



Migrants, minorities and employment

Exclusion and discrimination in the 27 Member States of
the European Union

Update 2003 – 2008

This report addresses matters related to the principle of non-discrimination (Article 21) and the right to fair and just working conditions (Article 31) falling under the Chapters III 'Equality' and IV 'Solidarity' of the Fundamental Rights Charter of the European Union.

Cover picture: iStockphoto

More information on the European Union is available on the Internet (<http://europa.eu>).

FRA - European Union Agency for Fundamental Rights
Schwarzenbergplatz 11
1040 Wien
Austria
Tel.: +43 (0)1 580 30 - 0
Fax: +43 (0)1 580 30 - 691
Email: information@fra.europa.eu
fra.europa.eu

Cataloguing data can be found at the end of this publication.

Luxembourg: Publications Office of the European Union, 2011

ISBN 978-92-9192-497-4
doi: 10.2811/43290

© European Union Agency for Fundamental Rights, 2010
Reproduction is authorised, except for commercial purposes, provided the source is acknowledged.

Printed in Belgium

PRINTED ON WHITE CHLORINE-FREE PAPER



Migrants, minorities and employment

Exclusion and discrimination in the 27 Member States of
the European Union

Update 2003 – 2008

Background to the report

This report is one of a series of comparative reports produced by the European Union Agency for Fundamental Rights (FRA) since 2003. These reports bring together every few years the data and information provided nationally by the FRA RAXEN National Focal Points on discrimination and related issues regarding migrants and minorities in selected areas of social life. Since 2003, the Agency has produced such comparative reports in the areas of employment (2003), legislation (2004), education (2004), racist violence (2005) and housing (2006). Among the aims of the reports are to highlight themes which emerge when the data is considered cross-nationally, to identify any signs of trends which can be perceived over the period of years under consideration, and to point to issues of future concern to policy makers or researchers.

This report begins the cycle again and covers the area of employment for the second time. The first such comparative employment report, published in 2003, covered data collected by the RAXEN National Focal Points in the area of employment between 2001 and 2003, covering the then 15 EU Member States. The current report covers 27 EU Member States, bringing together the material from RAXEN reports between 2003 and 2007, and also adding some further material from 2008. As most of the secondary data goes up to 2008, the report should be read in the context of several subsequent FRA reports which add to and advance this data, as well as subsequent FRA research reports which have taken up and explored in greater detail specific themes which have been raised in the comparative report. These reports¹ are:

- FRA Annual Report 2009
- FRA Annual Report 2010
- EU-MIDIS Main Results Report, 2010
- The Impact of the Racial Equality Directive: Views of trade unions and employers in the European Union, 2010

Taken together, the comparative report on employment and these subsequent FRA reports provide a unique body of secondary and primary data in the area of migrants, minorities and employment, identifying themes and trends, and suggesting questions of future concern relevant to policy makers and researchers alike.

¹ Available at www.fra.europa.eu

Country codes

AT	Austria	IT	Italy
BE	Belgium	LT	Lithuania
BG	Bulgaria	LU	Luxembourg
CY	Cyprus	LV	Latvia
CZ	Czech Republic	MT	Malta
DE	Germany	NL	Netherlands
DK	Denmark	PL	Poland
EE	Estonia	PT	Portugal
EL	Greece	RO	Romania
ES	Spain	SE	Sweden
FI	Finland	SI	Slovenia
FR	France	SK	Slovakia
HU	Hungary	UK	United Kingdom
IE	Ireland		

