

*Specialised bodies
to promote equality
and/or combat discrimination
Final Report*

May 2002



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1. *Executive Summary*

This report was commissioned by the European Commission in the framework of the Community Action Programme to combat discrimination (2001-2006). The Action Programme is designed to support and supplement efforts at Community level and in the Member States to promote measures to prevent and combat discrimination taking account, among other things, of legislative developments.

Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin lays down a framework for combating discrimination. As part of this work, each Member State must establish one or more bodies with a remit to analyse the problems involved, study possible solutions and make recommendations, and provide concrete assistance for the victims of discrimination.

The aim of the present study is to give an impetus to the work of the entities in the Member States charged with the creation of these bodies. The report consists of an analysis of the work of existing bodies working to promote equality and combat discrimination.

The analysis and examples of the experiences of the various institutions are to be found in the remaining chapters of the report. It should be noted that the present conclusions are not to be considered exhaustive. Using the methodology selected, the findings are based on observations that relate to a limited number of institutions. They will therefore more often represent an example of good practice, a valuable experience or an interesting idea rather than a trend or common approach. The reader is advised to take this into account when reading the report.

1.1. **Structure, mandate, and resources**

The Directive 2000/43/EC outlines the aims and tasks of the bodies for the promotion of equal treatment as:

- giving independent assistance to the victims of discrimination,
- conducting surveys and studies, and
- publishing reports and recommendations.

The requirements of the Directive concerning the specialised bodies are in line with the recommendations made by the European Commission against Racism and Intolerance (ECRI) under the Council of Europe.

The ECRI refers to the fundamental principles laid down at the first International Meeting of the National Institutions for the Promotion and Protection of Human Rights in Paris during 7-9 October 1991 (known as the "Paris Principles"). The Paris Principles set out the following minimum set of standards for independent commissions:

- Independence guaranteed by a constitutional or legislative framework
- Autonomy from government
- Pluralism, including pluralism of composition
- A broad mandate
- Adequate powers of investigation
- Sufficient resources

1.1.1.

Mandate, scope, and independence

The majority of the 21 institutions included in the study are established by national laws adopted by parliament. Typically, the legal basis provides a mandate for the institution and a framework defining the scope of its work and activities. Some of the institutions have their legal basis in secondary legislation, for example in ministerial decrees or administrative orders. This is the case for the French Commissions d'Accès à la Citoyenneté (CODAC) and the Italian Commission for Integration Policies. A few institutions, the Dutch National Bureau against Racial Discrimination (LBR), the Dutch Expertise Centre Age and Society (LBL), and the Danish Advisory and Documentation Centre on Racial Discrimination (DRC), are independent foundations and are not established by national legislation.

A body's legal basis may have implications for its relative independence. With a firm legal basis in the form of a national act containing clear descriptions of its scope and a mandate passed by the parliament, it is more difficult for a government to alter the role and activities of an institution. Alterations in such cases will typically require parliamentary negotiations and the adoption of a new legislative act. Thus in situations where an institution acts or makes statements in a manner which conflicts with the government of the day, a firm legal basis may serve to counteract any intent of swift political interference. On the other hand, a body which is established by secondary legislation or by a law, which does not clearly specify the role, mandate and scope of its work may be more prone to interference.

In most cases the mandate and duties of the specialised body or institution are defined in the legislative act, which establishes its legal basis.

The work of a number of the institutions, such as the three Swedish Ombudsmen and the Northern Ireland Equality Commission, is governed by more than one legislative instrument, thereby providing different tools and possibilities depending on the area of discrimination in question.

It can be argued that accountability to Parliament rather than to Government would secure an institution's independence to a greater degree. However, when this debate arose in the case of the Swedish Ombudsmen, it was argued by some that the members of Parliament might also speak for specific interests and make it difficult for the institution to manoeuvre freely. Therefore, it was argued, the key was to ensure a firm legal basis instead, including a clear mandate for the institution.

1.1.2.

Appointment of the Board

The appointment of the Board also touches upon issues of independence, continuity and effective authority.

The board of an independent body is the guarantor of the pursuit of the objectives and tasks set out for the institution, and ensures that its work is undertaken independently and in consistent accord with its mandate. This includes being independent of the state authorities as well as of other interests.

A number of the different models, which exist for the appointment of the boards of the institutions, have been included in this study. It is broadly possible to distinguish between two basic models: Boards constituted of the representatives of named institutions, and boards made up of individuals who have been selected purely on the basis of their merits.

The first approach stresses the network perspective and often, it seems, a desire to ensure that relevant interests are given a voice on the board. An important issue for this first type of board is to ensure that the board members do not merely represent their own narrow interests but also the overall interests of the institution in question.

The second approach, where individuals apply and are selected on merit, as is the case with the Italian Commission for Integration Policies and the British Commission for Racial Equality (among others), seeks to overcome this potential criticism. It may also be more competitive, in the sense that the reposting of vacant board positions in the press opens up an opportunity for anybody to be appointed, not just the representatives of a named group of organisations and institutions. In this respect it may be a more dynamic model. On the other hand, the risk of political interference may potentially be greater if the government sets very prescriptive criteria for board member selection. To guard against undue political influence when appointments are made to the three equality Commissions in the UK, the recruitment process is overseen by an independent Commissioner for Public Appointments. An assessor who is independent of Government is also involved to bring objectivity to the process.

Typically, board members serve a term of three to six years. To ensure the independence of the board, in many cases a clause in the law stipulates that the mandate of the members of the board cannot be withdrawn, or only under specific extraordinary circumstances. Obviously, the intention is to ensure that a board member cannot be dismissed arbitrarily.

1.1.3 Institutional structures, working approaches and accessibility

In terms of their internal organisation the institutions appear to have very different structures and cultures, consisting of organic, loosely structured organisations at one extreme, and highly-tuned management-based organisations with mission statements, corporate plans, performance indicators and monitoring procedures at the other.

The staff and competences of the various institutions differ according to their aims and priorities. The staff of the institutions vary in number from only 4 to just over 200 employees.

In some institutions the tasks are apportioned and organised according to the laws and instruments, which regulate the institution's work. This structure is typically completed by departments dealing with information or training.

In a few institutions the work is done in teams. For instance, the Dutch National Bureau against Racial Discrimination (LBR) has established working groups on specific issues which combine different competences. By organising its work among groups instead of along departmental lines, the LBR seeks to encourage knowledge sharing and to avoid staff only considering their own areas of competence.

The Equality Authority in Ireland (EA) has integrated nine grounds of discrimination, organising its work by function rather than according to the field of discrimination. The main purpose of such a structure is to

ensure learning and knowledge sharing concerning the various fields of discrimination.

The Dutch Equal Treatment Commission was previously divided into three chambers, but has decided to let all 9 commissioners and 13 juridical advisors work with all types of cases. Firstly, it enhanced flexibility, and in addition it was considered illogical to separate the various grounds of discrimination, since the Commission has been seeing an increasing number of cases where more than one ground of discrimination is involved.

The potential weaknesses, such as a lack of specialisation and the risk of duplicate work when working across fields of discrimination, is judged by the institutions to be outweighed by the benefits of combining competences and applying one's knowledge concerning a given ground of discrimination to the other grounds.

The study demonstrates that building up new institutions or merging several institutions takes time, and that time is what is needed to establish an effective working approach.

Some institutions share facilities and information in order to lower administrative costs. The Swedish Ombudsman against discrimination because of sexual orientation is located together with the Swedish Ombudsman against ethnic discrimination. The former buys administrative services from the latter, and they share common telephone and data networks.

However, co-location also presents potential problems. In Ireland, two institutions, the Irish Equality Authority (EA) and the Irish Office of the Director for Equality Investigations (ODEI), are located at the same address. This has led to severe identity confusion between the two institutions, not only in the minds of the public but also at an organisational and political level. In July 2002 the ODEI commenced using "ODEI - the equality tribunal" as its day-to-day business name in order to counter the confusion over identity.

Accessibility is a major issue for victims of discrimination. For a victim of discrimination, who may often belong to a marginalized group in society, the mere step of seeking advice and reporting a discriminatory experience may be a rather daunting task. If the person has to overcome great obstacles to reach the anti-discrimination body, it is likely that the case will never be reported and registered. The accessibility issues include an institution's physical accessibility, its image, the language skills possessed by its staff, and people's confidence that it will handle discrimination cases both promptly and professionally.

1.1.4 Resources

The resources available to an institution, including its funding, have direct practical implications for its capacity to implement its mandate. It can be difficult to meet the expectations of the public and politicians when struggling with limited resources.

All 21 institutions in this study receive public funds. The majority are granted resources annually from the fiscal budget. Some are financed by particular Ministries or Offices. A few of the institutions have no separate budget but are financed from the administrative budget of another entity (as is currently the case for the Portuguese Commission), or are constituted as a part of local government, as is the case with the French CODAC.

The immediate advantage for an institution of being financed from the annual fiscal budget is that a steady and predictable source of income exists which guarantees its ongoing activities. Of course, that assumes that the allocations are reasonably proportionate to the intended tasks of the organisation. Nevertheless, fluctuations due to changing political priorities will remain an issue.

Also, where grants are made following an application and detailed work plans, a government or minister may directly or indirectly be able to influence the overall direction and priorities of the work of the body.

Being able to attract sponsors to provide services for free can be a major opportunity for institutions involved in providing information, image building and awareness raising and campaigning. In addition, some organisations raise private money, but their contribution to the overall budgets of the institutions is for all the institutions surveyed very limited.

1.1.5 Horizontal approach to discrimination

There is a tendency towards the integration of several grounds of discrimination in legislation and in institutional structures. This is the case in Ireland (and in Belgium from mid-2002), and it is currently under discussion in the United Kingdom and Germany, among other countries.

In the UK, the government announced on 15th May 2002, following a consultation process, that it finds that there are good arguments in favour of a single equality body, and a Cabinet Office project team is looking into the question and expected to announce initial conclusions in September 2002.

The Equality Commission for Northern Ireland is in a transitional phase in which the process of amalgamation of several institutions into one has been completed but where the horizontal integration of the legal basis for the institution's work still has to be agreed.

The integrated approach is seen as advantageous in its potential for ensuring legal coherence, consistency and clarity concerning rights. Another benefit is that of effectiveness and giving the bodies the necessary influence to have an impact. Horizontal integration may also lessen any perceived hierarchy of the different grounds of discrimination.

There are also voices of concern. In particular, it is reported that some of the older, better-established institutions worry that an integrated approach could mean that the types of rights they are

promoting would lose political impact, public attention or resources if they were amalgamated with other grounds of discrimination.

The experience in Ireland, which has a fully integrated approach, is that a single institution dealing with nine integrated grounds of discrimination is all the stronger, and that in addition to the value of the mutual exchange of experiences, the work done with one ground of discrimination can be applied to the others in a mutually reinforcing way.

According to the interviews conducted in the institutions working with or towards an integrated approach, it is crucial to deliberately ensure that the work done with all the various grounds of discrimination within a single institution is visible.

1.1.6 Contextual scope

The contextual scope of the individual body reflects the boundaries and limitations in the legislation of the different Member States. Whereas some of the bodies have no contextual limitations in scope, others are restricted to certain areas. This especially concerns the bodies investigating cases of discrimination or resolving them, either through giving opinions or bringing cases to court. The scope of these institutions is often limited to employment and labour-market-related incidents.

1.1.7 Recommendations concerning structure, mandate, and resources

- ❖ The independence of the institution should be guaranteed by statute and a clear mandate.
- ❖ The composition of the board has to be considered with regards to representation of various groups, ensuring competences and independence
- ❖ To ensure independence of the board, a clause in the legislation should stipulate the length of the term and that the mandate of the board members cannot be withdrawn before end of term

- ❖ The internal division of work should provide possibilities for knowledge sharing across various ground of discrimination
- ❖ Accessibility is a key concern to ensure that victims of discrimination receive the assistance they need
- ❖ Financial resources should be granted on the annual fiscal budget in order to ensure continuity and independence
- ❖ If establishing one body working across all grounds of discrimination, it is important to maintain focus and expertise on the different grounds of discrimination

1.2 Role in relation to the direct victims of discrimination

The function of the institutions in relation to the direct victims of discrimination spans a broad range of possible activities: providing rights information, advising victims, dealing with complaints, carrying out investigations, conducting settlements and mediation, making formal decisions and giving assistance in court cases.

1.2.1 Information about rights and legislation

The majority of the institutions provide information about individual rights, legislation and case law. Typically, the institutions provide access to relevant legislation and a presentation of rights and options on their web pages.

Quite a number of institutions, amongst other the Belgian Centre pour l'Egalité des Chances et la Lutte contre le Racisme, the French Commissions Départementales d'Accès à la Citoyenneté (CODAC), the Danish Advisory and Documentation Centre on Racial Discrimination and the Dutch Equal Treatment Commission operate telephone lines for the benefit of those seeking advice and assistance.

The majority of organisations give individual advice on whether a person is likely to have a case and how to proceed with it.

Advice can also be concerned with preventive issues. For instance, organisations and employers may seek advice on how to interpret legislation or how to establish policies for the various grounds.

1.2.2 Investigations

A number of the institutions collect and investigate complaints filed by victims of discrimination. While some institutions mainly assist applicants in presenting their complaints, other organisations have a more formal role in investigating reported cases of discrimination. This is the case for the British Commission for Racial Equality (CRE) and the Swedish Ombudsmen, both of which have special powers to gain access to information from the parties involved in the course of its investigations.

The CRE has a particularly strong mandate to undertake formal investigation, and can require an organisation or company to follow instructions for action. This is also the case with the Dutch Equal Treatment Commission, which has a formal right to demand information from the parties concerned. In principle, the parties are obliged to provide this.

Some institutions can initiate investigations on their own initiative if discrimination is found to be present in a particular area of society. For instance, the Swedish Ombudsman Against Ethnic Discrimination (DO), the French Groupe d'Etude et de Lutte contre les Discriminations (GELD), the British CRE and the Equality Authority in Ireland (EA) investigate suspected structural discrimination.

Another example is situational testing, which is practised by the Belgian CECLR and the Berlin Commissioner for Foreigners' Affairs: Identically-clothed people of different ethnic backgrounds are asked to approach, for example, the same discothèque or bar to determine whether they receive systematically unequal treatment.

1.2.3 Assistance in resolving cases

Several organisations provide assistance in resolving cases, either through legal advice and attempts to settle cases out-of-court, or through assistance and representation when a case is taken to court.

Disputes outside the court system may be resolved on the basis of written complaints issued by the institution on behalf of the victim/complainant, a technique used by the Belgian CECLR, among others. Another approach is a more formal mediation process such as that operated by the Office of the Director of Equality Investigations in Ireland. Several of the institutions are aiming to increase their mediation activities, since a voluntary settlement between the parties may often be more helpful to a victim than a formal statement or a verdict. It is also less costly and time-consuming in terms of the human and financial resources involved in pursuing a case through the traditional legal system.

1.2.4 Legal advice and representation when processing cases through the courts

Only a few institutions, such as the Belgian CECLR, the Northern Ireland Equality Commission, the Irish Equality Authority, the Danish Documentation Centre and the British CRE, have experience in bringing cases to court. This lack of experience is by several institutions explained by the newness of the legislation, a lack of resources, and a strategic concern to ensure that the first case brought to court will be successful. Among those institutions which does bring cases to court, the Belgian CECLR has a particularly strong mandate which allows court actions even where there is no direct victim of discrimination.

1.2.5 Acting as a formal decision-making body

Two of the institutions involved in this study have the power to act as quasi-judicial bodies giving formal rulings in cases of possible discrimination. One of them, the Dutch Equal Treatment Commission, hands down advisory rulings with no legally-binding status, while the rulings of the other, the Office of the Director of Equality Investigations (ODEI), are legally binding.

It is generally considered essential that when a ruling is made, the basis of the case and the arguments supporting the ruling should be

clearly stated. This strengthens the legitimacy of the decision and makes the offender more liable to observe the ruling given, even where no instruments of enforcement exist.

According to both the institution itself and its stakeholders, a particular virtue of the decisions of the Irish Office of the Director of Equality Investigations (ODEI) is that the Office can order a specific course of action to be taken subsequently. The order is also legally binding.

Other institutions also try to prevent the repetition of discriminatory behaviour, among other things by making available training courses and advice to particular types of companies or to those whom it has found guilty of discrimination. For instance, the Dutch Equal Treatment Commission advises hotels, restaurants and discotheques on how to avoid discriminating against people of a non-Dutch ethnic background. Similarly, when settling a case out of court, the acceptance of training sessions for the staff of a company or organisation found to be guilty of discrimination may form part of the agreement.

1.2.6 Recommendations on assistance to victims of discrimination

- ❖ The focus on providing assistance in individual cases should be supplemented by a focus on the more long-term structural changes in discriminatory practices.
- ❖ The institutions should be allowed to take up cases of more general concern for investigation in order to raise issues of common concern.
- ❖ The assistance should be provided for free, both to victims and witnesses of discrimination.
- ❖ The institution has to carefully consider its role in mediation as this function might raise some principal questions on the protection of the law versus the function of creating voluntary settlements. A possible solution is to place the mediation role in a separate institution in order for roles not to become blurred.

1.3 Role and functioning in the political process

The report distinguishes between formal and informal roles, with the formal role comprising an institution's statutory rights or legally-established role in the political process.

The formal role in the political process may be exercised through active participation in the preparation of legislation, the statutory right to be consulted and to comment on draft legislation, and by the monitoring of practices after an item of legislation has come into force.

Institutions such as the Belgian CECLR and the Swedish Ombudsmen have a formal role in giving comments or opinions on existing legislation and new legislative initiatives. On the other hand, a primary role of the Irish Equality Authority and the British CRE is one of regularly reviewing the legislation which underpins the institution itself.

Informal roles in the political process include making requests to present views to parliamentary committees, sitting in on advisory committees, and lobbying the administration and government. They also include *ad hoc* involvement such as hearings and campaigns, or giving responses to consultation papers issued by government. Representatives of the institutions have sometimes also been invited to sit in on governmental preparatory commissions in order to provide expert input into the development of new legislation or new approaches to equal treatment.

1.3.1 Recommendations on involvement in the political process

- ❖ The political role of the institution should be formalised in order for its expertise to be included in legislative initiatives and in reviews of legislation.
- ❖ Where a political culture exists of integrating organisations in the political process, the institutions themselves can promote contacts to the relevant political partners.

1.4 Dissemination of information, research and awareness building

A substantial proportion of the institutions have the key function of providing information about relevant legislation and discrimination in general. The institutions' roles are numerous, with some conducting or commissioning research, publishing research results and making recommendations, or providing training, raising awareness via campaigns or the media, or acting as network-building institutions.

The institutions use various means to disseminate information to the general public or to specific target groups. These are often printed publications, such as opinions, statements or comments on legislation. Many institutions emphasise the importance of a well-designed and easily-accessible website to provide data regarding discrimination and give practical information for use in discrimination cases.

A number of institutions, such as the British CRE, the Belgian CECLR, the Irish ODEI, and the French GELD provide systematic information on case law. They often compile databases of rulings and settlements which can be accessed internally and/or on their websites. A common objective is to establish agreements with the relevant courts to establish an automatic inflow of information concerning relevant rulings, and concerning case law in particular.

Apart from the dissemination of information about equal treatment and legal cases, a number of institutions provide information designed to create a more positive climate and attitude towards those vulnerable to discrimination. One example is the Dutch National Bureau against Racial Discrimination, which every other month publishes a small newspaper about multicultural issues, and contains positive stories about people living together.

1.4.1 Conducting or commissioning surveys and reports

The undertaking of studies and writing of reports containing detailed documentation comprises an important tool for most of the bodies

concerned with equal treatment. The collation of data, new juxtapositions of facts or the gathering of entirely new data can highlight issues of discrimination which have hitherto gone unnoticed.

Independent surveys may take their points of departure in individual cases, specific themes or perceived patterns of discrimination.

None of the institutions carries out systematic reviews of the discrimination and equality situation in their respective countries, but some of them intend heading in that direction eventually.

Some organisations undertake research themselves, but many of them decide to let commissions, universities or research institutes do the research. The extent of survey and research activities often reflects the available financial means.

1.4.2 Making recommendations based on studies

In many instances, the survey and research activities provide the basis for the institutions to identify deficiencies in existing laws or pinpoint discriminatory practices, and to issue recommendations to groups of organisations, companies and decision-makers.

Some organisations, such as the Equality Authority in Ireland and the British CRE, aim to provide guidelines and recommendations at both political, organisational and personal levels. In addition to the studies which they either commission or carry out themselves, they prepare publications that focus exclusively on establishing codes of practice or guidelines in specific areas. Such codes of practices, guidelines and recommendations are generally seen as helpful by other institutions and organisations in diminishing discriminatory practices.

1.4.3 Training activities

Over the years some of the institutions have gained considerable experience in anti-discrimination and equality training. In general, the institutions contribute to training in four different ways: contributions to

curriculum development, the production of training material and training methodologies, the provision of training, and the training of trainers.

Contributions to curriculum development are often made in the context of more general training activities for particular groups, such as police officers or magistrates. Several organisations such as the French GELD, the Belgian CECLR and the Luxembourg Commission have been actively involved in training courses for police officers, and the Belgian CECLR interestingly has a long-term fixed contract with the Belgian state to provide training courses for young magistrates as a part of their professional education.

Several institutions focus on developing training material and toolkits. Indeed, some organisations see the question of whether to be involved in the large-scale provision of training, or whether to produce training material and methodologies for other organisations instead, as a strategic choice. The case of the British Commission for Racial Equality (CRE) illustrates this point. 40,000 public authorities have to comply with the new law on public duty, which was introduced in the recently amended Race Relations Act. With a staff of 200, it would be impossible for the CRE to provide the necessary training. Instead the CRE has been involved in the planning of the training approach recommended, and the training itself will be contract-based and managed by the individual public authorities.

