constitutional prohibitions on discrimination are enforceable against private sector suppliers of goods and services. Further, the Greek and Polish Constitutional equality clauses, in common with the Spanish Constitutional equality clause, only applies to citizens of the relevant country.

Justifying Discrimination

A number of the exceptions applicable here are discussed below at section VII. In addition, of those countries which do not provide a general justification defence in this context, Bulgaria provides for an exception for special legal measures designed for the benefit of parentless children, minors, single parents and persons with disabilities. In Luxembourg and the UK discrimination required to comply with other legal requirements is not unlawful, while Hungary’s prohibition on discrimination in access to goods and services provides, in addition to the general justification clause, an exception where entry into premises is restricted “for the purposes of preserving traditions or maintaining cultural and self identity” and “[t]he limitation ... [is] obvious from the name of the establishment and the circumstances of the use of the service; [provided that] this shall not be done in a manner that may be humiliating and defamatory to individuals who do not belong to the particular group, and furthermore it must not provide an opportunity for an abuse of this right.”

¹⁹¹ Note that in Australia “services” has been interpreted as extending to the intended implementation of government policy: in *Waters v Public Transport Corporation* (1992) 173 CLR 349 the High Court of Australia ruled that the intended replacement of all public transport tickets with tickets with plastic coatings to be scratched off by the passenger for each section travelled would indirectly discriminate against persons with physical, intellectual and psychiatric disabilities and was unlawful.

¹⁹² At federal level. The regions restrict discrimination along the lines of the race directive but on all relevant grounds.

Dutch law provides a general exception to the prohibition of discrimination in relation to requirements which may reasonably be imposed having regard to the private nature of the circumstances to which the legal relationship applies¹⁹³ while Malta's prohibition on disability discrimination does not affect any provision in a charitable instrument that confers charitable benefits, or enables charitable benefits to be conferred, wholly or in part on persons who have a disability or a particular disability.

The Irish prohibition on discrimination in this context is subject to a wide range of exceptions as follows (these are in addition to those mentioned in section VII and immediately below):

- In relation to gender discrimination, the provision of services of an aesthetic, cosmetic or similar nature which require physical contact between the service provider and the recipient;
- In relation to discrimination on grounds of gender, age, or disability (and nationality), discrimination in relation to sporting facilities and events provided the differences are reasonable and relevant to the facility or the event ;
- In relation to gender, discrimination where embarrassment or infringement of privacy could reasonably be expected from the presence of a person of another gender;
- In relation to discrimination on grounds of gender, age, disability (and race), discrimination reasonably required for reasons of authenticity, aesthetics, tradition or custom for a drama or other entertainment;
- In relation to discrimination on the ground of age, discrimination in relation to the adoption or fostering of a child;
- In relation to all grounds, discrimination in relation to services reasonably provided for the principal purpose of promoting a special interests of persons in a particular category;
- In relation to all grounds, discrimination in relation to the disposal of goods by will or gift;
- In relation to all grounds, discrimination where goods or a service can reasonably be regarded as suitable only to the needs of certain persons
- In relation to all grounds, discrimination in access to membership clubs whose principal purposes are to cater for the needs, *inter alia*, of persons of a particular gender, sexual orientation, religious belief (or persons of no religious belief), age or disability.¹⁹⁴

Specific insurance-related provisions

Exceptions do not appear to be applicable in relation to financial services generally, but exceptions relating to insurance are not uncommon in countries which regulate discrimination in access to goods and services. (Here we are concerned with private insurance rather than state health or social insurance.) The new German law, for example, provides a general exception applicable to goods and services (where there is "objective justification" but provides, in addition, that "This may especially apply if the distinction serves the purpose of preventing risks, avoiding damage, or other similar purposes".¹⁹⁵)

¹⁹³ Art. 7(3) ETA.

¹⁹⁴ S.9. New Zealand's Human Rights Act provides an exception to the prohibition on travel services in relation to age discrimination, and exceptions to the prohibitions on discrimination on grounds of sex, race, ethnic or national origin, and sexual orientation in relation to courses and counselling restricted to persons defined by reference to these grounds where highly personal matters, such as sexual matters or the prevention of violence, are involved (s.59).

¹⁹⁵ § 20.

It also makes specific provision in relation to insurance, § 20(2) stating that “Distinction on grounds of sex is only admissible ... for premiums and benefits, if gender consideration in risk evaluation is based on relevant and exact actuarial and statistical data and is a determining factor. Costs in connection with pregnancy and motherhood may not under any circumstances result in different premiums or benefits”, and “Discrimination on the grounds of religious or any other held beliefs, disability, age, or sexual orientation [in insurance] is only admissible ... if it is based on recognised principles of risk-adequate calculation, especially on risk evaluation ascertained through actuarial and statistical data collection”. Insurance premiums must not be calculated on the basis of nationality or ethnic origin.¹⁹⁶ Discrimination in insurance is also specifically permitted by Swedish law, though only in relation to gender. Lithuania has published draft legislation intended to restrict the exception permitting gender discrimination in relation to insurance: the amending law provides that such discrimination is lawful only in “cases established by laws when sex is recognised as determining factor while appraising insurance risk by taking into account with reliable and precise statistical and actuarial data”.¹⁹⁷

French criminal law provides an exception to the prohibition of insurance-related discrimination on grounds of health. Luxembourg’s Penal Code permits discrimination on grounds of state of health outside the field of employment, in relation to insurance. And Maltese law similarly provides that a person shall not be deemed to discriminate against another person on the grounds of disability by refusing to offer an insurance policy or by offering discriminatory terms or conditions for insurance coverage, provided that such decision is based on statistical data which is reasonably relevant to the assessment of the risk insured; and whenever such actuarial or statistical data is not available and cannot reasonably be obtained, such decision is reasonable having regard to any other relevant factors which are relevant to the assessment of the risk to be insured.¹⁹⁸

In addition to the exceptions set out above, Ireland’s Equal Status Acts permit discrimination in relation to annuities, pensions and insurance policies and other matters related to the assessment of risk based on, for example, actuarial or statistical data.¹⁹⁹ Slovak law permits differences of treatment on grounds of age and disability in the provision of insurance services where such treatment results from different levels of risk, verifiable by statistical or similar data, and where the terms of insurance services adequately reflect such risk.²⁰⁰ And in Romania, while older persons may not be denied insurance services, they may be provided with different policies (so, for example, mandatory medical travel insurance is more expensive for older people). In *Zurich Insurance Co v Ontario (Human Rights Commission)* the Supreme Court of Canada held that direct discrimination on the basis of age in insurance was justified under the provincial anti-discrimination provisions if (a) it was based on a sound and accepted insurance practice, and (b) there was no practical alternative. A practice is “sound” if it is desirable to adopt for the purpose of achieving the legitimate business objective of charging premiums commensurate with risk, and the availability of a practical alternative is a question of fact to be determined having regard to all the facts of the case.²⁰¹

¹⁹⁶ S.81 (e) Insurance Supervision Law (Versicherungsaufsichtsgesetz).

¹⁹⁷ Draft Amendment to the Law on Equal Opportunities for Women and Men No.XP-1274.

¹⁹⁸ Equal Opportunities (Persons with Disability) Act, 2000.

¹⁹⁹ DEC-S2004-201, *O’Donoghue v Hibernian General Insurance*: different motor insurance quotes for 31 year olds and 41 year olds was not illegal.

²⁰⁰ S.8(6) ETA.

²⁰¹ [1992] 2 SCR 321. Note that Australian anti-discrimination law also permits discrimination in access to superannuation funds, insurance policies and obtaining credit where there is reasonable actuarial data to support differential treatment.

Housing

Discrimination in housing is regulated in similar fashion to discrimination in access to goods and services (see above) except that the Czech and Lithuanian provisions on goods and services do not extend to it and the Italian prohibition applies only to the public sector.

As far as exceptions applicable exclusively to housing are concerned, Malta's prohibition on disability-related discrimination in this context does not apply where the person who provides or proposes to provide the accommodation or a near relative of that person, resides and intends to continue to reside on those premises; the accommodation provided in those premises could cater for no more than four persons; and the provision of accommodation in premises where special services or facilities would be required by the person with a disability would impose unjustifiable hardship on the person providing or proposing to provide the accommodation whether as principal or agent. Similar provision is made in UK while in Germany the prohibition of discrimination does not apply to long-term lettings unless the landlord operates in excess of 50 apartments and the law explicitly permits discrimination in connection with letting accommodation "with regard to the creation and maintenance of socially stable resident structures and balanced residential structures as well as balanced economic, social, and cultural conditions" and, in any event, the prohibition of discrimination does not apply to long-term lettings unless the landlord operates in excess of 50 apartments. The Danish and Irish prohibitions on discrimination do not apply where the discriminator rents out a room in his or her private home and the Dutch exception related to the private nature of the circumstances would cover, for example, a room is rented in a private house. Bulgaria's Protection Against Discrimination Act, while applies in respect of housing, provides for an exception for special protection measures provided for by law for the benefit of parentless children, minors, single parents and persons with disabilities.

