

A UNION OF EQUALITY

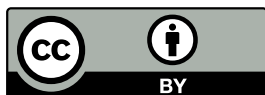
Report on the Racial and Employment Equality Directives



Report from the Commission to the European Parliament and the Council on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (the Racial Equality Directive) and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (the Employment Equality Directive)

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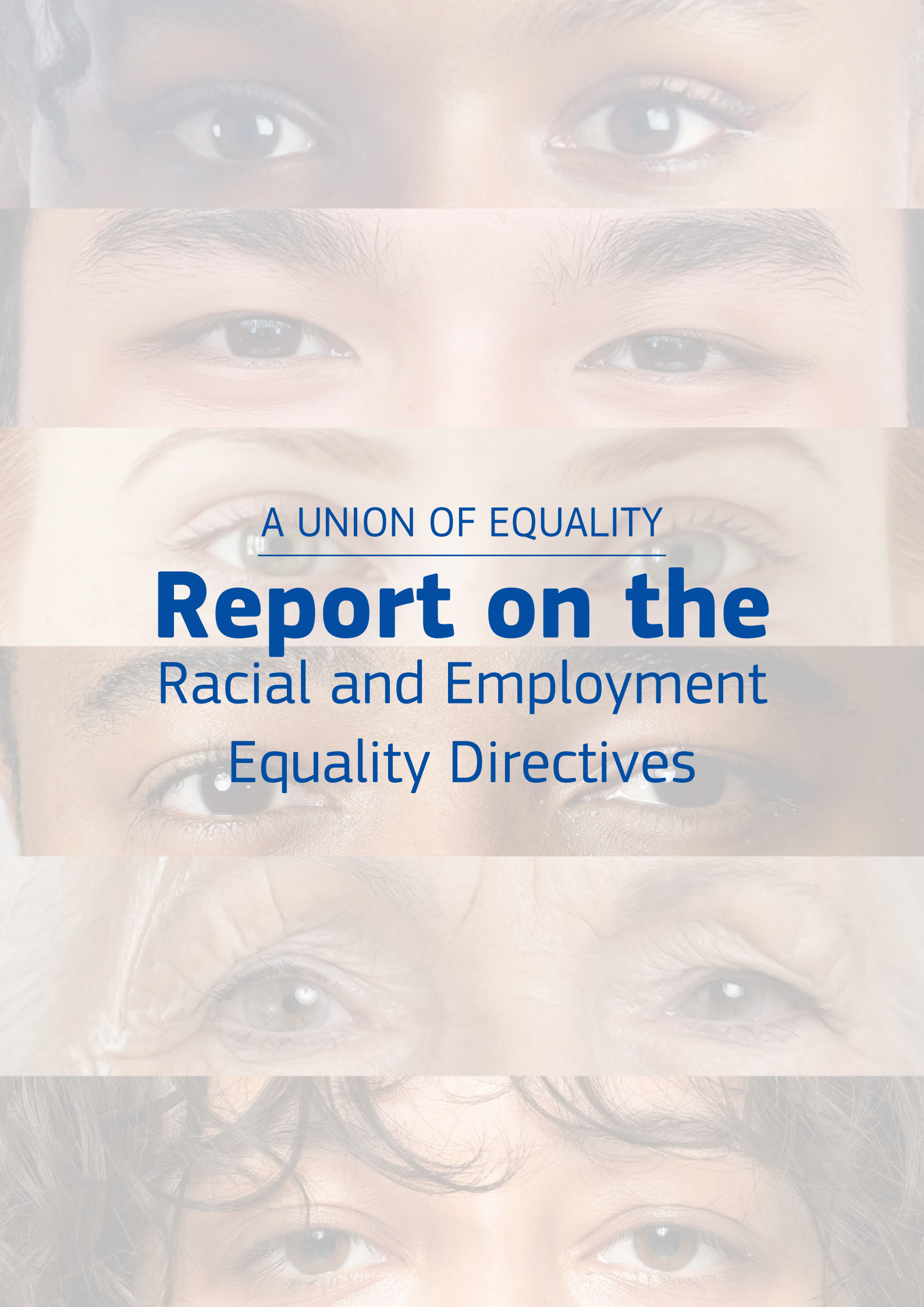


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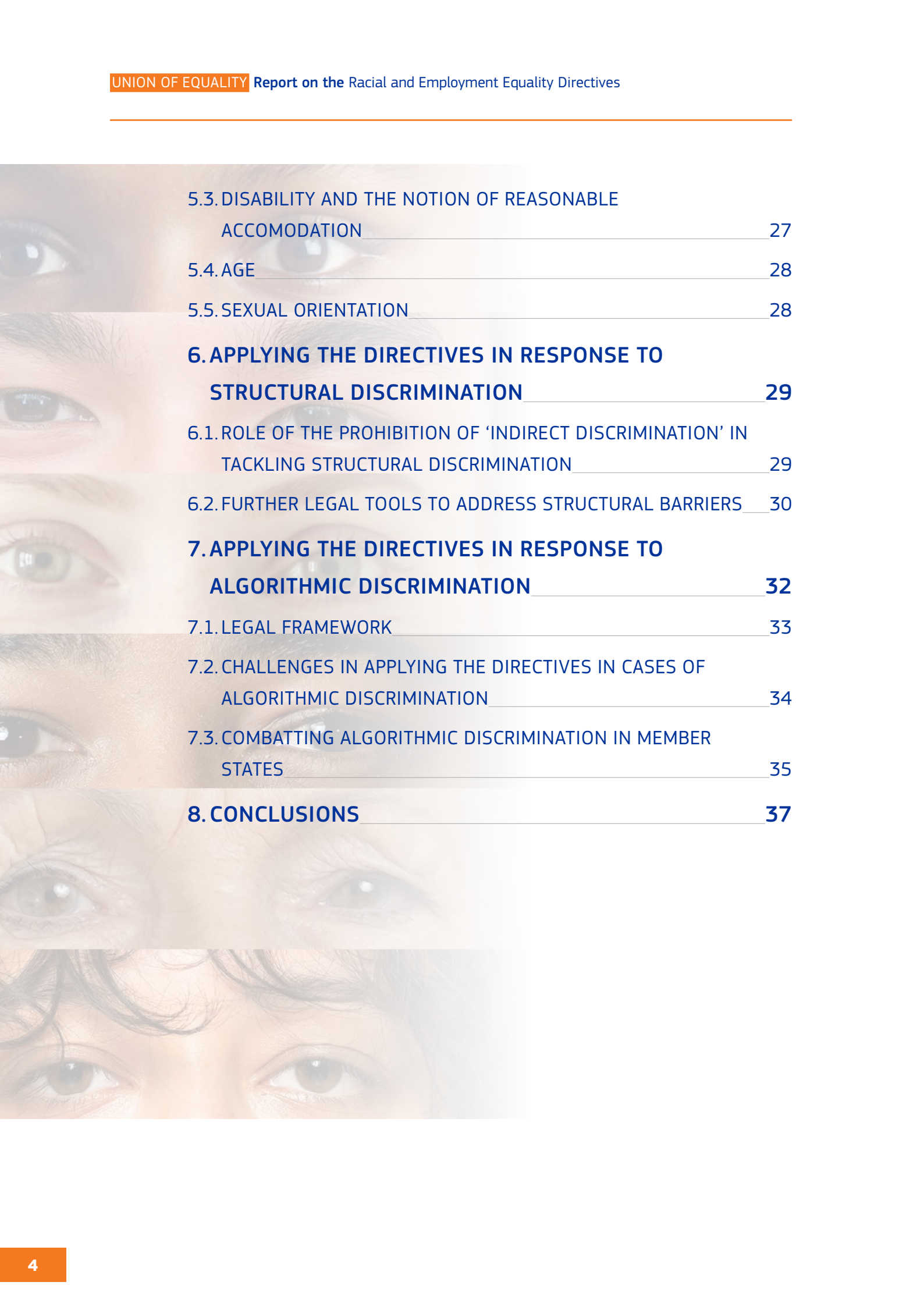
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1. INTRODUCTION

The Racial Equality Directive and the Employment Equality Directive (hereafter, the ‘Directives’) ⁽¹⁾ are the cornerstones of the EU’s efforts to build a Union of Equality. The Racial Equality Directive requires people to be treated equally in the fields of employment and vocational training, education, social protection (including social security and healthcare), and access to and supply of goods and services (including housing), regardless of their racial or ethnic origin. The Employment Equality Directive requires people to be treated equally in employment and vocational training, regardless of their religion or belief, disability, age or sexual orientation.

The Directives implement the fundamental values enshrined in Article 2 of the Treaty on European Union. Since 2000, they have played a key role in ensuring that all individuals can participate fully in economic, cultural and social life, free from discrimination on the grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation.

A significant development over this period has been the role of the Court of Justice of the European Union (CJEU) case-law in clarifying the fundamental concepts of non-discrimination law. In particular, through the many preliminary rulings it has issued at the request of national courts, the CJEU has significantly enhanced anti-discrimination protection across the EU. The minimal challenges reported by Member States in implementing the core principles of EU non-discrimination law confirm the enhanced clarity achieved through CJEU rulings..

Nevertheless, more than 25 years after the adoption of the Directives, **ensuring that individuals have effective recourse to the right to non-discrimination and equal treatment remains a considerable challenge.**

Every five years, the Commission must provide information on the application of the Directives to the European Parliament and the Council ⁽²⁾. This report fulfils that obligation, while also illustrating the progress made and the ongoing challenges faced in applying and enforcing non-discrimination law. It covers the period from 2021 to 2025 and outlines the developments since the last report, which was published in March 2021 ⁽³⁾.

This report follows up on the EU’s equality action plans and strategies, in particular, the EU anti-racism strategy 2026-2030 ⁽⁴⁾ and the LGBTIQ+ equality strategy 2026-2030 ⁽⁵⁾. These strategies stress that ensuring effective application of the EU anti-discrimination law is a Commission priority and emphasise the importance of effective sanctions against discrimination. The report is a key action for delivering on the anti-racism strategy’s commitment to ensuring the effective implementation of the Racial Equality Directive, in particular by focusing on its enforcement and application in cases of algorithmic discrimination. The report also discusses the application of the Directives to address structural discrimination.

Victims rarely report discrimination to institutions. According to various surveys ⁽⁶⁾ conducted by the EU Agency for Fundamental Rights (FRA), the reporting rate ranges from 5% to 11%. This under-reporting results mostly from the belief among victims that reporting discrimination will not lead to any action or change ⁽⁷⁾.

⁽¹⁾ OJ L 180, 19.7.2000, pp. 22–26, ELI: <http://data.europa.eu/eli/dir/2000/43/oj>, OJ L 303, 2.12.2000, pp. 16–22, ELI: <http://data.europa.eu/eli/dir/2000/78/oj>.

⁽²⁾ See: Article 17(1) of the Racial Equality Directive and Article 19(1) of the Employment Equality Directive.

⁽³⁾ COM(2021) 139 final and SWD(2021) 63 final of 19.3.2021, [EUR-Lex - 52021DC0139 - EN - EUR-Lex](#) and [EUR-Lex - 52021SC0063 - EN - EUR-Lex](#).

⁽⁴⁾ COM(2026) 12 final of 20 January 2026, [EUR-Lex - 52026DC0012 - EN - EUR-Lex](#).

⁽⁵⁾ COM(2025) 725 final of 8 October 2025, [EUR-Lex - 52025DC0725 - EN - EUR-Lex](#). See also other relevant strategies: COM(2020) 620 final of 7 October 2020, [EUR-Lex - 52020DC0620 - EN - EUR-Lex](#); COM(2021) 101 final of 3 March 2021, [EUR-Lex - 52021DC0101 - EN - EUR-Lex](#), COM(2026) 113 final of 5 March 2026, [EUR-Lex - 52026DC0113 - EN - EUR-Lex](#), COM(2026) 541 final of 6 May 2026, [EUR-Lex - 52026DC0541 - EN - EUR-Lex](#).

⁽⁶⁾ FRA, [Being Black in the EU – Experiences of people of African descent](#), [Being Muslim in the EU – Experiences of Muslims](#), [Jewish People's Experiences and Perceptions of Antisemitism – EU Survey of Jewish People](#), [LGBTIQ at a crossroads: progress and challenges](#), [Roma in 10 European countries. Main results – Roma Survey 2021](#), [Rights of Roma and Travellers in 13 European countries – Perspectives from the Roma Survey 2024](#), Publications Office of the European Union, Luxembourg, 2021-2025..

⁽⁷⁾ 38% of respondents to the EU-MIDIS III survey; 39% of respondents to the Jewish survey; 49% of respondents to the LGBTIQ III survey; 30% of respondents to the 2021 Roma survey.

The lack of trust in the existing processes and systems for reporting discrimination is paralleled by the perceived limited progress made on combating discrimination ⁽⁸⁾ since the last report on the Directives.

The general population continues to view discrimination as widespread in the EU ⁽⁹⁾. 50% of respondents to the 2022 EU Minorities and Discrimination Survey (EU-MIDIS III) reported feeling discriminated against on any ground ⁽¹⁰⁾ in the five years preceding the survey. Experiences of racial discrimination ⁽¹¹⁾ alone have increased between 2016 and 2023 ⁽¹²⁾.

The last report on the application of the Directives already highlighted several key issues. These included victims' fear of reprisals, inadequate levels of compensation, difficulty gathering evidence and a lack of awareness by victims of their rights and the support services available to them, e.g. through equality bodies. It also pointed to the uneven promotion of equality among the general public and national institutions, which varied depending on the Member State.

Building on the previous report, this new report provides an overview of the persisting and new challenges faced, the progress made and the good practices adopted in applying the Directives since 2021.

During the reporting period, the EU has taken concrete steps to improve the application and enforcement of the Directives. Most importantly, since the last report, the EU has adopted the Equality Bodies Directives ⁽¹³⁾ to strengthen the national bodies responsible for promoting equality and preventing and combating discrimination, including by better supporting individuals and groups discriminated against in accessing justice.