Two institutions, the Dutch National Bureau against Racial Discrimination and the Belgian CECLR, have developed co-operation with schools on the combat of discrimination, and have, among other things, established panels to assess the materials used in primary schools.

Some institutions provide training by request only and on a fully-funded basis, while others organise training campaigns targeted to specific audiences and free of charge.

While cost-free training based on training campaigns directed towards specific audiences may intuitively seem more effective, the question appears to be more complex. Evaluations made by the CECLR have shown that companies or organisations requesting training consider their motivations more carefully and are more eager to ensure proper attendance when they incur the costs of the training.

Meanwhile, there has been a gradual shift in focus in the Belgian CECLR, among others, from traditional anti-discrimination training to diversity management and inter-cultural communication.

1.4.4 Training of trainers

Most of the institutions place an emphasis on providing training that involves more persons than the immediate target group. The approach has been to train teachers who can convey their knowledge to pupils, to train labour union representatives so that they can work proactively against discrimination, or to train key administrative staff so that an equal treatment perspective can be integrated into administrative practices.

1.4.5 Campaigning

The majority of the institutions do not invest resources in large-scale campaigns. This is either because they do not have access to the resources required, or because in some cases such campaigns are not considered sufficiently effective.

However, organisations such as the CRE and the Disability Rights Commission in the United Kingdom do organise annual high-profile campaigns. The CLCLR in Belgium also occasionally conducts large-scale campaigns, including radio and TV-spots.

Other organisations concentrate on lower-key events, such as the Danish Board for Ethnic Equality's 'baton conference', which it organises every year. At the conference, batons are given to companies, municipalities, organisations or state institutions, which thereby

take on the obligation to work to promote ethnic equality and combat discrimination inside their particular organisation.

Other institutions are already campaigning in preparation for the implementation of the directives based on Article 13 of the Amsterdam Treaty. For instance, the Berlin Commissioner for Foreigners' Affairs is campaigning among other departments and organisations like housing agencies and discotheques to prepare them for the changes which Article 13 will involve.

Publicity in relation to court rulings or the issuing of legal opinions through carefully planned exposure in the media can also be a strategy for placing an institution and its concerns on the mental map of policy makers and the public. For instance, the Swedish Ombudsman against discrimination because of sexual orientation actively makes use of the media in presenting his opinions, and has thereby succeeded in giving a high profile to the issue.

1.4.6 Co-operation with other organisations, civil society and social partners

All the institutions are involved in co-operating with other organisations, NGOs and governmental bodies in one way or another. Some also actively include potentially discriminated groups in their daily work.

The French CODAC in particular acts as a network-building institution between its partners, and provides an annual forum for the exchange of experiences and information. The intention is to make the forces in civil society actively work with the public administration to promote integration and combat discrimination via regular working groups which typically deal with labour market integration, education, housing and other social conditions, and access to justice.

Some of the bodies which are working either to resolve cases of discrimination or are tackling more structural barriers to equal treatment are dependent on organisations with greater first-hand knowledge. For instance, in the Netherlands the Equal Treatment Commission works to resolve cases of possible discrimination, whereas organisa-

tions like the Expertise Centre on Age and Society and the National Bureau against Racial Discrimination aim to develop the available knowledge and documentation concerning discrimination due to age or ethnic background.

Another way of building networks and capacities is to include stakeholders in working groups or advisory groups.

One example is the British Commission for Racial Equality's private company group, which assists the CRE in developing strategies to make the organisation more visible and effective in a private company context. Similarly, the Office of the Director of Equality Investigations in Ireland has established a users' forum where users, stakeholders and others are invited to participate in discussions about the organisation and its procedures. No specific cases or the legal aspects of cases are discussed.

Finally, the Portuguese Commission for Equality and against Racial Discrimination, where a Commissioner has a transversal function spanning a series of different commissions, forums and working groups, is an example of a particular approach to bringing together information from representatives of a broad variety of ethnic minority groups and other groups vulnerable to discrimination.

In conclusion, all institutions surveyed in this study, consider networking and the effective exchange of information and experience as crucial for the efficient conducting of their roles in combating discrimination.

1.4.7 Recommendations concerning information, research and awareness building

- ❖ The institutions should be ensured sufficient means in order to make surveys an available tool for analysing the actual level of discrimination and problems regarding equal treatment.
- ❖ Institutes should be encouraged to co-ordinate surveys and make long-term plans on issues to be covered in order not to

allow news headlines and the financial resources available to determine the areas to be investigated.

- ❖ Training should be used as a tool for changing discriminatory practices so that cases of discrimination are not repeated.
- ❖ Training material and training programmes should be developed and directed to the target groups – their experiences should be taken as point of departure for the provision of information and the change in attitudes and actions.
- ❖ The institution should focus on training with a multiplier effect in order for the resources to be spent most effectively.
- ❖ Formalised structures of networking both at managerial and staff level can ensure the knowledge sharing and capacity building between different equal treatment institutions

2. Introduction

This Draft Final Report is the third deliverable of the project whose purpose is the compilation of the report entitled “Report on the role, structure and functioning of specialised bodies to promote equality and/or combat discrimination”. The report refers to contract no. VC/2001/0222.

The objective of the study is to analyse *the role, powers, structure and functioning of the existing specialised bodies to promote equality and/or combat discrimination* within the Member States of the European Union, and to review them in a thematic report.

The aim is to provide information that may be of assistance to those political entities of the 15 Member States, which have been tasked with the implementation of the specialised bodies as required by Directive 2000/43/EC of June 2000. The Directive prohibits racial and ethnic discrimination in employment, education, social security and health care, and in access to goods and services and housing. In order to strengthen the protection against discrimination based on racial or ethnic origin, each Member State must establish one or more bodies to analyse the problems involved, study the possible solutions and give practical assistance to the victims. The purpose of the study is to provide inspiration and insight that may be useful to the entities tasked with defining and establishing these specialised bodies.

2.1. Data-generating activities and methodology

The analysis in the present report is based on:

- Desk study
- Qualitative personal or telephone interviews
- Group interviews
- Case studies

During the preliminary phase a number of relevant specialised institutions in the Member States were identified, and desk research and exploratory interviews regarding these institutions as well as inter-

views with selected government officials were conducted. Based on the interviews, a preliminary survey of the institutions and of existing material concerning independent institutions, i.e. the ECRI and Paris Principles explained below, interview guides for the telephone interviews were developed. This work was reported in the preliminary note on methodology, which was delivered to the Commission on 7 January 2002.

The subsequent data-generating activities included telephone interviews with some of the staff and management of 21 bodies in various member states, plus interviews with representatives from the Member State government bodies charged with implementing Directive 2000/43/EC. An institutional profile was drawn up for each of the 21 bodies.

The criterion for the selection of the 21 institutions was that they were engaged in some of the equal treatment activities outlined in Directive 2000/43/EC, i.e. they were:

- Organisations which according to member state representatives are, or may become, specialised bodies to promote equality and/or combat discrimination as defined in Article 13 of Directive 2000/43/EC of June 2000;
- Organisations and bodies whose core activities fall within the competences set out for the bodies promoting equal treatment, as described in Article 13 of Council Directive 2000/43/EC:
 - providing independent assistance to victims of discrimination in pursuing their complaints about discrimination, and/or
 - conducting independent surveys, publishing independent reports and making recommendations concerning issues related to discrimination.
- In addition, the organisations were to comprise a mix of institutions dealing with discrimination based on race or ethnicity and those dealing with other types of discrimination.

In screening the institutions and bodies, the following further criteria were employed:

- The body had to be recognised by the government or by public opinion as a leader, if not an authority, in its field;
- The body had to have a broad range of activities and be politically unaffiliated;
- It should not be giving emphasis to one particular sub-group in addressing a particular type of discrimination;
- Between them, the institutions selected should represent various organisational types;
- The analysis should include bodies and organisations from a broad range of EU member states.

In some member states, i.e. Austria, Greece and Spain, none of the institutions identified in the preliminary analysis were among those that seemed closest to fulfilling the above-mentioned criteria.

On 6 February 2002 an interim report was delivered which described the current status and progress of the project.

Following the interim report, five of the institutions were selected for case studies. A guiding principle for the selection of the five institutions from among the total of 21 was that each of them could provide lessons and examples of good practice which had potential inspirational value to the entities charged with establishing the specialised bodies. The Belgian and the two Irish institutions were especially interesting, as they have either recently undergone or are in the process of undergoing significant changes in scope and in grounds of discrimination covered. These cases were intended to shed light on the consequences of the choices, which were made, and to provide material for an assessment of their advantages and disadvantages. The Dutch Equal Treatment Commission was of interest because it has the power to hand down opinions in discrimination cases. The work of the Swedish Ombudsman against discrimination because of sexual orientation was also of interest, since it involved resolving cases through mediation and was concerned with a different ground of discrimination to ethnic and racial discrimination.

Each case study was conducted as a three-day on-site visit by one consultant. During these visits each consultant carried out personal and/or group interviews with members of the staff and management of the institution, as well as with selected stakeholders.

On the basis of the generated data, PLS RAMBOLL has produced a synthesised analysis in this draft final report. The thematic analysis gives an overview of the positive and negative elements connected to each theme in relation to the role, powers, structure and functioning of the existing specialised bodies.

The annex of the report contains the qualitative institutional profiles of the 21 institutions, which were included in the study.

2.2. Institutions included in the study

The majority of the 21 institutions included in the study either cover discrimination based solely on race and ethnicity or a broad range of discriminatory grounds. One institution covers discrimination on the basis of sexual orientation, two exclusively cover discrimination on the basis of disability, and one covers discrimination on the grounds of age.

Some institutions describe their work as including national or locally-defined grounds of discrimination, such as the Finnish Ombudsman's inclusion of the so-called "old" ethnic minorities of Finland, the Sami and the Roma people; and the Irish institutions' inclusion of the Travellers' community.

Below is an overview of the 21 institutions included in the analysis.

Full details on all these bodies can be found in the Annexes to the report. Bodies marked in bold are those chosen for the particular case studies.

| Country | Name (*5 case studies) | Grounds of discrimination included | Role of institution |
|---------|--|---|---|
| Belgium | Centre for Equal Opportunities and the Fight Against Racism (Centrum voor gelijkheid van kansen en voor racismebestrijding, Centre pour L'egalite des chances et la lutte contre le racisme, CECLR) * | Racial and ethnic origin. In the future the Centre will also cover discrimination based on religion and belief, disability, age, and sexual orientation. | Informal role in decision-making Training Counselling Legal advice Mediation Bringing cases to court |
| Germany | The Commissioner for Foreigners' Affairs of the Berlin Senate (Die Ausländerbeauftragte des Senats von Berlin) | Racial and ethnic origin, and religious grounds - mostly related to anti-Semitism and discrimination against Muslims. | Campaigns Training Policy advice Counselling Mediation |
| Denmark | The Board for Ethnic Equality ¹ (Nævnet for Etnisk Ligestilling) | Racial and ethnic origin and religion. Indirectly with gender issues. | Statements on issues of discrimination Counselling Campaigns |
| | The Advisory and Documentation Centre on Racial Discrimination (Dokumentations- og Rådgivningscenteret for racediskrimination, DRC-DK) ² | Racial and ethnic origin and religion. | Telephone hotline Legal assistance Legal representation Research projects |
| France | Regional Citizenship Commissions (Commissions Départementales d'accès à la citoyenneté, CODAC) | Racial and ethnic origin. | Network building Advice Specifying redress for action, correction of discriminatory practices |
| | Group to study and combat Discrimination (Groupe d'Etude et de Lutte contre les discriminations, GELD) | Racial and ethnic origin. | Free phone line Analysis of discrimination Research Campaigns |

¹ The Board will be closed by January 2003

² The Centre's role may be reduced following the discontinuation of government funding as of 2002

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| Ireland | Equality Authority (EA)* | Gender, marital status, family status, sexual orientation, religious belief, age, disability, race (including colour, nationality or national or ethnic origin) and membership of the Traveller community. | <p>“Work towards the elimination of unlawful discrimination and the promotion of equality of opportunity</p> <p>Keep under review the equality legislation and if necessary make proposals to the Minister for amendment</p> <p>Provide information and advice</p> <p>Legal services</p> <p>Equality reviews</p> <p>Codes of practice</p> <p>Research</p> <p>Information campaigns and training</p> |
| | Office of the Director of Equality Investigations (ODEI) * ODEI has now adopted "ODEI – the Equality Tribunal" as their day-to-day business name. | Gender, marital status, family status, sexual orientation, religious belief, age, disability, race (including colour, nationality or national or ethnic origin) and membership of the Traveller community. | <p>Quasi-judicial tribunal</p> <p>Mediation</p> <p>Investigating complaints</p> <p>Giving binding and enforceable decisions</p> |
| Italy | Commission for Integration Policies ³ (Commissione per le Politiche di Integrazione) | Also covers integration, not just discrimination. The grounds covered are racial and ethnic origin and religion and belief. | Proposing and commenting on legislative initiatives |
| Luxembourg | Special Commission against Racial Discrimination (Commission spéciale contre la discrimination raciale, CSP-RAC) | Race and ethnicity. | <p>Giving proposals and policy advice to political decision-makers</p> <p>Campaigns and training</p> |
| The Netherlands | Equal Treatment Commission * (Commissie gelijke behandeling) | <p>Religion, personal convictions and views, political orientation, race, gender, nationality, sexual preference, marital status, extent of employment (full-time versus part-time work).</p> <p>The Commission does not yet cover age and disability, but legislation is in preparation.</p> | <p>Training</p> <p>Counselling</p> <p>Investigating complaints</p> <p>Hearings</p> <p>The Commission provides decisions, opinions and recommendations, although they are not legally binding</p> |

³ The Italian Commission is currently not in function, as the Italian Government has not reappointed Commissioners after the first three-year period ran out in July 2001.

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|----------|--|--|--|
| | Expertise Centre Age and Society (Expertisecentrum Leef tijd en Maatschappij, LBL) | Age (including gender and ethnicity-related aspects of age). | Training material Informal policy advisory role Stimulating research activities |
| | National Bureau against Racial Discrimination (Landelijk Bureau ter bestrijding van Rasdiscriminatie, LBR) | Race and ethnicity. | Training Advice Research and studies Policy advisory role Reviewing legislation |
| Portugal | Commission for Equality and Against Racial Discrimination ⁴ (Comissão para a Igualdade e contra a Discriminação Racial) | Race, colour, ethnicity and origin. | Recommendations for adoption of legal measures Conducting investigations |
| Sweden | Disability Ombudsman (Handikappombudsmannen, HO) | Physical or mental disability. | Reviewing legislation Campaigns and training Telephone counselling Reconciliation Predominantly labour-related competences |
| | Ombudsman against discrimination because of sexual orientation * (Ombudsmannen mot diskriminering på grund av sexuell läggning, HomO) | Sexual orientation. | Reviewing legislation Campaigns and training Telephone counselling Investigations Reconciliation Predominantly labour-related competences |
| | The Ombudsman against ethnic discrimination (Ombudsmannen mot etnisk diskriminering, DO) | Race, ethnicity and religion. | Reviewing legislation Campaigns and training Telephone counselling Investigations Reconciliation Predominantly labour-related competences |
| Finland | The Ombudsman for Minorities | Racial and ethnic origin. The Minority Ombudsman is consulted in asylum-seeker cases and in cases of expulsion. | Statutory right to make proposals Consulted in asylum-seeker and expulsion cases. Legal advice Juridical assistance |

⁴ The Portuguese Commission currently does not have a chairman since April 2002, as the incoming government had not appointed a High Commissioner.

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|----|--|--|--|
| UK | Commission for Racial Equality (CRE) | Race. | Policy advisory role on Race Relations Act Training materials Campaigns Advice Formal Investigations Legal representation |
| | Disability Rights Commission (DRC) | Disability. A broad definition which also covers sensory disability and learning difficulties. | Advice to government on disability legislation Campaigns Training Advice Assistance in court cases Conciliation services Formal investigations |
| | Equality Commission for Northern Ireland | Political opinion, religious belief, race/ethnicity, disability, gender, and marital status. | Formal consultative status Public education campaigns Training and capacity building Advice Formal investigations and non-discrimination notices Support in legal cases |

The type and development of national institutions for combating discrimination and promoting equality seem to some extent to be defined by the institutional culture and traditions of the country in question. For instance in Sweden, the Office of the Equal Opportunities Ombudsman was established in 1980. The Ombudsman against ethnic discrimination followed in 1986, the disability ombudsman in 1994, and the HomO in 1999. The establishment of institutions for new grounds of discrimination was evidently were based on the existing types of institution. In the British and Irish contexts there seems to be a tendency towards Commissions or Authorities, whereas countries like France, Italy and Luxembourg have established special working groups or commissions which are closely involved in the process or guidance of government.

Ireland also has a specialist equality tribunal (ODEI) to investigate and/or mediate complaints of discrimination.

2.3. Guiding principles for independent institutions

As mentioned earlier, the EU Directive 2000/43/EC outlines the aims and tasks of the bodies for the promotion of equal treatment as:

- giving independent assistance to the victims of discrimination,
- conducting surveys and studies, and
- publishing reports and recommendations.

The requirements of the Directive concerning the specialised bodies are thus in line with the recommendations made by the European Commission against Racism and Intolerance (ECRI) under the Council of Europe.

In its general policy recommendation N° 2, adopted in June 1997, the ECRI proposed the establishment of specialised bodies to combat racism, xenophobia, anti-Semitism and intolerance at national level (if such a body did not already exist) to the governments of the Member States of the Council of Europe.

In the appendix of the policy recommendation, the ECRI specified that the specialised bodies should be given terms of reference which were clearly specified in a constitutional or other legislative document, and that specialised bodies should ensure they operated in a way which was clearly politically independent.

In addition, the ECRI advised that the specialised bodies should adopt as many as possible of the following functions and responsibilities:

- a. to work towards the elimination of the various forms of discrimination and to promote equality of opportunity and good relations between persons belonging to all the groups in society;

- b. to monitor the content and effect of legislation and executive acts with respect to their relevance to the aim of combating racism, xenophobia, anti-Semitism and intolerance, and if necessary to make proposals for possible modifications to such legislation;
- c. to advise the legislative and executive authorities with a view to improving regulations and practice in the relevant fields;
- d. to provide aid and assistance to victims, including legal aid, in order to secure their rights before institutions and the courts;
- e. subject to the legal framework of the country concerned, to have recourse to the courts or other judicial authorities as appropriate and if and when necessary;
- f. to hear and consider complaints and petitions concerning specific cases and to seek settlements either through amicable conciliation or, within the limits prescribed by the law, through binding and enforceable decisions;
- g. to have appropriate powers to obtain evidence and information in pursuance of its functions under f. above;
- h. to provide information and advice to relevant bodies and institutions, including State bodies and institutions;
- i. to issue advice on standards of anti-discriminatory practice in specific areas which might either have the force of law or be voluntary in their application;
- j. to promote and contribute to the training of certain key groups without prejudice to the primary training role of the professional organisations involved;
- k. to promote the awareness of the general public to issues of discrimination, and to produce and publish pertinent information and documents;
- l. to support and encourage organisations with similar objectives to those of the specialised body;
- m. to take account of and reflect as appropriate the concerns of such organisations.

In its policy recommendation, the ECRI refers to the fundamental principles laid down at the first International Meeting of the National Institutions for the Promotion and Protection of Human Rights held in Paris during 7-9 October 1991 (known as the "Paris Principles");

The Paris Principles set out the following minimum set of standards for the advisory role of national human rights commissions:

- Independence guaranteed by a constitutional or legislative text
- Autonomy from government
- Pluralism, including pluralism of composition
- A broad mandate
- Adequate powers of investigation
- Sufficient resources

The principles emphasize that the national institutions should assist in creating public awareness concerning all forms of discrimination through education, teaching, publication and information, especially racial discrimination.

As can be seen, the principles guiding the bodies defined by the Directive 2002/43/EC match those set out by the ECRI and the Paris Principles, although the functions and responsibilities of the bodies established by the Directive are not given as detailed treatment as in the ECRI policy recommendation.

2.4. Guide to the report

The report is structured around the following themes:

- Legal status, structure and resources of the specialised bodies
- Horizontal integration and grounds of discrimination covered
- Role and functioning in relation to the direct victims of discrimination
- Role and functioning in the political process

- Role and functioning in compiling and disseminating information, conducting research and awareness-building, including co-operating with other organisations and civil society.

The report endeavours to present the procedures, practices and experiences, which relate to the various themes. Since the five case studies have generated considerable in-depth knowledge of the institutions and of the strengths and weaknesses of their institutional set-ups and practices, they comprise a substantial element of the report.

Particular or illustrative examples of activities, structures, procedures or experiences are presented in text boxes.

3. Legal status, structure, resources and independence of the specialised bodies

In this section we outline the possible approaches towards the formal organisation of the work to combat discrimination and/or promote equality, and their respective strengths and weaknesses. The focus will be on the legal basis of the institutions, their internal structures and their resources.

3.1. Legal basis and governance

Different legal approaches have been adopted for the establishment of the organisations surveyed. In most cases, the legal basis gives the institution a clear mandate and provides a framework for its scope of work and activities.