Contents

BACKGROUND TO THE REPORT	3
EXECUTIVE SUMMARY	7
INTRODUCTION	9
1. MIGRANTS AND MINORITIES: CONCEPTS, DEFINITIONS, DATA	11
1.1. Introduction: ethnic and cultural diversity in the European Union	11
1.2. Identifying migrants and minorities	15
1.3. Availability of statistics regarding discrimination in the area of employment	19
1.4. Developments of statistical data collection over the last five years	21
2. PATTERNS OF INEQUALITY	25
2.1. Inequality, social exclusion and vulnerability	25
2.2. Indicators of inequality	26
2.3. Evidence of change and continuity	45
3. RACIAL/ETHNIC DISCRIMINATION IN EMPLOYMENT: EU LAW	47
3.1. The Equality Directives	47
3.2. The concepts of discrimination in the Equality Directives	48
3.3. The implementation of the Directives	49
3.4. Outlook	52
4. INDICATORS OF DISCRIMINATION	53
4.1. Incidents, complaints and court cases	53
4.2. Research evidence for discrimination.....	58
5. LEGAL STATUS AND VULNERABILITY	65
5.1. The concept of ‘discrimination by law’ – a European dilemma.....	65
6. THE SITUATION OF MIGRANT AND MINORITY WOMEN IN EMPLOYMENT	73
6.1. The concept of multiple and intersectional discrimination	73
6.2. Complex experiences of discrimination – The situation of migrant and minority women in employment.....	74
CONCLUSIONS	79
STATISTICAL ANNEX	81
LIST OF CONTRIBUTORS	92

Executive summary

Migrants and minorities: concepts, definitions, data

Ethnic, cultural and religious diversity is a central feature of the European Union. Migration has been a major source of diversity: the number of foreign-born population in the EU has been estimated as over 40 million or 8.8 per cent of the total population of 495 million. Of these, two thirds have been born outside the European Union. National and linguistic minorities or 'historic minorities' are another important source of ethnic and cultural diversity in the European Union. Roma constitute one of the largest minority populations in the European Union, estimated at between 4.6 and 6.4 million.

There are considerable differences in how Member States define migrant and minority groups for policy purposes and how they collect statistical data on these groups. These differences in data collection practices in the European Union place serious limitations on any comparative study of patterns of inequality, social exclusion, and discrimination against migrants and minorities in the labour market.

The study finds that data on citizenship and country of birth are increasingly available in respect to data on employment of immigrants, and the recent ad-hoc module of the European Labour Force Survey includes information on persons with a migrant background. However, much less information is available on ethnicity, which is a relevant category for analysis particularly regarding national minorities and communities with a more distant migration background. Changes in this data situation can be expected in the future, not least in the context of the implementation of a new Community Statistical programme during 2008-2012.

Patterns of inequality

The report highlights persistent patterns of inequality between the situation of foreigners, immigrants and minority groups in the labour market and that of the overall majority populations. Differential employment and unemployment rates, the concentration of migrants and minorities in specific economic sectors and branches, income and wage disparities, and differences in working conditions, access to education and educational attainment all indicate important differences in labour outcomes for migrants and minorities. While unequal labour market outcomes do not necessarily reflect discrimination, discrimination is, nevertheless, an important factor leading to inequality.

In general terms, such patterns of inequality seem to have remained constant since 2000. However, against the background of the serious lack of sufficiently detailed longitudinal data on employment patterns of migrants and minorities, and in particular, the lack of knowledge on specific subgroups, notably specific cohorts of immigrants and the second generation, no definite statements on changes over time are possible.

Racial/ethnic discrimination in employment: the EU law

The adoption of the equality directives – the Racial Equality Directive 2000/43/EC and the Employment Equality Directive 2000/78/EC – must be considered a milestone in the development of equality and non-discrimination policies on the European level, although full and correct transposition in all 27 Member States is yet to be achieved. The main problem areas of incorrect transposition include definitions of discrimination, assistance to the victims of discrimination – such as the shift in burden of proof and victimisation – and the scope of protection granted.

The study highlights the importance of reducing barriers for victims, so that they may seek legal redress or other more low-profile remedies against unjust situations, and also emphasises the future role of the courts in effectively interpreting the meaning of discrimination itself.

Indicators of discrimination

Incidents, complaints and court cases

Specialised bodies, equality tribunals and judicial courts throughout the EU have dealt with cases covering all the types of discrimination covered by the Equality Directives and, while doing so, have also advanced different interpretations of several sensitive issues related to the directives, such as the shift of the burden of proof, instruction to discrimination, responsibility of employers for the behaviour of their employees, addressing multiple discrimination, the use of situation testing as evidence in court etc. However, although the total number of complaints of discrimination reported and processed since 2003 has increased, compared to previous years, as a direct consequence of the implementation of the Equality Directives in the Member States, with the notable exception of the UK and Ireland there is still very little case law on racial/ethnic discrimination in employment.