The Directives require Member States to establish effective, dissuasive and proportionate sanctions for discrimination. To support Member States, the Commission commissioned **a study on the legislation and application of sanctions for racial, ethnic and religious discrimination**. The study revealed that legal protection and long-term prevention of discrimination are undermined by low and symbolic sanctions. It highlighted the need for more effective sanctions that fully compensate victims and promote lasting solutions, along with stronger enforcement and capacity-building for legal practitioners and civil society.

In view of recent technological developments, including **the rise of automated and artificial intelligence (AI) systems**, the report also analyses the application of non-discrimination law in Member States in cases of algorithmic discrimination. It demonstrates the need to build capacities and to establish mechanisms for effective cooperation between different enforcement bodies.

⁽⁸⁾ FRA (see note 6).

⁽⁹⁾ See: European Commission, '2023 Eurobarometer on discrimination in the EU'.

⁽¹⁰⁾ Discrimination on the basis of at least one of the following grounds: skin colour, ethnic or immigrant background, religion or religious beliefs, age, sex/ gender, disability, sexual orientation and gender identity or gender expression.

⁽¹¹⁾ For the purpose of the survey, racial discrimination was understood as discrimination on the basis of at least one of the following three grounds: skin colour, ethnic or immigrant background and religion or religious belief.

⁽¹²⁾ FRA, *Being Black in the EU – Experiences of people of African descent*, *Being Muslim in the EU – Experiences of Muslims*, p. 44, *Experiences and perceptions of antisemitism – Second survey on discrimination and hate crime against Jews in the EU*, p. 59, *Jewish People's Experiences and Perceptions of Antisemitism – EU survey of Jewish people*, p. 77.

⁽¹³⁾ OJ L, 2024/1499, 29.5.2024, ELI: <http://data.europa.eu/eli/dir/2024/1499/oj>, OJ L, 2024/1500, 29.5.2024, ELI: <http://data.europa.eu/eli/dir/2024/1500/oj>.

This report draws on the results of targeted consultations ⁽¹⁴⁾. In response to tailored questionnaires, the Commission received contributions from all Member States and various stakeholders and institutions, including the EU Agency for Fundamental Rights, the European Institute for Gender Equality (EIGE), 11 equality bodies, 2 social partners, 17 civil society organisations and the European Network of Equality Bodies (Equinet). The statistics cited in this report are based on those responses.

This report focuses on the effective application and enforcement of EU non-discrimination law by highlighting the importance of::

- equality bodies,
- effective, dissuasive and proportionate sanctions,
- improving access to justice and evidence for victims,
- empowerment and cooperation of stakeholders, and
- the case law of the Court of Justice of the European Union.

The ‘key takeaways’ at the beginning of each section summarise the main findings of the report. Additional boxes provide examples of promising practices.



⁽¹⁴⁾ Between May and July 2025, the Commission conducted targeted consultations using an online questionnaire that included both tailored questions about Directives’ implementation and open-ended questions to raise any additional concerns. The questionnaires were distributed to all Member States, equality bodies in each Member State, European social partners consulted under Article 154 TFEU, and 57 civil society organizations. Stakeholders were encouraged to share the questionnaire with relevant parties at local, regional, and national levels.

2. IMPLEMENTATION OF THE KEY ACTIONS SET OUT IN THE PREVIOUS REPORT

The previous report highlighted that it is essential to enhance the visibility, role and independent functioning of equality bodies in order to address challenges in applying and enforcing the Directives. This led to the adoption of the Equality Bodies Directives following the Commission's proposal. The Commission also identified a need for closer monitoring of effective, proportionate and dissuasive sanctions, while providing support in this area. The following chapter examines the implementation of these key measures.

Key takeaways

- ✓ The Equality Bodies Directives aim to strengthen the mandate, independence, resources and powers of equality bodies. This includes by extending their remit to include the grounds and fields covered by the Employment Equality Directive.
- ✓ Equality bodies must have tools and resources to prevent and respond to discrimination, including structural discrimination.
- ✓ Equality bodies must have powers to act in court proceedings in support or on behalf of victims or in their own name to defend the public interest.
- ✓ Low sanctions and ineffective application of sanctions are the key bottlenecks in the sanction systems.
- ✓ Consolidating legislation and introducing forward-looking sanctions would improve the sanction systems.

2.1. STRONGER EQUALITY BODIES – A NEW IMPETUS FOR THE ENFORCEMENT OF EU NON-DISCRIMINATION LAW

Equality bodies are essential for enforcing EU non-discrimination law. Until 2024, the Racial Equality Directive merely empowered equality bodies to provide independent assistance to victims of discrimination and to conduct and publish their own surveys, reports and recommendations ⁽¹⁵⁾.

In the staff working document accompanying the last report on the application of the Directives ⁽¹⁶⁾, the Commission pointed to different levels of ambition and achievement in the Member States. Key cross-cutting issues included the inadequacy of the equality bodies' resources, in terms of funding and staff, limited awareness of the equality bodies' existence, and their limited independence and legal standing.

For this reason, the EU adopted the Equality Bodies Directives to ensure that, by June 2026, all equality bodies are better equipped to combat discrimination, support victims and promote equality.

The Equality Bodies Directives extend the remit of the equality bodies to include discrimination on the grounds of age, religion or belief, disability or sexual orientation in the field of employment. Prior to this, equality bodies were mandated by EU law to promote, analyse, monitor and support the equal treatment of all persons on the grounds of racial or ethnic origin and sex only.

Furthermore, the Equality Bodies Directives require Member States to ensure that equality bodies are independent and to provide them with the necessary human, technical and financial resources. Those resources must enable the equality bodies to perform all their tasks and exercise all their powers effectively across all grounds and fields of discrimination.

⁽¹⁵⁾ See e.g. Article 13(2) of the Racial Equality Directive.

⁽¹⁶⁾ SWD/2021/63 final, 19.3.2021, [EUR-Lex - 52021SC0063 - EN - EUR-Lex](#).

Finally, the scope of the tasks and powers of equality bodies has been strengthened substantially. Their mandate can no longer be restricted to responding to discrimination. They will also need to have the power to take preventive action, including in relation to discrimination on the basis of age, religion or belief, disability or sexual orientation in the field of employment and vocational training.

To address the structural aspects of discrimination and to contribute to social change ⁽¹⁷⁾, equality bodies will carry out awareness-raising, prevention and promotional activities ⁽¹⁸⁾. Such activities can include sharing good practices, taking positive action, reporting on structural issues, equality mainstreaming among public and private entities, and providing such entities with relevant training, information, advice, guidance and support.

The Equality Bodies Directives require Member States to give equality bodies litigation powers ⁽¹⁹⁾. Previously, litigation powers of those bodies varied significantly across the EU. With the new standards in place, all groups protected under EU law will be able to seek support from equality bodies in the fields covered by the Racial Equality Directive and Employment Equality Directive.

In particular, the Equality Bodies Directives allow Member States to empower equality bodies to support both individual and collective redress ⁽²⁰⁾ efforts. Member States may designate equality bodies to act in support or on behalf of several victims or in their own name to combat discrimination in the public interest. This may be necessary, for example, because of the abundance or seriousness of the cases or the need for legal clarification. Each one of those factors could imply that the discrimination is structural or systematic in nature ⁽²¹⁾.

Equality bodies will continue to fulfil their central task of providing assistance to victims of racial or ethnic discrimination, including by replying to all complaints of discrimination ⁽²²⁾. This task will now extend to victims of discrimination in employment on the basis of age, religion or belief, disability or sexual orientation. In addition, under the new Equality Bodies Directives, equality bodies also have to be empowered to offer alternative dispute resolution, to conduct inquiries into breaches of the principle of equal treatment and to issue non-binding opinions or binding decisions ⁽²³⁾. Their opinions or decisions must include appropriate remedial, monitoring and enforcement mechanisms.

The Commission adopted the implementing act establishing a list of common indicators on the functioning of equality bodies ⁽²⁴⁾. This will make it easier to monitor how the new standards are being applied in Member States and what impact they are having on the enforcement of EU non-discrimination law.

Conclusions

- ✓ Member States must fully and correctly transpose the Equality Bodies Directives.
- ✓ The Commission will continue to provide support to Member States through dedicated expert group meetings and an online IT platform. It will monitor the Member States' correct transposition of the Equality Bodies Directives into their national legislation using all the tools at its disposal, including informal dialogues and formal infringement procedures.

⁽¹⁷⁾ See: Recital 23 of Council Directive 2024/1499.

⁽¹⁸⁾ See: Article 5 and 17(c) of Council Directive 2024/1499.

⁽¹⁹⁾ See: Article 10 of Council Directive 2024/1499. In particular, Member States shall ensure at least one of the following rights of the equality body to act in court proceedings: (a) the right to initiate court proceedings on behalf of one or several victims; (b) the right to participate in court proceedings in support of one or several victims; or (c) the right to initiate court proceedings in its own name, in order to defend the public interest.

⁽²⁰⁾ Collective redress is a legal mechanism that allows one or more (natural or legal) persons to initiate a collective claim that may lead to the application of collective sanctions.

⁽²¹⁾ See: Recital 35 of Council Directive 2024/1499.

⁽²²⁾ See: Article 6 of Council Directive 2024/1499.

⁽²³⁾ Member States shall decide whether to empower an equality body to issue non-binding opinions or binding decisions.

⁽²⁴⁾ OJ L, 2026/1196, 11.6.2026, ELI: http://data.europa.eu/eli/reg_impl/2026/1196/oj.

2.2. SANCTIONS AND REMEDIES – THE NEED FOR STRONGER SAFEGUARDS

Effective sanctions ensure that victims of discrimination receive full redress for the harm they have experienced. Furthermore, sanctions and remedies can also be part of the toolkit for preventing discrimination. The Directives require Member States to provide for effective, proportionate and dissuasive sanctions for discrimination and to ensure that they are enforced. Sanctions may include the payment of compensation ⁽²⁵⁾.

The last report concluded that some national courts had established relatively low levels of damages, which discouraged victims from taking legal action or asking for pecuniary compensation in court.

Since the last report, the CJEU has issued further clarification on sanctions. In the Braathens Regional Aviation case, the CJEU explained that EU law precludes domestic legislation that would allow discrimination to go unrecognised by the courts if the defendant agrees to pay the compensation requested by the claimant ⁽²⁶⁾. Such rules would fail, in particular, to meet the requirements for compensatory and dissuasive sanctions, as they would allow perpetrators to avoid acknowledging wrongdoing in order to protect their reputation.

Findings of the study on sanctions for discrimination on racial, ethnic and religious grounds

The last report highlighted the challenge posed by the inadequate application of sanctions. The Commission therefore decided to help Member States to implement the provisions on sanctions effectively and commissioned a study on the legislation and application of sanctions for racial, ethnic and religious discrimination ⁽²⁷⁾.

The findings revealed that sanctions frameworks are fragmented. The relevant provisions are scattered across many different laws. This makes it difficult for victims to determine their rights and the remedies available to them.

In several jurisdictions, the amounts/ranges of sanctions provided for in legislation are low and not severe enough to deter potential perpetrators. The list of possible sanctions is often limited, making it more difficult to tailor them to the specifics and gravity of the offence. In addition, the sanctions imposed are often symbolic and close to the legal minimum, while the cost of litigation is high, which might undermine the system's effectiveness and disincentivise victims from reporting discrimination. Furthermore, sanctions are rarely amended, and many jurisdictions have outdated sanctions which do not take economic changes into account, such as inflation or the cost of living.

Finally, sanctions generally focus only on past wrongdoing. They serve to punish the perpetrator or compensate the victim, without leveraging their potential for prevention. Measures ⁽²⁸⁾ with a preventive or socio-preventive purpose, such as structural injunctions requiring, e.g. desegregation plans or compulsory training for perpetrators, are usually lacking ⁽²⁹⁾.

The study also highlighted the lack of sanctions for discrimination cases affecting large groups of non-identifiable victims ⁽³⁰⁾, including cases stemming from the use of AI or automated systems.

⁽²⁵⁾ See: Article 15 of the Racial Equality Directive and Article 17 of the Employment Equality Directive.

⁽²⁶⁾ Judgment of the Court of 15 April 2021, *Diskrimineringsombudsmannen v. Braathens Regional Aviation AB*, C30/19, ECLI:EU:C:2021:269, paragraph 49.

⁽²⁷⁾ European Commission: Directorate-General for Justice and Consumers, Milieu Consulting, Adamis-Császár, K., Vancauwenbergh, S., Gustave, F. et al., Study on sanctions for discrimination on racial/ethnic/religious grounds – Final report, Publications Office of the European Union, 2025, <https://data.europa.eu/doi/10.2838/7531428>.

⁽²⁸⁾ Such measures can take the form of an injunction, i.e. an order prohibiting certain actions or ordering certain actions. A basic injunction would order a perpetrator to take, or stop, a specific action or type of action. Structural injunctions seek to tackle pervasive organisational and even systemically embedded discrimination for which a basic injunction would not lead to satisfactory reform (e.g. amending internal regulations). See also: Halberstam, D., Van den Bogaert, S., 'A Fresh Look at Judicial Remedies in EU Equality Law and Beyond – The Untapped Possibility of Structural Injunctions', *Common Market Law Review*, Vol. 60, Issue 5, 2023, pp. 1269-1312, <https://doi.org/10.54648/cola2023093>.

⁽²⁹⁾ See note 27.

⁽³⁰⁾ For instance, statements concerning a discriminatory recruitment policy even though there was no open recruitment procedure and there was no identifiable complainant who claimed to have been the victim of discrimination. For similar facts, see judgment of the Court of Justice of 10 July 2008, *Feryn*, C-54/07, ECLI:EU:C:2008:397 or judgment of the Court of Justice of 25 April, *Asociația Accept*, C-81/12, ECLI:EU:C:2013:275.

Further challenges include insufficient consideration of certain characteristics or circumstances when deciding on a sanction or the amount of the sanction. This is particularly the case with regard to elements that are not required to be taken into account by national law, such as cases involving multiple, intersectional or algorithmic discrimination.