3.1.1. Legal basis

The majority of the institutions included in the study are established by legislation passed by the national parliament. The scope of the legislation varies. Thus some institutions are founded as one element in a broader sweep of legislation addressing equal treatment, race relations or employment equality, while others are regulated by laws adopted specifically to define the institution, as in the case of the Swedish Ombudsmen institutions and the Belgian CECLR. The Italian Commission for Integration Policies is established by the national immigration laws. A limited number of institutions have their legal basis in secondary legislation, for example in ministerial decrees or administrative orders. This is the case for the departmentally based French CODACs. A few institutions – the Dutch National Bureau against Racial Discrimination (LBR), the Dutch Expertise Centre Age and Society (LBL), and the Danish Advisory and Documentation Centre on Racial Discrimination (DRC-DK) – are non-governmental organisations, and are therefore not established by national legislation.

A body's legal basis may have implications for its relative independence. With a firm legal basis for an institution in the form of a national act, it is more difficult for a government to alter its scope and mandate. Alterations in such cases will typically require parliamentary negotiations and the adoption of new legislation. Thus in situations where an institution acts or makes statements in a manner which conflicts with the government of the day, a firm legal basis may serve to counteract any intent of swift political interference and thereby lessen the possibility of political influence on the body in question. On the other hand, a body, which is established by secondary legislation may be more prone to alterations in mandate and scope, since the secondary legislation can be modified without involving the parliament.

This study demonstrates that most of the institutions are guaranteed independence by means of a national law.

While the independence of the specialised body to promote equality may be best secured by law, this obviously will not protect the body if a parliamentary majority decides that it must be modified or removed.

Governmental decisions on the funding of the body may also have direct practical implications on the actual ability of an institution to implement its legal mandate. For a further discussion on this aspect, please refer to Chapter 4.3 below.

Though direct interference in the work of the institutions is seldom observed, institutional independence can be relative, such as when a government applies indirect pressure to it. As an example, one of the Dutch institutions referred to comments received from the Government questioning whether its choice of cases to present in its annual report did not suggest particular political associations. Though the institution in question rejected this notion, the example demonstrates how institutions might be exposed to indirect political interference.

3.1.2. Mandate, objectives and tasks

In most cases, the mandate and duties of the specialised body are defined in the law, which comprises the legal basis for the institution.

The mandates of the organisations surveyed vary, as can be seen in the institutional profiles compiled as part of this study and in the summary descriptions given in the figure in Chapter 1.

Duties defined by law

The duties of the British Disability Rights Commission (DRC) are defined as follows in the Disability Rights Commission Act of 1999, Chapter 2:

- to work towards the elimination of discrimination against disabled people;
- to promote the equalisation of opportunities for disabled people;
- to take such steps as it considers appropriate with a view to encouraging good practice in the treatment of disabled people; and
- to keep under review the working of the Disability Discrimination Act 1995 and the Disability Rights Commission Act 1999.

The clarity of the description of the mandate, instruments and powers of an institution is obviously also a means of ensuring that in the event of potential conflict with a particular government, the institution will be guaranteed freedom from the discrediting of its activities and will not be limited through administrative interventions. Thus in Sweden legislation governs the work of the Ombudsman against Discrimination because of Sexual Orientation in the workplace and higher education fields, whereas anti-discrimination work in other areas of society is governed by decree. While the laws provide the Ombudsman with certain formal legal powers with respect to discrimination in the workplace and in education, the decree does not furnish the same powers. Because the government could amend the decree if it wished, according to the Ombudsman it is a less useful tool for long-term anti-discrimination work.

In a number of the institutions the work is governed by more than one legislative instrument, providing differing tools and options depending on the area of discrimination in question.

A disjointed legal foundation of this kind may pose problems regarding:

- Transparency of legal rights
- Dissimilar treatment in similar cases of discrimination, depending on the different legal grounds and instruments applied

Anti-discrimination work governed by several laws

In Sweden, several laws govern the work of the various Ombudsman institutions. For example, there are laws on discrimination in the workplace, in higher education etc. Because the disparate laws present the Ombudsmen with such a fragmented legislative framework for dealing with the various forms of discrimination, two people in essentially the same situation who were confronted with similar discrimination under two different headings might have different access to help in obtaining equal treatment.

The Swedish Ombudsman against Discrimination because of Sexual Orientation illustrates this point with two hypothetical trainees in the same company who are being discriminated against because of their sexual orientation. The training of one of them is a part of his higher education, whereas the other is not receiving higher education. As the Ombudsman has certain formal legal powers (legal procedures, award of damages etc.) that only relate to sexual-orientation discrimination in the work place and higher education, and not to discrimination in other fields of society, the first trainee would to a greater degree be protected against harassment or discrimination because of his or her sexual orientation, than would the latter.

The problems related to the existence of different legal bases could lead to a discussion of the potential of integrating legislation on equal treatment. This question is discussed in Chapter 5, which deals with horizontal approaches to discrimination.

The question of whether the anti-discrimination institutions should be accountable to the government or to the parliament has been specifically debated in Sweden. The current Swedish *status quo* is a sort of gentlemen's agreement that the Ombudsmen should be independent, but their independence is not actually guaranteed by legislation. It has therefore been an ongoing discussion topic as to whether they should report to the parliament rather than the government in order to ensure greater independence. On the one hand, accountability to Parliament may be a better guarantee of the independence of the institutions. On the other hand, some members of Parliament may also represent specific interests and make it difficult for the institutions to manoeuvre freely. The conclusion that appears to emerge is that independence needs to be guaranteed by the legislative underpinning of the institution in question.

3.1.3. Criteria for the composition of the board

The appointment of the Board also touches upon issues of independence, as well as those of continuity and effective authority.

The board of an independent body is the guarantor of the pursuit of the objectives and tasks set out for the institution. It must undertake its activities and make its assessments in an independent manner. That is to say, it must be independent both towards the state authorities and other interests, and must consistently act in accordance with the mandate of the institution.

Independence and the role of government

The Commission for Equality and Against Racial Discrimination, which was recently established in Portugal, demonstrates an interesting contradiction in terms of the independence it enjoys. While on the one hand the law adopted by Parliament establishes the Commission for Equality and Against Racial Discrimination as an independent body, the same law states that the High Commissioner for Immigrants and Ethnic Minorities shall be its chair. The High Commissioner, who covers and co-ordinates a broad range of initiatives concerning minorities, is appointed by the prime minister, has the rank of a vice-secretary of state, and is subject to the authority of the Presidency of the Council of Ministers.

A number of different models exist for the appointment of the board even among the five institutions included in the study. It is broadly possible to distinguish between two models:

- On the one hand, bodies where the board is constituted of representatives of named institutions, whether these are ministries, social partner organisations, NGOs or political parties. The Dutch National Bureau against Racial Discrimination (LBR) also includes a member of the Board appointed by the staff.
- On the other hand, boards made up of individuals who have been selected purely on the basis of merit, typically following a procedure which involves publicly advertising for candidates who meet stated selection criteria, and succeeded by short-listing and interviews.

A prime difference between the two models is that the first aims to ensure that all relevant parties are heard and represented in the institution in question, thus to some extent underscoring the pluralist approach of the Paris Principles for ensuring the representation of civil society. The latter model has greater focus on the individual possession of the necessary integrity and qualification for dealing with cases of discrimination.

The first approach stresses the network perspective, and often - so it seems - a desire to ensure that relevant interests are given a voice on the board; that is, to ensure that the board takes appropriately into account the opinions of the various stakeholder groups who are particularly concerned with questions of discrimination and equal treatment.

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| <p>The advantages of having a politically-appointed board</p> <p>One institution, the Belgian Centre for Equal Opportunities and the Fight Against Racism (CECLR), specifically pointed to the advantages of having a board where some of the members are politically appointed. Having a broad political representation on the board means that the Centre reflects society</p> |
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at large to a greater extent, i.e. the politically-appointed board members represent the general electorate, something that its discussions mirror. By including political appointees on the board, an institution may also ensure better information-sharing with the political decision-making level, and thus create a greater understanding among politicians as to the work, results and ambitions of the specialised body. Depending on the rank of the political appointees, the anti-discrimination institution may utilise this individual contact as a starting point for gaining access to political decision-makers. In the case of CECLR, this has allowed the Centre to follow the political decision-making processes from the very outset and to ensure that CECLR recommendations were taken into consideration. Finally, it was suggested that by including different political groups in the institutional set-up (either in relation to the Centre itself or to the issues promoted by the Centre), a greater degree of common understanding and respect for the work carried out by CECLR had been achieved.

A crucial issue with this first type of board is to avoid the board members only representing their particular narrow interest, and encouraging them instead to identify with the overall interests of the institution they are entrusted to govern. For this reason, for instance, the board of the Irish Equality Authority (EA) has been carefully instructed by its chairman that they solely represent the EA when on the Board.

Finally, in organisations where the board is made up of representatives of named institutions, a clear-cut division of labour between the Board, the Chair and the Chief Executive seems to be of particular importance to the functioning of the institution.

The second approach, where individuals apply and are selected based on merit, seeks to overcome the potential criticism of being representative of certain interests. The approach which is used in the British CRE and the Equality Commission for Northern Ireland, among others, may also be more competitive, in the sense that the reposting of vacant board positions in the press opens up an opportunity for anybody to be appointed, not just the representatives of a named group of organisations and institutions. In this respect it may be a more dynamic model. On the other hand, a risk of political interference persists if the government chooses to set very prescriptive criteria for board member selection

The perceived legitimacy and moral authority of the board members is often of particular importance. It can be argued that the board that opposes a given Government policy can have little effect, as in most cases it does not have the formal power to influence the Government. In practice, the political influence of an independent body is therefore likely to be strongly dependent on the skills and reputation of its key representatives – typically on those of the board and the chief executive.

The Belgian CECLR notes that it is important that the chief executive of the institution is perceived as having high personal integrity and that he or she exudes a general atmosphere of openness. Otherwise the executive – and along with them the institution – may be perceived as dogmatic and biased, which would eventually hamper the work of the institution.

The Berlin Commissioner emphasises that due to the fact of being the public face of her institution for the last 20 years, her continuity has given the Commissioner's role very strong political influence, even if the institution's formal position is fairly weak.

The Swedish Ombudsman against Discrimination because of Sexual Orientation who was, in his own opinion, chosen for the position because of the credibility established through his judicial background in conjunction with his involvement in a Swedish organisation representing the interests of homosexuals.

The composition of the Board sometimes takes account of informal factors. When the first Equal Treatment Commission in the Netherlands was set up, equal representation with regard to different religious communities, ethnic background and genders etc. was sought, although this was not a criterion stipulated in the law establishing the Commission.

3.1.4. Service terms for members of the board

As a precaution to ensure the independence of the board, in many cases a clause in the law stipulates that the mandate of the members of the board cannot be withdrawn, or only under specified extraordinary circumstances. Typically, board members serve a term of four to six years, with some serving a two- or three-year term. Obviously, the intention is to ensure that a board, which issues opinions in conflict with those of the political majority currently in power cannot be dismissed arbitrarily by that same majority group.

Some of the bodies have established a rota whereby half the board members are up for appointment halfway through each service term, in order to ensure continuity in the institution's work.

Continuity and transfer of knowledge

There is a turnover of half of the members at the Dutch Equal Treatment Commission every third year in order to secure the continuity of its work. But according to the Commission, there is still scope for enhancing knowledge sharing for the purpose of retaining institutional memory when staff or commissioners leave the Commission. Some commissioners suggest an improved transfer of procedures and knowledge, for instance by allowing new commissioners to participate in hearings as observers to begin with, in order to learn from their more experienced colleagues.

In some institutions the government can dismiss the commissioner / chief executive / chairperson. However, it appears to be difficult for a government to dismiss a commissioner who has acquired a positive reputation, even if the government's views differ from the commissioner's. The length of stay in office is therefore fairly dependent on the individual in that office. The study includes examples of situations where an individual has played a central role in the political struggles surrounding the creation and setting-up of an institution. Swedish and German examples each indicate that individual credibility and influence can affect both the extent of an institution's power and the size of its budget (see above).

Non-political interference in the executive

Some legislators have ensured that not only the board but also the execu-

tive is protected from political interference. In the case of the Belgian Centre for Equal Opportunities and the Fight Against Racism (CECLR), not only the board, but also the key staff members, namely the Director, the Deputy Director and four so-called co-ordinators are employed for six years, during which they cannot be dismissed. This reflects the strong role of the Director, whose competences include the right to undertake activities in situations which are judged to be urgent and which would usually require the consent of the management board, and only to consult with the board afterwards.

3.1.5. Advisory groups

Some of the institutions in question have advisory groups or other independent reference groups attached. These are sometimes introduced to ensure the independence of particular studies or as more permanent “quality assurers”. For instance, the French GELD, whose board is 51% composed of representatives of public bodies, has set up a separate board (‘conseil d’orientation’) to oversee the research activities of the institution, thus seeking to ensure independence in this aspect of its work.

The Dutch National Bureau against Racial Discrimination has an advisory board composed of 15 persons with contacts and knowledge regarding specific questions. In this case, and in the case of the Irish Equality Authority (EA), a prime function is to provide expert knowledge on specific themes as well as continuous updating concerning new and relevant trends and general developments in society.

Other advisory bodies act as auxiliary bodies to the institution in question. Their focus is to co-ordinate the main institution’s work with other organisations, including helping to integrate the aims and objectives of the institution more generally into the administration, so as to mainstream the work on equal treatment.

These advisory groups are often set up on an *ad hoc* basis and under less formal criteria than the boards, for instance being appointed by the management. Often the existing members of the advisory bodies reappoint new members when others leave.

The institutions face a challenge in constructing the advisory bodies in a balanced manner, so that they are not too closely aligned to specific interests. In this regard there has to be a balance between independence and close co-operation with other organisations. It is important not to form alliances that signal specific interests, and not to be too closely associated with specific NGOs, for instance. On the other hand, as previously discussed, it can be helpful to have specific representatives in the body to signal that it is an authority in its field.

3.1.6. Summary of key points – legal basis and governance

- Independence of the institutions is best guaranteed by legislation clearly defining mandate, scope and powers.
- Boards can either be composed of representatives of specific institutions or of individuals who have been selected purely on the basis of their merit. The former is seen to assure the representation of various groups and closer links with the political decision-making structures, whereas the latter might be seen as more dynamic and having higher integrity, although there may in this case also be a certain risk of political interference.
- To ensure independence, members of boards are often given a fixed-term mandate of typically four to six years that cannot be withdrawn.
- In order to ensure continuity, some bodies have chosen to institute a half-term turnover of half the members of the board.
- Management and the executive can also be guaranteed fixed terms in office in order to ensure their independence.

3.2. Institutional structures

In terms of their internal organisation, the organisations appear to have very different structures and cultures, with organic, loosely structured organisations at one extreme, and highly-tuned management based organisations with mission statements, corporate plans, performance indicators and monitoring procedures at the other. As organisations are dynamic, the organisation and structure of the institutions may vary according to changing tasks and responsibilities.

3.2.1. Internal division of tasks

The internal division of tasks varies according to the size of the institution in question. The smaller institutions with fewer than ten members of staff often have a unitary structure and fewer boundaries between areas of work and responsibilities, e.g. the Expertise Centre on Age and Society in the Netherlands (LBL), the Ombudsman against Discrimination because of Sexual Orientation in Sweden, and the Danish Board for Ethnic Equality and the Advisory and Documentation Centre on Racial Discrimination.

In bigger institutions like the Equal Treatment Commission in the Netherlands, the Commission for Racial Equality in UK or the Swedish Ombudsman against Ethnic Discrimination, the need for specialisation and formal organisation has often meant a more formal division into departments and areas of responsibility.

In quite a number of the institutions the tasks are divided and organised according to the laws and instruments regulating its work. For instance, the larger Swedish institutions, e.g. the Ombudsman against Ethnic Discrimination and the Disability Ombudsman, have one department concerned with discrimination in the labour market and one concerned with discrimination in other areas of society, because different laws and decrees apply to its work within these two areas. Such separations therefore reflect the legal instruments available – e.g. where it is possible to bring cases relating to the labour market before the labour court, whereas discrimination regarding other areas of society cannot be brought to court by the institution in question. Other divisions, like information or training divisions, may supplement those which relate to different areas of society.

In institutions such as the Dutch National Bureau against Racial Discrimination (LBR) the work is organised into teams. The LBR has established working groups that combine competences, such as those of lawyers and political or social scientists. By organising its work among groups instead of along departmental lines, the LBR seeks to

encourage knowledge sharing and to avoid staff only considering their own areas of competence.

The Equality Authority in Ireland (EA) has integrated nine grounds of discrimination, organising its work by function rather than according to the field of discrimination. The main purpose of such a structure is to ensure learning and knowledge sharing concerning the various fields of discrimination. The potential weakness is a lack of specialisation and the risk of duplicating work. But the management believes that the benefits from applying the knowledge of one ground to the other grounds compensates for that risk.

The ODEI has integrated the work of its "judges" (Equality Officers), in its role as a quasi-judicial body, across all nine grounds of discrimination.

Equally, other institutions working with more grounds of discrimination have changed their internal organisation in order to secure the transfer of knowledge from one case to another and between the various grounds of discrimination, as is illustrated below.

The Dutch Equal Treatment Commission was previously divided into three chambers. The first of the chambers worked with gender discrimination and discrimination on the basis of working hours, the second with race and nationality, and the third with other grounds of discrimination (religion, personal beliefs, convictions, sexual orientation, and marital status). Then it was decided to let all 9 commissioners and 13 juridical advisors work with all types of cases. Firstly, this enhanced flexibility, and in addition it was considered illogical to separate the various grounds of discrimination, since the Commission has been seeing an increasing number of cases where more than one ground of discrimination is involved, either because the complaints brought to the Commission have contained more than one ground of discrimination, or because whereas the complainant claims sexual discrimination, for instance, the respondent's defence is based on a difference of treatment based on religion. Also, in this new institutional setting each commissioner will be working in a fixed partnership with the same two legal advisors in all investigations. Which commis-

sioners worked with which members of staff used to depend on chance, but as the Dutch Equal Treatment Commission has been making staff and commissioners co-operate on a regular basis, so they have come to know each other and their respective working methods better, and the result has been a more efficient handling of cases. The Commissioners and staff have also found that the move from having three chambers to combining the work has given it more variety. The new organisation of work has made it easier to compare one case with another, and has thereby increased the extent of learning from cases across all grounds of discrimination. Although in theory the commissioners and the juridical advisors can be involved in any sort of case, in practice the staff and the commissioners still have specific knowledge and preferences which are considered when they are assigned to cases.

3.2.2. Staff and competences required

The institutions vary in size from just four members to a staff of 200 employees. In most institutions, the staff are usually composed of academics, legal experts, policy experts, technical staff and clerical workers.

Examples of staffing

Commission for Racial Equality, UK

The 15 Commissioners guide the work of approximately 200 staff based at offices in London, Birmingham, Leeds, Manchester, Edinburgh and Cardiff.

Approximately 100 staff members are based in the central office, working in:

- the legal directorate with circa 20-25 employees,
- corporate services, including HRM, IT and Finance with circa 30,
- the policy and communication department with about 50,
- and finally the office of the Chief Executive Officer.

The regional offices of the CRE broadly reflect the division in the central office, but with some variations.

Equal Treatment Commission, Netherlands

The Commission has 36 staff in its office:

- Director

- 13 juridical advisors
- 1 co-ordinator of judicial staff
- 9 secretaries
- 2 PR officers
- 2 policy officers
- 1 documentation expert
- 1 job assessment specialist (who investigates cases of unequal pay)
- 2 personnel officers
- 1 helpdesk expert
- 3 investigation assistants

Ombudsman against Discrimination because of Sexual Orientation, Sweden

The Ombudsman has a staff of four:

- Ombudsman
- Lawyer
- Director of education
- Director of information

Legal skills

The proportion of staff with a juridical background depends on the role of the institution and the emphasis placed on such things as information and training, addressing the structural aspects of discrimination, and awareness raising. As can be expected, in institutions which focus on aspects of training and awareness raising as well as on the dissemination of information, the number of people with a legal background is relatively lower than in institutions working to resolve cases or providing legal advice.

Where the staff or commissioners are supposed to present an opinion or a verdict in cases concerning discrimination, the preferred competences diverge. Where some institutions mainly employ staff with a legal background, others prefer to employ non-lawyers. The Office of the Director of Equality Investigations (ODEI) in Ireland is staffed by 13 Equality Officers and Equality Mediation Officers. Only a few of the officers have a legal background, but they all have extensive experience as civil servants in the drafting and interpretation of legislation and they have also undergone substantial specialist training in dis-

crimination law. There is also a specialised in-house Legal Adviser available to the Equality Officers. By contrast, all Commissioners in the Dutch Equal Treatment Commission have expertise in anti-discrimination law and equality policies.

Communication and mediation skills

As discussed below, a number of the institutions focus on developing competences in mediation and communication tools.

Most of the institutions prioritise the availability of information units or information workers, because an important part of their work is to communicate knowledge, and to do it proactively. The competences required vary according to the specific aims and tasks of the institutions. Emphasis is often placed on finding staff with previous experience in the field of anti-discrimination work who have good contacts with relevant institutions which they will bring with them. Especially in institutions working with awareness-building and information work, the staff is often composed of people with knowledge of the area who have well-developed networks.

Some institutions make premises available to other related organisations, e.g. the Swedish Disability Ombudsman houses the National Centre for Accessibility. Whereas the staff of the Ombudsman is composed of lawyers, the National Centre for Accessibility brings architects and social scientists into the building, among others, thereby bringing new perspectives into the work of the Ombudsman.

External resources

Another way of bringing new competences into the organisation is by hiring staff on short-term contracts or by involving external resources in specific cases, such as by co-operating with universities and research institutions in connection with surveys, analyses and reports. External staff are also frequently involved in relation to ICT issues, evaluations and internal staff training. A final category of external staff is the legal experts who are often used to bring cases to court.