In addition to the exceptions mentioned in the previous section and above, Irish law permits discrimination on all the relevant grounds in the context of where the accommodation is not available to the public generally or a section of the public; where accommodation is provided to persons of one gender and where embarrassment or infringement of privacy can reasonably be expected to result from the presence of a person of another gender; and where premises or accommodation are reserved for the use of persons in a particular category of persons for (*inter alia*) a religious purpose. Swedish law provides an exception from the prohibition on gender discrimination in relation to services or housing, where the different treatment can be justified by a legitimate aim and the means are appropriate and necessary for achieving this aim. This is intended to ensure that housing for battered women would not be determined to be in violation of the prohibition on discrimination but there is concern that the exception has been formulated in an unnecessarily broad manner.

3. Social protection and social advantages

General Remarks

Most countries surveyed apply at least a general prohibition to discrimination in relation to social protection and social advantages, though with the exception of Bulgaria, Romania, Luxembourg, Ireland and Slovenia the discrimination is subject to a general justification defence.

In many cases discrimination in this context, which includes access to healthcare, is regulated only by means of Constitutional or other provisions which do not provide detailed definitions of discrimination and/or which permit general justification defences. Further, the scope of “social advantages” is not clear, though in some cases it is possible to say that it is covered because of the generality of the prohibition in domestic law. It is not clear whether, in Latvia, the prohibitions apply to discrimination on grounds of sexual orientation, while Denmark does not regulate such discrimination on grounds of age or disability, Sweden and the UK in relation to age (or, in the UK at present, sexual orientation), while in Malta and the Netherlands such provisions apply only in relation to sex (though general prohibitions on discrimination on all relevant grounds also apply at the Constitutional level²⁰²). Polish law appears to regulate only discrimination on grounds of sex, marital or family status in relation to social security but to apply more broadly (subject to a general justification defence) to social assistance (which would include different forms of social assistance for children such as daycare, the provision of surrogate families or residential care). In Cyprus there is some doubt as to whether social advantages, as distinct from social protection, are covered.

Austria regulates discrimination on grounds of disability at federal level in relation to goods and services which is thought to extend to some aspects of social protection and social advantages. The precise scope of the latter is not clear but Austrian law provides protection against broad and vague “disadvantage” at the Federal level, while regional discrimination provisions use the term “social advantages” from Directive 2000/43/EC. Those aspects of social protection and social advantages which are regulated at the regional level are covered in respect of all the relevant grounds, and the regional governments are significant providers. Belgian Federal law regulates discrimination on all relevant grounds “in the exercise of any right or freedom” and is accepted as applying (though subject to a general justification defence) to social protection and social advantages however defined, though only to the extent that Federal jurisdiction applies. This is the case in relation to social security is regulated at the federal level and therefore subject to regulation on all the relevant grounds, though subject to a general justification defence. In Denmark a general principle of equality binds public authorities and would prohibit unjustified discrimination in relation to social protection and social advantages, however defined, while discrimination by private sector providers would be covered only if it fell within the prohibitions on discrimination in goods and services.

French penal provisions would apply only in respect of direct discrimination and Slovakia, which defines “social advantages” in its Non Discrimination Act (applicable only to discrimination on grounds of sex, race and national and ethnic origin) as “a discount, exemption from a fee, benefits in cash or in kind provided directly or indirectly and independently of social security scheme to a certain group of natural persons who, usually, have a lower income or higher living costs than other natural persons”, regulates discrimination only to the extent that it relates to fundamental Constitutional rights which include the right to adequate material security in old age and in cases of incapability for work and the death of a family breadwinner, but not otherwise. Similarly, the Czech Republic does not regulate discrimination in relation to social advantages, or social protection save where basic civil and political rights are at stake. In Italy only discrimination on grounds of sex, religion and belief and disability are regulated in this context while in Sweden protection applies only in relation to sex, sexual orientation and religion or belief.

²⁰² In the case of social security but not other forms of social advantage or social protection discrimination is regulated across all the relevant grounds except disability and age.

The UK provisions do not apply in relation to age or, prior to April 2007, religion or belief or sexual orientation²⁰³). Further, it is expected that the prohibitions in relation to sexual orientation discrimination apply more narrowly (where the public authority is performing functions akin to those performed by private sector actors) when they do come into effect.

Exceptions

One of the most common instances of unequal treatment in relation to social protection and social advantages relates to same-sex couples (and, accordingly, amounts to either direct or indirect discrimination in connection with sexual orientation). A number of social security regimes provide particular benefits to married persons (Romania, Slovakia, Greece, Ireland, Estonia, Malta, Slovenia, Cyprus, the Czech Republic, Portugal and France, though the latter four countries recognise same-sex partnerships and Spain and Belgium recognise same-sex marriage). Ireland's Equal Status Act provides that it does not prohibit any discrimination provided for by law, which privileges married couples. Belgium differentiates between married and unmarried couples but recognises same-sex marriage,²⁰⁴ while Poland, Estonia, Malta and Ireland discriminate between married and unmarried couples and Cyprus between same-sex and heterosexual couples. It is interesting in this context to note the decision of the UN Human Rights Committee in *Young v Australia* that the restriction of some social security benefits to opposite-sex couples contravened Art 26 ICCPR.²⁰⁵ In South Africa social security payable only to opposite-sex couples would be unconstitutional and in violation of the Equality Act.²⁰⁶

In Austria state pensions for widows/widowers are only paid to people who were married to the deceased insured person. On 10th October 2005 the Constitutional Court suspended a regulation in the Lower Austrian Act on social insurance which allowed the benefit to unmarried opposite-sex, but not same-sex, couples.²⁰⁷ The decision was to suspend it with effect from 31st July 2006 to give the legislator time to make right the provision. This has not occurred so all unmarried couples will become ineligible for the benefit.

Payments in Latvia and Lithuania do not turn on marital status and in Bulgaria, Italy and Sweden, social security payments are now made on a strictly personal basis (though in Italy marital status is still relevant to pension payments and neither Italy nor Latvia recognise same-sex couples). The status of same-sex partnerships and married opposite-sex couples has been equalised by German law in most respects of social security law. Luxembourg, Dutch, UK, Swedish and Finnish social security arrangements do not discriminate on grounds of marital status (all five countries recognise same sex relationships), and Hungary's Constitutional Court has ruled that "those (social and health care) benefits that are provided on the basis of partnership, may not be made dependent on the sex of the partners."

Registered partnerships in Denmark have the same legal consequences as marriages with exceptions relating to legally prescribed gender-specific rights (duties in relation to children, right of wife to pledge husband's credit, and widow's pension).

²⁰³ The extent of the prohibition on sexual orientation which is likely to take effect on that date is as yet unclear.

²⁰⁴ Canada similarly recognises same-sex marriage at the federal level: Marriage for Civil Purposes Act, S.C. 2005, c. 33.

²⁰⁵ UN doc CCPR/C/78/D/941/2000.

²⁰⁶ See *Langemaat v Minister of Safety and Security* 1998 (4) BCLR 444 (T), *Satchwell v President of the RSA* 2002 (9) BCLR 986 (CC).

²⁰⁷ Case G-87-88/05, V-65-66/05.

Most countries provide pensions payable on reaching a particular age (which is frequently different for men and women, though generally in the process of equalisation) or on a combination of age and working years. Disability benefits are in many cases also paid as are a variety of age-related payments. Also commonplace are benefits available to the young and severely disabled in relation to transport, health care etc.

There are various examples in Germany of special provision for older and younger people and those with caring responsibilities, e.g. as to meeting the special needs of older persons or persons with children in Social Security Law and regulations permitting minimum and/or maximum age requirements in relation to access to healthcare, social advantages or other matters outside the fields of employment and occupation, e.g. maximum age for entering the public healthcare system after being privately insured (notwithstanding the protection of any person in need through Social Security). Special, more advantageous rules apply to severely disabled persons, and for a transitory period for women of some age groups. The various areas of law – public and private – covered by the prohibition of discrimination of a different nature admit for exceptions, that roughly speaking will have to meet a test of proportionality, which is a general principle of German Law.

In a challenge to Dutch rules providing access to a longer holiday period in the case of those aged 57.5 years who were reliant on social assistance, the Central Appeals Tribunal ruled that the rationale (that older people were more difficult to place on the labour market) found that the rule violated the Constitution and the ICCPR (which the Netherlands has ratified and which has direct effect in Dutch law).²⁰⁸

²⁰⁸ *Centrale Raad van Beroep*, 25 January 2005, LJN AS4163.