In addition, inadequate enforcement and monitoring rules often lead to delays or non-execution of sanctions. Only a few jurisdictions provide for effective enforcement measures, such as penalty payments ⁽³¹⁾ or conditional fines ⁽³²⁾. Similarly, monitoring measures, in the form of follow-up reporting by perpetrators, follow-up hearings, interviews or inspections, are largely absent.

Both Member States and stakeholders noted that awareness of the rights established by the Directives is low (see 3.2). Awareness of the available remedies is also limited or even non-existent.

Research has not identified any specific national rules for raising awareness about sanctions for discrimination. Most awareness campaigns focus broadly on combating discrimination, without explaining what victims can expect from the justice system when their rights are violated. Furthermore, there is a shortage of targeted training on these sanctions for professionals, including judges, which may affect the application of effective, proportionate and dissuasive sanctions.

The good practice guide on sanctions for discrimination, which is part of the study, highlights a number of promising practices that have been implemented in Member States ⁽³³⁾.

Evaluation of sanction systems by Member States, equality bodies and civil society

Different stakeholders perceived the effectiveness of the sanction systems rather differently. While 12 of the 17 civil society organisations that participated in the targeted consultation prior to the report considered sanctions for discrimination to be not very effective or not effective at all, respondents from equality bodies were evenly divided in their assessment of the sanctions, and Member States were largely convinced of the effectiveness (five Member States) or relative effectiveness (16 Member States) of their sanction systems.

The reasons given for considering the sanction systems to be effective were usually the mere existence of sanctions, the availability of monitoring and enforcement mechanisms, or the alleged lack of any indication that the sanction system is functioning unsatisfactorily. However, where difficulties were experienced, all stakeholders clearly identified the failure to apply the prescribed sanctions in practice as the key bottleneck in the sanction systems.

The Member States, equality bodies and civil society organisations surveyed agreed that consolidating the legislation and introducing forward-looking sanctions would improve the sanction systems. Furthermore, civil society organisations called on Member States to recognise and take account of multiple and intersectional discrimination in their sanction systems. In their view, such reforms would facilitate the enforcement of sanctions for discrimination, anchor a victim-centred approach and enable prevention of discriminatory behaviours and not just punishment.

In their replies to the consultation, only Latvia, Portugal and Spain, saw a need to adapt their sanction systems to the growing use of algorithmic decision-making tools.

⁽³¹⁾ Payment, typically imposed by a court at the request of the victim, to compel the perpetrator to comply with a judgment on merits.

⁽³²⁾ A penalty imposed by a court or adjudicating body that becomes payable only if certain conditions are not met by the perpetrator. It is used as a deterrent to ensure compliance with a specific order or requirement.

⁽³³⁾ European Commission: Directorate-General for Justice and Consumers, Milieu Consulting SRL, Adamis-Császár, K., Vancauwenbergh, S., Gustave, F. et al., How can sanctions effectively prevent and combat discrimination? – Good practice guide on sanctions for discrimination on racial, ethnic and religious grounds, Publications Office of the European Union, 2025, p. 32, <https://data.europa.eu/doi/10.2838/0513884>.

Conclusions

- ✓ All Member States must ensure that sanctions are applied effectively in practice. The amounts of monetary sanctions should reflect the long-term harm caused by discrimination, provide redress for victims and drive profound change.
- ✓ All Member States should establish effective sanctions for discrimination involving large groups of non-identifiable victims, including in cases stemming from the use of AI or automated systems.
- ✓ The Commission will support the Member States by holding meetings to discuss sanctions within the expert group on the implementation of EU equality law.



3. DEVELOPMENTS COMMON TO BOTH DIRECTIVES

Since 2021, there have been developments in terms of legislation, implementation and application for both Directives, while external research has been carried out on the existing framework, specific provisions and the application of the Directives. The topics discussed below are based on the issues identified in the previous report, subsequent developments and the feedback received during targeted consultations.

Key takeaways

- ✓ Member States provide protection against harassment, instructions to discriminate and victimisation. This protection varies widely across the Member States and is sometimes limited in practice.
- ✓ Awareness of support services among ethnic groups and people with a migrant background has increased slightly since the last report. Most Member States have implemented, or are continuing to implement, practices that facilitate access to justice. However, low awareness of rights remains a significant challenge.
- ✓ Courts and legal practitioners often lack understanding of the Directives' rules relating to the burden of proof.
- ✓ Most Member States have measures in place to promote dialogue with social partners and civil society. However, this is not systematically the case across all Member States or for all grounds of discrimination. In addition, most civil society organisations say that they face persistent challenges.
- ✓ Nearly all Member States allow or encourage positive action and very few implementation challenges were reported.

3.1. THE CONCEPT OF 'DISCRIMINATION'

As highlighted in the previous report, a number of issues arise around the concept of discrimination. Besides defining 'direct' and 'indirect' discrimination ⁽³⁴⁾, the Directives also prohibit 'instruction to discriminate' and 'harassment'. There are also further forms of discrimination, such as discrimination 'by association' and 'by assumption'.

Instruction to discriminate

The Directives state that 'an instruction to discriminate against persons' on the grounds specified in the Directives is to be deemed to constitute discrimination ⁽³⁵⁾.

Following the adoption of the Directives, the concept of 'instruction to discriminate' was introduced into the legal systems of all Member States. However, due to the general nature of the prohibition, the regulatory framework in the Member States is diverse and domestic case-law is scarce.

In addition to the prohibition of explicit instructions to discriminate, 22 Member States consider that their domestic legislation also prohibits implicit instructions, such as expressions of preference or encouragement to discriminate on one or more protected grounds. In seven Member States, there must be a hierarchical relationship between the person giving the instruction and the person receiving the instruction to trigger protection against instructions to discriminate. Finally, in 20 Member States, both the person giving the instruction and the person receiving the instruction can be held liable ⁽³⁶⁾.

⁽³⁴⁾ See Article 2(2) of the Directives. Direct discrimination refers to situations where a person is treated less favourably than another in a comparable situation on grounds of their racial or ethnic origin, religion or belief, disability, age or sexual orientation. Indirect discrimination covers apparently neutral provisions (or practices) which would put persons of racial or ethnic origin or having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless those provisions (or practices) would be objectively justified by a legitimate aim and the means of achieving that aim would be appropriate and necessary.

⁽³⁵⁾ See Article 2(4) of the Directives.

⁽³⁶⁾ The relevant literature may present different figures to those provided by the Member States. See Dewhurst, E., Buendia, R., Instructions to discriminate under EU and national law, Publication Office of the European Union, 2025, <https://data.europa.eu/doi/10.2838/6242130>.

In a recent report on instructions to discriminate ⁽³⁷⁾, experts identified 23 cases between 2002 and 2025. Of those cases, 14 concerned access to and supply of goods and services, including housing, and 17 were lodged on the grounds of racial or ethnic origin. In 12 Member States, there was no relevant case-law. The report's authors suggest that this lack of case-law stems partly from a lack of understanding of what constitutes an instruction to discriminate. Claimants are more likely to pursue an action for direct or indirect discrimination once an instruction has caused discrimination, rather than challenging the instruction itself.

Harassment

The Directives provide a definition of harassment. However, they also emphasise that the concept of harassment may be defined in accordance with the national laws and practices of the Member States ⁽³⁸⁾. The regulatory landscape in the Member States remains diverse and case-law is scarce.

Member States prohibit harassment under either non-discrimination law or criminal law or both. The choice of legislative means usually depends on one of the following factors: the nature of the offence ⁽³⁹⁾, the severity of the act ⁽⁴⁰⁾ or the intent ⁽⁴¹⁾. Member States also provided a long and diverse list of examples of behaviour that can fall under the definition of harassment. Their scope and type depend on the jurisdiction ⁽⁴²⁾.

Within the employment sector, three main liability models have emerged. Liability may rest with the harasser, the employer, or both. Many Member States were unable to specify the forms of protection against harassment beyond employment. Where information was available, Member States typically elaborated on the regulatory framework for combating harassment in educational establishments, healthcare, and public administration.

In this regard, in a number of countries, not only the harasser, but also the relevant body or institution might be held liable for harassment due to negligence in fulfilling obligations to prevent harassment ⁽⁴³⁾.

Ten Member States highlighted difficulties in applying the concept of harassment under domestic law. Most notably, Member States indicated challenges in obtaining evidence to prove harassment. Furthermore, some of the issues have been attributed to a national implementation of the law, in which repeated behaviour, intent (rather than effects), identification of individuals or groups in similar situations and a hierarchical relationship are required for behaviour to constitute harassment. None of those are explicitly required under EU law.

In a few Member States, interesting case-law has emerged regarding the use of protection from harassment to address online discrimination affecting unspecified numbers of people and to protect groups of individuals from discrimination.

⁽³⁷⁾ See note 36, p. 10.

⁽³⁸⁾ See: Article 2(3) of the Directives.

⁽³⁹⁾ 'Discriminatory' harassment focuses on the impact on the victim's dignity and behaviour, whereas criminal harassment concentrates on punishing the perpetrator for criminal offences.

⁽⁴⁰⁾ Criminal law addresses the most severe forms of harassment, such as incitement to hatred, defamation, stalking, or threats.

⁽⁴¹⁾ Criminal harassment typically requires intent, persistence, and harm. These are not necessary under non-discrimination law.

⁽⁴²⁾ They include: inappropriate or offensive language; production, display or circulation of pictures or videos or written words; physical contact or violence; bullying; exclusion; unjustifiable/persistent criticism or control; undermining professional performance or spreading rumours; deliberate overloading with work or setting impossible deadlines; humiliation; verbal or non-verbal intimidation or threats; verbal abuse or insults; inappropriate jokes; psychological pressure or violence; unwanted acts or requests; gestures; stalking; name-calling; hate speech or hate symbols; online harassment; graffiti; and refusal to acknowledge preferred pronouns.

⁽⁴³⁾ Malta highlighted that such a framework creates a positive duty of care for employers, educators and service providers to actively prevent harassment – not only between staff but also between staff and third parties.

Box 1. Examples of harassment cases in Member States ⁽⁴⁴⁾

- ✓ In Bulgaria, there was a case where the Supreme Administrative Court classified offensive social media posts from a political party as harassment on the ground of sexual orientation ⁽⁴⁵⁾. In another decision, the Court found that stigmatising online articles targeting people of Roma ethnicity constituted harassment on the ground of ethnicity ⁽⁴⁶⁾.
- ✓ In Belgium (in the field of employment) ⁽⁴⁷⁾ and Italy ⁽⁴⁸⁾, courts have recognised harassment in cases where offensive opinions have been expressed on social networks or communication platforms, even if they have been shared with only a limited number of people.

Discrimination by association or assumption

Discrimination by association occurs when a victim is discriminated against because of their association with a protected individual, group or characteristic. The CJEU has consistently recognised this form of discrimination in its case-law, most recently in relation to indirect discrimination on the grounds of disability (see 5.3.) ⁽⁴⁹⁾. In addition, 19 Member States now explicitly prohibit discrimination by association in their national legislation or case-law ⁽⁵⁰⁾.

The CJEU has not yet explicitly addressed the issue of ‘discrimination by assumption’. This occurs when a person is discriminated against on the basis of an incorrect belief or perception that they have one of the protected characteristics. It should be noted that the European Court of Human Rights has ruled, in a series of cases, that discrimination under the European Convention on Human Rights encompasses discrimination by assumption ⁽⁵¹⁾. Furthermore, it appears that 19 Member States already prohibit it in either domestic legislation or case-law ⁽⁵²⁾.

In some Member States, discrimination by association or assumption may also apply in cases of harassment, victimisation or denial of reasonable accommodation ⁽⁵³⁾. Such understandings rarely come from legislation. Instead, they often originate from case-law or represent the interpretation of the authorities surveyed. Other Member States were mostly unsure about the applicability of their domestic legislation to such cases.

Despite the Court’s ruling in the *CHEZ* case ⁽⁵⁴⁾, which found that discrimination by association does not depend on an intimate or close relationship between the alleged victim and the associated group, a few Member States may continue to demand it.

Multiple discrimination

Both Directives ⁽⁵⁵⁾ recognise that certain groups of people may experience discrimination on multiple grounds. To date, 14 Member States have adopted legislation that explicitly recognises multiple discrimination.

Within those 14 Member States, the practical and legal consequences of the recognition of multiple discrimination vary significantly. In some Member States, it affects the type and severity of sanctions for

⁽⁴⁴⁾ The examples from Bulgaria and Italy fall outside the material scope of both the Racial Equality Directive and the Employment Equality Directive. Nevertheless, they are relevant to the concept of ‘harassment’ as defined in these Directives and as implemented in national legislation.

⁽⁴⁵⁾ Supreme Administrative Court of Bulgaria, Decision No. 9763 of 16 September 2024.

⁽⁴⁶⁾ Supreme Administrative Court of Bulgaria, Decision No. 5014 of 14 May 2025.

⁽⁴⁷⁾ Antwerp Court of Appeal, Judgment No. 2023/CO/654 of 27 June 2024.

⁽⁴⁸⁾ Italian Supreme Court of Cassation, Order No 14836 of 26 May 2023.

⁽⁴⁹⁾ See: Judgment of the Court of 11 September 2025, *Bervidi*, C-38/24, ECLI:EU:C:2025:690, paragraphs 55 to 56.

⁽⁵⁰⁾ Walsh, J., *Discrimination by association and discrimination by assumption under directives 2000/43 and 2000/78*, Publications Office of the European Union, 2024, p. 12-13, <https://data.europa.eu/doi/10.2838/4086758>.

⁽⁵¹⁾ See e.g. *Timishev v. Russia*, Nos. 55762/00 and 55974/00, 13 December 2005.

⁽⁵²⁾ See note 50.

⁽⁵³⁾ In the *Bervidi* case (see note 49), the CJEU ruled that workers without disabilities may also benefit from reasonable accommodations in certain circumstances.

⁽⁵⁴⁾ Judgment of the Court of 16 July 2015, *CHEZ Razpredelenie Bulgaria* AD v *Komisija za zashtita ot diskriminatsia*, C-83/14, ECLI:EU:C:2015:480, paragraphs 49 and 56.