3.2.3. Working approaches

One of the study's findings is that building up new institutions or merging existing ones takes time, and that a bedding-in period is required to establish the specific working approach. This is the experience of the Equality Commission for Northern Ireland, which has been through a difficult but successful process of merging four institutions into one. This entailed many considerations and reviews of the appropriate internal organisation, where in order to cater for the concerns voiced by each of the four constituent organisations, during an extended period which lasted until March 2002 disability issues were organised in a separate department from the remainder of the organisation, which was structured according to the principle of the horizontal integration of equality issues.

For the Equality Authority south of the border in the Republic of Ireland, the point of departure was different, but also here the first years have been used in order to make adaptations, leading to a discussions of working approaches among other matters.

Working approach – three ways of approaching the field of discrimination in the Irish Equality Authority (EA)

- Ground-specific approach, taking up themes and cases concerning a single ground of discrimination where there is a special need for attention. An example is the week-long campaign to promote an anti-racist workplace.
- Theme-based approach, where a theme or an area covering the 9 grounds is investigated. An example is the educational sector, where experts have looked into the 9 grounds of discrimination from three perspectives:
 - As a service provider, how do you provide education for all without discriminating?
 - How do you teach equality?
 - What criteria do you employ when hiring teachers?
- Multiple-identities and multi-ground approach, where the basic approach is that people have multiple identities which may be linked to more than one ground of discrimination. The EA has, for example, held a seminar where it brought disabled people together with groups representing the gay and lesbian communities.

All three approaches are considered relevant. The combination of the three approaches allows the EA to achieve extensive penetration in the field of dis-

crimination.

3.2.4. Sharing facilities between institutions

Some institutions share facilities. The Swedish Ombudsman against Discrimination because of Sexual Orientation is located together with the Swedish Ombudsman against Ethnic Discrimination. The former acquires services from the latter regarding administrative issues, and they share a telephone and data network. They consider this very positive, pointing to the improved exchange of experience and knowledge and the cost-efficiency of having shared resources. The two Ombudsmen are located on the same floor, and the expectation is that their co-operation will be further intensified.

The Irish Equality Authority (EA) and the Office of the Director for Equality Investigations (ODEI) are also located at the same address. Confusion can arise where the ODEI has sometimes been seen as the Investigation Section of the EA or where the EA is wrongly perceived as prosecutor and judge. The adoption by the IDEI of "ODEI – the Equality Tribunal" as a day-to-day business name may well help to resolve this confusion.

3.2.5. Accessibility

The above-mentioned issue of the confusion of institutions also touches on the question of accessibility. A number of stakeholders point to accessibility as a major issue for victims of discrimination, i.e. the ability for victims to make contact with the institution and to know that it will respond to their questions without delay.

The accessibility issues include an institution's physical accessibility, its image, the language skills possessed by its staff, and people's confidence that it will handle discrimination cases both promptly and professionally.

For a victim of discrimination, who may often belong to a marginalized group in society, the mere step of seeking advice and reporting a discriminatory experience may be a rather daunting task. If they have to overcome great obstacles to reach the anti-discrimination body, it is likely that the case will never be reported and registered.

The majority of the bodies included in the study are national institutions, but some are regional. The German Commissioner for Foreigners' Affairs of the Berlin Senate is such a regional institution. Likewise the French CODACs work at a regional level; there are 100 CODACs distributed among 22 regions.

Only a few of the national bodies have regional branches, such as the British Commission for Racial Equality, which has offices in six major cities. The British Disability Rights Commission (DRC) is about to launch a pilot regional capacity-building initiative with a partner organisation. This will provide information and advice at the local/regional level to supplement what the DRC already does at a national level to promote the values and campaigns of the DRC, and will help identify potential legal cases.

In Belgium and the Netherlands a national infrastructure also exists, although it is formally organised outside the structures of the bodies, with the local anti-discrimination bureaux being variously-organised independent institutions which can forward complaints to the Equal Treatment Commission in the Netherlands and the CECLR in Belgium. The boundaries of the institutions' work are defined with reference to the activities undertaken by other organisations or institutions. For instance, in the Netherlands the organisational framework relating to anti-discrimination includes a Commission for Equal Treatment, more than 20 regional anti-discrimination agencies, and various or-

ganisations with expertise and in-depth knowledge in the specific areas of discrimination, e.g. ageing and ethnicity.

In addition to the outreach work of its own offices, the British Commission for Racial Equality undertakes close co-operation with the individual race equality councils.

The Equality Commission in Northern Ireland has an outreach programme, visiting citizens' advice bureaux once a month. The Irish Equality Authority (EA) works with the Citizens Information Service to distribute leaflets and information material across Ireland. In addition, the EA is working to set up temporary legal offices once a month to enable a solicitor from the EA to travel outside of Dublin to advise people.

Various issues of accessibility

In Belgium, the NGO partners of The Centre for Equal Opportunities and the Fight Against Racism (CECLR) pointed out that accessibility in the form of a welcoming environment and premises which are easy to reach are of vital importance if the victims of discrimination are to approach the institution in question. One of CECLR's partners, a local NGO, has had good experiences with making its advisory services available during the evening when the victims of discrimination are not at work, and therefore have a proper opportunity to approach the NGO and receive personal advice.

In addition, the CECLR itself discovered new accessibility issues when it started consulting with disability groups as part of the forthcoming broadening of the CECLR mandate. During a recent conference many practical issues of physical accessibility had to be taken into account – for example translation services for deaf participants, or premises catering for people in wheelchairs.

Providing information in several languages is another concern. Two examples can illustrate this point:

In the offices of the Berlin Commissioner, consultations on legal and social issues are regularly provided in 12 languages.

The website of the Swedish Ombudsman against Ethnic Discrimination provides information on discrimination because of ethnic background – plus relevant legislation – in 17 languages.

Once an institution has gained a reputation as being both accessible and having good contact with its target groups, it may be solicited to undertake additional assignments well beyond its immediate aims and objectives, as the box below illustrates.

Image and reputation as a beacon for attracting new assignments

During the recent period when the outbreak of Foot and Mouth Disease in Britain was a major concern across the EU, the Belgian Centre for Equal Opportunities and the Fight Against Racism (CECLR) was asked by the Ministry of Agriculture to establish a telephone helpline to provide health advice and information to the Muslim community during the holy celebration of the Eid al-Adha, when large numbers of sheep are slaughtered. Here it seems that it was the reputation of the organisation that encouraged the public authorities to ask for the CECLR's assistance.

3.2.6. Summary of key points - structures

- Staff and competences in the various institutions vary according to the aims and priorities of the institutions.
- Some institutions place emphasis on awareness raising and information work or training, and therefore employ more personnel with these sorts of competences.
- The work of other institutions is more focused within the juridical area, and therefore they employ more staff with legal backgrounds.
- More institutions working with various grounds of discrimination have started organising their work across these grounds in order to learn from each other and to be able to integrate the different grounds of discrimination. The strengths are seen as overriding the potential weaknesses, such as lack of specialisation and duplicated work.
- Accessibility is a key concern. This concerns both physical accessibility, the image of the institution, the language skills possessed by the institution, and the confidence that an institution will handle a case of discrimination professionally and rapidly.

3.3. Resources

All the institutions in this study are financed by the state. This is also the case for the NGOs, who often receive their core funding from state sources. The majority are granted resources on an annual basis from the fiscal budget. Some receive financial resources from specific Ministries or Offices. In addition, a few of the institutions do not have a separate budget and instead are financially incorporated into the budget of another institution (as is the case with the Portuguese Commission), or into the administrative budget of local or regional government (like the German Commissioner of Foreigners' Affairs of the Berlin Senate and the French departmental CODAC offices).

Quite a number of institutions find it difficult to meet the expectations of the public and politicians due to their limited access to resources. This includes finding it difficult to live up to all the expectations embodied in the laws or statutes underpinning the institution. Therefore they find that they must prioritise among the different goals set for their work. For instance, the newly established Finnish Ombudsman for Minorities has to be consulted in asylum cases. This is quite a workload, involving 1200 applications per year. With few members of staff it has so far been difficult for the Ombudsman to invest much time in the other tasks assigned to him, such as investigating, reporting on and making proposals on discrimination based on ethnicity, or developing the co-operation between the public authorities and those organisations involved in preventing and combating discrimination.

3.3.1. Financial resources from the state

The immediate advantage for an institution of being financed from the annual fiscal budget is that a steady and predictable source of income exists which guarantees its ongoing activities. Of course, that assumes that the allocations are reasonably proportionate to the intended tasks of the organisation. Nevertheless, fluctuations due to changing political priorities will remain an issue.

A ministry which allocates money to an institution may sometimes be in a position to influence its activities. For instance, in the case of the

British CRE, the organisation must submit a corporate plan to the Home Office to get funding; in principle, the Home Office could refuse to fund certain activities if these were considered to be beyond the remit of the organisation.

A problem may especially arise if the institution is dependent on financial resources from several ministries: This often makes it necessary for the institution to meet several sets of standards and expectations concerning its work. Therefore institutions, which receive funds from several ministries, may spend time and energy simply on coordinating and meeting all the demands of the various Ministries.

3.3.2. Project grants

Some institutions supplement their state grants with project-based grants, either from EU social funds such as the EQUAL programme, or national funds or funds generated specifically for projects within an area, e.g. lottery funds in Britain for persons with disabilities. But these are mostly minor resources compared to the state grant. The project grants are often contracted for specific projects or programmes which can be additional to the aims and activities defined in the statutes of the institution.

Some of the private foundations also receive funds from other public and private sources.

3.3.3. Other sources of support

A few institutions generate financial resources from the sale of reports, posters and T-shirts. This is so in the case of the Dutch National Bureau against Racial Discrimination, and the Swedish Ombudsman against Ethnic Discrimination generates some resources from the sale of books. Other institutions levy an hourly-based fee to third parties, which ask for lectures or specific information. For some institutions a change in the law has been necessary for them to be able to ask for payment for their services.

Some organisations also charge for the provision of training, as in the case of the CECLR in Belgium, and the Dutch National Bureau against Racial Discrimination, which has charges for courses and projects and, for example, a website built for the benefit of schools.

Training as an additional source of income

The customised training courses by the Belgian Centre for Equal Opportunities and the Fight Against Racism (CECLR) are much in demand, and the CECLR charges for the individual training provided to organisations and companies. The training fee does, however, differ depending on whether the client is from the private or public sector, or belongs to the non-governmental sector.

Other organisations, e.g. the British CRE, are only allowed cost recovery, i.e. to charge cost price for publications etc. Any income is deducted from the state grant.

More importantly, some organisations may benefit from support in kind from companies who provide services for free. Some institutions such as the British CRE and the Belgian CECLR have been quite successful in this respect.

Support in kind

The CECLR has obtained free benefits from a Belgian television station such as free radio and TV airtime and the free production of TV spots. Also, as part of the 1995 European Youth Campaign against racism the CECLR public relations department secured a number of free services, such as phone cards with campaign logos and messages from the telecoms company Belgacom, and free advertising space on buses and in trains, etc.

Another example may be found in the Britain, where the CRE has conducted several major media campaigns, such as the campaign under the slogan *“Britain – we all make it unique”* with posters, postcards, and adverts in newspapers, cinemas and occasionally on TV. The services were provided free of charge by the Saatchi & Saatchi advertising agency. The British CRE has also had events like *“Race in the Media”* sponsored by newspapers.

Being able to attract such gratis services can present a major opportunity to institutions involved in providing information, image building and awareness raising and campaigning. However, to those institu-

tions mainly involved in activities related to resolving cases or providing legal advice, it can be more difficult to find opportunities to benefit from such free services, even though all institutions consider it important to publicise their existence and work.

3.3.4. Summary of key points - resources

- Quite a number of institutions find it difficult to meet expectations due to their limited access to resources.
- The granting of money from the annual fiscal budget is an important opportunity for planning and continuing activities.
- An institution receiving state funds may potentially be subject to direct or indirect attempts to influence its work priorities.
- Where several ministries are in charge of the funding it can be difficult for an institution to meet the diverse expectations.
- Other sources of funding are few, and in all cases the amounts are small compared with state funding.

4. *Horizontal approach to discrimination*

4.1. Horizontal integration

The implementation of the Racial Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC) has accentuated the debate concerning the integration of the different laws relating to discrimination. The study shows a tendency towards integrating several grounds of discrimination into an institution's legal basis and the institutional structure. In the following section we consider the issues involved.

4.1.1. One coherent legal basis

Several of the Member States have either already been working on integrating the legal basis for discrimination into one or two coherent laws or are currently doing so.

An example of a completely integrated approach is the Irish national equality structure.

A completely horizontal integrated approach – The Office of the Director of Equality Investigations (ODEI) and the Irish Equality Authority (EA)

The Equal Status Act of 2000 and the Employment Equality Act of 1998 establish a clear division of labour between the two institutions. While the ODEI acts as a quasi-judicial impartial equality tribunal issuing legally binding decisions, the EA has a partial role of advocating equality and empowering possible victims of discrimination. The legislation covers nine grounds of discrimination.

The arguments which have been presented in favour of an integrated approach for the nine grounds of discrimination in Ireland are:

- that advances in one ground can assist advances across the other grounds of discrimination
- it avoids 'hierarchies' emerging among the various grounds of discrimination
- it achieves administrative simplicity by encouraging multi-ground strategies to promote equality and reduce the risk of fragmentation

it has the potential to promote the concept that people have multiple identities (for instance minority ethnic women or gay people with a dis-

ability – see also above)

The positive effects of combining the various legal bases into one common law on equal treatment are primarily the achievement of a simplification of the law and a higher degree of accessibility of the legislation across the various grounds and social groups, especially in cases, which combine several grounds of discrimination.

The integrated approach may also be an advantage for employers and other organisations, which only have to deal with a limited number of actors in connection with discrimination issues.

The negative effects might be that of a risk of neglecting specific circumstances relevant to the various grounds. However, in Ireland, where a process of reviewing the grounds is taking place, this is not seen as an insurmountable problem, though no political decision has yet been made as to whether new discriminatory grounds should be added to the legislation.

The integrated approach taken by the ODEI as a quasi-judicial equality tribunal has also influenced the question of the burden of proof, since it is now applying the transfer of the burden of proof to all cases, not just to gender. This approach should be seen in relation to the relatively small size of the institution, which has just 13 Equality and Mediation Officers. There is no specialisation as to ground between the officers. The ODEI believes that there is no lack of expertise arising from such close co-operation. Instead the integrated approach provides for spill-over effects, where principles established for one ground can be applied to other grounds in the setting of precedents.

Countries such as Britain, Sweden, Germany, the Netherlands, Northern Ireland and Belgium are all contemplating whether and how to integrate the various grounds into a single basis.

In Britain, the government issued a consultation paper in December 2001 on how to build a common framework for equality legislation covering race, disability, age, religion, sex and sexual orientation. This includes seeking to use the same or similar concepts where this seems appropriate, and to use consistent definitions across all the grounds of discrimination. In principle the CRE agrees with this approach, but as one member of the organisation says, the devil is in the detail. This organisation's concern would be to ensure that there will be no resulting dilution of the institution's existing powers to protect the rights and needs of victims. The Minister responsible for equality co-ordination across government announced on 15th May 2002, that it finds that there are good arguments in favour of a single equality body, but stressed that the government is committed to an open and inclusive process, and will be drawing on the expertise of those working in the field. A project team established in the Cabinet Office is looking into the question and is expected to announce some initial conclusions in September 2002.

In Germany, equality and anti-discrimination directives are expected to be implemented through two main laws – a labour law which also contains anti-discrimination clauses, and a civil code containing general anti-discrimination provisions.

In Northern Ireland, the local government has issued a consultation paper concerning the adoption of a single equality bill in 2002. This approach is supported by the Northern Ireland Equality Commission, which hopes that this will simplify and clarify existing legislation and at the same time allow for the inclusion of other vulnerable groups, thus facilitating social inclusion.

In Belgium a new legal basis is under preparation. The new legislation will broaden the scope of the work of the Belgian Centre for Equal Opportunities and the Fight Against Racism (CECLR) to cover

a broad range of grounds of discrimination. It is expected to be adopted by parliament during the summer of 2002.

Equally, in Sweden there is discussion about whether to integrate the various grounds of discrimination into a single law and institution in order to make the laws regulating their work more coherent and transparent and to reduce the number of organisations concerned with equal treatment.

4.1.2. The integration of institutions

The other aspect of horizontal integration is the possible integration of different institutions working on equality and, in some cases, the establishing of new institutions covering several grounds of discrimination.

In the Swedish context, among others, it has been argued that there is a limit to the number of independent bodies, which can be established in a single country. Unification into one institution is seen as a means to ensure the bodies' effectiveness and clout. However, so far the introduction of new grounds of discrimination has usually resulted in the creation of new bodies.

New or existing bodies?

When establishing new bodies such as the Ombudsmen of Finland and Sweden, discussions took place as to whether the new grounds of discrimination could be covered by broadening the perspective of existing institutions:

When the ***Finnish Ombudsman for Minorities*** was established to replace the Ombudsman for Foreigners, there was debate in Parliament about whether the Parliamentary Ombudsman could undertake this role. But Parliament considered that another separate institution should be established. However, it agreed to follow the developments closely and to report on the work of the Ombudsman for Minorities .

When the ***Ombudsman against Discrimination because of Sexual Orientation (HomO)*** was established in Sweden, the committee looking into the issue proposed that the area of sexual-orientation discrimination be placed under the Ombudsman against Ethnic Discrimination (DO). However, the

Government and Parliament preferred to have separate institutions working with these specific issues in order to be able to take into account the specific characteristics of sexual orientation discrimination, and to develop expertise in this field.

Along with their current focus on the consolidation of the grounds of discrimination, some Member States are voicing a desire to reduce the number of separate institutions working with discrimination. In part of the United Kingdom and in Belgium this has meant that one institution, respectively the Equality Commission for Northern Ireland and the Belgian Centre for Equal Opportunities and the Fight Against Racism (CECLR), will include all the grounds of discrimination in their work.

| | |
|---|---|
| <p>Horizontally integrating different types of discrimination</p> | <p>Horizon</p> |
| <p>The Northern Ireland Equality Commission has been through a process of amalgamation of four existing institutions into one. Following a transition period with four pillars, it has now become a unified organisation with three horizontally-integrated departments: Public Relations & Policy; Legal Affairs Policy; and Operations & Corporate Services. Also, a new single equality act is on its way through the parliamentary system and is expected to be in place in autumn 2004.</p> | <p>The Northern Ireland Equality Commission amalgamated four existing institutions during a transition period with four pillars. It has now become a unified organisation with three horizontally-integrated departments: Public Relations & Policy; Legal Affairs Policy; and Operations & Corporate Services. Also, a new single equality act is on its way through the parliamentary system and is expected to be in place in autumn 2004.</p> |

New discrimination grounds within an already established body

The Belgian Centre for Equal Opportunities and the Fight Against Racism (CECLR), which has until now primarily worked in the area of racial and ethnic discrimination, faces new institutional challenges with the anticipated new legislation, which will broaden its mandate to cover several grounds of discrimination. According to its partners, the CECLR has a very strong profile in its existing area of operation, and it has been faced with concerns about whether a broadened mandate and extensive new tasks may dilute the public image of the organisation and weaken its overall profile. It expects to tackle this issue by establishing two distinct pillars of operation, one pillar dealing with racism and the other devoted to the remaining grounds of discrimination

There are different views about the appropriateness of the two-pillar structure, and the expectation is that it will need to be reviewed after an initial two-year period.

While grounds of discrimination such as disability, age and sexual orientation are planned to be included within the CECLR's scope, it seems clear that gender will remain a separate field.

The positive effects of combining institutions are that there is only one institution to approach, and that the same treatment is available in relation to every kind of discrimination. There is also a concern to ensure coherence and clarity in the information given to stakeholders and the general public. It can be an advantage for the stakeholders not to have to work with different actors on different issues. When several specialised bodies exist to tackle the various aspects of discrimination, it is important to ensure that victims of discrimination do not fall into the cracks between the organisations concerned with the different grounds of discrimination with the result that no-one takes on their case. Today in Sweden attempts to avoid this are being made through the close co-operation of the four ombudsmen.

Combining different grounds of discrimination

If a Swedish Ombudsman brings a case to court that includes several grounds of discrimination, these grounds can be included too. From time to time it can be difficult to determine whether discrimination has been taking place because of sexual orientation or because of gender. Sometimes the

complainant will also report the case of discrimination to more than one Ombudsman. So in order to ensure coherence in the cases and avoid confusing the individual complainant, the Ombudsman approached can include grounds which are not necessarily part of his/ her core mandate. However, the case has to be *founded* on discrimination based on a single specific ground.

In addition, a possible decrease in the perceived hierarchy existing between the different grounds of discrimination is expected where horizontal integration is implemented. In countries with different institutions for the different grounds of discrimination, a sort of hierarchy of older and newer grounds often implicitly or explicitly exists. But if there is a shared view that equal treatment is primarily concerned with not violating the law irrespective of the ground of equality, then it should be possible to work more efficiently with all the grounds.

Finally, it is often considered an advantage to be able to share facilities and resources.

Not surprisingly, a key concern of most institutions and stakeholders concerned with a given type of discrimination is to ensure that the focus on it at least remains at the same level after a merger of institutions. For instance, when the four Ombudsmen institutions in Sweden debate if and how they might merge into one institution, a fundamental question is how to safeguard their deep-rooted knowledge of each of the four areas of discrimination. Therefore they tend to favour either of two solutions: a single Ombudsman institution which preserves the different sub-areas in its internal workings, or a Commission where the commissioners will each be expert in their respective fields.