VI. General exceptions to the prohibitions on discriminations

Some exceptions to the various prohibitions on discrimination have been considered above in relation to specific contexts. This section is concerned with the more general exceptions permitted to countries' prohibitions on discrimination. A number of general points can be made here. The South African approach to discrimination was set out above. It follows from the fact that the Equality Act prohibits only "unfair" discrimination that it does not focus on the presence of explicit or implicit "exceptions" to the principle of equal treatment, rather on the question whether the treatment at issue is substantively fair or unfair.²⁰⁹ The same is true in Canada where section 15 of the Charter of Rights imposes a substantive approach to non-discrimination.

Where the prohibitions on discrimination consist of Constitutional equality clauses or field-specific provisions it is common for "discrimination" to be undefined or to extend, implicitly or explicitly, only to *unjustified* or *unfair* differences of treatment. The discussion below of exceptions therefore concerns, for the most part, those countries which do not provide general justification defences to their prohibitions on discrimination. Particular attention will be paid to the exceptions which apply in connection with discrimination by religious organisations, and to any prohibition on age discrimination. The former question is perhaps of particular significance because it concerns the relationship between the prohibition on discrimination and the protection of religious freedom. The countries considered here all provide a degree of respect for religious freedom which includes the recognition of at least some measure of autonomy on the part of religious organisations. The balance to be struck between the freedom of religious organisations and the right to be free from discrimination has been considered in directive 2000/78/EC which applies in the context of employment. Below are some remarks about the degree of autonomy provided to religious bodies outside the employment sphere. The question arises in part in access to religious schools but may have broader application in the area of, for example, goods and services, and the running of healthcare and other facilities by religious bodies.

1. General

As mentioned above, many of the countries considered here provide general justification defences to their prohibitions on discrimination. In some cases these are explicit on the face of legislation. In other cases they are inherent in Constitutional or statutory prohibitions on discrimination. In addition, this report considers the specific exceptions applied in relation to various protected grounds and/ or areas of regulation. Some commonly occurring exceptions include those which allow discrimination provided for by other statutory provisions to take precedence over their prohibitions on discrimination (as in Luxembourg and the UK) while in the Netherlands formal legislative acts cannot be reviewed against the Constitutional prohibition of discrimination. Many countries also permit broad exceptions designed to respect freedom of religion, and exceptions from prohibitions on age discrimination are common. These are considered further below.

²⁰⁹ See in Canada s.15 Charter and, in particular, the decisions of Canada's Supreme Court in *Andrews v Law Society of British Columbia* [1989] 1 SC. 143 and in *Law v Canada (Minister of Employment and Immigration)* [1999] 1 SCR 497. In South Africa see the Constitution, s.9, the Promotion of Equality and the Prevention of Unfair Discrimination Act, and *Minister of Finance v Van Heerden* 2004 (6) SA 12 (CC).

2. Religious autonomy

The question of religious segregation in schools, considered above, is part of a broader issue which concerns the nature of the relationship between the state and religious organisations within the countries surveyed. There are a variety of traditions ranging from the strictly secular to those in which a significant degree of autonomy is provided to religious bodies.

The balance between religious freedom and the right to equality has become a contentious issue in Canada. The decision in the high school case was mentioned above. *Trinity Western University v British Columbia College of Teachers* involved a challenge to a refusal by the British Columbia College of Teachers to accredit a teacher training program delivered by a private institution whose code of conduct discriminated on grounds of sexual orientation. The Supreme Court held that the proper place to draw the line between freedom of religion and belief, on the one hand, and equality, on the other, was between belief and conduct. Absent concrete evidence that training teachers at the University fostered discrimination in the provincial public schools at which they sought certification to teach, the Court held that the freedom of individuals to adhere to certain religious beliefs while at the University should be respected.²¹⁰ The decisions in *Nijjar v Canada 2000 Airlines Ltd*²¹¹ and in *Multani v Commission Scolaire Marguerite-Bourgeoys*²¹² are also worthy of note. In the first of these cases Canada's Human Rights Tribunal found that an airline's prohibition on the carrying of an eleven inch "kirpan" (a ceremonial knife carried by Sikh men) was justified in the interests of health and safety (there was evidence that kirpans had been used as offensive weapons aboard aircraft). In *Multani*, by contrast, the Supreme Court of Canada has held that a school board's refusal to permit a Sikh student to wear a kirpan to school violated the student's religious freedom as protected under the Charter. The Court stated that, although public safety could constitute a justified limitation on the claimant's religious freedom, in this case the school board had not done enough to accommodate him.

All Australian jurisdictions provide exceptions based on a religious ethos, generally in the form of an exception where the provision of services such as medical treatment, education or accommodation would offend the genuine religious sensibilities of the provider or its adherents. In most jurisdictions clubs are also subject to the legislation, but clubs set up for religious or cultural purposes can exclude from membership persons not of that religion. The aim of the exemption is to preserve culture, or reduce disadvantage suffered by persons of that religion, culture, etc. A number of Australian jurisdictions prohibit the vilification of religious groups unless it is done "in good faith". In *Islamic Council of Victoria v Catch the Fire Ministries Inc.*, the Victorian Civil and Administrative Tribunal considered a complaint relating to a public seminar held shortly after 11 September 2001 by an evangelical church which purported to give "an insight into Islam and the future of Australia." The presenter claimed, *inter alia*, that Muslims intended to take over Australia and Christianity by force, that the Qur'an motivated Muslims to be violent and intolerant, and that Muslims made money by selling drugs. Quotes from the Qur'an were presented in a sarcastic and mocking tone designed to invoke laughter and contempt. In answer to a complaint of religious vilification, the church contended that the seminar and similar material on its website involved serious religious discussion in the public interest.

²¹⁰ [2001] 1 SCR 772.

²¹¹ (1999), 36 CHRR D/76.

²¹² 2006 SCC 6.

This was rejected by the Tribunal which held that the conduct of the seminar incited hatred, serious contempt and severe ridicule of people with Muslim beliefs. Its purpose was hostile, demeaning and derogatory. Therefore it lacked good faith and amounted to religious vilification.²¹³

Turning to the European countries surveyed, German law contains an elaborate system of exceptions from general rules for communities of religious and/or philosophical belief. These have been given effect to in the 2006 Act which provides that “Any act of distinction on grounds of religious or any other held beliefs ... for which there is an objective justification shall not constitute a breach of the prohibition of discrimination. This may especially apply if the distinction ... is in keeping with religious beliefs of a person, and can be justified under the exercise of freedom of religion or belief or the right to self-determination of the religious communities, any organisations classified as such without consideration of their legal form, or any associations whose task is the common maintenance of a religion or belief.”²¹⁴

Irish law permits religious discrimination in relation to goods and services provided for a religious purpose and the Dutch Equal Treatment Act provides a general exception for legal relations within religious communities and independent sections thereof and within other associations of a spiritual nature as well as a more general exception in relation to requirements which may reasonably be imposed having regard to the private nature of the circumstances to which the legal relationship applies. In the Explanatory Documents to the original bill, it was argued that a person of a certain religious conviction should not be forced to enter into a legal relationship of a close personal nature with persons of another belief. In Belgium, attempts to include a broad exception along the lines of article 4(2) of Directive 2000/78/EC were rejected in the debates on the 2003 Federal Act but churches may nevertheless organise themselves by taking into account religion or belief of those involved and some difference of treatment may be accepted if they are objectively and reasonably justified. Similarly, the general exempting rule of Hungary’s Equal Treatment Act may be interpreted in a way as to provide an exemption (subject to an analysis of justification) for religious organisations.

Narrower exceptions are provided elsewhere. The Latvian Penal Code, for example, which prohibits “direct or indirect restriction of the rights of persons or creation of whatsoever preferences for persons, on the basis of the attitudes of such persons towards religion”, provides an exception for “activities in the institutions of a religious denomination” but otherwise does not permit distinctions based on religion or belief. Danish medical staff can rely on conscientious objection clauses in relation to the provision of abortions and medical treatment where blood transfusions which they deem ethically necessary are refused, unless participation it is strictly necessary. And in Estonia providers of services, healthcare, housing, etc. with an ethos based on religion or belief are not excepted from the ban on discriminatory behaviour unless it is an integral part of professing or practising faith or working as a priest and there are no specific provisions or case-law in this area relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination.

Bulgaria’s Protection Against Discrimination Act includes measures to protect the identity of minority religious groups but does not permit discrimination by those or other religious groups outside the employment context.

²¹³ [2004] VCAT 2510; <http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/vic/VCAT/2004/2510.html>.

²¹⁴ § 20.