⁽⁵⁵⁾ See: Recital 14 of the Racial Equality Directive and recital 3 of the Employment Equality Directive.

discrimination. In others, it is considered one of the more severe forms of discrimination. In two Member States, multiple discrimination can set a higher evidentiary threshold for defendants, as separate proof of non-discrimination is required for each ground.

Half of the Member States that explicitly recognise multiple discrimination have signalled significant difficulties in applying the concept. In six Member States, there is a lack of awareness of multiple discrimination. In five Member States, there are insufficient statistics for all the relevant grounds of discrimination. Five Member States also found it difficult to identify an appropriate comparison group in a more favourable position in cases involving multiple discrimination. Equality bodies raised similar concerns. However, in contrast to the Member States, almost all equality bodies reported difficulties in recognising instances of multiple discrimination.

There is no legal basis for recognising intersectional discrimination in either Directive covered by this report ⁽⁵⁶⁾. While the CJEU acknowledged that discrimination may be based on several of the grounds protected under EU law, it also held that 'no new category of discrimination resulting from the combination of more than one of those grounds ... may be found to exist where discrimination on the basis of those grounds taken in isolation has not been established' ⁽⁵⁷⁾.

The civil society organisations and equality bodies surveyed raised the need to anchor intersectional discrimination in the legal framework and provide guidance on how to frame, assess and adjudicate such claims.

Since 2021, the EU has begun to address intersectional discrimination to a certain extent in EU law. The Pay Transparency Directive ⁽⁵⁸⁾ defines intersectional discrimination for the first time in EU law ⁽⁵⁹⁾. The Equality Bodies Directives require equality bodies to be empowered to take intersectional discrimination into account in their activities to prevent discrimination and promote equal treatment ⁽⁶⁰⁾. Furthermore, the Commission continues to recognise the importance of intersectional discrimination in equality strategies ⁽⁶¹⁾.

3.2. ACCESS TO JUSTICE – BRIDGING THE GAP FOR VICTIMS

Member States must ensure that the people concerned are made aware of the national laws transposing the Directives by all appropriate means throughout their territory ⁽⁶²⁾. Ensuring that people are aware of their rights remains a major challenge. However, the situation is improving in some respects ⁽⁶³⁾.

Half of the Member States (14) acknowledged that people's lack of awareness of the rights and obligations deriving from the Directives was an issue. Similarly, almost all civil society organisations, 8 of the 11 equality bodies and Equinet argued that there was insufficient awareness of rights and obligations.

Despite the relative consensus that lack of awareness is a root cause of the inadequate enforcement of EU non-discrimination law in the Member States, neither Member States nor equality bodies nor civil society organisations seem to hold data on specific levels of awareness. Furthermore, only one equality body had information on the general population's awareness of their activities.

⁽⁵⁶⁾ Discrimination that takes place on the basis of several personal grounds or characteristics/identities, which operate and interact with each other at the same time in such a way as to be inseparable.

⁽⁵⁷⁾ See judgment of the Court of Justice of 24 November 2016, David L. Parris v Trinity College Dublin and Others, C 443/15, ECLI:EU:C:2016:897, paragraph 80.

⁽⁵⁸⁾ OJ L 132, 17.5.2023, p. 21, <http://data.europa.eu/eli/dir/2023/970/oj>.

⁽⁵⁹⁾ In Article 3(2)(e), the Pay Transparency Directive explicitly prohibits intersectional discrimination, which is listed as a distinct form of discrimination. It defines intersectional discrimination as 'discrimination based on a combination of sex and any other ground or grounds of discrimination protected under Directive 2000/43/EC or 2000/78/EC'.

⁽⁶⁰⁾ See Article 5(2) of Council Directive (EU) 2024/1499 and Article 5(2) of Directive (EU) 2024/1500.

⁽⁶¹⁾ See e.g. COM(2025) 725 final of 8 October 2025; COM(2026) 12 final of 20 January 2026.

⁽⁶²⁾ See Article 10 of the Racial Equality Directive and Article 12 of the Employment Equality Directive.

⁽⁶³⁾ For example, only 39% of respondents to the EU-MIDIS III survey of ethnic or immigrant groups had heard of at least one equality body in their country of residence. Nevertheless, at the time of the preceding report, the awareness of any organisation providing support or advice to those subjected to discrimination within this group was at 29%. That being said, the FRA notes that even where the knowledge of specific equality bodies is higher this fact does not correlate with a substantially higher rate of reporting discrimination.

Box 2. A survey on awareness of the work of an equality body

In Malta, the Commission for the Rights of Persons with Disability (CRPD) carried out a representative telephone survey in 2024. It found that 59% of the general population had heard of the CRPD and its activities.

During the consultation, most Member States (20) said that they had run awareness-raising campaigns on non-discrimination since 2021. However, only a few Member States had run campaigns that focused on the grounds of discrimination protected under the Directives. Most other campaigns focused on the ground of sex. Of the few campaigns relating to grounds covered by the Directives, even fewer addressed rights and obligations under non-discrimination law. Similarly, the campaigns run by civil society organisations also only occasionally addressed legal rights and obligations under non-discrimination law.

Examples of relevant campaigns include those combating anti-gypsyism (in four Member States), LGBTIQ+ discrimination (in five Member States) and racism (in five Member States). Some targeted campaigns also focused on age discrimination, accessibility and housing.

Furthermore, the campaigns reported by all types of stakeholders usually target the general public and are rarely evaluated for their impact, apart from tracking social media traffic or counting complaint numbers. Finally, civil society organisations highlighted that some Member States' campaigns are not sustained over time.

Box 3. Anti-discrimination platform of the French equality body ⁽⁶⁴⁾

In 2021, the French equality body Défenseur des droits [Defender of Rights] launched an anti-discrimination platform. The platform mobilised social media content creators to promote its anti-discrimination activities. The equality body also ran a keyword purchasing campaign to redirect visitors to the platform. By 2024, it had 2 109 000 views. The top keywords searched for online were 'harassment at work', 'racial discrimination' and 'psychological harassment at work'.

Besides lack of awareness, the equality bodies and civil society organisations identified fear of victimisation and 'inequality of arms' ⁽⁶⁵⁾ as key obstacles to accessing justice. They also considered access to justice to be hindered by insufficient legal advice and assistance, the complexity of legal proceedings and procedural obstacles, including the absence of collective redress in some Member States.

The previous report on the application of the two Directives identified a range of good practices intended to make it easier to defend the rights of victims of discrimination ⁽⁶⁶⁾. A total of 21 Member States have implemented or are implementing some of those practices, the most common ones being legal aid (12 Member States), online reporting and improved access to local services (eight Member States).

Other than that, Member States rarely take measures to address the procedural bottlenecks to effective access to justice. For example, only two Member States waived court fees for discrimination cases or set up accessible dispute resolution bodies and just one Member State set up funds to provide victims with advance coverage of legal costs. Although it was identified as a good practice in the past report, no Member State reduced court fees for discrimination cases.

⁽⁶⁴⁾ Défenseur des droits, [Plateforme AntiDiscriminations.fr – Agir contre les discriminations](https://plateforme-antidiscriminations.fr/).

⁽⁶⁵⁾ The principle of equality of arms is one of the features of the wider concept of a fair trial. Each party must be afforded a reasonable opportunity to present their case under conditions that do not place them at a disadvantage vis-à-vis his opponent. See e.g. Judgment of the European Court of Human Rights of 22 February 1996, *Bulut v. Austria*, 17358/90, ECLI:CE:ECHR:1996:0222JUD001735890, paragraph 47.

⁽⁶⁶⁾ See: COM(2024) 419 final, 25.9.2024, [EUR-Lex - 52024DC0419 - EN - EUR-Lex](#), p. 6.

The new Equality Bodies Directives will help address some of the issues identified, notably by giving equality bodies greater powers to provide free assistance and alternative dispute resolution services and by giving them litigation powers.

Another way of improving victims' access to justice is for equality bodies and civil society organisations to collaborate on strategic litigation cases.

3.3. PROVING A DISCRIMINATION CASE

The last report highlighted difficulties in proving discrimination as a key challenge for enforcement. This report shows that stakeholders still have concerns about proving discrimination in relation to indirect discrimination, harassment, instructions to discriminate, multiple discrimination and victimisation.

Burden of proof

Under the Directives, complainants benefit from the shift of the burden of proof ⁽⁶⁷⁾. The Directives require that, where the complainant presents facts from which discrimination can be presumed, the burden of proof shifts to the defendant. However, the practical implementation of this principle faces multiple challenges.

Three quarters of the equality bodies surveyed and 14 Member States encountered significant obstacles in applying the shifted burden of proof. Specifically, they mainly pointed to a general lack of awareness or understanding of the burden of proof rules among courts and legal practitioners.

Despite the challenges faced, only two Member States have implemented measures to address the difficulties in applying the burden of proof rules. Conversely, most equality bodies did take some measures, including proposals for legislative changes to lower the threshold of the burden of proof ⁽⁶⁸⁾, recommendations to public authorities, training for the judiciary, training for the public service and employers and consistently applying the shift of the burden of proof in their non-binding opinions, evidence-gathering and guidance materials.

Evidence

Both the Member States and the equality bodies surveyed highlighted difficulties in accessing evidence to meet the initial burden of proof. As in the previous report, most of them continue to face difficulties in collecting and publishing data on discrimination. Furthermore, evidence-gathering and system testing are rare in the digital realm (see 7.2). However, some alternative methods, such as situation testing ⁽⁶⁹⁾ and mystery shopping ⁽⁷⁰⁾, are used in some Member States.

A total of 16 Member States allow situation testing to prove discrimination. Half of the equality bodies reported using mystery shopping and situation testing to identify patterns of discrimination. According to Equinet, these methods have proven effective in detecting discrimination, particularly in the employment and housing sectors.

⁽⁶⁷⁾ See: Article 8 of the Racial Equality Directive and Article 10 of the Employment Equality Directive.

⁽⁶⁸⁾ For example, the equality body in Germany proposed lowering the requirement to prove disadvantage, provided indications for establishing prima facie evidence and recommended setting out a right to information against the defendant.

⁽⁶⁹⁾ Situation testing is a method according to which pairs (of applicants for accommodation or a job vacancy or clients of a restaurant, a nightclub, etc.) are established in such a way that they differ solely on the basis of a single characteristic reflecting the discriminatory ground (gender, ethnicity, age, disability, religion or belief, sexual orientation) under scrutiny. If one of the members of the pair faces different treatment, the distinction points to discriminatory behaviour. See: Rorive, I., *Proving Discrimination Cases – the Role of Situation Testing*, Migration Policy Group, Centre for Equal Rights, 2009, [Proving Discrimination Cases – the Role of Situation Testing | Migration Policy Group](#).

⁽⁷⁰⁾ Mystery shopping is a technique used to check whether individuals or entities accept discriminatory requests. Investigators make discriminatory requests, for example, to temporary employment agencies or real estate agencies. See: [Tests de situation et mystery shopping en cas de discrimination | Unia](#)

3.4. VICTIMISATION

Member States must protect individuals from victimisation, meaning any adverse treatment or consequences resulting from a complaint or from discrimination proceedings ⁽⁷¹⁾. The CJEU interprets this concept broadly, extending it to anyone who could suffer adverse consequences for making a complaint or initiating proceedings ⁽⁷²⁾. However, in practice, implementation of this protection in the Member States continues to be uneven and limited, as outlined in the previous report.

All Member States explicitly provide protection against victimisation on all grounds in the field of employment. Some Member States do not explicitly provide protection against victimisation on the ground of racial or ethnic origin in the fields of education, social protection, and access to goods and services.

The reported personal scope of protection against victimisation varies across the Member States. In addition to victims and complainants, 17 Member States reported that their domestic legislation or case-law protects witnesses and individuals supporting a victim. Furthermore, 13 Member States said that they extend this protection to legal and other representatives, 14 Member States said that they protect individuals victimised by presumption or association and 10 Member States said that they offer protection to individuals treated less favourably for refusing to discriminate.

Only seven Member States reported limitations or difficulties in ensuring effective protection against victimisation in practice. Such limitations or difficulties included formal reporting procedures, a high evidentiary threshold and the limited personal scope of protection. There are almost no good practices or case-law relating to protection against victimisation in the Member States.

3.5. COOPERATION ON APPLYING THE DIRECTIVES

The Directives provide for their enforcement to go hand in hand with dialogue with partners representing the collective interests of groups at risk of discrimination. In fact, they require Member States to take appropriate measures to promote social dialogue between the two sides of industry with a view to fostering equal treatment ⁽⁷³⁾ and encouraging dialogue with non-governmental organisations ⁽⁷⁴⁾.

Most Member States reported that they had measures in place to promote social dialogue between the two sides of the industry in order to foster equal treatment. The most prevalent way of doing this is through tripartite bodies ⁽⁷⁵⁾, which are present in at least 10 Member States.

Similarly, a few Member States have set up governing forums on non-discrimination, the rights of Roma people, persons with disabilities or older people. These involve government bodies, civil society and other key stakeholders. However, this is not done systematically across all Member States or for all grounds of discrimination.

According to civil society organisations, engaging in practical dialogue about combating discrimination remains challenging. Almost three quarters of civil society respondents to the survey (12 out of 17) reported that they were having difficulties. The key issues have remained largely unchanged since the last report ⁽⁷⁶⁾.

Member States engage with civil society less frequently during the implementation stage of policies than during the design phase. This finding on the basis of the Member States' replies is also echoed by the civil society organisations surveyed. For example, two thirds of the Member States involved civil society in legislative or policy consultations. However, slightly less than half of the Member States collaborated with civil society organisations on implementing anti-discrimination measures, and even fewer involved them in reporting and monitoring discrimination issues (10 and 8 Member States, respectively).

⁽⁷¹⁾ See: Article 9 of the Racial Equality Directive and Article 11 of the Employment Equality Directive.

⁽⁷²⁾ See: Judgment of the Court of 20 June 2019, *Hakelbracht and Others*, C-404/18, ECLI:EU:C:2019:523, paragraphs 26-30.

⁽⁷³⁾ See: Article 11 of the Racial Equality Directive and Article 13 of the Employment Equality Directive.

⁽⁷⁴⁾ See: Article 12 of the Racial Equality Directive and Article 14 of the Employment Equality Directive.