Some of the interviews, such as in Denmark and Belgium, similarly indicate that well-established institutions working within the equality field (in these two cases, with the ground of gender) have lobbied strongly to remain outside any future integrated institution due to their fear of a loss of efficiency, influence or resources.

This is contradicted by the experience of Ireland, where those interviewed emphasised that the different organisations and grounds of

discrimination can stand stronger together because they possess the power and the resources to focus their efforts, and because they can invoke more aspects of discrimination than just a single ground in their work. Their experience is that the expertise gained in one ground can be transferred to the others by applying similar principles, thereby creating a stronger case.

According to interviews in the institutions working with or towards an integrated approach, a crucial point is to ensure that the various grounds of discrimination are given visibility within the single institution. Structural obstacles among the various grounds and aspects must be avoided in order not to make some discrimination issues invisible. For instance, issues concerning discrimination because of sexual orientation are often invisible in society at large. If these are also rendered invisible inside an institution which combines all the grounds of discrimination, the level of reporting of cases in this field might fall.

4.1.3. Summary of key points – horizontal integration

- The main discussion theme in relation to the growing number of discrimination grounds is, “Should the laws on discrimination be consolidated into one act to include all grounds of discrimination?”.
- Or should different provisions be made for each individual ground of discrimination, potentially making the laws more complicated and difficult to explain?
- A further issue is whether institutions dealing with discrimination should be integrated horizontally. The experience in Ireland, which has a fully integrated approach, is that a single institution working with nine integrated grounds of discrimination possesses considerable advantages both for individual victims, for the organisations tackling the grounds of discrimination, and for employers, which only have to deal with one institution.
- A concern is to ensure specific internal expertise in all the grounds of discrimination, and that all discrimination grounds

are given sufficient visibility. As the CECLR puts it, “All people must feel that they have priority”.

4.2. Scope of the institutions

4.2.1. Contextual scope

The contextual scope of the institutions as a whole varies according to the laws, which establish them and/or define their aims, tasks and tools. The contextual scope of the individual bodies reflects the boundaries and limitations of the legislation of a given Member State.

Whereas some of the bodies have no contextual limitation in scope, others are restricted to certain areas. This especially concerns those bodies which investigate cases of discrimination or resolve them, either by providing opinions or bringing them to court. The scope of these institutions is frequently limited to the employment/labour market. For some (such as the Irish ODEI and EA) this is complemented by other areas such as goods and services, accommodation and housing, and certain aspects of education and career development.

The implication for some institutions is that different instruments and tools are available in relation to their different areas of coverage, as illustrated in the box below.

Different tools and competencies in the workplace and in education versus social life

The Swedish Ombudsmen work to counteract discrimination in all areas of social life. However, the Ombudsmen have certain formal legal powers that only relate to discrimination in the workplace. An overlap of competences arises if a complainant belongs to a labour union which also wishes to deal with his workplace-related complaint. However, only if the union decides not to pursue his case may the ombudsman intervene. With the coming into force of a new law from March 2002, higher education is also covered.

Most institutions work both with direct and indirect discrimination, though British legislation in the field of disability does not distinguish between indirect and direct discrimination. British legislation relies

rather on the use of reasonable adjustments by the employer to meet the needs of persons with disability and in this way to deal with situations which might arise as a result of both direct and indirect discrimination. Irish equality legislation includes indirect discrimination as well as the concept of reasonable adjustment.

The Belgian definition of scope is one of the broadest among the organisations surveyed. It states that 'discrimination' means 'any form of distinction, exclusion, restriction or preference whose purpose or whose result is or could be to destroy, compromise or limit the equal recognition, enjoyment or exercise of human rights and fundamental freedoms on a political, economic, social or cultural level, or in any other area of social life'.

4.2.2. Summary of key points – scope

- The contextual scope varies. Especially institutions that play a direct role in resolving cases are subject to limitations in their scope, which are related to their legal basis.
- The scope of an institution is also often dependent on its history.

5. *Role in relation to the direct victims of discrimination*

The function of the institutions in relation to the direct victims of discrimination spans a broad range of roles.

In this chapter we shall take a closer look at the areas of activity, beginning with information about rights. Then the perspective broadens to encompass the various functions and issues concerned with advising victims, handling complaints and investigations, resolving and mediating complaints, the issuing of formal decisions and giving assistance in court cases.

5.1. **Information about rights and legislation**

The majority of the institutions provide information about individual rights, legislation and case law.

Quite a number have telephone lines to provide enquirers with advice and knowledge. The Belgian Centre for Equal Opportunities and the Fight Against Racism (CECLR) has introduced a freephone line. Likewise, in France the CODACs have introduced an anonymous freephone line, *Le numéro vert –114*. At the Dutch Equal Treatment Commission a number of law student assistants provide telephone advice to people seeking information on rights, such as whether their case can be taken to the Commission or should be referred to other relevant organisations. The Danish Advisory and Documentation Centre on Racial Discrimination (DRC-DK) also runs a telephone service where possible victims of discrimination can obtain legal advice on their case.

The majority of the institutions involved in information work have provided access to legislation and presented rights and options on their websites.

Several of the institutions have website-based forms for filing complaints, either written in the national language alone or also translated into several other languages.

However, preliminary contact with an institution often does not lead to the victim filing a complaint. There are several possible reasons for this. The case may not be covered by the law governing the activities of the institution, the institution concerned may not consider it a case of discrimination, or the victim may be discouraged from continuing by a requirement that the case be made public.

Most institutions have produced pamphlets or other written material concerning rights related to equal treatment. For instance, the Commissioner of Foreigners' Affairs of the Berlin Senate produces a free publication each month on issues of particular interest to migrant groups which among other things includes information about new legislation. An important function of many institutions like the Irish Equality Authority (EA) is to publish concise information about discrimination legislation, the rights it confers and the possibility of pursuing a claim for discrimination.

Providing access to information nationwide

The Irish Equality Authority (EA) views part of its role as one of disseminating information about rights and taking cases of strategic importance to the ODEI and other relevant courts, as well as assuming responsibility for reaching all parts of the country. It aims to achieve this through leaflets and campaign material and via meetings with organisations in some of the larger cities. Further, as mentioned earlier, a solicitor from the EA sets up clinics once a month in several cities where people are given information about the law and their options in pursuing claims.

The next stage in assisting victims of discrimination is giving advice on whether the person is likely to have a case and how to proceed with it, i.e. by supplying details about the case procedure, options for legal representation and sources of further assistance, such as trade unions in employment cases, NGOs or the police. Institutions which

operate such an information service generally integrate it into their helpline service or the printed material they distribute. Their advice may also address the mechanics of filing a complaint or bringing a case to court. Some of the institutions also help with interpreting information issued by such entities as ministerial legal departments.

Not just the victims but the witnesses of discrimination may also require advice on how to respond. Such advice can include assistance in reporting an incident to the proper authorities or referral to a lawyer.

Advice can include prevention. Organisations and employers may for instance seek advice on how to interpret legislation or how to establish a policy for the various grounds, e.g. in housing policies or in health care, or to ensure that their company's employee policy does not contain discriminatory clauses. Several institutions, among them the British Commission for Racial Equality (CRE) and the Northern Ireland Equality Commission, provide guidelines, codes of practice and advice on such issues on their websites.

5.2. Investigating complaints

A number of the institutions are engaged in collecting and investigating complaints filed by the victims of discrimination. While some mainly assist the applicants in the presentation of their complaints, other organisations have a more formally-established role in investigating reported cases of discrimination.

The British Commission for Racial Equality has a strong enforcement role based on its extensive powers of conducting formal investigations of companies and organisations where there is evidence of possible discrimination. If such an investigation concludes that discrimination is occurring or has occurred, the CRE has the means to oblige the company or organisation to change its operating methods (see box).

Powers to conduct formal investigations

The British Commission for Racial Equality (CRE) has extensive powers to conduct formal investigations of companies and organisations.

The CRE can, if there is evidence of possible discrimination, order an organisation or a company to produce documents and give evidence; however, to do so it must obtain authorisation from the Secretary of State for the Home Office.

If discriminatory practices are discovered the CRE can require an organisation or company to follow instructions for action which it has specified in a non-discrimination notice.

The reports of its formal investigation findings are public documents.

To enforce a non-discrimination notice, the CRE can if necessary obtain a court order or conduct a further formal investigation to ensure that the action required in the notice is being carried out.

The CRE also has the sole power of enforcing the prohibition of discriminatory advertisements and prohibiting the application of pressure or instructions having discriminatory intent. The organisation has three lines of action: Either to apply to a court for a declaration stating that an action is an unlawful act of discrimination; to conduct a formal investigation; or to resolve the matter informally by negotiation.

Accordingly, during its investigation the institution might exercise special powers and demand access to information from the parties involved. This is also the case with the Equality Officers of the ODEI, the quasi-judicial equality tribunal in Ireland.

Some institutions have more limited powers. If an employer does not obey a request to supply relevant information, the Swedish Ombudsman Against Discrimination Because of Sexual Orientation (HomO) can issue an order under penalty of an administrative fine for non-compliance.

The system of investigation operated in France through the CODAC network is different from the approach taken by the other institutions surveyed. Here the emphasis is on identifying key actors within the region which can ensure that any reported discriminatory action is

followed up, and that remedial action is taken to correct poor practice and ensure justice for the person who has been discriminated against.

Using 'reference persons' to investigate

The CODAC secretariats are found within the local public administration in all departments in France. They are typically staffed by one or two part-time employees. An important part of their job is to follow up on cases of complaints of discrimination. Complaints are addressed to them on special forms, many of which are submitted via referral from the freephone 'numéro 114'. The secretary of the CODAC usually has an established network of 'reference persons' (often senior civil servants in key agencies such as the employment service and the police, or people from anti-racism associations and trade unions). In the event of a complaint these people are contacted and requested to investigate. The subjects of the complaints can be both public bodies and private employers.

In Paris, following discussions with NGOs, the CODAC has now agreed that in cases where the complaint concerns a public institution, a second person nominated by the NGOs should participate in the investigation of the case to ensure greater impartiality.

Some institutions cannot take the complaint further but only log the number and type of complaints brought to them in order to identify patterns of discrimination. For instance, this is the role of the Expertise Centre Age and Society in the Netherlands (LBL). LBL does not take up individual cases of age discrimination, but supports people with information. The complaints that it receives are recorded and published every year. If the LBL receives an unusually high number of complaints about a particular topic, e.g. a certain area of the housing market, the centre will investigate it and the surrounding issues.

In addition to investigating individual complaints, some institutions can also investigate on their own initiative if it is found that discrimination in a certain organisation or a wider area of society exists.

Ideas for investigations can arise from many sources, for instance the press. The criteria applied by these organisations for general investigations tend to be that the issues should embody an important princi-

ple and affect many people either directly or through long-term normative effects.

For example, the Dutch Equal Treatment Commission may choose to initiate an investigation on its own initiative if a serious problem is identified. The Commission will usually then convene the most important actors for roundtable discussions with the aim of identifying specific solutions.

Likewise, the Swedish Ombudsman Against Ethnic Discrimination (DO) can investigate suspected discrimination without a complaint having been filed. When the DO recognises a pattern of discrimination, she is in a position to invite public authorities, companies and organisations to discuss the changes needed.

Investigating and changing norms

Together with the Ombudsman for Gender Equality, the Swedish Ombudsman Against Discrimination Because of Sexual Orientation (HomO) took the initiative of investigating the criteria for appointing the defence officials at Sweden's foreign embassies. The provisions were from December 2000. In the definition of the officials it was stated that "the person should be *married*, and in order for the *wife* to function in social settings *her* language competences should be developed," which thereby implied the expected gender of the official, his sexual orientation and his marital status. The investigation ensured quite a lot of media attention.

The Equality Authority in Ireland (EA) can take up cases without a complainant and conduct investigations in order to combat structural discrimination. This has for instance been applied in relation to advertising or the content of policies.

The British Commission for Racial Equality also has clear powers to initiate investigation into a defined area of activities in society as a whole, and can order respondents to produce documents and give evidence which will be compiled in reports. These reports are typically then made public and followed by a set of recommendations.

Another approach is situational testing, which is for instance currently practised by the Belgian CECLR and the Berlin Commissioner. The British CRE was previously also involved in this type of activity.

Situational testing

The Belgian Centre for Equal Opportunities and the Fight Against Racism (CECLR) has a limited but interesting role in investigations, because the CECLR and its partner organisations organise equality situation testing. Here, identically-clothed people of different ethnicities are asked to approach the same discothèque or bar in front of witnesses to test whether they receive systematically unequal treatment. This may afterwards be used as evidence in a court case. In one particular instance which formed part of a larger case, proof of discrimination was provided by a video and tape recording of the conversation that took place between the door-keeper at a discothèque and his victim. The Court ruled that "these video recordings, even if they were made without the knowledge of the door-keepers, do not in themselves constitute evidence unlawfully acquired. The fact that these recordings were made to record particular facts does not mean that the facts were provoked".

The results of investigations can thus be used at different levels: to ensure that individual services of the public administration change any discriminatory practices, as in the French CODAC; to apply pressure to particular companies or organisations to change their approaches and practices, as in the case of the formal investigations and non-discriminatory notices of the British CRE; to provide documentation in court cases, as with the situational testing organised by the Belgian CECLR and the Berlin Commissioner; or to make public and political decision makers aware, by means of broader analysis reports, of structural problems which are resulting in unequal treatment or indirect discrimination.

5.3. Assisting in the legal process

In connection with the direct discrimination of victims, two kinds of legal assistance may be involved in the actual processing of a complaint:

- Legal advice and attempts to resolve cases out-of-court

- Legal advice and representation when a case is taken to court.

5.3.1. Legal advice and settling cases outside the courtroom

Several organisations provide support to victims in cases of discrimination without involving the courts or the judicial system, via mediation and the resolution of disputes. This may be based on written complaints issued by the institution on behalf of the victim/ complainant, as is practised by the Belgian Centre for Equal Opportunities and the Fight Against Racism (CECLR) and others. As a result the majority of the cases in Belgium are settled outside the court system. The Berlin Office of the Commissioner also actively explores other avenues than the court system and has gained experience with the mediation of cases involving the co-operation of the police.

Several of the institutions are planning to include more mediation activities in their work, as they believe that a voluntary settlement among the parties will often be more helpful to the victims than a formal statement or verdict. A primary focus is also the reduction of the personal and financial cost involved in pursuing a case through the traditional legal system.

Out-of-court settlements

If the complaint is against an employer, the Commission for Racial Equality (CRE) will try to settle the case through ACAS (the advisory, conciliation and arbitration service in employment relations) on behalf of the applicant. According to the 2000 CRE annual report, the CRE made 77 out-of-court-settlements worth €2,18 mio (£1,362,444).

However, according to the Swedish Ombudsman Against Ethnic Discrimination the advantages of mediation must not lead decision-makers to rely exclusively on mediation procedures, as the threat of bringing a case to court is important for putting pressure on the parties to find a solution.

How the option of taking cases to court encourages out-of-court settlements

Before taking a case to court, the Swedish Ombudsman Against Ethnic Discrimination (DO) will suggest an out-of-court settlement. The law states that the first priority is to arrive at a voluntary settlement. Settlements are also less demanding of the DO's resources. The Ombudsman meets with the parties involved and seeks to reach agreement on financial compensation or some other relevant solution. While the DO interprets achieving a high number of such settlements as a criterion of success, it can also sometimes be important to obtain a court verdict and thereby establish a legal interpretation of an item of legislation. Since the law on measures against ethnic discrimination in the workplace came into force in 1999, the number of out-of-court settlements has increased. In 2001 there were about 32 settlements out of the 262 cases that were concluded the same year. This includes those settlements achieved with the assistance of trade unions. Often such a resolution is the preferred solution for both parties, e.g. because a complainant might prefer a job he/she had applied for than financial compensation. This would not be possible to achieve in court.

However, having the option of bringing cases to court might, according to the DO, apply a degree of pressure to the parties and serve as encouragement towards reaching a settlement.

In Ireland the mediation service is an integrated part of the legal structure which processes discrimination claims.

A legally-binding mediation service as part of an integrated approach

The Office of the Director of Equality Investigations (ODEI) in Ireland can process complaints of discrimination by two different methods – formal investigation and mediation. In the overall majority of cases the ODEI will suggest mediation as a way of settling the case. The mediation method used by ODEI is an internationally recognized process whereby a trained Mediation Officer who takes a neutral and impartial role assists the parties in exploring the areas of dispute, and where possible to assist them in reaching a mutually acceptable agreement. The process is voluntary and either party may end the process at any time. When a settlement is reached both parties sign a legally-binding agreement.

The mediation process is based on the following principles:

- Consent: this is sought independently from both parties
- Impartiality: the mediation service guarantees impartiality
- Voluntary process: the consent of both parties is necessary, and either party may withdraw from the process at any time
- Accessibility: the mediation is free of charge and intended to be universally accessible
- Participation: the process is based on the active participation of the parties involved in the case
- Power balance: the mediator will ensure balanced negotiations and will prevent manipulative or intimidatory negotiation techniques
- Third parties: these are welcome to be included in the process
- Advice: where the case involves rights and obligations other than those in which the mediator is trained, s/he will refer the parties to independent advice
- Confidentiality: the mediation is conducted in private, and the terms of the settlement are not published.

(Office of the Director of Equality Investigation, Mediation Procedures and Guidelines, 2000)

All parties in Ireland agree that having some kind of mediation service which resolves cases outside the court system has considerable advantages.

The strengths of the mediation procedure as viewed in Ireland are as follows:

- It is less time-consuming than formal investigations.
- There is no loser, both parties can win.
- The parties involved retain ownership of the process and can control the outcome.
- The process focuses on the future, not just on past history.
- If a settlement cannot be reached, the case will go on to formal investigations within the ODEI. An Equality Officer who is not the Mediation Officer will carry out the investigation.

A potential weakness of mediation which has been expressed by the trade unions in Ireland is that people might lose their rights if they engaged in legally-binding mediation decisions without knowing their actual legal position in the case.

Another concern about mediation which is voiced by some NGOs is that government organisations or employers might try to hide discrimination behind the more closed procedures of mediation. However, others maintain that reaching a settlement outside the courts has always been possible, and that the advantages of a more structured procedure by far outweigh the risk.

Conciliation services

The British Disability Rights Commission (DRC) has made arrangements for a conciliation service which is available to any disabled person who thinks that he/she may have been discriminated against when trying to access goods and services. It is run by a separate organisation on behalf of the DRC. This organisation will also run a 'disability in education conciliation' service when new legislation comes into effect in September 2002.

A more politically-charged institutional issue is that the willingness of institutions to promote mediation and out-of-court settlements might be curbed if these more 'soft' interventions are not perceived by policy makers as part of the criteria of an institution's overall success. Thus institutions which are mainly judged by the quantity of opinions or verdicts might lack the motivation to promote mediation measures. At the Dutch Equal Treatment Commission some members pointed out the risk of an institution's financing authorities tending to focus narrowly on the more measurable criterion of verdicts, and also emphasised the importance of not reducing its achievements to an annual total of verdicts.

A more active mediation role?

The Dutch Equal Treatment Commission actively investigates its cases, and has found that instead of exploring differences, a mediation approach can highlight common denominators and thus bring the parties closer to settlement. As a result of these observations, the Dutch Equal Treatment Commission is presently considering undertaking a more active role in mediation and intervention during the earlier stages of the process. The Commission

considers that a legal judgement may not always be the most satisfactory way to resolve a problem because the legal procedure tends to emphasise the opposition of positions rather than the finding of common ground. This is all the more so as the legal process which involves the Commission can sour the relationship between the parties.

However, according to the Dutch Commission the issue of mediation does raise some additional questions of principle. Mediation is generally more concerned with the avoidance of conflict escalation rather than focussing on developing case law. The concern of the Commission is therefore to ensure that a stronger role in mediation does not bring the institution in a role that contrast too strongly with the institutions general focus on a strict enforcement of the law against discrimination. If not, it could lead to confusion as to the purpose of the institution.

It also raises the question of whether the same institution can simultaneously fulfil mediation and policy advisory roles. Some of the staff of the Dutch Commission consider it potentially problematic that the same organization can be involved both in the legislative process and in reaching out-of-court settlements in which the law has been bent to achieve a resolution. It might create a clearer definition of competences if the institution consulted during the legislative process could instead refer the complainants to another institution to file their complaint, as is already the case with the Disability Rights Commission in Britain. The Disability Rights Commission has made arrangements for a conciliation service which will be available to disabled people who think they have been discriminated against, and which is run by a separate organisation on behalf of the Commission.

Other institutions tend to believe that the debate on achieving a verdict on violations of the law versus an out-of-court settlement should not be exaggerated. The goal of the work of the Swedish Ombudsman Against Discrimination Because of Sexual Orientation (HomO) is for the complainant to be satisfied with the outcome. Of course this does not imply that the HomO would uncritically accept any agreement. But the approach of the HomO is to seek a settlement, and not necessarily to name a guilty party.

In conclusion, mediation is attracting considerable interest in many institutions.

5.3.2. Legal advice and representation when pursuing cases through the courts

Only a few of the institutions actually have experience so far of bringing cases to court. This is explained as being due to operating under rather new legislation; a lack of resources; and the institution in question waiting for the right case to bring to court as its first.

Institutions such as the Danish Advisory and Documentation Centre on Racial Discrimination (DRC-DK) and the French CODAC refer cases to lawyers or the state attorney, but the legal procedures are lengthy and cases often fail to reach court due to insufficient evidence.

One of the institutions that does have experience of bringing cases to court is the Belgian Centre for Equal Opportunities and the Fight Against Racism (CECLR). The centre helps people to bring court actions, and has itself brought a number of cases to court. The CECLR can also take up cases without a direct victim of discrimination.