Legislation expressly bans any refusal of access to a denomination-run social or medical establishment on grounds of religion and a refusal by a religious entity to provide a service to a homosexual customer would be in direct contravention of the Protection Against Discrimination Act's express, unconditional ban on discrimination. And the French Constitutional principle of secularity is opposed to any exceptions for providers of services, healthcare, housing etc. with an ethos based on religion or belief.

The question of religious exemptions is a very controversial one in Slovakia where a proposal of the Ministry of Justice to draw up agreements with the Holy See and registered churches and religious societies on the right to exercise conscientious objection in the area of employment, education, provision of health services, legal services and armed forces led to break-up of the coalition Government in February 2006.

3. Age discrimination

Discrimination on grounds of age is regulated, to a greater or lesser extent, in most countries (with the exception of Denmark, Malta, the Netherlands, Sweden and the UK). Every country permits age differences in treatment in relation to access to pensions, which will not be discussed further here.²¹⁵

Ireland, which does not provide any general justification defence for age discrimination, has an exception to the effect that, apart from the provision of motor insurance, it is not discrimination to treat a person under the age of 18 years either less favourably or more favourably than another person irrespective of that person's age. This approach is not uncommon across the comparator states: New Zealand's Human Rights Act defines age as 16 years and above²¹⁶ while Canada's provincial anti-discrimination provisions typically establish a minimum age (usually the age of majority, which varies from jurisdiction to jurisdiction) and, less frequently, also establish a maximum age (usually 65) for legal protection.²¹⁷ Other Canadian jurisdictions either restrict the scope of protection against discrimination on grounds of age by providing that age-related restriction in other statutes do not constitute discrimination.²¹⁸ Further, Canada's Federal anti-discrimination legislation permits age discrimination in contexts other than employment which takes place "in a manner that is prescribed by guidelines issued by the Canadian Human Rights Commission ... to be reasonable."²¹⁹ The "Age Guidelines"²²⁰ exempt "a reduction or absence of rates, fares or charges with respect to children, youths or senior citizens" from the prohibition of discrimination with respect to provision of goods, services, facilities or accommodation customarily available to the general public.

²¹⁵ Interestingly, while the Supreme Court of Canada has rejected age discrimination challenges to public pensions and social assistance benefits, in each case on the basis that they did not violate the dignity of the individuals denied benefits, the Court has ruled that an age limit of 65 on entitlement to employment insurance benefits was discriminatory (respectively, *Law v Canada* [1999] 1 SCR 497, *Gosselin v Quebec, (Attorney General)* [2002] 4 SCR 429, *Téroult-Gadoury v Canada* [1991] 2 SCR 22).

²¹⁶ S. 21(1)(i).

²¹⁷ For example, the Ontario Human Rights Code defines "age" (as a prohibited ground of discrimination) 18 years of age or more: R.S.O. 1990., C.H.19, s. 10.

²¹⁸ See for example the Quebec Charter of Human Rights and Freedoms, R.S.Q., c. C-12, s. 10.

²¹⁹ R.S.C. 1985, c.H-6, s. 15(1)(e).

²²⁰ Issued by the Commission in September 1978.

In addition to the limitation mentioned above, Irish law provides that persons over 70 automatically qualify for free medical care and are exempt from the normal means-test. Exceptions to the prohibition on age discrimination are provided in relation to the allocation of educational places to “mature students”, access to sporting facilities /events, provided the differences are reasonable and relevant to the facility or the event, where the difference in treatment is reasonably required for reasons of authenticity, aesthetics, tradition or custom for a drama or other entertainment, in relation to the adoption or fostering of a child, in relation to annuities, pensions and insurance policies (or other matter related to the assessment of risk) based on, for example, actuarial or statistical data), where the differences of treatment relates to services reasonably provided for principal purpose of promoting a special interests of persons in a particular category, in relation to the disposal of goods by will or gift, where goods or a service can reasonably be regarded as suitable only to the needs of certain persons. Social security legislation also provides for a number of age-related payments including pensions and early retirement allowances.

Bulgaria’s Protection Against Discrimination Act, which also does not contain any general justification defence in relation to age discrimination, allows the fixing of requirements for minimum and maximum age for access to training or education, provided that it is objectively justified by a legitimate aim in view of the nature of the training, or education, or the conditions it is carried out in, and the means to accomplish such aim go no further than necessary. It also permits special protection measures provided for by law for the benefit of parentless children, minors, single parents and persons with disabilities.

Spanish law, although not permitting a general justification defence for direct age discrimination, does allow differences of treatment based on age for some activities where the difference in treatment is objectively and reasonably justified by a legitimate aim. Portuguese law allows positive measures in favour of young people, and access to social security is in fact available only to persons aged over 18 except in limited cases and there are a number of restrictions on access to social security for persons aged between 18 and 30. The Finnish Non Discrimination Act permits, in addition to a general justification defence, differential treatment in relation to education based on age where it has a justified purpose that is objectively and appropriately founded and derives from employment policy, labour market or vocational training or some other comparable justified objective, or from age limits adopted in qualification for retirement or invalidity benefits within the social security system.²²¹ And German law permits the justification of direct age discrimination on a proportionality review which asks whether, for example, age limits serve a legitimate aim, are suitable to achieve their aim, necessary, and to not impose any unnecessary burden on the person concerned. This is the result of the Constitutional principle of equality and there is no jurisprudence directly on the point. Slovenian law allows the justification of direct age discrimination in line with Article 6 of Directive 2000/78/EC and Lithuania’s Law on Equal Treatment provides a general exception from its prohibition on discrimination in relation to restrictions on grounds of age.²²²

France, by contrast, does not in terms permit age discrimination except in relation to capacity to contract, and HALDE has ruled that an arrangement exempting those under 45 from a requirement to complete a medical questionnaire in relation to consumer credit of 10 000 Euros or less was unlawful. Having said this, many legal provisions envisage age-related differential treatment (insurance, health care and pensions) which is legal.

²²¹ The prohibition on age discrimination applies only in relation to employment and education.

²²² Lygių galimybių įstatymas. Official Publication Valstybės žinios, 2003 No.114-5115.

It is not possible to justify direct discrimination on the ground of age in Romania, but compulsory travel insurance is more expensive for older people.

VII. Concluding observations

Such is the variety and complexity of the countries surveyed that it is difficult to do other than make a number of very general observations here. Suffice to say that in a number of countries, the prohibition on discrimination on grounds of sexual orientation, religion or belief, disability, sex and/or age extends well beyond that required by EC law to cover social protection, social advantages, education, goods and services including housing. A number of countries also (or instead) prohibit discrimination in other areas such as:

- police action (Austria);²²³
- access to and participation in, as well as any and all other exercise of an economic, social, cultural or political activity accessible to the public (Belgium);
- all areas (in the case of sex discrimination) except some matters relating to the practice of a religion by established churches (Finland);
- all areas of social life (Slovenia);
- advertising (the UK, Slovakia, Romania, the Netherlands, Estonia, Denmark, Greece, Ireland, Poland and Portugal);
- military service and conscription (except in relation to sex), and alternative military service in wartime or in a state of war (Slovakia);
- the treatment of prisoners (Slovakia);
- State support for citizens living abroad (Slovakia);
- the social and legal protection of children and custodianship (Slovakia);
- the actions of public authorities generally (Hungary, the UK);
- broadcasting (France, Greece, Poland).

1. Extent of Coverage

Leaving aside these miscellaneous protections, the countries surveyed obviously vary greatly in the extent to which they provide legal protection against discrimination on the relevant grounds beyond that currently required by EU law. A small number of countries (Ireland, Bulgaria, Slovenia, Romania and Luxembourg) have Constitutional or detailed statutory provisions which cover all relevant grounds in relation to, as a minimum, social protection and social advantages, education and access to goods and services including housing, and whose definitions of direct discrimination do not allow such discrimination to be justified by reference to a general defence (for example, by prohibiting only “unjustified” discrimination, or discrimination which is not “necessary and proportionate” to the pursuit of a legitimate aim).²²⁴ Instead of such a broad defence, these countries provide discrete exceptions applicable in particular cases. Until very recently Luxembourg’s penal provisions did not apply in relation to age or across all the material grounds covered by the Race Directive. A package of measures adopted on 24 October 2006, however, provides protection in relation to all the material grounds across the material scope of the Race Directive.²²⁵

²²³ § 5 of the Directive on Police Actions prohibits any semblance of discrimination on the part of the police on grounds of sex, race, skin colour, national or ethnic origin, political affiliation or sexual orientation.

²²⁴ A ‘general justification defence’ may be contrasted with a specific exception covering, for example, discrimination in access to services or education provided by church organisations. General justification defences are invariably available in cases of *indirect*, as distinct from *direct*, discrimination.

²²⁵ Bill 5518 on private relations, including employment and Bill 5583 on public service, adopted on 24 October 2006.