⁽⁷⁵⁾ Tripartite dialogue involves discussions between public authorities and social partners on issues of common interest.

⁽⁷⁶⁾ See: COM(2021) 139 final, 19.3.2021, [EUR-Lex - 52021DC0139 - EN - EUR-Lex](#), p. 12.

3.6. GENDER MAINSTREAMING

The Directives require ⁽⁷⁷⁾ the Commission to report on the impact of the measures on women and men, in accordance with the principle of gender mainstreaming.

Member States appear to have conducted limited assessments of the Directives' specific impact on men and women. While some Member States reported that implementation produced particular effects on certain groups of men and women, these claims were generally not explained or supported with data. One Member State noted an increase in lawsuits involving the combination of gender and age discrimination.

In general, Member States' policies concerning the protected grounds covered by the Directives rarely specifically distinguish between the needs of men and women. Some Member States mentioned adopting an intersectional approach in their policy documents, while others identified specific challenges faced by particular groups of women. There were individual examples of targeted measures for Roma women and women with disabilities.

Meanwhile, respondents from civil society organisations actively mainstream gender in their activities and specifically target women from disadvantaged groups and communities.

Both the EIGE and civil society organisations emphasised that implementation of gender mainstreaming varies greatly between Member States and frequently falls short of addressing specific challenges. The EIGE noted that some countries have established comprehensive frameworks and dedicated resources, while others have lagged behind ⁽⁷⁸⁾.

3.7. POSITIVE ACTION

In order to ensure full equality in practice, Member States may adopt or maintain specific measures aimed at preventing discrimination or compensating for disadvantages related to protected characteristics ⁽⁷⁹⁾. The CJEU has provided guidance on the interpretation of positive action ⁽⁸⁰⁾. Positive action must be proportionate and, in principle, should not result in an automatic or unconditional preference for underrepresented groups. Bodies adopting positive measures should monitor and evaluate them, and publish information about them, to ensure that they continue to be necessary and effective ⁽⁸¹⁾.

Nearly all Member States allow for or promote positive action, the most common measures being quota systems and campaigns to raise awareness and promote diversity (17 Member States). A total of 14 Member States offer training and mentoring programmes for underrepresented groups, 13 Member States have adopted special measures, such as improving access to education or vocational training, and 13 Member States carry out targeted recruitment and hiring initiatives ⁽⁸²⁾.

Where used, quota systems mostly apply in employment and vocational training (12 Member States). In particular, a few Member States have specific employment quotas for persons with disabilities. In four Member States, they also apply to education (e.g. university admissions and scholarships). Quotas seem to almost exclusively target gender equality or persons with disabilities.

Less than half of the Member States reported difficulties in implementing positive action. A third of them raised insufficient enforcement and lack of domestic legal and policy guidance. Where difficulties were encountered, Member States most often cited insufficient resources and funding and limited understanding

⁽⁷⁷⁾ See: Article 17(2) of the Racial Equality Directive and Article 19(2) of the Employment Equality Directive.

⁽⁷⁸⁾ For instance, results for EIGE's gender mainstreaming indicator ranged from 71 % in Spain to zero in Hungary, with 21 Member States scoring less than 50 %. This suggests that many countries could do more to effectively mainstream gender equality concerns in policy processes. See: EIGE, *Institutional mechanisms that deliver on gender equality and gender mainstreaming*, Publications Office of the European Union, Luxembourg, p. 14.

⁽⁷⁹⁾ See: Article 5 of the Racial Equality Directive and Article 7 of the Employment Equality Directive.

⁽⁸⁰⁾ See, notably, judgments in cases C-450/93, *Eckhard Kalanke v. Freie Hansestadt Bremen*; C-409/95, *Hellmut Marschall v. Land Nordrhein-Westfalen*; C-158/97, *Georg Badeck and Others*; C-407/98, *Katarina Abrahamsson and Leif Anderson v. Elisabet Fogelqvist*; C-476/99, *H. Lommers v. Minister van Landbouw, Natuurbeheer en Visserij*; C-559/07, *Commission v. Greece*, among others.

⁽⁸¹⁾ See also: Giteva, D., 'Positive action on the grounds of racial or ethnic origin within the EU with a focus on Bulgaria, Greece and Hungary', in: *European equality law review 2024*, Publications Office of the European Union, 2024, pp. 26.

⁽⁸²⁾ Some countries offer further measures, such as financial incentives for companies promoting diversity and inclusion (nine Member States) and programmes to support business development among disadvantaged groups (six Member States).

among key stakeholders. Five Member States highlighted negative public perception and overreliance on voluntary initiatives.

Meanwhile, civil society and equality bodies worked to raise awareness of positive action among key stakeholders. They also implemented their own positive action measures, both internally and externally.

Box 4. 'Angajez 45+' ('I hire 45+') platform in Romania ⁽⁸³⁾

In Romania, the 'Angajez 45+' ('I hire 45+') platform mobilises employers and jobseekers to challenge ageist hiring practices. This civil society-led initiative promotes the employment of people aged 45 and over by encouraging inclusive recruitment and showcasing the value of experience in the workplace.

Conclusions

- ✓ Member States and their equality bodies must raise awareness of the rights and obligations set out in the Directives. In particular, they should focus on protected groups, making use of the expertise and outreach of civil society and social partners.
- ✓ Member States and their equality bodies must give victims of discrimination and their representatives easy access to the relevant evidence, including statistical data, needed to demonstrate discrimination and shift the burden of proof onto the defendants.
- ✓ Member States and their equality bodies should provide judges, law practitioners and claimants with further guidance and support to help them effectively implement the shift of the burden of proof rules in discrimination cases.
- ✓ The Commission will support Member States in improving their collection and use of equality data. It will work on a recommendation on equality data, in line with national legal frameworks.
- ✓ The Commission will support further research to facilitate the application of the Directives' provisions on harassment and victimisation and to enable victims to fully enjoy the protection they offer.



⁽⁸³⁾ [Angajez 45+ | D&I România | Discriminarea de vârstă.](#)



4. ASPECTS SPECIFIC TO THE RACIAL EQUALITY DIRECTIVE

In the previous report, the Commission provided an extensive overview of the scope of the Directive and how the notion of ‘racial or ethnic origin’ is to be understood, on the basis of the available case-law of the CJEU. The following sections update that information with relevant developments since 2021.

Key takeaways

- ✓ Access to and supply of social housing may be covered by the Racial Equality Directive.
- ✓ A person’s nationality or country of birth may be considered alongside other factors when determining whether discrimination on the basis of ‘ethnic origin’ has occurred.
- ✓ The Racial Equality Directive prohibits discrimination against both one ethnic group and multiple ethnic groups.

4.1. MATERIAL SCOPE

Housing

One of the fields in which the Racial Equality Directive applies is access to and supply of goods and services available to the public, including housing ⁽⁸⁴⁾. The CJEU has recently provided important clarifications on whether the provision of social housing falls within this scope in the context of alleged discrimination on the grounds of ethnic origin in a Member State’s public family housing system ⁽⁸⁵⁾.

When considering whether the case falls within the scope of the Racial Equality Directive, the Court first recalled that the provision of housing in exchange for rent, under a scheme such as the one at issue in the case at hand, must be regarded as constituting a supply of ‘services’, within the meaning of Article 57 TFEU and, by extension, within the meaning of Article 4(1) of Directive 2006/123/EC ⁽⁸⁶⁾, since it is a service provided for remuneration ⁽⁸⁷⁾.

Further, the CJEU emphasised that an activity must have an economic character to be considered a ‘service’. In this context, it is irrelevant that the public lessors which manage the system are non-profit organisations and that the amount of the rent paid by the tenants is lower than the market price. For an activity to be ‘economic’, it is sufficient that it is not provided for free ⁽⁸⁸⁾.

The CJEU has not yet provided guidance on the recurring question of whether evictions from unlawfully built or unlawfully occupied housing could fall under the scope of the Racial Equality Directive. Without prejudice to the CJEU’s competence for interpreting EU law and any future clarifications on the matter by the Court, it should be pointed out that the Directive only covers access to and supply of goods and services which are available to the public; in many cases of evictions from unlawfully occupied housing, this criterion is unlikely to be met.

⁽⁸⁴⁾ See: Article 3(1)(h) of the Racial Equality Directive.

⁽⁸⁵⁾ Judgment of the Court of 18 December 2025, *Slagelse Almennyttige Boligselskab, Afdeling Schackenbergvænge*, C-417/23, ECLI:EU:C:2025:1017.

⁽⁸⁶⁾ OJ L 376, 27.12.2006, p. 36, ELI: <http://data.europa.eu/eli/dir/2006/123/oj>.

⁽⁸⁷⁾ See note 85, paragraph 56.

⁽⁸⁸⁾ See note 85, paragraphs 60-61.

Education

In December 2023, the Commission referred the Slovak Republic to the CJEU for structural discrimination (see 6.1). The Commission argued that by placing, in an excessive manner, Roma children in special schools or special classes for children with intellectual or other disabilities, who follow a restricted curriculum, and by segregating Roma children, either in separate classes in mainstream schools or in separate schools, the Slovak Republic has failed, systematically and persistently, to fulfil its obligations under the Racial Equality Directive⁽⁸⁹⁾. The Court ruling is expected to clarify Member States' obligations regarding combating discrimination in this field.

4.2. THE NOTION OF 'RACIAL OR ETHNIC ORIGIN'

Racism is a belief that a ground such as 'race'⁽⁹⁰⁾ or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons⁽⁹¹⁾. It may lead to discrimination based on 'racial or ethnic origin' in the meaning of the Racial Equality Directive.

Academic experts have published reports that examine the larger EU and national legal frameworks for combating anti-Muslim hatred and antisemitism⁽⁹²⁾.

The Racial Equality Directive does not define the notion of 'racial or ethnic origin'. Building on its previous jurisprudence, the Court provided new clarifications in the *Slagelse* case⁽⁹³⁾.

The CJEU recalled that the concept of 'ethnic origin', within the meaning of the Racial Equality Directive, has its origin in the idea of societal groups marked in particular by common nationality, religious faith, language, cultural and traditional origins and backgrounds⁽⁹⁴⁾. The Court emphasised that 'ethnic origin' must be determined on the basis of a variety of objective and subjective factors, and not just nationality or country of birth⁽⁹⁵⁾. However, the Court considered that, when combined with other factors, a person's nationality or country of birth may be taken into account to determine whether discrimination on the basis of 'ethnic origin' has occurred⁽⁹⁶⁾.

Significantly, the Court also clarified that the fact that a general criterion such as 'immigrants from non-Western countries and their descendants'⁽⁹⁷⁾, referred to in the Danish public family housing legislation at stake in that case, may encompass multiple ethnic origins does not automatically exclude it from being based on 'ethnic origin'. Interpreting the notion of 'ethnic origin' in a way that would require discrimination to target a single specific ethnic group would undermine the Racial Equality Directive's effectiveness. This is because the Directive's non-discrimination objective would fail to apply when multiple ethnic groups experience the same discriminatory treatment⁽⁹⁸⁾.

⁽⁸⁹⁾ Case C-799/23: Action brought on 22 December 2023 — European Commission v Slovak Republic, *OJ C*, C/2024/1402, 19.2.2024, ELI: <http://data.europa.eu/eli/C/2024/1402/oj>.

⁽⁹⁰⁾ The Commission emphasises the common understanding that 'races' are purely based on socially constructed ideas and it rejects the notion of biological 'races'.

⁽⁹¹⁾ See COM(2026) 12 final of 20 January 2026, p.3.

⁽⁹²⁾ See Kádár, A., The legal framework to combat anti-Muslim hate in the European Union, Publications Office of the European Union, 2024, p. 11, <https://data.europa.eu/doi/10.2838/0978883>; Kadar, A., The legal framework to combat antisemitism in the EU, Publications Office of the European Union, 2024, p. 31, <https://data.europa.eu/doi/10.2838/273421>.

⁽⁹³⁾ See note 85.

⁽⁹⁴⁾ See note 85, paragraph 72.

⁽⁹⁵⁾ See note 85, paragraphs 72-74 and 82-85.

⁽⁹⁶⁾ See note 85, paragraph 86.

⁽⁹⁷⁾ 'Immigrants from non-Western countries and their descendants' were defined on the basis of a combination of nationality, country of birth and parental nationality / country of birth, distinguishing between 'Western' and 'non-Western' origins. The Danish Statistics agency (Danmarks Statistik) defined 'Western' countries as: EU Member States, Andorra, Australia, Canada, Iceland, Liechtenstein, Monaco, New Zealand, Norway, San Marino, Switzerland, the UK, the United States and the Vatican City State. All other countries were referred to as 'non-Western countries'.

⁽⁹⁸⁾ See note 85, paragraphs 100-104.

5. ASPECTS SPECIFIC TO THE EMPLOYMENT EQUALITY DIRECTIVE

Since the 2021 report, the CJEU has issued a significant number of judgments in preliminary cases submitted by the national courts of several Member States regarding discrimination in employment and occupation on the four grounds covered by the Directive (religion or belief, disability, age and sexual orientation).

Key takeaways

- ✓ The protection of the Directive applies irrespective of the legal form in which work is provided.
- ✓ The scope of the Directive covers staff members who are not recruited on a permanent basis, such as trainees.
- ✓ The Directive prohibits indirect discrimination by association on the grounds of disability.

5.1. MATERIAL AND PERSONAL SCOPE OF THE DIRECTIVE

Several rulings clarified the scope of the Directive.

The CJEU confirmed ⁽⁹⁹⁾ in the *Zetschek* case that the grounds listed in the Directive are exhaustive, and that the Directive does not cover cases of alleged discrimination between professional categories ⁽¹⁰⁰⁾.