When organisations have a strong mandate to take up cases on their own initiative

CECLR can even act as a party to a legal case where there are no direct victims of an offence. This was the case when identified persons shot at the mosque in the city of Turnhout. There were no direct victims, but the CECLR took the case to court in the capacity of complainant, and a sentence was passed. In other cases the CECLR has filed cases when Belgian citizens have committed discriminatory acts abroad and the victims could not subsequently be identified. One such case, which received great media attention, concerned the conduct of some members of the Belgian peace-keeping soldiers in Somalia who committed racist acts towards the local population. Also in this case the CECLR acted as the complainant on behalf of the Somali victims.

Other institutions with experience in bringing cases to court are the EA and the Commission for Racial Equality (CRE).

The EA has a dual function to combat discrimination and to promote equality in the way it works to empower and protect the potential victims of discrimination, in addition to having a proactive role in promoting equality. Both the EA and CRE have the discretion to represent potential victims of discrimination, but are not obliged to do so in all cases. Instead they can consider the cases and give the complainants preliminary advice on the legislation and their legal position, referring them to NGOs, trade unions or other bodies where possible. They take on strategic cases and offer free legal representation in pursuing such claims through the system.

Criteria for granting assistance in court cases

The criteria for the granting of assistance in court cases adopted at present by the Irish Equality Authority are still quite flexible, as the organisation does not wish to be limited by excessively strict and rigid criteria. The EA does, however, apply the following broad criteria to identify the cases it will take on:

- Cases of serious injustice
- Where the case could establish a precedent
- In cases of continuing resistance
- Where no other legal assistance is available and where the complainant has difficulties representing him/herself.

New criteria are currently being finalised by the EA board that build on the above.

The Swedish Ombudsmen too may as a last resort assist in bringing cases before a court.

Complaints regarding discrimination in the labour market

A person who considers that they have been discriminated against on the basis of their ethnic background can write to the Swedish Ombudsman Against Ethnic Discrimination (DO) and submit a complaint. A DO case offi-

cer contacts the complainant within a week of submission. If the complainant is a union member, the union is contacted to see if it will represent its member. If not, the DO can provide representation. Hereafter the DO or the union can meet with the complainant and the employer being complained against. Sometimes settlements are reached which involve some form of compensation for the complainant. As a last resort the union or the DO can bring a lawsuit against the employer in the Labour Court. The complainant is not required to pay the legal costs.

The EA has adopted a strategy of aiming to build advocacy skills among groups subject to discrimination.

Community advocacy among the users

The Equality Authority in Ireland (EA) can provide victims of discrimination with legal information and can also represent the victims in the processing of the case by the Office of the Director of Equality Investigation (ODEI) or in relation to any proceedings in respect of which redress is provided under the Employment Equality Act 1998 or the Equal Status Act 2000. Because of the large volume of cases, especially those concerning Travellers' access to public houses, it has initiated a community advocacy pilot project. The EA provides a strategic legal service and also does not have the capacity to process all claims. The focus of the new programme is to train people to represent themselves. The Irish Travellers' Community has nominated individuals who have then undergone substantial training. The EA has developed a resource pack, including information materials and a video. A telephone hotline has also been set up through which the community representatives can get help from the EA.

The Dutch Equal Treatment Commission is discussing the possible problems of its potential double role. The Commission can assist victims in bringing cases to court. But since the institution also has a quasi-judicial role in giving opinions on equality cases (see section 5.4), this can be seen as a rather dangerous provision, as it is not unproblematic to first have the role of an independent judge, and subsequently that of a prosecutor.

Confusion of roles?

The Equal Treatment Commission can take legal action in order to obtain a court ruling that conduct contrary to the relevant equal treatment regulations is unlawful, that it should be prohibited, or that the consequences of such conduct should be rectified. This power has been one of the most disputed subjects of the Equal Treatment Act. The reason for giving it to the Commission was to provide some comfort for the absence of enforceability of the Commission's rulings. The Commission has not yet taken a case to court.

Ireland, on the other hand, is an example of a balanced model with a clear division of responsibilities between the EA as a proactive body working to promote equality and empower users, and next to it the Office of the Director of Equality Investigations (ODEI) acting as a tribunal for processing individual cases and issuing legally-binding decisions.

Most institutions have articulated the need to have a watertight case before bringing it to court. However, as the Danish Advisory and Documentation Centre on Racial Discrimination (DRC-DK) illustrates, a lost court case can occasionally also play a major role in changing legislation.

Changing legislation through lost cases

From time to time the Danish Advisory and Documentation Centre on Racial Discrimination (DRC-DK) takes on a case which it knows it may well lose in the Danish courts. Its aim is to take the decision further, either to the Danish Ombudsman or to the UN Committee on the Elimination of Racial Discrimination, in order to push for a change in legislation or a change of practice. In a couple of cases this has led to the amendment or sharpening-up of legislation or current practice.

Sometimes the aim is not necessarily just to win an individual case, but to take it up in order to draw attention to structural discrimination and make an attempt to change it, as illustrated by the examples from DRC-DK in Denmark and the Swedish Ombudsman Against Discrimination Because of Sexual Orientation which are given below.

The role of the institution can also be to push cases that have otherwise been rejected. For instance, the Danish Advisory and Documentation Centre on Racial Discrimination (DRC-DK) started to take

up cases which the police had rejected. These initiatives have motivated the police to reconsider some cases and investigate more of them than before.

When organisations take a proactive role on behalf of the complainant

The involvement of the Swedish Ombudsman on Discrimination Because of Sexual Orientation (HomO) forced the police to consider cases of discrimination on the basis of sexual orientation. Two women brought a case forward to the police regarding discrimination because of their sexual orientation. Despite their naming of the offender the police had closed the case, because the discrimination could not be shown to have been perpetrated by the alleged offender. After HomO examined the case it was reopened and new investigations were undertaken by the police, subsequently leading to the passing of a sentence.

A final aspect that should be mentioned is the possibility of presenting several cases together as a joined action.

Presenting several cases as a joined action

The Belgian Centre for Equal Opportunities and the Fight Against Racism (CECLR) has obtained good results by gathering applications and presenting collective case files to the relevant authorities, such as where refugees lacked personal documents like driving licences or educational diplomas and could not retrieve them because they were unable to contact the authorities in their home countries. By collecting a number of comparable files and presenting them to the Court as a joined action the CECLR was able to illustrate the scope of the problem, and the immigrants were eventually exempted from presenting these documents in certain situations.

5.4. Acting as a formal decision-making body

Two of the institutions involved in this study have the power to act as quasi-judicial bodies making formal decisions in cases of possible discrimination.

- The Dutch Equal Treatment Commission, which makes advisory decisions with no binding legal status and which are not enforceable.

- The Office of The Director of Equality Investigations (ODEI), which, as a quasi-judicial tribunal makes legally-binding decisions.

Also, the three Swedish Ombudsmen have the power to issue decisions based on their investigations. They can approach parties in a conflict and ask them to change discriminatory practices or regulations. However they cannot amend verdicts, issue formal legal decisions, award damages or change the decisions of other authorities.

The powers of the British CRE in issuing non-discrimination notices have also been described previously.

Hearings at the Dutch Equal Treatment Commission

The hearings are staged in a fairly informal setting to allow the commissioners to inform the parties on the laws and their implications. There is less at stake than at a court, and greater room for reconciliation. Hearings at the Commission should preferably take place within 6 months of a complainant submitting a written complaint to it.

The three commissioners and the juridical advisor have a pre-meeting where the content and format of the hearing are discussed. Generally the chairperson or the vice chair hosts the hearing. But instead of having only one commissioner asking questions during the hearing, they decide how to allocate the work among themselves and how to handle the case and their roles in it.

The Commissioners give considerable attention to how they communicate with the parties in the hearings. It is important for them to do so in open and positive terms to encourage the parties to co-operate and find solutions. Therefore internal communication officials at the Commission provide feedback to individual Commissioners so that they can continuously improve their personal communication strategies.

The Dutch Commission emphasises that the chance of the parties obeying the decision given is greater when the parties have been informed about the relevant laws. Therefore one purpose of the hearing is often to make the parties understand the workings and intent of the legislation relevant to the case.

The Dutch Equal Treatment Commission believes that there are positive results to be derived from its opinions not being binding. The fact that its opinions are not legally enforceable means that the quality of their work is all the more important. It places considerable emphasis on drafting precise and persuasive opinions. In a substantial number of cases the defendants have observed the terms of its conclusions, and in a third of the cases measures have been taken to avoid future discrimination.

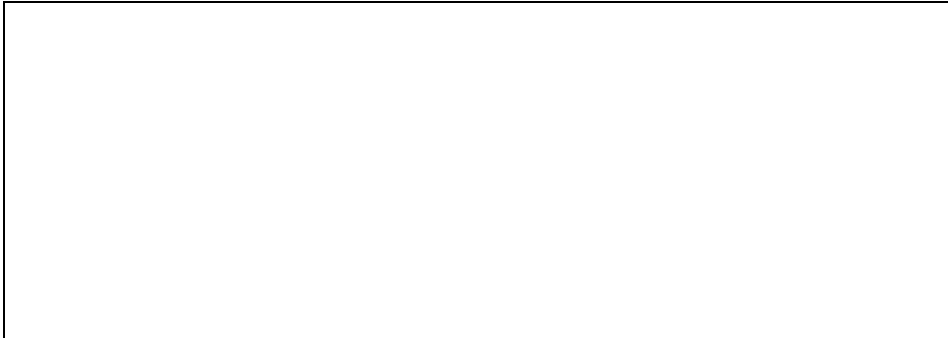
On the other hand, some Commissioners and representatives from the Ombudsmen institutions in Sweden occasionally express frustration about not being able to implement their decisions. For this reason they also focus more on the structural aspects of discrimination in order to promote long-term change.

One institution included in this study has the power of issuing legally-binding decisions, namely the Office of the Director of Equality Investigations in Ireland (ODEI), which acts as a quasi-judicial tribunal. The advantage of the quasi-judicial setting as opposed to a court is that the ODEI is not solely dependent on the evidence presented. The Equality Officers also act as investigators who can request documents and ask clarifying questions.

Another important point emphasized by the ODEI is that no legal representation is required.

Making the court accessible: trying cases free of charge and without legal representation

Two of the main points of the Irish Office of the Director of Equality Investigations (ODEI) are that its cases are investigated free of charge and that no legal representation is required. These basic conditions aim to make the ODEI, the equality tribunal, accessible to everybody. However, especially in employment cases, where there is substantial case law, the complainant will benefit greatly from being represented. In some cases (around 30 %) trade unions will conduct the cases on behalf of the complainant. A significant proportion of complainants in Equal Status cases had no representation, another significant group were represented by NGOs, some by the EA and quite a few had legal representation.



One of the main issues for the Irish ODEI has been to establish itself as a legitimate and authoritative body, and the ODEI itself, the Equality Authority and the stakeholders believe that this has been achieved. As the equality legislation is still quite new it remains to be seen how many cases will be overturned in the appeals process. So far none of the appeal cases under the 2000 Equal Status Act and the Employment Equality Act have been decided, but five cases decided under previous legislation which were brought to the ODEI for adjudication have been either overturned or amended. The ODEI sees this as a positive result. With regard to Labour Court Appeals - under the previous gender & marital status employment equality legislation approx. 35 appeals were heard in the last 3 years. In approx. 80% of the cases the Labour Court upheld on appeal the findings of the Equality Officers. The fact that there are no signs that complainants are attempting to bypass the ODEI in order to have their cases heard in the court system also supports the impression of a legitimate and authoritative body. In addition, the decisions made by the ODEI are seen as very competent and legally well-founded by stakeholders and users. However, reducing the time required to process claims is seen as a challenge for the institution.

The institutions involved in giving opinions have to accept all cases that are not manifestly unfounded. But there can be a feeling that some of the problems are trivial, or that a case involves considerations that the legislators did not intend their legislation to cover. It is quite resource-consuming for an institution to get involved in a case and provide an opinion or a statement. So the institutions are increasingly trying to filter out the irrelevant cases before their workload overwhelms them. This can partly be achieved by asking the parties

for more information before embarking on a complaints process. Then they might be advised to write a new complaint containing more information. In Ireland the issue of caseloads and the extended processing time they entail is seen as one of the potential difficulties for an institution, especially since there are no penalties if one of the parties does not co-operate or delays the procedure.

Another issue that could be considered as a weakness in the legal constitution of processing tribunals like the ODEI - equality tribunal, is that class actions are not possible, meaning that they cannot take up cases for a whole group of persons. However, a trade union, for example, could lodge a group of complaints on behalf of named individuals, as happens frequently with Equal Pay claims. In the Netherlands, the Dutch anti-discrimination bureaux can file a complaint on behalf of a victim or on their own initiative. The latter possibility has proven useful when, for reasons of fear or uncertainty, a victim has been reluctant to bring his or her case personally. As previously illustrated, the same option is open to the CECLR in Belgium.

The Equality Authority in Ireland also considers its inability to intervene in ongoing cases to be a point of weakness. The third potential weakness regarding its legal role is the unavailability of interlocutory injunction. An injunction is a remedy in the form of a court order addressed to a particular person that either prohibits him from committing or continuing a certain act, or which orders him to carry out a certain act. The Equality Authority, for example can seek injunctions in the case of discriminatory job advertisements, to prevent the appointment of any person to any post to which the advertisement relates. Some institutions point out that interlocutory injunction as an internal relief to modify the actions of the defendant while a case is ongoing could be a very effective remedy in promoting individual rights, since very often those involved in the case are suffering all the while their case is being heard. An example of the type of case where this might have a great impact would be instances in which Roma or Traveller children have been denied access to schools.

5.4.1. Change in discriminatory behaviour – courses for action

When handling individual cases of discrimination, some of the institutions aim to ensure non-repetition of the discrimination. The institutions try to do so by providing training to the persons in question. The body may suggest as part of the settlement that training sessions are provided in order to encourage an offender not to repeat his discriminatory actions. In this regard the work not only focuses on settling the individual case, but on changing attitudes and actions to prevent any further discrimination.

A great strength in the decisions of the Irish Office of the Director of Equality Investigations (ODEI), according to both the institution itself and the stakeholders in Ireland, is that they provide for corrective action.

Legally binding decisions of the Irish ODEI to provide redress

All decisions issued by Equality Officers at the ODEI- the equality tribunal, are legally binding and include a very detailed presentation of the case, the positions of the disputing parties, and the reasoning behind the ODEI's decision. In addition to awarding compensation for the effects of discrimination, the decisions may include orders for specific courses of action to be taken to change a discriminatory practice or prevent further discrimination. The Equality Officer can, for instance, instruct an employer to establish a diversity policy, or instruct a firm to install a lift for persons with disabilities. This is seen as a great asset in decreasing existing discrimination and in working proactively to promote equality.

Through its right to conduct formal investigations and issue non-discrimination notices, the British Commission for Racial Equality (CRE) possesses a very powerful tool for forcing companies and organisations to change practices and approaches that encourage discrimination. One of the most-cited cases of 2000 was the formal investigation of a large motor vehicle manufacturers which led to an agreement on a series of measures to counter discrimination.

CRE forces multinational to counter discrimination

The CRE decided in 2000 to conduct a formal investigation of a multinational motor vehicle manufacturers. This followed evidence of racial discrimination and failure by the company to take effective action in response to complaints of racial harassment.

The Commission agreed to suspend its decision to carry out a formal investigation after assurances in a meeting with the European Chairman that the company would comply with stringent conditions for improvements within a tight timetable for action.

This included:

- A wide-ranging diversity and equality assessment review of its racial equality practices
- Work with the CRE to develop a strategy to implement required changes identified by the review, and to set out an Action Plan for improvement
- Clear and independent means for the verifiable measurement of effective and lasting cultural changes in management and staff behaviour
- New procedures for dealing with incidents of discrimination and complaints by staff
- Corporate leadership and accountability for the delivery of these outcomes.

From the outset the Dutch Equal Treatment Commission has focused on individual cases; its first task was to place itself on the agenda through cases involving individuals. But as part of its work is to look more deeply at the structural aspects of discrimination, it is now increasingly concentrating on providing advice as a follow-up to an opinion, for instance by advising hotels, restaurants and discotheques on how to avoid discriminating against people with a non-Dutch ethnic background.



The experience of the Dutch Commission is that standard methods are needed to measure content and achievements with regard to individual cases in order to identify broader patterns of discrimination.

As far as the Swedish Ombudsman against Ethnic Discrimination is concerned, it is important to gain understanding and take action that will change the situation. Individual cases are often useful for discovering general problems, such as when a Roma family was prevented from moving to a different apartment. The family was informed that it was impossible because there were already too many Roma in the area they wanted to move to. This was a fairly clear case which was filed with the police. The Swedish ethnicity DO invited the company to a discussion on how to reach a solution for the future, with the company being asked what it would do to ensure that a similar event would not happen again, since it had stated that the act of discrimination was not a result of company policy but of an individual employee of the company. In its discussion with the DO the company undertook to modify its actions to prevent a recurrence.

5.4.2. Implementation of decisions

When the Dutch Equal Treatment Commission gives a decision it requests information on the action the parties intend to undertake next. Then the Commission decides how to respond, e.g. by making a follow-up appointment, providing further advice etc. In addition, the Commission is currently focusing on whether companies have introduced policies or procedures for handling complaints about discrimination. The Commission is also planning to investigate which kinds of cases generally do or do not result in compliance with its decisions by the parties involved. In particular, by collecting and analysing data it hopes to discover whether there are decisions in particular types of cases that are regularly being disobeyed.

The ODEI, as a quasi-judicial tribunal, makes legally binding decisions which are enforceable by complainants and by the EA in the Circuit Court. The EA itself, however, does not have powers in the "follow-up" procedure. This is unlike the case of the Equality Commission in Northern Ireland which has a statutory right to apply sanctions such as the temporary closure of a pub that refuses to serve members of the Travellers' community. There have not yet been any cases in Ireland where a defendant has refused to implement a pre-

scribed action, so whether there is a need for a strengthened role in the implementation process remains to be seen.

5.4.3. Appealing against legally-binding decisions

An important theme is how legally-binding decisions can be appealed, and in what circumstances. Problems can arise when there are large differences between the principles governing the institution of first instance and the appeal system.

This could for instance be the case in Ireland, where the first instance is a quasi-judicial tribunal emphasizing an informal approach and where cases are conducted free of charge. If appealed, the case goes from this system to the formal courts (either the Circuit Court or the High Court) where the case may be tried by a judge who, although familiar with the equality legislation, has no special background or training in discrimination and equality issues.

Costs may be awarded in Circuit Court and High Court appeals. However, an award of costs is a matter for the courts and in many cases the court may make no order for costs.

The Irish institutions also commented that the traditional appeals process took too long. There has not been sufficient experience with the Equal Status Act to be in a position to comment on the length of time involved in appeals to the Circuit Court.

5.5. Summary of key points – role towards direct victims of discrimination

- Most of the institutions provide basic information about rights and give advice to victims of discrimination. The study reveals great differences in the procedures and methods of giving advice, and in the available types of assistance.
- There are considerable differences among institutions as to whether and to what degree they can assist in court cases; as to the approach taken to their role in mediation, if any; and as to whether the institution generally sees this as its prime role.

- Several institutions have roles in mediating or settling cases, or in providing opinions concerning complaints about discrimination.
- A major strength is the provision of assistance free of charge. This applies not only to the supply of information and advice, but to mediation and most lawsuits.
- An important related issue is whether the potential appeals procedure operates free of charge, and how the appeals process is organised.
 - The balance of the work on individual cases versus that devoted to issues of institutional discrimination needs to be considered individually for each institution.
 - Advice is needed not only by victims, but also by witnesses of discrimination.
 - The issue of mediation raises some important questions of principle concerning the role of an institution in safeguarding the law versus its role in achieving settlements.
 - Settlements outside the courts are often viewed positively by the bodies.
- Legally-binding decisions which specify subsequent courses of action can prevent further discrimination.
 - It is important to make the reasoning which governs decisions visible. This strengthens their legitimacy and makes offenders more liable to comply with them even if no instruments of enforcement are available.

6. *Role and functioning in the political process*

In this chapter we examine the role of the equality bodies in the political process. The role and function of these bodies in the political process is partly formal and partly informal.

By 'formal role' is meant a statutory right or a legally-based role in the political process. The informal role covers roles or procedures, which are not included in the legal basis and which occur *ad hoc*. However, in practice it is hard to maintain a strict distinction between the formal and the informal roles of the institutions.

As mentioned earlier, some of the institutions included in the study are expert commissions designated by law as advisory to the government and thereby primarily provide political advice, whereas other institutions do not have such a function. However, all the institutions examined play some sort of role in the political process.

The present study demonstrates that the institutions' roles and functions change over time, and so does their role in the political process. Several institutions have had to prove themselves as potentially influential partners in the field before being accepted in the political process. In addition, once they have been incorporated into the political landscape, the institutions have frequently referred to their simultaneous ability to act independently while for instance also having a considerable say in the drafting of legislation. Their work often involves both a formal and an informal role in the political process.

6.1. **Formal role in the political process**

The formal role in the political process can take the form of active participation in planning, drafting or commenting on legislation, as well as monitoring practice after the legislation is implemented.

6.1.1. Role in the legislative process

Institutions such as the Irish Equality Authority (EA), the Belgian CECLR, the Finnish and the Swedish Ombudsmen, the Northern Ireland Equality Commission and the British Commission for Racial Equality (CRE) all have a formal role in commenting on existing and proposed legislation, including the legislation, which establishes the institutions.

The Portuguese Commission has an explicit mandate to make recommendations for the adoption of legal measures, which are judged necessary to prevent discriminatory practices based on race, colour, ethnicity or origin.