Another group of countries do not have comprehensive across-the-board legislation, but do have an amalgam of Constitutional and/or detailed statutory civil and/or penal prohibitions on discrimination and/or other civil or penal provisions which together regulate discrimination on the relevant grounds across the material scope of the Race Directive (that is, social protection, social advantages, education and access to goods and services including housing). The main difference between these countries and those in the first category is that some or all of the latter's prohibitions on direct discrimination are subject to a general justification defence rather than, or as well as, the particular exceptions permitted by first category of countries. Finland's approach, for example, is a patchwork of Constitutional and statutory provisions which together regulate discrimination on all relevant grounds in relation to social protection, social advantages, education and access to goods and services including housing but which allow general justification defences in respect of much direct discrimination (the Penal Code, which applies to goods and services, prohibits differences of treatment on a wide variety of grounds "without a justified reason"²²⁶ while the Constitution provides that "No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person."²²⁷). Similar remarks can be made of Portugal, where a broad Constitutional prohibition on discrimination allows for the justification of direct discrimination, Spain which regulates discrimination by a variety of Constitutional provisions and field-specific and anti-discrimination statutes, Cyprus, which has relatively little substantive law but an Equality Body with a mandate which is comprehensive (or almost so) as to relevant grounds and material scope, Estonia and Greece. France regulates discrimination on all relevant grounds across the areas of social protection, social advantages, education and access to goods and services including housing, but does so primarily by penal provisions which apply only in relation to *direct* discrimination.

The third category of countries have legislation which covers some or all relevant grounds of discrimination, but which is more limited in its material scope. Belgium, Austria, Hungary and Lithuania fall into this category: Belgian federal law regulates discrimination on all relevant grounds across the material scope of the Race Directive but community and regional legislation is more limited. The opposite is true in Austria where regional provisions are comprehensive as regards the relevant ground and the material scope of the Race Directive, but federal legislation is not. Hungarian legislation is comprehensive as regards relevant grounds and material scope in its application the public sector but is more limited in its application to private actors and the Lithuanian prohibition on discrimination, which is subject to a general justification defence, applies to all the relevant grounds and to social protection, social advantages, education and access to goods and services but does not apply to housing. Also in this category are Slovakia, Poland, Germany, Italy and the Czech Republic which have protection on all the relevant grounds but in relation to a more limited material scope than in the case of the first and second categories of country.

The UK excludes age, sexual orientation and religion and belief from protection other than in relation to employment and occupation, though this is due to change in April 2007 as regards religion and belief and is likely to change on the same date as regards sexual orientation.²²⁸

²²⁶ It is not thought that this applies to indirect discrimination.

²²⁷ This has been interpreted to cover indirect discrimination.

²²⁸ The Equality Act 2006, which provides protection outside employment against discrimination on grounds of religion or belief, is due to come into force on that date. The Act also provides a basis for secondary legislation extending the protection from sexual orientation discrimination beyond employment. The regulations, which are not yet in final form, are expected to be implemented in April 2007.

The Netherlands regulates discrimination on grounds of sex, sexual orientation and religion or belief in relation to social services, education and access to goods and services including housing but not in relation to social protection or social advantages except to the extent required by EU law. It does not at present regulate discrimination on grounds of age and provides more limited protection from discrimination on grounds of disability outside the field of employment. Denmark regulates discrimination on grounds of sex, sexual orientation and religion or belief in relation to access to goods and services and, in the case of sex, also in relation to public administration and occupational and general activities, healthcare and education. Discrimination other than on grounds of sex in this broader area is regulated by general principles of equal treatment, and there is no specific regulation of discrimination on grounds of age or disability beyond that currently required by EU law. Sweden provides a variety of protections in relation to the relevant grounds other than age, discrimination on the basis of which it does not regulate outside employment and occupation.

The final category of countries provide significantly less protection from discrimination outside that currently required by EU law. These countries comprise Malta which regulates only age and disability and whose disability-related provisions do not extend to social protection or social advantages and Latvia which provides protection on the relevant grounds only in relation to limited areas, and not at all on grounds of sexual orientation.

2. Nature of Coverage

A number of the prohibitions on discrimination discussed throughout the report are of a Constitutional nature. Although the adoption of Constitutional prohibitions on discrimination confirm the acceptance of the principle that such discrimination is unlawful, these provisions sometimes extend only to citizens of the country concerned; are regularly applicable only as against the State rather than private individuals; and frequently give rise to real difficulties as regards enforcement. Still other countries regulate discrimination wholly or in part by means of penal provisions some of which apply (France, Finland) only to direct discrimination. Such provisions also give rise to difficulties as regards enforcement and remedy. Thus the fact that most of the European countries surveyed provide protection from discrimination outside the employment context in excess of that required by EU law does not mean that a level playing field exists as regards the regulation of discrimination outside the field of employment at the European level.

Attention also needs to be drawn to the fact that, as mentioned throughout the report, prohibitions on discrimination outside the employment context are in many countries subject to a general justification defence (this is the case, for example, in Finland, Italy, Portugal, Spain, Estonia, Greece and Cyprus). Such a defence may permit differential treatment which would not be lawful under a legislative regime which prohibited differential treatment except in particular, tightly-drawn circumstances. On the other hand, the regulation of *unjustified* differential treatment has the advantage of flexibility: it may not be possible in advance to articulate all the circumstances in which differential treatment *ought* to be allowed. Further, such an approach can be rigorous if the test for justification incorporates an analysis of the aims of the differential treatment, its necessity to the achievement of those aims, and the proportionality between aims and impact of the differential treatment.

General justification defences may permit positive action more extensively than is generally permitted by EU law within the scope of its current application. Typical of the EU approach to positive action is the Race Directive which provides as follows (Art 3):

“With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin”.

This provision, which *permits* but does not *require* positive action on racial grounds, defines the legal boundaries of such action for EU purposes. It is notable that a number of the countries surveyed either have general justification defences (mentioned immediately above) or have Constitutional or other provisions which appear to adopt a different approach to the legitimate boundaries of such action.

3. Coverage by Ground of Discrimination

There is no clear hierarchy of protection from discrimination across the countries surveyed as regards sex, religion or belief, sexual orientation and disability, though it is probably possible to say that religion and belief and sex are more generally regulated to an extent greater than is required by EU law, sexual orientation and disability less so. There is, however, a clear distinction between these four grounds, on the one hand, and *age*, on the other, age being the ground in respect of which there is least protection outside the employment sphere.

Discrimination on grounds of *religion or belief* is or imminently will be the subject of broad protection in Bulgaria, Finland, Ireland, Luxembourg, Romania, Slovenia, Sweden and the UK, in all of which countries protection extends across social protection, social advantages, education and access to goods and services including housing. A large number of countries provide significant protection, albeit not quite as comprehensive as that provided by the first group of countries. These comprise Austria, Belgium, Cyprus, Estonia, France, Germany, Hungary, Italy, Lithuania, the Netherlands, Portugal and Spain. The Czech Republic, Denmark, Latvia, Poland and Slovakia also provided some protection against discrimination on this ground while no specific protection applies in Malta, although that state does give effect to European Convention provisions which guarantee freedom of religion and belief and prohibit discrimination on these grounds.

As regards *sex*, Bulgaria, Denmark, Estonia, Finland, Ireland, Lithuania, Luxembourg, Romania, Slovakia, Slovenia, Sweden and the UK have legislation going beyond the EU minimum requirements in relation to discrimination. All of these countries provide very broad protection against such discrimination. Belgium, Cyprus, France, Germany, Hungary, the Netherlands, Portugal and Spain also provide measures going beyond the minimum requirements albeit not in so comprehensive a fashion as the first category of countries listed. Austria, the Czech Republic, Italy, Latvia, Malta and Poland also provide a measure of additional protection through Constitutional or other measures.

Protection from discrimination on the ground of *sexual orientation* in relation to social protection, social advantages, education and access to goods and services including housing is provided by Bulgaria, Ireland, Luxembourg, Romania and Slovenia. In addition, Austria, Belgium, Cyprus, Denmark, Finland, Germany, Hungary, Lithuania, the Netherlands, Portugal, Spain and Sweden provide a significant degree of protection in this context and the Czech Republic, France, Italy, Latvia and Slovakia provide some measure of protection. In Malta, Poland and the UK there is little in the way of legal control of sexual orientation discrimination outside the employment context, though this is expected to change in April 2007 in the UK.