In the TP (Audiovisual editor for public television) case, the Court concluded that the protection of the Directive applies **irrespective of the legal form in which work is provided** ⁽¹⁰¹⁾. The case concerned refusal to conclude or renew a contract for the performance of specific work on the basis of the sexual orientation of the provider. The question to be assessed was whether the situation fell under the protection afforded by the Directive or whether the activity should be considered mere provision of goods or services. It follows from the ruling that the concept of 'conditions for access to employment, to self-employment or to occupation' ⁽¹⁰²⁾ and the notion of 'employment and working conditions, including dismissals and pay' ⁽¹⁰³⁾ **must be broadly interpreted**, covering (access to) *any form of employment or self-employment, whatever the legal form in which it is pursued. In addition, the Court concluded that 'an involuntary termination of activity of a self-employed person (...) may be assimilated to dismissal of an employee'.*

In the HK v Danmark and HK/Privat case, the Court had already clarified the broad material scope of the Directive, which extends to the statute of an organisation of workers where that statute sets an age limit for the position of 'sector convenor', an elected position in that organisation ⁽¹⁰⁴⁾.

The ruling in the *Ca Na Negreta* case ⁽¹⁰⁵⁾ shed light on the notion of **dismissal**. The case concerned national legislation that allowed a worker to be dismissed as soon as they had been formally recognised as unfit to occupy their post because of the onset of a disability, without requiring the employer first to take appropriate reasonable accommodation measures or to maintain the appropriate measures already taken. The Court held that the fact that the worker concerned had sought recognition of that total permanent incapacity did not mean that that worker consented to the termination of their contract, even though the worker had been aware that national legislation allowed the employer to terminate the contract of employment following such recognition. Accordingly, **such termination is to be considered a 'dismissal' under the Employment Equality Directive**.

⁽⁹⁹⁾ In line with previous CJEU caselaw, e.g. judgment of 21 May 2015, *SCMD*, C-262/14, EU:C:2015:336.

⁽¹⁰⁰⁾ Judgment of the Court of Justice of 17 October 2024, Case C-349/23, *Zetschek*, ECLI:EU:C:2024:889.

⁽¹⁰¹⁾ Judgment of the Court of Justice of 12 January 2023, Case C-356/21, TP (*Audiovisual editor for public television*), ECLI:EU:C:2023:9.

⁽¹⁰²⁾ Article 3(1)(a) of the Employment Equality Directive.

⁽¹⁰³⁾ Article 3(1)(c) of the Employment Equality Directive.

⁽¹⁰⁴⁾ Judgment of the Court of Justice of 2 June 2022, Case C-587/20, *HK v Danmark and HK/Privat*, ECLI:EU:C:2022:419.

⁽¹⁰⁵⁾ Judgment of the Court of Justice of 18 January 2024, Case C-631/22, *Ca Na Negreta*, ECLI:EU:C:2024:53.

Another important ruling, the *HR Rail* case, concerned the dismissal of a trainee who, because of a disability, was unable to perform their duties. The CJEU clarified that **the scope of the Directive covers staff members not recruited on a permanent basis, such as workers doing a traineeship** as part of their recruitment ⁽¹⁰⁶⁾.

In the *Bervidi* case the Court addressed the situation of a worker who asked their employer to modify their working time **so that they could care for a child with severe disabilities**. The employer only agreed to grant provisional accommodation, noting that it was not the worker who had a disability ⁽¹⁰⁷⁾. While it was already been established by previous case-law that the Directive prohibits **direct** discrimination by association ⁽¹⁰⁸⁾, the Court specified in the *Bervidi* case, that the prohibition of **indirect** discrimination on the ground of disability also applies to a worker who should benefit from reasonable accommodation.

5.2. RELIGION AND BELIEF – MANIFESTATION OF POLITICAL, PHILOSOPHICAL OR RELIGIOUS BELIEFS AT WORK

With the release of the rulings in the *Achbita* ⁽¹⁰⁹⁾ and *Bougnaoui and ADDH* ⁽¹¹⁰⁾ cases, concerning wearing of headscarves at work, the CJEU further expanded its case-law on the wearing of political, philosophical or religious signs in the workplace. It continues to recognise the right of employers to have neutrality rules prohibiting the wearing of all signs of religious, philosophical and political beliefs in the workplace, as long as certain conditions are met.

The rulings set out below clarified that the **ground of ‘religion or belief’** is strictly limited to religious, philosophical or spiritual beliefs, thus distinguishing it from the notion of political or any other opinion (*WABE* case ⁽¹¹¹⁾) They also clarified that it does not include political or trade union beliefs, nor does it include artistic, sporting, aesthetic or other beliefs or preferences (*SCRL* case ⁽¹¹²⁾).

In the *WABE* case, the Court clarified that a prohibition on wearing any visible form of expression of political, philosophical or religious beliefs in the workplace may be justified by the genuine need of the employer to present a neutral image towards customers or to prevent social disputes. It must, however, be applied in a general and undifferentiated way and be limited to what is strictly necessary. The Court recalled that the specific context of each Member State is important, as they have ‘a margin of discretion in achieving the necessary reconciliation of the different rights and interests at issue, in order to ensure a fair balance’.

The same line was followed in the *S.C.R.L* case, where the CJEU also held that an undertaking’s internal rule prohibiting the wearing of any visible sign of political, philosophical or religious belief in the workplace does not constitute direct discrimination ‘on the [ground] of religion or belief’ provided that it covers any manifestation of such beliefs without distinction and treats all workers of the undertaking in the same way by requiring them, in a general and undifferentiated way, for example, to dress neutrally, which precludes the wearing of such signs. A difference in treatment would not constitute indirect discrimination if it were objectively justified by a legitimate aim and if the means of achieving that aim were appropriate and necessary. **However, the mere desire of an employer to pursue a policy of neutrality – while in itself a legitimate aim – is not sufficient, as such, to justify objectively a difference in treatment indirectly based on religion or belief**, since such a justification can be regarded as being objective only where there is a genuine need on the part of that employer, which it is for that employer to demonstrate.

The case *Commune d’Ans*, was the first to address the question of religious neutrality **in the public sector in relation to a back-office job** ⁽¹¹³⁾. The Court held that a policy of strict neutrality imposed by a public administration on its employees may indeed be regarded as being objectively justified by a legitimate aim.

⁽¹⁰⁶⁾ Judgment of the Court of Justice of 10 February 2022, Case C-485/20, *HR Rail*, ECLI:EU:C:2022:85.

⁽¹⁰⁷⁾ Judgment of the Court of Justice of 11 September 2025, Case C-38/24, *Bervidi*, ECLI:EU:C:2025:690.

⁽¹⁰⁸⁾ Judgment of the Court of Justice of 17 July 2008, Case C-303/06, *Coleman*, ECLI:EU:C:2008:415.

⁽¹⁰⁹⁾ Judgment of the Court of Justice of 14 March 2017, Case C-157/15, *Achbita*, ECLI:EU:C:2017:203.

⁽¹¹⁰⁾ Judgment of the Court of Justice of 14 March 2017, Case C-188/15, *Bougnaoui*, ECLI:EU:C:2017:204.

⁽¹¹¹⁾ Judgment of the Court of Justice of 15 July 2021, Joined Cases C-804/18 and C-341/19, *WABE*, ECLI:EU:C:2021:594.

⁽¹¹²⁾ Judgment of the Court of Justice of 13 October 2022, Case C-344/20, *SCRL*, ECLI:EU:C:2022:774.

⁽¹¹³⁾ Judgment of 28 November 2023, Case C-148/22, *OP v Commune d’Ans*, ECLI:EU:C:2023:924.

Such a rule is not discriminatory if it is applied in a general and indiscriminate manner to all the staff of that administration and is limited to what is strictly necessary, taking into account the various rights and interests at stake. **The fact that the rule mostly affected women was not examined as the Court declared the question inadmissible.**

In the case *Katholische Schwangerschaftsberatung* ⁽¹¹⁴⁾, the CJEU held that a fair balance should be ensured between, on the one hand, the interests of an employer whose ethos is based on religion in not having its ethos and right of autonomy called into question and, on the other hand, the interests of employees in not being discriminated against depending on their religion. EU law affords each Member State discretion in ensuring that balance.

In the most recent case, *Ministero della Difesa* ⁽¹¹⁵⁾, the Court held that, by refusing to comply with the vaccination requirement for military personnel of the Ministry of Defence, an officer sought to challenge the choices made by the Italian authorities in the field of public health rather than asserting his own beliefs. Accordingly, the reasons for that refusal do not come within the concept of ‘belief’, but rather constitute opinions, which are not taken into account by the Employment Equality Directive.

5.3. DISABILITY AND THE NOTION OF REASONABLE ACCOMMODATION

During the consultations for the report, Equinet and civil society organisations highlighted difficulties in implementing the duty to provide reasonable accommodation in employment. In this regard, the Court provided useful clarifications.

In the *Komisija za zashtita ot diskriminatsia* ⁽¹¹⁶⁾ case, the Court concluded that an **individual evaluation** should take place to determine whether a blind juror could carry out their work after reasonable accommodation measures have been taken.

In the *HR Rail* case ⁽¹¹⁷⁾, the Court concluded that a trainee should have been offered reasonable accommodation, for example by being **assigned to another position** for which they had the necessary **competence, capability and availability**, unless that measure would have imposed a disproportionate burden on the employer. This was confirmed in the *Ca Na Negreta* case ⁽¹¹⁸⁾.

The Court gave more examples in the *Tartu Vangla* case, where a prison officer with hearing impairment was dismissed on the basis of a national regulation that prohibited the employment of persons whose hearing acuity does not meet minimum sound perception thresholds. In this case, the Court stressed that measures such as the use of a **hearing aid, exemption from some tasks or assignment to a post which would not require hearing acuity would have to be explored.**

Significantly, these CJEU judgments are increasingly referring to the Charter of Fundamental Rights and the United Nations Convention on the Rights of Persons with Disabilities ⁽¹¹⁹⁾. This confirms that the provisions of the Directive must, as far as possible, be interpreted in a manner that is consistent with that convention ⁽¹²⁰⁾.

⁽¹¹⁴⁾ Judgment of the Court of Justice of 17 March 2026, Case C-258/24, *Katholische Schwangerschaftsberatung*, ECLI:EU:C:2026:211.

⁽¹¹⁵⁾ Judgment of the Court of Justice of 18 June 2026, Case C-522/24, *Ministero della Difesa*, ECLI:EU:C:2026:498.

⁽¹¹⁶⁾ Judgment of the Court of Justice of 21 October 2021, Case C-824/19, *Komisija za zashtita ot diskriminatsia*, ECLI:EU:C:2021:862.

⁽¹¹⁷⁾ Judgment of the Court of Justice of 10 February 2022, Case C-485/20, *HR Rail*, ECLI:EU:C:2022:85.

⁽¹¹⁸⁾ Judgment of the Court of Justice of 18 January 2024, Case C-631/22, *Ca Na Negreta*, ECLI:EU:C:2024:53.

⁽¹¹⁹⁾ Approved on behalf of the European Community by Council Decision 2010/48/EC of 26 November 2009.

⁽¹²⁰⁾ Judgment of the Court of Justice of 18 January 2024, Case C-631/22, *Ca Na Negreta*, ECLI:EU:C:2024:53, paragraph 41.

5.4. AGE

Age-related differences in treatment remain the source of the highest number of rulings issued by the CJEU on the Directive. A number of national laws set age limits for access to specific professions. In these cases, the key question is whether the age limit can be justified under Article 6 of the Directive (justification of differences of treatment on grounds of age) as a proportionate measure for achieving a legitimate employment or labour market objective ⁽¹²¹⁾.

In the *Ministero della Giustizia* case, the Court examined a national law setting **50 years of age as the limit to access the profession of notary** ⁽¹²²⁾, closely analysing the coherence of the national legislation in question.

Another example in the *Ministero dell'Interno* case concerned a national law setting a maximum age limit of **30 for persons to be recruited as police commissioners** ⁽¹²³⁾. The Court stressed that such a rule would not comply with the Directive if the duties actually performed by those police commissioners did not require particular physical capacities. If particular physical capacities are required, the age limit would have to be checked as to its possibly disproportionate nature; in the case at hand carrying out a physical fitness test as part of the recruitment competition could possibly be an appropriate and less onerous measure.

On a different age-related issue, the CJEU examined a national rule placing public-sector workers who qualified for a full pension in a **'labour reserve'** system until the termination of their contract. This had negative economic consequences (e.g. reduction in pay, loss of possible advancement, cancellation of severance pay) for the workers concerned ⁽¹²⁴⁾. The Court held that the Directive does not preclude such a national law if the conditions of Article 6 are met. It cited the **context of acute economic crisis and the objectives of maintaining employment and balancing the age structure of the workforce**.

Finally, in the *AP Assistenzprofis* case, the CJEU had to balance opposing interests on the grounds of age and disability ⁽¹²⁵⁾. A 28-year-old person with disabilities, who was looking for a personal assistant to help them in all areas of everyday life, restricted the selection to candidates of between 18 and 30 years of age. The Court held that national law could take account of the individual wishes of persons with disabilities if such a measure was necessary for the protection of their rights and freedoms. It pointed out that the age-range requirement was likely to promote respect for the right to self-determination by the person with disabilities and that it appears reasonable to expect a personal assistant within the same age range as the person with disabilities to fit into that person's personal and social circle more easily.

5.5. SEXUAL ORIENTATION

In the above-mentioned *TP (Audiovisual editor for public television)* case (see 5.1), the Court held that the freedom of contract in a democratic society is not absolute but is to be viewed in relation to its social function ⁽¹²⁶⁾. In this context, accepting that freedom of contract allows a party to refuse to enter into a contract with a person on the basis of their sexual orientation would deprive the Directive of its practical effect.

⁽¹²¹⁾ Judgment of the Court of Justice of 17 October 2024, Case C-408/23, *Anwaltsnotarin*, ECLI:EU:C:2024:901 concerning an upper age limit of 60 years for the first appointment to a position of lawyer commissioned as notary, of the Court of Justice

⁽¹²²⁾ Judgment of 3 June 2021, Case C-914/19, *Ministero della Giustizia*, ECLI:EU:C:2021:430.

⁽¹²³⁾ Judgment of the Court of Justice of 17 November 2022, Case C-304/21, *Ministero dell'Interno*, ECLI:EU:C:2022:897.