The Belgian CECLR can submit recommendations to the Inter-ministerial Conference for Immigration Policy chaired by the Belgian Prime Minister, and it is occasionally represented in working groups within Ministries to monitor or provide guidance on policies which are under development, including at the European level.

The Italian Commissions appear to have been given more of a policy preparation role, looking into the complex of broader issues in preparation for subsequent government initiatives.

Among other things, the Swedish Ombudsmen have been commissioned to investigate legislative deficiencies and to present proposals to the Government for changes in legislation, as well as provide comments on legislative proposals.

A watchdog overseeing the implementation of rules and regulations

One of the tasks of the Swedish Disability Ombudsman is to evaluate and disseminate information about the Standard Rules on the Equalization of Opportunities for Persons with Disabilities adopted by the United Nations in 1993. The Ombudsman also investigates the extent to which these rules are generally respected and implemented, for example by government agencies or local authorities. If the Disability Ombudsman detects deficiencies in the current legislation concerning persons with disabilities he makes proposals to the government for their amendment. The law on discrimination in the workplace was established as a result of the Om-

budsman's work in this area. In 1997 the Ombudsman conducted a survey amongst people with disabilities. They were asked if they had encountered discrimination, and 25% answered affirmatively. The work conducted by the Ombudsman thereby made visible the need for legislation in this field.

One of the crucial questions in Ireland is whether the institution has the right to be involved in legislation other than the primary acts. The Equality Authority has the statutory right to be included in the review of the two Acts directly involved in discrimination, but it is not assured of a role in reviewing legislation beyond these two Acts, such as the Education Act or the Health Act. The EA has the general functions to work towards the elimination of unlawful discrimination and promote equality of opportunity in relation to the areas covered by the employment equality and equal status legislation. Its statutory functions also include the review of the Employment Equality and Equal Status Acts and, if it considers it necessary, to make proposals to the Minister for Justice, Equality and Law Reform for the amendment of those Acts. There is no statutory obligation on the Government to consult with the Authority in relation to other legislative proposals. This may be considered a limitation of the institution's effectiveness. Moreover, the equality legislation has not yet been amended and it therefore remains to be seen how much influence the EA will have in the process.

One of the institutions which has a mandate to review legislation and propose amendments is the British Commission for Racial Equality. By law the CRE has been furnished with a mandate to make regular reviews of the race relations legislation, and to present proposals for amendments. The CRE is also consulted via green and white papers to which it makes a formal response.

Changing legislation in order to promote racial equality

In 2001 the Commission for Racial Equality in Great Britain (CRE) was closely involved in the amendment of the 1976 Race Relations Act. The CRE applied extensive pressure on politicians to strengthen Britain's race relations legislation, and partly as a result the general duty mandated by legislation passed in 2001 has made the promotion of racial equality central

to the activities of all public authorities. The three elements of the duty compel the public authorities to focus on the elimination of unlawful discrimination and the promotion of equal opportunities and good race relations. Public authorities must take account of racial equality in their day-to-day work of policy-making, service delivery and employment practice, amid other functions. Codes of practice have been produced by the CRE and have helped racial equality to become a major consideration for the bodies which operate throughout the public sector and central government.

The French GELD does not have a formal role in providing advice on policy, but in practice it is consulted on all legislation relating to issues of discrimination.

In general the institutions consider the statutory right to comment on legislation to be an asset for their role. Institutions such as the Danish Board for Ethnic Equality, which have had to struggle to be included in the political process, consider their subsequent involvement in consultations on primary legislation to be a result of their continuing efforts, despite never having achieved a greater formal role in the process.

6.1.2. Setting up monitoring systems

Another formal role can be to keep policy makers generally informed of developments within the legislative area, or to monitor the implementation of legislation.

Developing monitoring and planning schemes

The Northern Ireland Equality Commission monitors employment policies via obligatory annual reports from all employers employing more than 11 persons. It also monitors the development by all public authorities of a so-called Equality Scheme stating how they propose to fulfil their duties, which according to the Northern Ireland Act (1998) are to promote equality of opportunity between persons of different religious beliefs, political opinions, racial groups, ages, marital status or sexual orientation; between men and women generally; between persons with and without a disability; and between persons with and without dependants.

The French regional CODACs are involved in the assessment of local

needs and the subsequent development of regional integration plans which the government has decided must be developed.

These monitoring roles are frequently seen as valuable by the institutions because they give them legitimate entry into discussions concerning the implementation and follow-up of existing legislation.

Other approaches to monitoring, not necessarily focussing on the implementation and effects of legislation, could also be adopted by specialised bodies in the future.

6.2. Informal roles in the political process

The majority of institutions have a role in the political process, which is broader than the one outlined in their statute. Their informal roles in the political process include being asked to present views to parliamentary committees and lobbying the administration and government concerning certain legislation. By 'informal' we also include *ad hoc* involvement in consultation procedures and the issuing of government consultation papers.

6.2.1. Informal consultative roles

Often institutions are represented in working groups or ministerial advisory committees in order to provide guidance on the preparation of legislative initiatives and to comment on draft legislation. As mentioned earlier, organisations with no statutory right to be included in legislative preparations often receive draft legislation for consideration nevertheless.

Representatives of the bodies may also sometimes be invited to sit in on governmental preparatory commissions in order to provide expert

guidance or input in the process of developing new legislation or new approaches to issues or activities related to equal treatment.

Experts in an advisory role

The Commission for Integration Policies in Italy is a governmental consultative body, which works not only with discrimination but also with integration in a broader sense. The Commissioners were not reappointed after their first three-year term expired in the summer of 2001. Therefore, the Commission does not in practice exist at the moment. However, the Commission operated as an expert group having an advisory role vis-à-vis the government. Because the topic of integration is quite new in Italy there was an immediate need to establish a basis for understanding immigration, such as through conducting surveys and initiating research on the topic. The 20 members of the Commission belonged to a variety of institutions and organisations as well as to ministries. They were involved in various capacities in fields such as law, economy, demography etc. The Commissioners met once a month and were supported by a secretariat comprising four staff.

In some cases, institutions may be invited to provide information to parliamentary committees. For instance, the Belgian CECLR has been invited to attend the Senate three times during the past year in order to explain its views on the draft of the new anti-discrimination legislation.

While some institutions are included in the political process in various ways, some are not so directly involved in policy-making. An alternative means for such institutions to influence policy may be to present cases to UN institutions or national ombudsmen.

For instance, the Danish Advisory and Documentation Centre on Racial Discrimination (DRC-DK) has presented eight cases to the UN Committee on the Elimination of Racial Discrimination. In two cases the Committee criticized the Danish Government, and Danish legislation was consequently changed.

Informal contacts

The Swedish Ombudsman Against Discrimination Because of Sexual Orientation (HomO) has contacted the different ministers to discuss what they and the government might do in each area in order to ensure equal treat-

ment irrespective of sexual orientation. This has often been followed up by civil servants initiating more concrete actions together with the HomO.

Thematic reports or special surveys in the annual reports of the institutions which are presented to the government frequently also provide advice to it on how to amend existing legislation, or to suggest which areas should be focused on. Likewise, some institutions monitor how often politicians refer to their reports or documentation during parliamentary proceedings, and thereby make an informal assessment of the importance of their own role in the political decision-making process.

6.2.2. Influencing the institutions' own scope

A few institutions have had a political role in the development of their own mandate. These institutions may have been established due to pressure from existing organisations, which found that such an institution was lacking, as in the case of the Dutch Expertise Centre on Age and Society (LBL). The existing organisations have thereby had a say in formulating the scope and work of the new institution through highlighting the problem of the previous lack of such an institution.

Initiatives from existing organisations

The Dutch Expertise Centre on Age and Society (LBL) was established in 1994 because of serious concerns about the problem of ageism and age discrimination. It was the National Advisory Council on Policy for the Elderly together with older people's unions, which emphasised the necessity of a national office to combat age discrimination. Accordingly the Dutch Department of Health, Welfare and Sports decided that a national office would be established for a period of four years. The LBL aims to challenge the negative stereotyping of people because of their age, to place the issue of age discrimination high on the public and political agenda, and to set out options for change. As well as investigating the legal and social aspects of age discrimination, the LBL has been encouraging debate on the issue of age limits in laws and regulations. Once the office had proved itself to be necessary, it gained permanent status from the beginning of 1998.

Some of the institutions were established following a change in the role of previous institutions working with immigrants or foreigners. This is the case with the German Commissioner for Foreigners' Affairs and for the Finnish Ombudsman, for instance. In these two cases the scope of the former institutions working with issues concerning foreign citizens has been expanded to include matters related to various ethnic groups and discrimination because of race or ethnicity, thereby broadening the overall scope of these institutions.

Shifting concepts and legal positions: From "foreigners" to "integration"

For many years *Germany* defined itself as a non-immigrant country and supported return programmes. But the term 'foreigner' is now perceived to be problematic, and with the new Berlin federal state government, the Commissioner of Foreigners' Affairs of the Berlin Senate is to be renamed the *Commissioner for Integration and Migration*. The change of name reflects a change in the mode of thinking.

In *Finland* the office of the Ombudsman for Foreigners was set up by law in 1991. In 1999 the Ministry of Labour appointed a special investigator to prepare proposals for changing the post of Ombudsman for Foreigners and expanding its functions. This brought about the establishment of the Ombudsman for Minorities (affiliated to the Ministry of Labour) in 2001. The former activity areas of the Ombudsman for Foreigners were transferred to the Ombudsman for Minorities.

The above examples illustrate that the institutions are seldom static in their nature, but that aims and tasks change both with the political agenda and the societal focus and understanding of questions related to race, ethnicity and discrimination.

Another example is the French CODACs, which from the outset were intended to promote the *integration of young people* with non-French ethnic backgrounds, but which have subsequently been working *to improve conditions for all immigrants and citizens* with non-French ethnic backgrounds.

6.3. Summary of key points – political process

- The majority of the institutions have either a formal or an informal role in the political process.
- The institutions are typically consulted on legislation related to discrimination.
- Some organisations also sit on government committees for the preparation of new legislation.
- Some organisations have a formalised role in regularly reviewing the legislation defining the role and competences of the their own organisations, thus ensuring that the organisation is given a prominent role in legislative revisions.

7. *Role and functioning in dissemination of information, research and awareness building*

A significant proportion of the institutions have set themselves the important function of providing information and conducting research on discrimination in general. The institutions' role is thereby broadened in various ways, ranging from conducting or commissioning studies and publishing the results to making recommendations directed at several target levels, or providing training, raising awareness via the media or campaigns, or acting as a network-building institution. These functions often stem from the explicit goals of quite a few of the institutions to promote equality in broader terms and to take the initiative in driving forward the equality agenda.

In this chapter we shall examine these aspects of the institutions under the following four overall headings:

- Studies and written documentation
- Anti-discrimination training
- Campaigning
- Co-operation

7.1. Studies and written documentation

According to the new EU directive, the Member States must have institutions that in addition to providing independent assistance to victims will conduct independent surveys concerning discrimination, publish independent reports and make recommendations.

A substantial number of the institutions are already involved in various areas of dissemination, research and awareness building:

- Information about legislation and rights (as discussed in Chapter 5)
- Conducting or commissioning independent surveys and reports
- Making recommendations

- Conducting or commissioning training or training material
- Awareness building and campaigns

7.1.1. Dissemination of information

The institutions have various ways of disseminating information to the general public or specific target groups. These are frequently printed publications, such as opinions, statements, comments on legislation, which are often made available on the Internet. In fact, most institutions attach much importance to having a well-designed and easily-accessible website for providing general information regarding discrimination, in addition to specific information about the options available to victims of discrimination, such as whom to contact, one's rights and so forth.

Providing access to information

The Dutch National Bureau against Racial Discrimination (LBR) has an accessible documentation and information centre which specializes in combating racial discrimination and encouraging good inter-ethnic relations. The documentation centre contains more than 20,000 titles from home and abroad. The collection of the LBR documentation centre can also be accessed remotely. The entire LBR collection is described and recorded in the LBR database which can be examined at various locations in the country, for example at most Anti-Discrimination Agencies, and is also accessible via the LBR's website. The LBR also maintains a database of case law in the area of racial discrimination. This case law information is available to third parties with the permission of the LBR's legal advisors.

One challenge when communicating with the general public is that of making legal opinions comprehensible to those who are not members of the legal profession or professionals with a background in equal treatment. The statements and opinions need to be phrased in terms capable of generating interest among the general public.

A number of institutions try to provide systematic information on case law. They often make accessible former rulings and settlements in databases internally or on their websites, as for instance is the case in Ireland. But they often encounter problems in establishing an automatic flow of information concerning past rulings and case law. The Irish ODEI - equality tribunal has details on its Website (www.odei.ie) of all findings by Equality Officers from 1996 to date. A summary of cases is also published each year in its annual report. Similarly, the Dutch Equal Treatment Commission publishes regular bulletins on recent cases of wider interest.

Often the institutions depend on other organisations for their flow of information. This generally requires a well-developed relationship of co-operation with the courts that does not always exist. The British CRE says that it can be difficult to establish a regular flow, and in Belgium this issue is to be addressed by including it as a specific obligation in the new legislation which is planned.

Whereas the ombudsman institutions in Sweden can mostly provide up-to-date information on the number and content of cases brought to them, it is harder for them to provide an overview of the cases presented to the police, as the flow of information is not always active. In Sweden the police publishes the number of cases reported to it annually, but it is not possible to have more frequent updates of the numbers of cases relating to specific issues or grounds of discrimination.

Apart from distributing information on equal treatment and on legal cases, a number of institutions provide information in order to create a more positive attitude towards those who experience discrimination. One example is the production of material that contradicts prevailing negative images and makes available information about various different cultural backgrounds.

Promoting positive images

The Dutch National Bureau against Racial Discrimination (LBR) produces a small wall newspaper every other month. The idea is to portray positive stories. The newspaper is designed for waiting rooms, schools, etc. It always contains positive news about multi-cultural lifestyles and people living together plus other useful information which is scattered throughout small articles, and with jokes, cartoons etc. to make it more accessible. LBR sends this to about 1000-1200 organisations and individuals.

7.1.2. Conducting or commissioning surveys and reports

Undertaking studies, writing reports containing detailed documentation, and providing subsequent recommendations for desirable change are important tools for most of the bodies dealing with equal treatment. The collation of data, new juxtapositions of facts or the collection of completely new data can bring to the forefront issues of discrimination which have hitherto not been discerned.

None of the institutions carries out systematic reviews of the discrimination and equality situation in its respective country, but some of the institutions plan to move in that direction eventually. The Berlin Commissioner already conducts an annual mini-survey of attitudes towards migrants and foreigners. The survey is based on a representative sample of 1000 persons. The questions asked each year are essentially the same, and the results are publicised in an annual press statement.

All the institutions included in this study (except the quasi-judicial institution ODEI) carry out research and studies on one or more specific grounds or themes.

Some organisations undertake their own research, but many of them prefer to commission universities or research institutes to conduct it. This is the case with the British Commission for Racial Equality (CRE), for instance.

Others, like the Dutch Expertise Centre for Age and Society (LBL), seek out surveys and research covering the topics they are interested in, then make this information available on their website. Sometimes

the LBL conducts research. Furthermore it points at further essential research to be carried out and tries to persuade others to conduct it. Often the extent to which the institutions are directly involved in surveys and research are dictated by financial resources.

Some institutions, like the Equality Authority in Ireland, are in the process of establishing a longer-term research programme which defines criteria for strategic themes and projects. The approach is to combine urgent themes suggested by current events and demands on the one hand, with a more strategic plan which gives structure to the focus of the institution and the use of its resources on the other hand.

Some of the institutions, e.g. the Dutch Equal Treatment Commission and the Swedish Ombudsmen, try instead to bring together the general themes derived from the individual judgements or opinions they produce. They may undertake investigations on their own initiative when they find several individual cases casting light on discrimination in a specific field, and will highlight more general issues of discrimination on the basis of these investigations.

The staff at the Equal Treatment Commission emphasise that in order to be able to detect more general patterns of discrimination, aspects of structural discrimination and themes which need to be examined further, an analysis and investigation of individual cases is necessary. In order to localise these patterns it is important to structure the available information, for instance according to the nature of the discrimination and the case types, in order to make it suitable for further analysis. This requires tools, information systems and databases. Thus in the highly sophisticated web-based search infrastructure of the Dutch Equal Treatment Commission, it is possible to search through the opinions (*Oordelen*) which the Commission has delivered.

7.1.3. Making recommendations based on the studies

Investigations and surveys of discrimination based on a broader perspective (as opposed to individual cases) often lead an institution to provide recommendations or opinions based on its findings. Given that the role of several institutions is to identify and assess deficits in

existing legislation, their recommendations are often directed at the level of the policy-makers.

Recommendations can also be directed at a specific firm, as is sometimes the case when the Dutch Equal Treatment Commission includes recommendations in its opinions. For example, it can be difficult to prove that racial discrimination has taken place in employment. The Commission might have the feeling that there is a racist climate in the workplace as a whole, but without being able to give a firm opinion as to whether or not the law has actually been violated. In such instances the Commissioners can choose to recommend that the company in question should establish procedures for dealing with cases of discrimination which are motivated by race or ethnicity. The Commission believes that its recommendations can be helpful in translating abstract legal norms into concrete practice and thereby contribute to the effectiveness of the equal treatment legislation.

The studies of the Equality Authority (EA) in Ireland aim to provide guidelines and recommendations at both the political, organisational and personal levels. In addition to the studies which they either commission or carry out themselves, the EA prepares publications focusing exclusively on the establishment of codes of practice or guidelines in specific areas. Two examples are 'The code of practice on sexual harassment and harassment at work' and 'Guidelines for Employment Equality Policies in Enterprises', both prepared in co-operation with various Government Departments and organisations. Especially the latter guide emphasizes the provision of concrete examples of an equality policy and an anti-discrimination approach in various areas, i.e. recruitment, advertising, interviews, job orientation and career progression. The impression created in our interviews is that both the EA and the organisations involved see these publications as a useful tool for putting the issue of equality on the agenda and providing help to companies to reduce discriminatory practices. The Northern Ireland Equality Commission and the British CRE take a similar approach.

On its own initiative the Equal Treatment Commission in the Netherlands investigated practices relating to *in vitro* fertilisation. Because

some clinics only made the treatment available to heterosexual couples, the Commission found that single persons and homosexual couples were being discriminated against by those particular clinics. The Commission gave its decision and received a response from the relevant minister.

The rules and practices which have been amended following the opinions of the Commission include changes in the selection procedures of some larger companies in order to avoid sex discrimination, the inclusion of same-sex partners in the travel benefits of employees of the National Railway Company, and revised banking procedures for extending credit to non-residents.

The effect of the non-discrimination notice which can be issued by the British CRE has already been mentioned previously.

7.1.4. Summary of key points – studies

- Most institutions apply a fairly broad range of information strategies in the course of their work.
- Any absence of studies stems mostly from a lack of resources, not the lack of a desire or perceived need to conduct surveys.
- Independent surveys can take individual cases, a specific theme or perceived patterns of discrimination as their point of departure.
- The criteria for selecting areas for study and research are often based on perceptions of where there is a scarcity of specific information, where the greatest impact can be achieved, or where a specific need has arisen, for instance in response to a specific case or media coverage.
- There is seldom an overall national plan governing any intended future surveys or research.
- Recommendations which follow on from investigations can focus on specific organisations, on societal areas, or on the broader national level.

- Codes of practice, guidelines and recommendations are considered helpful by institutions and organisations in reducing discriminatory practices.

7.2. Anti-discrimination training

The institutions take part in various forms of employee training for public authorities, companies, social partners, stakeholders and potential victims of discrimination.

Training can be more or less formalized. Often the institutions provide training through information-giving and discussions on the laws governing the field of equal treatment.

In general the institutions conduct four different kinds of training:

- Curriculum development
- Production of training material
- Provision of training and training methodology
- Training of trainers

Over the years several of the institutions have gained considerable experience in anti-discrimination and equality training. Thus the Swedish Ombudsman Against Discrimination Because of Sexual Orientation and the Ombudsman against Ethnic Discrimination, the Dutch National Bureau Against Racial Discrimination, the Dutch Equal Treatment Commission, the German Commissioner of Foreigners' Affairs at the Berlin Senate, the Danish Board for Ethnic Equality, the Luxembourg Commission and the Belgian CECLR are all actively involved with training.

The Belgian CECLR provides an example of the development of approaches to training, with its training methodology evolving over time in response to lessons learned and the continuous changes taking place in society. Its initial efforts focused on sensitising the trainees – mainly police officers – to multi-cultural issues. So the emphasis then was on providing information and creating opportunities for dialogue. More latterly, the focus of the training has switched from anti-discrimination training towards diversity management and inter-

cultural communication. While anti-discrimination training may still be provided to certain groups, the majority of the training effort (including methodology development) focuses on the latter areas. Often people are unaware that they are breaking the law, for instance interpreting the requirements of the law in a non-fulfilling way. Current discriminatory practices are often revealed through discussions with the institutions. This often inspires those committing them to learn more about the law and how to prevent future violations, which then creates an opportunity for more or less formalised training activities. However, new subjects such as diversity management may have a tendency to remove the focus from the more 'traditional' groups with more 'traditional' sensitisation needs. This has been an issue within CECLR, where the training section is continuously discussing how to prioritise training efforts and which groups to target.

Summary of training experiences

Having conducted training for around 10 years, the CECLR stands out as one of the more experienced organisations within this field. Some of the key issues identified by the CECLR may be summarised:

A joint training vision – it is important that all levels of the organisations to which the training is provided share the same training vision.