Protection from discrimination on the ground of *disability* in relation to social protection, social advantages, education and access to goods and services including housing is provided by Bulgaria, Ireland, Luxembourg, Romania, Slovenia and the UK. Of these countries, Bulgaria imposes duties of reasonable accommodation in relation to education, Ireland and the UK impose such duties across the board (that is, in relation to social protection, access to goods and services, etc.). Romania and Slovenia do not impose any duties of reasonable accommodation outside employment. In addition, Austria, Belgium, Cyprus, Estonia, Finland, Germany, Hungary, Italy, Lithuania, Portugal and Spain provide a significant degree of protection in this context. Of these, Cyprus, Austria, Germany, Belgium, Finland, Spain and Portugal impose duties of reasonable adjustment in one or more contexts. The Czech Republic, France, Latvia, Malta, the Netherlands, Slovakia and Sweden provide some measure of protection. Of these, France imposes duties of reasonable adjustment in the education context and Slovakia and Malta more broadly. In Denmark and Poland there is little in the way of legal control of disability discrimination outside the employment context, though Denmark imposes a general principle of equality on public authorities and Poland's Constitution contains specific provisions dealing with the rights of disabled people.

Turning, finally, to *age*, Bulgaria, Ireland, Luxembourg, Romania and Slovenia have adopted comprehensive measures in this context and Austria, Belgium, Cyprus, Estonia, Finland, Germany, Hungary, Lithuania, Portugal and Spain also provide a significant degree of protection. Some protection is also provided by the Czech Republic, France, Italy, Latvia and Slovakia while in Denmark, Malta, the Netherlands, Poland, Sweden and the UK protection from age discrimination does not extend further than that required by EC provisions²²⁹

4. Coverage by Material Scope

No clear hierarchy emerges either as to the contexts in which discrimination is more and less likely to be regulated. On the one hand, discrimination in the contexts of social protection, social advantages and education are more likely than discrimination in access to goods and services to be subject to Constitutional prohibitions on discrimination (these prohibitions frequently applying only or more clearly to state actors). On the other hand, a number of countries surveyed have introduced statutory provisions relevant to discrimination on one or more relevant grounds in access to goods and services without introducing similar legislation applicable to social protection, education, etc. It is for this reason not possible to state that, for example, the highest level of protection applies in relation to education (or social services, or healthcare) and the lowest to goods and services (or housing, or social advantages).

²²⁹ Cyprus, Finland and the Netherlands have ratified this free-standing prohibition on discrimination by public authorities.

Most countries surveyed apply at least a general prohibition to discrimination in relation to *social protection* and *social advantages*. In Bulgaria, Romania, Ireland, Finland, Hungary, Luxembourg and Slovenia detailed statutory provisions apply in this context. Austria's detailed statutory provisions apply only to the regional level though it is thought that penal prohibitions of discrimination on grounds including religion and disability could also apply in this context. Belgian detailed statutory provisions apply only at the federal level and therefore to social security, while healthcare and social assistance are generally provided at regional level. Denmark's detailed statutory provisions applicable in this context do not cover discrimination on grounds of age or disability (though public authorities are bound by a general principle of equality) while the Swedish provisions do not apply to age or disability or the UK provisions to age (or, prior to April 2007, religion or belief or sexual orientation²³⁰). In Italy detailed statutory provisions are applicable in this context in relation to disability, religion or belief and sex while in Malta and the Netherlands such provisions apply only in relation to sex (though general prohibitions on discrimination on all relevant grounds also apply at the Constitutional level²³¹).

Elsewhere, discrimination in this context, which includes access to healthcare, is regulated by means of Constitutional or other provisions which do not provide detailed definitions of discrimination and/or which permit general justification defences. Further, the scope of "social advantages" is not clear, though in some cases it is possible to say that it is covered because of the generality of the prohibition in domestic law. Portuguese and Spanish Constitutional and field-specific measures apply in this context to all relevant grounds. The Estonian Constitution regulates discrimination on all relevant grounds in "all spheres of life" and so should apply in this context as should French Constitutional and penal provisions and German and Lithuanian Constitutional provisions. The Greek Constitution would apply to protect Greek citizens from discrimination in this context and the Latvian Constitution would apply to discrimination by state actors other than on grounds of sexual orientation. The Czech Constitutional prohibition on discrimination applies on this context only to social protection to which there is a legal right and does not extend to health. Similarly the Slovakian Constitution prohibits discrimination in this context only in relation to "fundamental rights" which include some but not all social payments. Polish law appears to regulate only discrimination on grounds of sex, marital or family status in relation to social security but to apply more broadly to social assistance (which would include different forms of social assistance for children such as daycare, the provision of surrogate families or residential care). In Cyprus there is some doubt as to whether social advantages, as distinct from social protection, are covered by general prohibitions on discrimination on the relevant grounds. It is thought in Latvia that the prohibitions on discrimination outside the employment context do not apply to discrimination on grounds of sexual orientation.

Turning to *education*, Ireland, Bulgaria, Cyprus, Slovenia, Luxembourg, Romania, Finland, Italy and Spain regulate discrimination on all relevant grounds in relation to *education*. Sweden and the Netherlands regulate discrimination in education on grounds of disability, sex, sexual orientation and religion or belief but not on grounds of age, and the UK at present regulates such discrimination only on grounds of disability and sex though provisions extending the scope of protection to sexual orientation and religion and belief are expected to be in place by April 2007.

²³⁰ The extent of the prohibition on sexual orientation which is likely to take effect on that date is as yet unclear.

²³¹ In the case of social security but not other forms of social advantage or social protection discrimination is regulated across all the relevant grounds except disability and age.

Denmark regulates discrimination in the context of education on grounds of sex, sexual orientation and religion or belief (not age or disability) and Malta on grounds of sex and disability alone. Austria regulates discrimination in this context on all relevant grounds at the regional, but not the federal, level, while the reverse is true in Belgium and in Hungary discrimination in this context is regulated on all relevant grounds as long as it is publicly provided or funded.

Estonian and Lithuanian Constitutional prohibitions on discrimination apply to all relevant grounds in relation to education whether it is provided by the state or a private actor. Portuguese Constitutional and field-specific provisions impose general prohibitions on discrimination in education and Polish legislation contains a general prohibition on discrimination in education by reference to the Universal Declaration of Human Rights 1948, the International Covenant on Civil and Political Rights 1966 and the Convention on the Rights of the Child 1989 but without reference to any particular grounds. Discrimination in this context is regulated in Slovakia explicitly in relation to sex alone and otherwise by the Constitutional prohibition on discrimination on all the relevant grounds. In France, Germany and Greece public education is subject to general Constitutional principles of equality (which under the Greek Constitution apply only to Greek citizens save where the discrimination is on the ground of sex).

The Czech Republic's Constitution similarly applies to education whether publicly or privately provided and regulates discrimination on grounds of sex, religion or belief and disability, but not age or sexual orientation.²³² Latvia's Constitutional equality clause, which is applicable only against state actors, is not thought to provide protection against discrimination on grounds of sexual orientation in this or any other context, while a field-specific prohibition on discrimination in education does not extend to age, sexual orientation or disability.

Discrimination in the context of *goods and services* is subject to detailed regulation on all the relevant grounds in Ireland, Bulgaria, Romania, Slovenia, Luxembourg, Lithuania, Spain, Finland, the Netherlands (other than in relation to age), Germany (though only in relation to "mass contracts"), Hungary, Austria, France (in relation to direct discrimination only), Sweden and Denmark (other than in relation to age and disability), Italy (other than in relation to sexual orientation and age) and the UK (except on grounds of age and not yet on grounds of sexual orientation, religion or belief).²³³ Detailed Belgian provisions apply only at the federal level. Cyprus regulates discrimination in access to goods and services on all relevant grounds though there are no detailed provisions applicable in this context. A similar position prevails in the Czech Republic where the Law on Consumer Protection covers all agencies involved in the system of public services provision as well as private providers but applies only in relation to persons who acquire goods and services etc. for their own use, and where the operations are conducted or offered publicly for profit.²³⁴ In Estonia general Constitutional and criminal anti-discrimination provisions regulate access to goods and services including housing, the Law on Trading prohibiting traders from "illegally ... restrict[ing] or favour[ing] the sale of goods or services"²³⁵ and in Portugal Constitutional and field-specific provisions regulate unjustified discrimination in this context on all relevant grounds.

²³² The relevant provision of the School Law (Law no. 561/2004 (Collection of Laws 2004, no. 190 p. 10 324)) includes "other status" but is not thought to apply to these grounds.

²³³ The legislation is expected to be in place in April 2007.

²³⁴ Law no. 634/1992 (Collection of Laws 1992, no. 130 p. 3811).

²³⁵ Kaubandustegevuse seadus, RT I 2004, 12, 78, Art.4(2).

Discrimination as between Greek citizens in this context would breach the general Constitutional equality clause, which binds private as well as state actors. The same is true in Spain in relation to discrimination against Spanish citizens, and Spain also makes detailed statutory provision in this context in relation to disability. Malta regulates discrimination in access to goods and services over and above EU requirements only in relation to disability. No prohibitions apply in Slovakia, Poland or Latvia except possibly in the case of public sector providers.