⁽¹²⁴⁾ Judgment of the Court of Justice of 15 April 2021, Case C-511/19, *Olympiako Athlitiko Kentro Athinon*, ECLI:EU:C:2021:274.

⁽¹²⁵⁾ Judgment of the Court of Justice of 7 December 2023, Case C-518/22, *AP Assistenzprofis*, ECLI:EU:C:2023:956.

⁽¹²⁶⁾ Also in line with judgment of the Court of Justice of 22 January 2013, *Sky Österreich*, C-283/11, ECLI:EU:C:2013:28, among others.

6. APPLYING THE DIRECTIVES IN RESPONSE TO STRUCTURAL DISCRIMINATION

Inequalities are not simply the sum of individual experiences of contempt or barriers, such as those encountered when searching for housing, looking for a job, in the workplace or in access to education.

For example, the anti-racism strategy 2026-2030 notes that lifetime experiences of racism accumulate and pose structural barriers ('structural racism'). They can lead to structural discrimination. The impact of structural barriers can be more harmful than isolated instances of discrimination, as it denies access to equal opportunities and can persist through generations ⁽¹²⁷⁾.

In their replies to the Commission, almost all of the equality bodies surveyed and all of the civil society organisations believed that structural discrimination was not yet appropriately understood and addressed by public authorities, the private sector or wider society.

Equality bodies and civil society organisations reported that structural discrimination mostly affects people with a minority racial or ethnic background and persons with disabilities. It manifests most clearly in employment, education, healthcare and access to goods and services. As demonstrated below, some of the Directives' legal tools allow to address structural discrimination.

Key takeaways

- ✓ The most important legal tools to tackle structural discrimination (e.g. positive action and the prohibition of indirect discrimination) are available to Member States in existing legislation.
- ✓ Most Member States provide for at least one form of collective redress. However, it is one of the least implemented measures for enforcing EU non-discrimination law.

6.1. ROLE OF THE PROHIBITION OF 'INDIRECT DISCRIMINATION' IN TACKLING STRUCTURAL DISCRIMINATION

The existing EU legal framework provides legal tools that can address structural discrimination, even though the Directives do not explicitly use the term. In particular, both Directives prohibit indirect discrimination.

Indirect discrimination occurs where an apparently neutral provision, criterion or practice would put certain protected persons at a particular disadvantage compared with other persons ⁽¹²⁸⁾.

Currently, legislation of Member States does not explicitly use the term 'structural discrimination'. It is important to note that more than one third of Member States identify this as being one of the main difficulties in addressing the issue. This is echoed by respondents from equality bodies and civil society organisations.

At the same time, most of the Member States recognise that prohibiting indirect discrimination and taking positive action (see 3.7) can help tackle structural discrimination.

⁽¹²⁷⁾ The structural inequalities in education illustrate the problem well. For instance, people with a minority racial or ethnic background are noticeably more likely to be segregated at school or to leave school early. Only 32% of Roma or Travellers responding to the FRA survey attained at least upper-secondary education, compared with 84% of the general population in the EU in 2024. See FRA, [Rights of Roma and Travellers in 13 European countries – Perspectives from the Roma survey](#) 2024, p. 42..

⁽¹²⁸⁾ See e.g. Article 2(2)(b) of the Racial Equality Directive and Article 2(2)(b) of the Employment Equality Directive.

Box 5. Examples of cases of structural discrimination in Member States

- ✓ In 2023, a ruling from the Supreme Court of the Slovak Republic addressed the issue of the systemic segregation of Roma children in the education system. Although it did not explicitly mention structural discrimination, the court recognised the cumulative disadvantages faced by Roma children and endorsed the need for proactive measures ⁽¹²⁹⁾.
- ✓ In 2022, the Czech Supreme Court issued a ruling on the issue of segregation. It condemned segregation as a practice that cannot be justified, as it is inherently against human dignity ⁽¹³⁰⁾.

6.2. FURTHER LEGAL TOOLS TO ADDRESS STRUCTURAL BARRIERS

Apart from indirect discrimination and positive action, respondents from equality bodies and Member States, identified *actio popularis* ⁽¹³¹⁾ and equality duties ⁽¹³²⁾ as effective legal tools for tackling structural discrimination.

Actio popularis and class actions ⁽¹³³⁾ are two forms of collective redress. They reduce reliance on individual forms of redress and address the structural nature of discrimination ⁽¹³⁴⁾.

The Directives do not oblige Member States to provide collective redress for victims of discrimination ⁽¹³⁵⁾. Currently, 20 Member States provide for one of the two forms of collective redress in discrimination cases in their legislation.

Nonetheless, class actions are sometimes restricted to certain fields of law, may require affiliation to a specific organisation or may exclude actions by associations or trade unions ⁽¹³⁶⁾. Similarly, while *actio popularis* is provided for in the legal systems of 14 Member States, at least five either do not use the framework or use it very rarely in practice ⁽¹³⁷⁾. Consequently, collective redress measures have not yet realised their full potential for combating discrimination.

Against this background, the new standards for equality bodies require Member States to give equality bodies the right to act in court proceedings ⁽¹³⁸⁾. One of the ways in which Member States can fulfil this obligation is by enabling equality bodies to act in support or on behalf of several victims or to initiate court proceedings in their own name to defend the public interest.

Besides collective action, the equality bodies surveyed also mentioned public-sector equality duties as another tool. Equality duties are available in 23 Member States but often lack meaningful implementation mechanisms, accountability and avenues for enforcement and are frequently unknown to administrations. The 13 Member States that reported encountering challenges in implementing equality duties largely agreed with those conclusions.

⁽¹²⁹⁾ Supreme Court of the Slovak Republic, 6Cdo/14/2023.

⁽¹³⁰⁾ Supreme Court of the Czech Republic, [Judgment of 5 May 2022](#), 25 Cdo 473/2021, ECLI:CZ:NS:2022:25.CDO.473.2021.1.

⁽¹³¹⁾ When an organisation acts in the public interest on their own behalf without a specific victim to support or represent. See note 27, p. 126.

⁽¹³²⁾ Equality duties include measures to prevent discrimination, institutional obligations to promote equality and mainstreaming requirements for public and/or private authorities. See Equinet, Crowley, N. (2016), 'Making Europe more equal: A legal duty?', p. 9, [Making Europe more Equal: A Legal Duty?](#).

⁽¹³³⁾ When claimants act on behalf of an undefined group of claimants or on behalf of multiple identified claimants submitting multiple claims. See note 27, p. 126.

⁽¹³⁴⁾ Equinet, Tudisco, V. and Lantschner, E. (2022), 'Preventing and Reacting to Discrimination through Sanctions and Remedies', p. 24, [Preventing and Reacting to Discrimination through Sanctions and Remedies – Equinet](#).

⁽¹³⁵⁾ See: Article 7 of the Racial Equality Directive and Article 9 of the Employment Equality Directive.

⁽¹³⁶⁾ For instance, in Sweden, the legislation does not allow for class actions in the field of labour law. In Romania, class actions are not available to associations, organisations and trade unions. See: Adamis-Császár, K., Vancauwenbergh, S., Gustave, F. (n X), p. 126.

⁽¹³⁷⁾ European Commission: Directorate-General for Justice and Consumers, Milieu Consulting SRL, Adamis-Császár, K., Vancauwenbergh, S., Gustave, F. et al., *How can sanctions effectively prevent and combat discrimination? – Good practice guide on sanctions for discrimination on racial, ethnic and religious grounds*, Publications Office of the European Union, 2025, <https://data.europa.eu/doi/10.2838/0513884>, p. 32.

⁽¹³⁸⁾ See: Articles 10(3) of Council Directive 2024/1499.

Conclusions

- ✓ Member States must continue strengthening their enforcement of the Directives, including in cases of structural discrimination.
- ✓ Member States should make it easier to use collective redress in discrimination cases.



7. APPLYING THE DIRECTIVES IN RESPONSE TO ALGORITHMIC DISCRIMINATION

Digitalisation adds another layer of complexity to the situation faced by communities exposed to structural inequalities.

Humans determine the objectives of automated systems, including algorithms and AI systems, according to which these systems utilise data collected from human or machine sources during operation. As a result, algorithms and AI systems may incorporate human biases, stereotypes, norms, and practices during programming, data processing, and when humans interact with the applications ⁽¹³⁹⁾. This has been shown to sometimes result in issues that negatively affect people on the grounds and in the fields protected by non-discrimination law.

For instance, under-representation of people with a particular minority racial or ethnic background led to situations in which photo booths did not recognise people with darker skin tones when taking biometric pictures ⁽¹⁴⁰⁾. Elsewhere, AI or automated systems recommended actions that disproportionately affected certain groups of people on the basis of proxies ⁽¹⁴¹⁾ for protected characteristics. For example, postcodes could be used as a proxy for racial or ethnic origin or sexual orientation, and first names might be used as a proxy for age ⁽¹⁴²⁾.

The Racial Equality Directive and Employment Equality Directive establish a general framework for tackling discrimination. This is true regardless of the means by which it is perpetrated. As demonstrated below, the Directives apply to situations where discrimination arises from the use of automated and AI systems (algorithmic discrimination).

Algorithm and AI-supported decisions are made at large scale and speed, while potential biases and sources of unfavourable outcomes for protected groups may be difficult to identify. In their replies to the Commission, almost all of the equality bodies surveyed and all of the civil society organisations believed that algorithmic discrimination was not yet appropriately understood and addressed by public authorities, the private sector or wider society.

Equality bodies and civil society organisations reported that people with a minority racial or ethnic background and persons with disabilities are the primary victims of algorithmic discrimination, which manifests most clearly in employment, education, healthcare and access to goods and services.

The following sections outline key concepts and protections under EU non-discrimination law that are relevant to addressing algorithmic discrimination. Additionally, the report examines other instruments designed to prevent and mitigate potentially discriminatory effects of algorithms and AI systems. It also presents the applicable legal framework and practices in Member States, along with identified good practices.

Key takeaways

- ✓ Most Member States have minimal practical experience of applying non-discrimination law to cases of algorithmic discrimination.
- ✓ Under the Equality Bodies Directives, equality bodies must have appropriate human and technical resources to use AI and automated systems and to ensure that they comply with non-discrimination rules.

⁽¹³⁹⁾ Bartoletti, I., Xenidis, R., *Study on the impact of artificial intelligence systems, their potential for promoting equality, including gender equality, and the risks they may cause in relation to non-discrimination*, Council of Europe, 2023, p. 15.

⁽¹⁴⁰⁾ See: Wulf J., *Automated Decision-Making Systems and Discrimination: Understanding causes, recognizing cases, supporting those affected*, AlgorithmWatch, 2022, p. 8.

⁽¹⁴¹⁾ Proxy refers to a feature correlated with a protected class whose use in a decision procedure can result in indirect discrimination. See: Anupam Datta and others, 'Proxy Non-Discrimination in Data-Driven Systems', <https://doi.org/10.48550/arXiv.1707.08120>.

⁽¹⁴²⁾ See note 139.

7.1. LEGAL FRAMEWORK

The Racial Equality Directive and Employment Equality Directive both apply to discrimination resulting from the use of AI within their respective personal and material scopes.

The prohibition of direct discrimination prevents protected characteristics from being utilised by algorithms to treat individuals in ways that produces less favourable outcomes in comparable situations. The prohibition of indirect discrimination addresses the disadvantageous effects of practices that might seem neutral, such as using proxies for protected characteristics.

Furthermore, Member States are required to establish appropriate redress mechanisms ⁽¹⁴³⁾. They are obliged to ensure that associations and organisations can provide support to victims of discrimination or act on their behalf. This specialised support can be vital when seeking remedies in a highly complex, technical, algorithmic environment. In addition, the principle of shift of the burden of proof makes it easier to overcome challenges in obtaining evidence.

By ensuring that potential violations can be addressed, EU non-discrimination law contributes to the development of trustworthy AI systems.

AI ecosystems must also ensure that they have high-quality datasets and that systems have sufficient transparency, accessibility and explainability for everybody, including persons with disabilities, and that there is clear accountability for how they function. This is important throughout the lifecycle of AI or automated systems, from development to deployment.

In order to achieve this, the EU adopted Regulation (EU) 2024/1689 (the Artificial Intelligence Act) ⁽¹⁴⁴⁾ in July 2024. The Artificial Intelligence Act will apply as of 2 August 2026 ⁽¹⁴⁵⁾. However, some provisions have already been applied since 2 February 2025 or 2 August 2025. Furthermore, following the amendments from the Digital Omnibus on AI, certain chapters will only apply later. This is the case of rules related to high-risk AI systems ⁽¹⁴⁶⁾. The Artificial Intelligence Act applies in conjunction with non-discrimination legislation.

The Artificial Intelligence Act aims to promote innovation and trustworthy AI in the EU, while addressing the risks stemming from the placing on the market, putting into service and use of AI systems to health, safety and fundamental rights, including the right to non-discrimination, democracy and the rule of law. It follows a risk-based approach, where AI systems are classified according to the level of risk they pose to health, safety and fundamental rights. It imposes proportionate obligations and requirements depending on the classification of the AI system.

The Artificial Intelligence Act identifies systems as posing minimal, limited, high or unacceptable risks.

Certain AI practices, such as harmful manipulation, social scoring and real-time remote biometric identification in publicly accessible spaces for the purposes of law enforcement are prohibited, because they are inconsistent with EU values ⁽¹⁴⁷⁾.

High-risk AI systems need to comply with strict obligations before they are placed on the market or put into service. Such high-risk systems include systems intended to be used, for example, as safety components in critical infrastructure, for biometrics or for determining admission to educational institutions ⁽¹⁴⁸⁾. Such systems must comply with obligations on, among other things, robust risk management, high-quality data, bias examination and mitigation, transparency and human oversight ⁽¹⁴⁹⁾.

⁽¹⁴³⁾ See: Article 7 of the Racial Equality Directive and Article 9 of the Employment Equality Directive.

⁽¹⁴⁴⁾ OJ L, 2024/1689, 12.7.2024, ELI: <http://data.europa.eu/eli/reg/2024/1689/oj>

⁽¹⁴⁵⁾ For systems integrated into products such as lifts or toys, the rules will apply from 2 August 2028.