Voluntary participation – all participation must be free and voluntary. The management of an organisation should not force employees to participate against their will.

Knowledge of the organisation which is to be trained – the targeted organisation and its employees must be viewed as a unit. The CECLR has made a practice of visiting the organisation concerned prior to the training in order to acquire a better understanding of the setting in which the trainees operate on a day-to-day basis.

Benefits of including local stakeholders – as part of its police training the CECLR will often invite local stakeholders, such as representatives from immigrant cultural centres and/or mosques, to participate in (parts of) the training in order to enhance dialogue and facilitate communication at the local level.

No taboos – the training is based on completely free speech: anything can be said and all opinions are respected, which is not to say that all points of view are accepted. Establishing a forum where all opinions may be voiced is part of the process of 'wiping the slate clean' and creating a space for bottled-up feelings and sentiments.

Confidentiality – when anything can be said, confidentiality is important.

Realism of expectations – as part of creating the context for the training, the CECLR seeks to adjust the expectations which exist within the organisation being trained. It is important to understand that training for behavioural change is a long-term process.

7.2.1. Production of training material

Several institutions concentrate on the development of training material and tool kits.

Indeed, some organisations regard it as a strategic choice whether to be involved in the provision of large-scale training, or instead to produce training material and methodologies to be used by other organisations. The British Commission for Racial Equality (CRE) can illustrate this point: 40,000 public bodies and authorities must comply with the new law on statutory duty which was introduced in the revised Race Relations Act. With a staff of only 200 there is no possibility whatever of the CRE being able to provide the necessary training. Instead the CRE has participated in the planning of the training approach recommended, and the training itself will be contract-based and managed by the individual public authorities.

Contributions to the development of curricula are often made in the context of more general training activities for particular groups such as police officers or magistrates. Several organisations such as the French GELD, the Belgian CECLR and the Luxembourg Commission have been actively involved in training courses for police officers, and the Belgian CECLR has a fixed long-term contract with the Belgian state to provide training courses to young magistrates as part of their education.

Supplementing training

The British Commission for Racial Equality does not provide training as such, but undertakes a number of activities to support race relations training. The CRE has commissioned consultants to conduct a review of government departments to assess their training needs in relation to the new statutory duty, and to draw up specifications for the training required. The CRE is developing a core training package which will also include advice on the hiring of external trainers. This is available from its website. The CRE also issues

codes of practice and racial equality standards to help organisations to develop fair policies, procedures and practices. In addition the CRE advises employers, local authorities, housing, health and education authorities, the police, training bodies and other agencies on how to avoid discrimination and promote equality.

7.2.2. Provision of training and training methodology

Some institutions provide training by request only and on a fully-funded basis, while others organise training campaigns which are targeted to specific audiences and provided free of charge.

While free training based on training campaigns directed towards specific audiences may intuitively seem more efficient, the question appears to be more complex. Interestingly, the Belgian CECLR changed its approach following its experiences with the training of police officers.

Tailored training

The Belgian CECLR reconsidered its approach to training following a critical assessment of the Centre's training of police officers, among others. Its conclusion was that off-the-shelf theory-based training in non-discrimination and the safeguarding of people's rights was perceived as antagonistic by the police officers, who defended their approach and criticized the training for not taking into account the reality in the field. As a consequence the CECLR's training is now exclusively tailored to its audience, and a key concern is to cater first for the problems that the trainees themselves perceive in their own daily work before commencing discussions on discrimination and new approaches.

The CECLR has also started to demand reimbursement for its training courses, which were initially provided free of charge. Evaluations have shown that counterparts requesting training consider their motivations more carefully and are more eager to ensure proper attendance when they incur the costs of the training.

Much of the training provided by the institutions includes general awareness-building and sensitisation to various issues of multi-

culturalism. For instance, the Berlin Commissioner, together with an NGO representing migrants, organises regular meetings between migrant groups and young police officers in order to exchange views and improve mutual understanding.

Training policemen

The Advisory and Documentation Centre in Denmark has been running a course for policemen. As a consequence of its work the police department in Copenhagen is now actively working on a strategic plan for its approach to minorities in Denmark. It has prepared a policy for tackling conflict and taking control without discrimination.

The purpose of the training is not confined to the communication of knowledge of laws and regulations or the changing of attitudes among those involved in the training. As part of the refinement of their training methodologies, some institutions such as the CECLR distinguish between training and sensitisation. The latter is perceived as being a public relations rather than a training task. Within the CECLR, transmitting information to school children about different religions and cultures is perceived as sensitisation and will normally be carried out by the PR department, whereas efforts focusing on behavioural change will remain with the training department.

The Dutch National Bureau Against Racial Discrimination has, like the Belgian CECLR, developed co-operation with schools on how to combat discrimination, and among other things it has established panels to assess the materials used in primary schools.

Schools without racism

The Dutch National Bureau Against Racial Discrimination, LBR, has established a movement called "Schools Without Racism". Schools that join the movement are provided with opportunities and resources to address and combat racism. The LBR has also established an education panel that assesses the teaching and project material of the LBR's documentation centre in terms of its practical usefulness. With the assistance of the panel, the LBR staff gives advice to teachers and other clients using the LBR's materials.

The CECLR training methodology has been developed over time as a result of a learning-by-doing process in which its training has been adapted and modified in response to the evaluations of previous training events. Thus the CECLR is renowned for adapting to the specific needs of each recipient audience. The flexible approach and results of the CECLR's training are generally considered successful by the organisation's counterparts. This view is supported by the fact that the CECLR receives far more requests for its training than it can currently accommodate.

Training employees in temporary staff agency

The CECLR has recently provided training to the employees of a temporary staff agency. The staff wished to improve their skills in meeting and interviewing people with different cultural backgrounds. Significantly, they also requested assistance in developing suitable responses to those groups of potential employers which applied more or less overt pressure on them to exclude people of certain origins etc. when recommending candidates for temporary vacancies in their firms.

Training for daily experience

The LBR arranges role-play training sessions in order to rehearse actual situations. The training focuses on the situations and conversations representing the daily experiences of those participating in the session, in which they are for instance confronted with the prejudices, doubts and the defective understanding of relationships manifested by some colleagues or by clients of a different ethnic background.

7.2.3. Training of trainers

Most of the institutions place an emphasis on providing training that involves more persons than the immediate target group. Examples are: training teachers who can convey their knowledge to pupils, training trade union representatives so that they can work proactively against discrimination, or training key administrative staff so that an equal treatment perspective can be integrated into their administrative practices.

The institutions often apply *cascade methodology*, the purpose of which is to train trainers to train others so as to make the most of the available resources.

Training of trainers

Training of trainers (ToT) has been a part of the training activities of the Belgian CECLR for some time. With only 10 trainers, all of them in great demand, the ToT model ensures greater outreach and impact. The CECLR first conducted ToT for instructors in police schools, and since then has also trained army instructors, social workers and others.

Likewise, the Swedish Ombudsman Against Ethnic Discrimination focuses on educating those who can educate others. For instance, when providing training to trade unions and employers' organisations the DO is careful to ensure that such efforts have a multiplier effect. For the DO it is also a question of building capacity within the trade unions so that they can handle cases of discrimination without the DO's assistance.

The French GELD organises training for those managing the Departmental CODAC offices. In turn these provide training to the people who comprise the Department's network of people to whom cases are referred.

7.2.4. Summary of key points - training

- Some organisations have refined their training methodologies over the years.
- Other institutions have made a strategic choice not to provide training but to concentrate on the development of training materials and the supply of advice on training methodology.
- Increasingly, training to traditional groups such as the police force is being supplemented by experience-based training to companies and groups of individuals.
- Training often has goals extending beyond the group of people who are participating in the training, through focusing on the training of people who can train others.

- Training is often tailored to take into account the everyday experiences of the target group.

7.3. Campaigning

The majority of the institutions do not invest resources in large-scale campaigns. This is either because they do not have access to the resources required, or because such campaigns are not considered cost-effective.

However, organisations such as the British Commission for Racial Equality and the Disability Rights Commission organise high-profile campaigns annually. The CLCLR in Belgium also occasionally conducts large-scale campaigns which include radio and TV spots.

This section discusses both these more substantial campaigns and other methods of changing attitudes and public opinion.

7.3.1. Changing general attitudes and public opinion

The very existence of specific institutions capable of drawing attention to issues of discrimination appears to influence both the public debate and the public perception of discrimination and equal treatment.

As mentioned earlier, changes in general attitudes and public opinion can be achieved through generating debate in the media, conducting training sessions, and influencing public opinion via investigations and recommendations.

However, most organisations also recognise the need to ensure that they are clearly identifiable to the public. One concern is to ensure that potential victims of discrimination know of the organisation's existence, and are aware of their rights and the availability of the support offered by the organisation.

Some organisations, such as the British CRE, organise broader public campaigns which highlight a key message of the organisation and at the same time make people aware of its existence.

Large-scale public campaigns

The CRE runs public education campaigns to raise awareness of race issues and encourage organisations and individuals to play their part in creating a just society.

Roughly one campaign is organised each year. In 2000, the CRE arranged a public campaign with posters, postcards and occasional TV and cinema advertisements called “Would I?”, where famous British people from all walks of life changed colour before viewers’ eyes, in order to highlight the inanity of discrimination. For example, London’s Mayor Ken Livingstone appeared as if he were Asian, asking, “Would I have won?”.

The Belgian CECLR organised a campaign around the time of the 2000 European Football Championship in which it used TV spots and other devices to draw attention to racism in sports.

The British DRC has also organised several national campaigns such as the ‘Educating for Equality’ campaign, which aimed to ensure that everyone would benefit from the new legislation which provides protection for children and students with disabilities in all aspects of educational life.

Also of note was the ‘Actions Speak Louder Than Words’ Campaign. This campaign called on leaders in the worlds of business, entertainment, sport and politics to make a practical long-lasting commitment to enabling people with disabilities to participate fully in society.

Apart from large-scale campaigns and general participation in public debate, some institutions have established special events for raising awareness of issues of discrimination. One example is the ‘Race in the Media Award’ by the British CRE.

Race in the Media Award

The annual Race in the Media Awards gives prizes to encourage informed media coverage of race relations. This high-profile event has been organised by the British Commission for Racial Equality every year since 1992, and is sponsored by leading British newspapers.

Other organisations concentrate on targeted events, such as the Danish Board for Ethnic Equality's 'baton conference', which it organises every year. At the conference, batons are given to companies, municipalities, organisations or state institutions, which thereby take on the obligation to work to promote ethnic equality and combat discrimination inside their particular organisation.

Other institutions seek to attract public attention and place issues on the agenda through particular events. The Swedish Ombudsman Against Discrimination Because of Sexual Orientation, HomO, gives great emphasis to actively participating in public discussions in newspapers, on television and among the public at large, displaying both knowledge and professionalism in order to create respect for people who might otherwise be subject to considerable prejudice. Creating visibility for a group is one of the anti-discrimination strategies.

The Dutch National Bureau against Racial Discrimination organises media events to combat prejudice in the media. At a national level, the event "the Silver Zebra" award is organised annually. This involves an award for the best media production about the multicultural society. One of the criteria is that the nominated production should show multicultural society in a critical, inventive way.

Changing public attitudes

The Swedish Ombudsman Against Discrimination Because of Sexual Orientation has among other things created a network of homosexual and transsexual policemen, and the Head of the armed forces has held a press conference to publicise the network of homo- and transsexual members of the armed forces. Initiatives such as these have encouraged a much more open discussion of sexual orientation.

Institutions such as the Danish Board, the Italian Commission, the British CRE, the Belgian CECLR, the Irish Equality Authority and several others all consider it a major sign of success that they have managed to place discrimination and equality on the public and political agenda, and regard it as a great achievement that racial and ethnic discrimination is now increasingly being discussed at the political level and by the public.

7.3.2. Specific campaigns

Some institutions are already campaigning in preparation for the implementation of the directives based on Article 13 of the Amsterdam Treaty. For instance, the Berlin Commissioner is campaigning among other departments and organisations like housing agencies and discotheques to prepare them for the changes which Article 13 will involve.

Other institutions campaign in relation to new national legislation in order to provide information about it and how it will influence specific areas, as well as explaining how to work proactively against discrimination.

Other proactive campaigns may be directed at specific groups in society, e.g. employers or public authorities, but not always quite with the hoped-for success.

Proactive campaigning

The Swedish Ombudsman Against Ethnic Discrimination has been conducting a proactive campaign on employment directed at companies in order to discourage discrimination. It is being run as a media campaign, and includes the opportunity of contacting the DO for information and setting up appointments to talk to him. However, the DO's experience has been that the enterprises have not asked for this information to the extent expected. The DO has also travelled around the country to conduct sessions with companies in order to raise awareness of their obligations and provide examples of how to meet them.

7.3.3. Creating visibility in the media

Some institutions are not involved in campaigning as such, but once or twice a year they intensify their media profile in order to promote themselves, their activities, and the legislation and the rights they are working for.

Publicity in relation to court rulings or the issuing of legal opinions through carefully planned exposure in the media can also be used to publicise an institution and its concerns to policy makers and the public. For instance, the Swedish Ombudsman Against Discrimination Because of Sexual Orientation actively makes use of the media in presenting his opinions, and has thereby succeeded in raising the profile of the issue.

The strategic use of newspapers can also be the result of initiatives from the media. For instance, in the Netherlands some newspapers and specialist magazines have asked the Equal Treatment Commission to submit its opinions concerning specific grounds of discrimination or discrimination in specific areas of society on a continuous basis.

7.3.4. Summary of key points - campaigning

- Huge media campaigns are too costly for many of the institutions surveyed, and are seen by some as not always being the most useful tools.
- However, some organisations do run large-scale campaigns to raise awareness of their concerns and remind potential victims of the existence of specialised institutions which can help them.
- Media exposure of verdicts and individual cases can be a mechanism for awareness-raising.
- One of the main achievements of the institutions is that they have managed to place discrimination and equality on the public and political agenda.

7.4. Co-operation with other organisations, civil society and social partners

All of the institutions are involved in co-operation with other organisations, NGOs and governmental bodies in one way or other. Some also include potentially discriminated-against groups in their work.

7.4.1. Network-building institutions

The objectives of some institutions specify that they should maintain relations with relevant institutions working within their field, i.e. NGOs, associations, etc. For instance, one of the objectives of the Dutch LBL is to initiate actions and stimulate co-operation with organisations to combat age discrimination. The same applies to most of the other organisations, whether or not they have explicitly said so.

The French CODAC in particular acts as a network-building institution for its partners, and provides an annual forum for the exchange of experiences and information. The intention is to make the forces in civil society actively work with the public administration to promote integration and combat discrimination via regular working groups which typically deal with labour market integration, education, housing and other social conditions, and access to justice.

The Swedish Disability Ombudsman institution is instructed in its statute to maintain contacts with businesses and to encourage the private sector to pay appropriate attention to disability issues. According to the Swedish action plan on accessibility, the Disability Ombudsman is responsible for the co-ordination of these activities. Twice a year the Ombudsman meets with all the officially-recognised disability organisations which receive state subsidies to exchange views and information.

The chairman of the Portuguese Commission, being also the High Commissioner for Immigrants and Minorities, has a broad co-ordination role relating to all parts of the state administration, and is a member of a very large number of organisations and commissions dealing with issues related to minorities and migrants. This provides a particular example of bringing together information from representatives of a broad variety of ethnic minority groups and other groups vulnerable to discrimination.

7.4.2. Capacity-building

In addition to the activities of those institutions, which have as a priority to act as network-building institutions, most of the institutions emphasise co-operation and networking as important in regard to building the capacities of themselves and other institutions.

Those bodies working either to achieve settlements in cases of discrimination or to overcome more structural equal treatment barriers are dependent on the organisations with greater hands-on knowledge in their respective countries. For instance, in the Netherlands the Equal Treatment Commission works to settle cases of possible discrimination, and is benefiting from the work of organisations like the Expertise Centre on Age and Society and the National Bureau Against Racial Discrimination and their knowledge of age- or ethnicity-based discrimination.

Networking can also include other parties, e.g. where the institution takes part in work being conducted by others. An example is the Swedish HomO's participation in the reference group of two Swedish EQUAL projects on Equal Treatment Because of Sexual Orientation, which involve various unions and NGOs. One concerns the role of sexual orientation in working life, and is established by the Swedish trades union confederation, the confederation of municipalities, and the Swedish federation for lesbian, gay, bisexual and transgender rights. The other project is concerned with modifying the norms re-

lated to homosexuality within the military, the police and the church in Sweden, and likewise includes employers' and employees' organisations and NGOs. Through this co-operation the different institutions are building capacity within the field of anti-discrimination work.

In connection with self-capacity building, the Dutch Expertise Centre Age and Society may be mentioned. As a key European actor in the area of age discrimination, it is important for the LBL to extend its knowledge and obtain information from its network so as to keep fully briefed on relevant developments in the area.

Co-operation within the national institutions of discrimination

In UK the Disability Rights Commission (DRC) co-operates with the GB Commission for Racial Equality (CRE), the Equal Opportunities Commission, the Equality Commission in Northern Ireland, and the Equality Authority in the Republic of Ireland through:

- Regular joint meetings of the Chief Executives and Chairs
- Joint approaches to and meetings with Government
- Some joint publications and research, and sharing of staff resources
- Observers from the three GB Commissions and the NI Commission attending each other's main meetings.

However, a large amount of the work particularly focuses on building the capacity of other institutions, such as NGOs and trade unions. Two organisations providing such capacity-building are the CRE and the Swedish Ombudsmen. The Belgian CECLR is also seeking to bring together and train groups of NGOs on an *ad hoc* basis.

Capacity building and training

The British Commission for Racial Equality has close links with a number of NGOs, and in particular with the racial equality councils. The racial equality councils are organisations working in local areas and among local communities to promote racial equality and deal with racial discrimination. The CRE provides some funding and training to the circa 100 racial equality councils in the UK.

The Swedish Ombudsman Against Discrimination Because of Sexual Orientation gives priority to building competences among the trade unions, which are supposed to handle cases of discrimination in the workplace. The

Ombudsman noted that the unions have not so far paid much attention to this issue, and often their members do not know that they can approach the unions with problems relating to discrimination or harassment.

Capacity building can also relate to the previously-described initiatives which are directed at training organisations and companies in how to handle cases of discrimination.

Mutual capacity building

In the course of its duties the British Disability Rights Commission (DRC) builds links with disability and advisory groups, networks and organisations representing businesses and employers. The DRC also works with other public and statutory bodies on issues relating to discrimination when a joint approach is appropriate. The DRC reports on the nature and effectiveness of those links in its Annual Report. The DRC is continuously updated on developments in the field. The DRC also works to build capacity among the organisations working on behalf of people with disabilities.

The question of capacity building also touches upon questions of how to mainstream the equal treatment perspective in the work across public institutions.

Some of the existing institutions have the role of networking and co-ordinating these activities and ensuring the integration of a non-discriminatory perspective into the work of the public administration – in effect acting as a sort of watchdog for it.

Thus the French GELD emphasizes that one of its key concerns is to establish capacity within all parts of the French public administration for dealing with discrimination issues. Rather than wishing to see all efforts and resources being focused on its own activities with the risk that they will simply be concentrated into one small unit, the GELD stresses the importance of ensuring that ministries and departments should assume an active role and responsibility for mainstreaming the discrimination issue.

This role is also played by the Commissioner of the Berlin Senate, and by the Finnish Ombudsman, as the text box below illustrates.

Mainstreaming the discrimination perspective into all areas of work

One of the aims of the newly-established Finnish Minority Ombudsman is to develop co-operation between the public authorities and organisations involved in the combating and prevention of ethnic discrimination. The Ombudsman tries to critically evaluate how other officials acquire their information and to ensure that the dimension of ethnic origin is taken into account where necessary. For instance, when the Parliamentary Ombudsman deals with a case the Minority Ombudsman tries to ensure that the ethnic dimension is not left out.

7.4.3. Including other organisations in one's own work

Another way of building networks and enlarging capacities is to include stakeholders in working groups, advisory groups etc..

One example is the British CRE's private company group which assists the CRE in developing strategies to make the organisation more visible and effective in private company contexts. The CRE works with a business advisory group containing representatives from 10-15 big corporations in order to help the CRE become more effective in persuading businesses to work towards the achievement of racial equality in their own workforces. They are currently engaged in a dialogue regarding methodology, practical assistance and information.

The ODEI in Ireland has established a users' forum where users, stakeholders and others are invited to participate in discussions about the organisation and its procedures. No specific cases or legal aspects of cases are discussed. The forum is still very new, but both the stakeholders and the organisation see it as a good and open way to share experiences.

The Berlin Commissioner for Foreigners' Affairs works closely with migrants' organisations. The Commissioner has been active in helping migrants to organise themselves and to form so-called self-help

groups. One role of the commissioner is also to act as a funding agency supporting activities proposed by the migrant organisations.

Funding agency for other institutions

One of the activities of the Berlin Commissioner is to support an institution called 'Werkstadt der Kulturen', which conducts intercultural activities for migrant groups. This is an autonomous structure with its own administrative board which also includes representation of the Commissioner's office. Its activities are financed through the budget of the Commissioner, and the Commissioner's office is responsible for their budget.

7.4.4. Summary of key points – co-operation

- Networking generally has a double capacity-building impact which affects both the institution itself and its relevant partners in the national equal opportunities field.
- Some institutions apply a double strategy of being in the forefront of anti-discrimination work and concurrently trying to integrate an equal treatment perspective in the work of other institutions, agencies and departments, thereby providing both a mainstreaming strategy on equal treatment perspectives and a knowledge base where others can obtain access to expertise.

Appendix A: Institutional profiles

The five institutions selected for case studies are presented first.

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