Discrimination in *housing* is regulated in similar fashion to discrimination in access to goods and services (see above) except that the Czech and Lithuanian provisions on goods and services do not extend to it and the Italian prohibition applies only to the public sector.

To conclude, such is the variety and complexity of the countries surveyed that it is difficult to do other than make a number of very general observations except to remark that in a number of countries, the prohibition on discrimination on grounds of sexual orientation, religion or belief, disability, sex and/or age extends well beyond that required by EC law to cover social protection, social advantages, education, goods and services including housing, and that the countries surveyed vary greatly in the extent to which they provide legal protection against discrimination on the relevant grounds beyond that currently required by EU law. It can further be said that all the European Countries surveyed exceed EU requirements in at least some respects, and that in many cases the protection provided in excess of EU requirements is very significant.

Synoptic Table - Comparative Analysis of National Measures to Combat Discrimination Outside Employment and Occupation

**Mapping study on existing national legislative measures - and their impact in - tackling discrimination
outside the field of employment and occupation on the grounds of sex,
religion or belief, disability, age and sexual orientation
VT/2005/062**

December 2006

	SOCIAL PROTECTION (incl. social security, social assistance and healthcare)				
	Religion	Disability	Age	Sexual Orientation	Gender*
Austria	Yes. Provincial acts (unclear scope)	Yes. Provincial acts (unclear scope)	Yes. Provincial acts (unclear scope)	Yes. Provincial acts (unclear scope)	Yes. Provincial acts (unclear scope)
Belgium	Yes	Yes	Yes	Yes	Yes
Cyprus+	Yes	Yes	Yes	Yes	Yes
Czech Republic	Yes (Constitution)	Yes (Constitution)	Yes (Constitution)	Yes (Constitution)	Yes (Constitution)
Denmark	Yes (unwritten principle of equality applicable under general administrative law would cover direct discrimination)	Yes (unwritten principle of equality applicable under general administrative law would cover direct discrimination)	Yes (unwritten principle of equality applicable under general administrative law would cover direct discrimination)	Yes (unwritten principle of equality applicable under general administrative law would cover direct discrimination)	Yes (unwritten principle of equality applicable under general administrative law would cover direct discrimination)
Estonia	Yes (Constitution and penal provisions)	Yes (Constitution and penal provisions)	Yes (Constitution and penal provisions)	Yes (Constitution and penal provisions)	Yes
Finland	Yes	Yes	Yes	Yes	Yes
France	No	No	Yes	No	Yes
Germany	Yes (Basic Law)	No	No	No	Yes (Basic Law)
Greece	Yes (Constitution)	Yes (Constitution)	Yes (Constitution)	Yes (Constitution)	Yes (Constitution and Case law)
Hungary	Yes	Yes	Yes	Yes	Yes
Ireland	Yes (interpretation of legislation includes social welfare services, health services)	Yes (interpretation legislation includes social welfare services, health services)	Yes (interpretation legislation includes social welfare services, health services)	Yes (interpretation legislation includes social welfare services, health services)	Yes (interpretation legislation includes social welfare services, health services)
Italy	Yes	Yes	No	No	Yes (Constitution covers public activities)
Latvia	Yes	Yes	Yes	Yes	Yes
Lithuania	Yes	Yes	Yes	Yes	Yes
Luxembourg	Yes partially (religion but not belief)	Yes partially	No	Yes partially	No
Malta	No	No	No	No	No
Netherlands	No	No	No	No	No

SOCIAL PROTECTION (incl. social security, social assistance and healthcare)

	Religion	Disability	Age	Sexual Orientation	Gender*
Poland	Yes (no specific grounds listed).	Yes (no specific grounds listed).	Yes (no specific grounds listed).	Yes (no specific grounds listed).	Yes (no specific grounds listed).
Portugal	Yes	Yes	Yes	Yes	Yes
Slovakia	Yes (some aspects of healthcare) (Constitution: Social benefits)	Yes (some aspects of healthcare) (Constitution: Social benefits (not express))	Yes (some aspects of healthcare) (Constitution: Social benefits (not express))	Yes (some aspects of healthcare) (Constitution: Social benefits (not express))	Yes
Slovenia	Yes	Yes	Yes	Yes	Yes
Spain	Yes (Constitution)	Yes (Constitution)	Yes (Constitution)	Yes (Constitution and case law)	Yes (Constitution)
Sweden	Yes	No	No	Yes	Yes
United Kingdom	Yes (performance of public functions) (NI only direct)	Yes (performance of public functions)	No	No (but proposed)	Yes (performance of public functions)
Bulgaria	Yes	Yes	Yes	Yes	Yes
Romania	Yes (however health care only covered for those who contribute).	Yes (however health care only covered for those who contribute) (exception:those with severe disability).	Yes (however health care only covered for those who contribute).	Yes (however health care only covered for those who contribute).	Yes (however health care only covered for those who contribute).
*gender excludes social security and assistance					
Cyprus+					

SOCIAL ADVANTAGES

(Indication of whether national law explicitly addresses a category of 'social advantages' or whether discrimination in this area is likely to be unlawful. 'Social advantages' covering a broad category of benefits that may be provided by public or private actors to people on the basis of their employment or residence status)

	Religion	Disability	Age	Sexual Orientation	Gender
Austria	Yes. Provincial acts (binds only the provinces and municipalities)	Yes. Provincial acts (binds only the provinces and municipalities)	Yes. Provincial acts (binds only the provinces and municipalities)	Yes. Provincial acts (binds only the provinces and municipalities)	Yes. Provincial acts (binds only the provinces and municipalities)
Belgium	Yes	Yes	Yes	Yes	Yes
Cyprus	No	No	No	No	No
Czech Republic	Yes (Constitution)	Yes (Constitution)	Yes (Constitution)	Yes (Constitution)	Yes (Constitution)
Denmark	Yes (unwritten principle of equality applicable under general administrative law would cover direct discrimination)	Yes (unwritten principle of equality applicable under general administrative law would cover direct discrimination)	Yes (unwritten principle of equality applicable under general administrative law would cover direct discrimination)	Yes (unwritten principle of equality applicable under general administrative law would cover direct discrimination)	Yes (unwritten principle of equality applicable under general administrative law would cover direct discrimination)
Estonia	Yes (Constitution and penal provisions)	Yes (Constitution and penal provisions)	Yes (Constitution and penal provisions)	Yes (Constitution and penal provisions)	Yes
Finland	Yes	Yes	Yes	Yes	Yes
France	No	No	Yes	No	Yes
Germany	No	No	No	No	No
Greece	Yes (Constitution)	Yes (Constitution)	Yes (Constitution)	Yes (Constitution)	Yes (Constitution)
Hungary	Yes (if discriminator falls under personal scope of ETA)	Yes (if discriminator falls under personal scope of ETA)	Yes (if discriminator falls under personal scope of ETA)	Yes (if discriminator falls under personal scope of ETA)	Yes (if discriminator falls under personal scope of ETA)
Ireland	Yes	Yes	Yes	Yes	Yes
Italy	Yes	Yes	No	No	Yes (public activities covered by Constitution)
Latvia	Yes	Yes	Yes	Yes	Yes
Lithuania	No	No	No	No	No
Luxembourg	Yes potentially to a degree.	Yes potentially to a degree.	No	Yes potentially to a degree.	Yes potentially to a degree.
Malta	No	No	No	No	No

SOCIAL ADVANTAGES

(Indication of whether national law explicitly addresses a category of 'social advantages' or whether discrimination in this area is likely to be unlawful. 'Social advantages' covering a broad category of benefits that may be provided by public or private actors to people on the basis of their employment or residence status)

	Religion	Disability	Age	Sexual Orientation	Gender
Netherlands	No	No	No	No	No
Poland	No	No	No	No	No
Portugal	Yes (by implication)	Yes (by implication)	Yes (by implication)	Yes (by implication)	Yes (by implication)
Slovakia	No	No	No	No	Yes
Slovenia	Yes	Yes (implicit)	Yes (implicit)	Yes (implicit)	Yes (implicit)
Spain	Yes (Constitution).	Yes (Constitution).	Yes. (Constitution).	Yes (Constitution).	Yes (Constitution)
Sweden	Yes.	No	No	Yes.	Yes.
United Kingdom	Yes (performance of public functions) (NI only direct)	Yes (performance of public functions)	No	No	Yes (performance of public functions)
Bulgaria	Yes	Yes	Yes	Yes	Yes
Romania	No	No	No	No	No