⁽¹⁴⁶⁾ From 2 December 2027 for the rules falling under Annex III of the AI Act and 2 August 2028 for AI systems falling under Annex I of the AI Act.

⁽¹⁴⁷⁾ See Article 5 of the Artificial Intelligence Act.

⁽¹⁴⁸⁾ See Article 6 of the Artificial Intelligence Act.

⁽¹⁴⁹⁾ See Articles 8 to 15 of the Artificial Intelligence Act.

Systems with limited risk that require transparency around the use of AI and must comply with certain transparency obligations ⁽¹⁵⁰⁾. Such systems include chatbots or deepfakes. The Artificial Intelligence Act does not introduce rules for minimal or no-risk systems, such as spam filters.

The Commission supports and facilitates the effective implementation of the Artificial Intelligence Act, including through the adoption of guidelines and other supporting tools, and coordination within the AI Board with national authorities.

7.2. CHALLENGES IN APPLYING THE DIRECTIVES IN CASES OF ALGORITHMIC DISCRIMINATION

There are some challenges to applying the Directives in cases of algorithmic discrimination.

Firstly, applying the provisions of the Directives in cases of algorithmic discrimination is complex. In virtual environments, individuals may sometimes not even consider exercising their rights and reporting discrimination. This is because, in a heavily targeted and personalised algorithmic environment, individuals may not realise that they are being discriminated against ⁽¹⁵¹⁾.

Secondly, it may be challenging to determine whether algorithmic discrimination constitutes direct or indirect discrimination ⁽¹⁵²⁾.

Finally, challenges in applying the Directives in cases of algorithmic discrimination are further exacerbated by minimal practical experience and limited legislation in most Member States. In response to the Commission's questionnaire, Member States stated that there is almost no practical experience of organising technical testing of algorithmic systems for biases and/or discrimination. Sometimes, this is not even possible. Consequently, there is minimal practical experience of applying the national laws transposing the Directives in cases of algorithmic discrimination.

As outlined above, respondents from equality bodies and civil society organisations also largely considered that algorithmic discrimination was not yet sufficiently recognised by public administrations, the private sector or society. The equality bodies suggested that this is mostly due to a lack of awareness-raising initiatives, the novelty of the phenomenon itself, insufficient knowledge and digital literacy, and limitations in existing enforcement mechanisms.

At the same time, civil society organisations highlighted the limitations of public debate on this issue, which tends to focus more on the benefits than the risks. Furthermore, they expressed concerns about the use of algorithmic systems in fields such as migration, law enforcement and welfare ⁽¹⁵³⁾.

⁽¹⁵⁰⁾ See Article 50 of the Artificial Intelligence Act.

⁽¹⁵¹⁾ In this regard, Article 26(11) of the AI Act stipulates that those deploying high-risk AI systems which make or assist in making decisions relating to natural persons must inform the latter that they are subject to the use of such a system. Additionally, Article 86 of the AI Act grants individuals the right to obtain clear and meaningful explanations regarding the role of the AI system in the decision-making process, as well as the main elements of the decision taken.

⁽¹⁵²⁾ For further details, see Hacker, P. (2018), 'Teaching fairness to artificial intelligence – Existing and novel strategies against algorithmic decision-making under EU law' Common Market Law Review, Vol. 55, Issue 4, 2018, pp. 1143, 1151.

⁽¹⁵³⁾ The scope of the Racial Equality Directive and the Employment Equality Directive does not extend to the fields of migration and law enforcement, while welfare is also outside the scope of the Employment Equality Directive. The Artificial Intelligence Act classifies certain AI systems intended for use in migration, law enforcement, essential private and public services and benefits, and some other sensitive areas as high risk. Providers and deployers of these high-risk AI systems must comply with the Artificial Intelligence Act's obligations, as described in section 7.1 of this report.

7.3. COMBATTING ALGORITHMIC DISCRIMINATION IN MEMBER STATES

Of all the Member States, only the Netherlands referred to cases of algorithmic discrimination that had been addressed by either a court ⁽¹⁵⁴⁾ or an equality body ⁽¹⁵⁵⁾. Only one Member State (Austria) has favourable rules for victims to prove algorithmic discrimination or to alleviate the technical burdens.

In 2025, the EU supported the adoption of the Council of Europe's Draft Recommendation on equality and artificial intelligence ⁽¹⁵⁶⁾. The recommendation ⁽¹⁵⁷⁾ aims to ensure that AI systems promote equality, including gender equality, and do not reinforce discrimination. It is consistent with the Artificial Intelligence Act and will be implemented through measures and safeguards applicable to AI systems following the risk-based approach.

Box 6. Guidelines for ensuring non-discrimination when developing and implementing an AI system

On behalf of the Dutch Ministry of the Interior, experts have drawn up guidelines for system builders, data analysts and AI experts for ensuring non-discrimination when developing and implementing an AI system. The 2022 guidelines explain which questions and principles are key when working on and with an AI system, with a focus on the prohibition of discrimination, from a legal, technical and organisational perspective ⁽¹⁵⁸⁾.

In the ever-expanding digital realm, cross-authority cooperation and dialogue with partners representing the interests of groups at risk of discrimination play an important role. The Equality Bodies Directives require Member States to ensure that equality bodies have the appropriate mechanisms in place to cooperate with other equality bodies within the Member State, as well as with relevant public and private entities within their respective fields of competence, including across borders ⁽¹⁵⁹⁾.

Furthermore, the Equality Bodies Directives emphasise that equality bodies must have the necessary human and technical resources to use AI for their work and to assess whether automated systems comply with the Racial Equality Directive and Employment Equality Directive ⁽¹⁶⁰⁾.

Article 77 of the Artificial Intelligence Act establishes a duty of close cooperation and mutual assistance between the bodies responsible for supervising or enforcing obligations under EU law that protect fundamental rights and the market surveillance authorities.

Member States must identify those fundamental rights bodies ⁽¹⁶¹⁾ which have the power to request and access, from the relevant market surveillance authority, any information or documentation created or maintained under the Regulation, where this is necessary to fulfil their mandate. Where that documentation is insufficient to ascertain whether an infringement has occurred, they may make a reasoned request to the market surveillance authorities to organise testing of a high-risk AI system through technical means ⁽¹⁶²⁾.

⁽¹⁵⁴⁾ Rechtbank Overijssel, 29 oktober 2024, ECLI:NL:RBOVE:2024:5627

⁽¹⁵⁵⁾ College voor de Rechten van de Mens, [Vooronderzoek naar de vermeende discriminerende effecten van de werkwijzen van de Belastingdienst/Toeslagen | College voor de Rechten van de Mens](#).

⁽¹⁵⁶⁾ Council Decision (EU) 2025/2350 of 13 November 2025 on the position to be taken on behalf of the European Union within the Committee of Ministers of the Council of Europe on the Draft Recommendation on equality and artificial intelligence (OJ L, 2025/2350, 17.11.2025, ELI: <http://data.europa.eu/eli/dec/2025/2350/oj>).

⁽¹⁵⁷⁾ Recommendation of the Committee of Ministers to Member States on equality and artificial intelligence (Adopted by the Committee of Ministers on 4 March 2026 at the 1552nd meeting of the Ministers' Deputies), CM/Rec(2026)1, 4.3.2026, <https://search.coe.int/cm?i=09125948802acd7f>.

⁽¹⁵⁸⁾ Ministry of the Interior of the Netherlands, 'Guidelines for non-discrimination by design', [Handreiking non-discriminatie Artificial Intelligence \(AI\) | Rapport | Rijksoverheid.nl](#).

⁽¹⁵⁹⁾ See: Article 14 of Council Directive 2024/1499.

⁽¹⁶⁰⁾ Recital 22 of the Council Directive 2024/1499.

⁽¹⁶¹⁾ So far, 21 Member States have notified some or all of their equality bodies as fundamental rights protection authorities with special powers under the Artificial Intelligence Act.

⁽¹⁶²⁾ See Article 77(3) of the Artificial Intelligence Act.

These rules await implementation. At the time of consultation, almost none of the surveyed equality bodies. The Artificial Intelligence Act also imposes certain cooperation obligations on market surveillance authorities where the use of high-risk AI systems poses risks to fundamental rights, including the right to non-discrimination. In particular, they must inform, consult with, and fully cooperate with the relevant fundamental rights authorities ⁽¹⁶³⁾.

Those rules have yet to be implemented. At the time of consultation, almost none of the surveyed equality bodies felt equipped to use automated or AI systems in their work, or to assess them for compliance with the non-discrimination rules ⁽¹⁶⁴⁾. Lack of experience, specialised staff and technical resources were cited as the key reasons.

Box 7. Upholding equality and non-discrimination by Equality bodies regarding the use of AI in public administrations ⁽¹⁶⁵⁾

Under the EU-funded Technical Support Instrument, equality bodies in Belgium, Finland and Portugal are seeking to build their administrative capacity. The project focuses on the impact of AI on discrimination and equality, with the objective of increasing the equality bodies' capacity to uncover algorithmic discrimination and provide legal assistance.

According to the stakeholders consulted for the report, systematically involving equality bodies and designating them as advisory bodies for the relevant competent authorities ⁽¹⁶⁶⁾ fosters an environment conducive to efficient collaboration on the enforcement of the Racial Equality Directive and Employment Equality Directive in the context of algorithmic discrimination.

In several Member States, equality bodies already have pre-existing arrangements with regulatory authorities, including data protection authorities.

Box 8. Cooperation between equality bodies and other authorities

The Dutch equality body engages proactively with market surveillance authorities. The Finnish Non-Discrimination Ombudsman cooperates with the Finnish Transport and Communication Agency, and the Maltese Commission for the Rights of Persons with Disabilities works with the Malta Competition and Consumer Affairs Authority. Similarly, in France, the Defender of Rights is a member of the French Data Protection Authority's advisory board, providing therefore a model for how to organise regular updates and cooperation.

Conclusions

- ✓ Member States must continue their efforts to strengthen enforcement of the Directives, including in cases of algorithmic discrimination.
- ✓ Member States should ensure effective cooperation between relevant equality bodies and market surveillance authorities under the Artificial Intelligence Act.
- ✓ The Commission is committed to facilitating cross-authority exchanges and sharing knowledge on AI systems and combating algorithmic discrimination with the relevant institutions, building on the ongoing TSI project to better equip institutions fighting new forms of discrimination.

⁽¹⁶³⁾ See Article 79(2) and Article 82(1) of the Artificial Intelligence Act.

⁽¹⁶⁴⁾ The notable exception is Finland. Along with Belgium and Portugal, it is part of a capacity-building project under the Technical Support Instrument.

⁽¹⁶⁵⁾ Council of Europe, 'Upholding equality and non-discrimination by Equality bodies regarding the use of artificial intelligence (AI) in public administrations - Inclusion and anti-discrimination'.

⁽¹⁶⁶⁾ E.g. markets surveillance authorities, data protection authorities, consumer bodies. See: Recital 41 of Council Directive 2024/1499.

8. CONCLUSIONS

Since the last report on the application of the Directives, the EU has remained firmly committed to equality and to implementing EU non-discrimination law. It has implemented the Union of Equality strategies, adopted new strategies on anti-racism, LGBTIQ+ equality and gender equality, adopted enhanced strategy for the rights of persons with disabilities, and given the enforcement of non-discrimination rules a new impetus by adopting the Equality Bodies Directives. The Commission has also continued to support the practical implementation of non-discrimination law.

The report highlights some positive trends. For example, awareness of support services for discrimination victims has grown slightly among certain groups. Most Member States did not report major difficulties in applying key concepts of EU non-discrimination law and many shared positive and extendable practices. In addition, the CJEU has handed down judgments that will provide important clarification of the Directives' concepts. The Directives also appear to provide adaptable and effective tools to tackle discrimination in an evolving societal landscape.

Most Member States have made efforts to improve access to justice for victims of discrimination and to cooperate with relevant social and civil society partners. They have also adopted positive measures to address disadvantages linked to protected characteristics.

Nonetheless, Member States must continue their efforts to apply the Directives in practice. In particular, **it is vital that sanctions are effective, with amounts that reflect the long-term harm caused by discrimination**, provide redress for victims and drive a profound change.

Efforts to raise awareness of the rights and obligations set out in the Directives should target specific protected groups, while making use of the expertise and outreach of civil society and social partners.

Victims of discrimination and their representatives must have easy access to the relevant evidence, including statistical data, needed to demonstrate discrimination and shift the burden of proof onto the defendants.

In addition, Member States should make it easier to use collective redress in discrimination cases and must encourage collaboration between regulatory authorities, civil society and social partners.

On the basis of the report's findings, **Member States and their equality bodies should continue addressing the various challenges arising in their domestic law and practice**. In particular, they could provide judges, law practitioners and claimants with further guidance and support to help them effectively trigger the shift of the burden of proof rules in discrimination cases. In parallel, Member States must continue their efforts to strengthen enforcement of the Directives, including in cases of algorithmic discrimination. This involves ensuring full and correct implementation of the Equality Bodies Directives.

The effective application and enforcement of the Directives requires joint efforts. The Commission will continue to work together with Member States, equality bodies, the FRA, the EIGE, regulators, civil society organisations and social partners to ensure systemic protection for victims of discrimination and to fully realise the potential of the Directives.

In addition, **the Commission** is committed to two further areas of action:

- **Facilitating regular discussions among Member States** on the above topics. These discussions will take place through the expert group on the implementation of EU equality law, which was set up in May 2024.
- **Using EU funding to support the capacity of Member States and relevant actors to enforce fundamental rights.** For example, support could be provided under the Citizens, Equality, Rights and Values (CERV) programme or the future AgoraEU programme (pending interinstitutional negotiations). That support covers developing and improving the skills and abilities of civil society organisations, national human rights institutions, equality bodies, legal professionals, practitioners, ombuds institutions and other human rights defenders to design and implement litigation strategies and strategic litigation approaches.

The next report on the application of the Directives is due in 2031. It will look, in particular, at the progress made in enforcing the Directives. That same year, the Commission will receive information from Member States on the application of the Equality Bodies Directives. It will then also report on their independent functioning and effectiveness.



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