	EDUCATION				
	Religion	Disability	Age	Sexual Orientation	Gender
Austria	Yes. Provincial acts	Yes. Provincial acts	Yes. Provincial acts	Yes. Provincial acts	Yes. Provincial acts
Belgium	Yes (Constitution and French Community).	Yes (Constitution and French Community).	Yes (Constitution and French Community).	Yes (Constitution and French Community).	Yes (Constitution and French Community). Yes (Flemish Community (equal opportunities)).
Cyprus	Yes	Yes	Yes ("or other status")	Yes ("or other status")	Yes
Czech Republic	Yes	Yes (not express "or other status")	Yes (not express "or other status")	Yes (not express "or other status")	Yes
Denmark	Yes (unwritten principle of equality applicable under general administrative law would cover direct discrimination)	Yes (unwritten principle of equality applicable under general administrative law would cover direct discrimination)	Yes (unwritten principle of equality applicable under general administrative law would cover direct discrimination)	Yes (unwritten principle of equality applicable under general administrative law would cover direct discrimination)	Yes
Estonia	Yes (Constitution)	Yes (Constitution)	Yes (Constitution)	Yes (Constitution)	Yes
Finland	Yes	Yes	Yes	Yes	Yes
France	Yes (Constitution)	Yes	No	No	Yes (Preamble Constitution)
Germany	Yes. (Constitution).	Yes. (Constitution).	Yes. Constitution (not	Yes. Constitution (not	Yes. Constitution.
Greece	Yes. (Constitution)	Yes. (Constitution)	Yes. (Constitution)	Yes (Constitution)	Yes. (Constitution)
Hungary	Yes.	Yes	Yes	Yes	Yes.
Ireland	Yes	Yes	Yes	Yes	Yes
Italy	Yes	Yes	Yes (unclear basis)	Yes (unclear basis)	Yes (unclear basis - Constitution)
Latvia	Yes	Yes	Yes (Constitution)	Yes (Constitution)	Yes
Lithuania	Yes	Yes	Yes	Yes	Yes
Luxembourg	No	No	No	No	No
Malta	No	Yes	No	No	No
Netherlands	Yes	No	No	Yes	Yes
Poland	Yes (no grounds listed).	Yes (no grounds listed).	Yes (no grounds listed).	Yes (no grounds listed).	Yes (no grounds listed).
Portugal	Yes	Yes	Yes (Constitution)	Yes (Constitution)	Yes (Constitution)

	Religion	Disability	EDUCATION Age	Sexual Orientation	Gender
Slovakia	Yes	Yes	Yes	Yes (Constitution - thought to come under 'other status'.	Yes
Slovenia	Yes	Yes	Yes	Yes	Yes
Spain	Yes (public and state-subsidised schools)	Yes ('any other circumstance')	Yes ('any other circumstance')	Yes ('any other circumstance')	Yes (public and state-subsidised schools)
Sweden	Yes	Yes	No	Yes	Yes
United Kingdom	Yes	Yes	No	No	Yes
Bulgaria	Yes	Yes	Yes	Yes	Yes
Romania	Yes	Yes	Yes	Yes	Yes

	GOODS AND SERVICES (EX HOUSING, incl. supply of healthcare services)			
	Religion	Disability	Age	Sexual Orientation
Austria	Yes (administrative penal provision and provincial acts provinces as providers goods and services only (including transportation).	Yes (Federal and provincial)	Yes (provincial acts only - provinces as providers goods and services only (including transportation).	Yes (provincial acts only - provinces as providers goods and services only (including transportation).
Belgium	Yes	Yes	Yes	Yes
Cyprus	Yes	Yes	Yes	Yes
Czech Republic	Yes (if = a consumer)	Yes (if = a consumer)	Yes (if = a consumer)	Yes (if = a consumer)
Denmark	Yes	Yes (unwritten principle of equality applicable under general administrative law would cover direct discrimination)	Yes (unwritten principle of equality applicable under general administrative law would cover direct discrimination)	Yes
Estonia	Yes (Constitution)	Yes (Constitution)	Yes (Constitution)	Yes (Constitution)
Finland	Yes	Yes	Yes	Yes
France	Yes	Yes	Yes	Yes
Germany	Yes (Basic Law)	Yes	Yes (Basic Law)	Yes (Basic Law)
Greece	Yes (Constitution)	Yes (Constitution)	Yes (Constitution)	Yes (Constitution)
Hungary	Yes	Yes	Yes	Yes
Ireland	Yes	Yes	Yes	Yes
Italy	Yes	Yes	Yes (Constitution for acts of public authorities (not express "personal or social conditions"))	Yes (Constitution for acts of public authorities).
Latvia	Yes (Constitution in public sphere only and Criminal Law (gravest cases only)	Yes (Constitution in public sphere only)	Yes (Constitution in public sphere only)	Yes (Constitution in public sphere only)
Lithuania	Yes	Yes	Yes	Yes
Luxembourg	Yes	Yes	No	Yes
Malta	No	Yes	No	No
Netherlands	Yes	No	No	Yes
Poland	No	No	No	No
Portugal	Yes (Constitution)	Yes	Yes (Constitution)	Yes (Constitution)

	GOODS AND SERVICES (EX HOUSING, incl. supply of healthcare services)			
	Religion	Disability	Age	Sexual Orientation
Slovakia	Yes	Yes	Yes	Yes
Slovenia	Yes	Yes	Yes	Yes
Spain	Yes (Constitution)	Yes	Yes (Constitution)	Yes (Constitution)
Sweden	Yes	Yes	No	Yes
United Kingdom	Yes	Yes	No	No
Bulgaria	Yes	Yes	Yes	Yes
Romania	Yes.	Yes	Yes.	Yes

	HOUSING				
	Religion	Disability	Age	Sexual Orientation	Gender
Austria	Yes. provincial legislation (explicit or implicit)	Yes. provincial legislation (explicit or implicit)	Yes. provincial legislation (explicit or implicit)	Yes. provincial legislation (explicit or implicit)	Yes. provincial legislation (explicit or implicit)
Belgium	Yes (Federal level of private housing). Regional Level (Constitution)	Yes (Federal level of private housing). Regional Level (Constitution)	Yes (Federal level of private housing). Regional Level (Constitution)	Yes (Federal level of private housing). Regional Level (Constitution)	Yes (Federal level of private housing). Regional Level (Constitution)
Cyprus	Yes	Yes	Yes	Yes	Yes
Czech Republic	No	No	No	No	No
Denmark	Presumably Yes (unwritten principle of equality applicable under general administrative law)	Presumably Yes (unwritten principle of equality applicable under general administrative law)	Presumably Yes (unwritten principle of equality applicable under general administrative law)	Presumably Yes (unwritten principle of equality applicable under general administrative law)	Yes
Estonia	Yes (Constitution)	Yes (Constitution)	Yes (Constitution)	Yes (Constitution)	Yes
Finland	Yes (however allows justification of direct discrimination).	Yes (however allows justification of direct discrimination).	Yes (however allows justification of direct discrimination).	Yes (however allows justification of direct discrimination).	Yes (however allows justification of direct discrimination).
France	Yes	Yes	Yes	Yes	Yes
Germany	Yes (Basic Law)	Yes (Basic Law)	Yes (Basic Law) (not express)	Yes (Basic Law) (not express)	Yes Basic Law
Greece	Yes (Constitution)	Yes (Constitution)	Yes (Constitution)	Yes (Constitution)	Yes (Constitution)
Hungary	Yes	Yes	Yes	Yes	Yes
Ireland	Yes	Yes	Yes	Yes	Yes
Italy	Yes	Yes	Yes (public housing)	Yes (public housing)	Yes (public housing)
Latvia	Yes (provided by state or municipal institutions)	Yes (provided by state or municipal institutions)	Yes (provided by state or municipal institutions)	Yes (provided by state or municipal institutions)	Yes (provided by state or municipal institutions)
Lithuania	No	No	No	No	No
Luxembourg	Yes for religion but not belief (not express)	Yes (not express)	No	Yes (not express)	No
Malta	Yes	Yes	Yes	Yes	Yes
Netherlands	Yes	No	No	Yes	Yes
Poland	No	No	No	No	No
Portugal	Yes (Constitution)	Yes (Constitution)	Yes (Constitution)	Yes (Constitution)	Yes (Constitution)

	Religion	Disability	HOUSING Age	Sexual Orientation	Gender
Slovakia	No	No	No	No	Yes
Slovenia	Yes (implicit)	Yes (implicit)	Yes (implicit)	Yes (implicit)	Yes (implicit)
Spain	Yes (Constitution)	Yes (Constitution)	Yes (Constitution)	Yes (Constitution)	Yes (Constitution)
Sweden	Yes	Yes	No	Yes	Yes
United	Yes	Yes	No	No	Yes
Bulgaria	Yes	Yes	Yes	Yes	Yes
Romania	Yes	Yes	Yes	Yes	Yes