This situation suggests that there are a number of barriers to gaining access to justice, namely:

- legal and administrative barriers (e.g. the lack of a service clearly mandated or trained to process complaints, lack of effective organisations striving for more equality, complex and slow procedures, short time limits for filing an application etc.);
- technical barriers (e.g. prohibitive costs of bringing a case to court or the high cost of legal advice and lack of access to free legal services); and
- other obstacles to accessing legal remedies against discrimination (e.g. the infrequency of litigation itself, lack of effective, proportional and dissuasive sanctions, low level of awareness among the victim population regarding their rights and available options for seeking redress, fear of victimisation, the perception of low success rate for actions taken to court etc.).

Research evidence for discrimination

Considerable research on employment discrimination has been carried out over the past five years. The available data and studies provide ample evidence for discrimination against migrants and minorities. The report presents the main findings of research conducted on employment discrimination on grounds of ethnicity, while also discussing the strengths and weaknesses of different methodologies.

Specifically, it focuses on indicators of discrimination produced from four main research sources: statistical data on labour market performance; discrimination testing; research conducted on the majority population, in particular regarding employers' discriminatory attitudes and behaviour; and surveys and interviews with migrants and minorities recounting their subjective experiences of discrimination in employment.

This section of the report concludes that discrimination on grounds of ethnicity and 'race' is a social reality, but also that much more research – especially cross-national – is needed in order to properly assess the full extent of discrimination against migrants and minorities on the labour market, and also to raise awareness of the existence of such discrimination.

Legal status and vulnerability

The Equality Directives explicitly refrain from restricting 'any treatment which arises from the legal status of the third-country nationals and stateless persons'. Thus, the national legal frameworks regulating the entry, residence and employment of non-nationals continue

to be one of the main sources of inequality among persons residing on the European territory, while citizenship remains one of the last grounds on which Member States may legally engage in discriminatory treatment of persons. The report analyses in detail public sector exclusion of non-nationals, the legal insecurities and stratification of third country nationals, and the situation of undocumented migrant workers.

Research in this area suggests that restrictive immigration systems may contribute to migrants' living and working in irregular conditions, as well as further reinforcing the segmentation of labour markets along ethnic and national lines.

While Council Directive 2003/109/EC has improved the status of third country nationals who are long term residents (for instance, by ensuring their access to employment on equal terms with the nationals), 'discrimination by law' against the remaining categories of third country nationals has continued to remain an under-represented and under-researched field. This section of the report concludes that legal insecurity renders a considerable number of immigrants vulnerable to exploitation and may even reinforce their marginalisation in the labour market or put them at risk of losing their legal status due to non-compliance with residence requirements.

Migrant and minority women in employment

Available data indicates that migrant and minority women occupy the least-paid and least-skilled jobs in the most marginalised segments of the labour market. Often, their employment opportunities are restricted to work in the domestic sphere, with a high risk of insecurity and, often, irregular working conditions. In addition, discrimination experiences of migrant and minority women are different according to the various social and legal positions they occupy and to the attitudes of the majority population they are confronted with.

This section concludes that their situation cannot be regarded as the simple sum of gender and racial/ethnic discrimination, rather it is best described as being at the intersection of a number of different types of discrimination, including gender, nationality and ethnicity. This section also includes a brief theoretical discussion on the concepts of 'multiple discrimination' and 'intersectional discrimination,' as well as the way these concepts have been reflected at policy level in the EU and the Member States.

Introduction

Aims of the study

The overall aim of this comparative study is to provide the European Community and its Member States with a policy-relevant and comprehensive overview of social exclusion and discrimination regarding migrants and minorities in the area of employment in the 27 EU Member States. In addition, the study also surveys the legal framework in place to combat discrimination. The study highlights main developments since 2003. In particular, it provides evidences of change in relation to trends and developments identified by a previous comparative report on 'migrants, minorities, and employment' which was commissioned by the predecessor institution of the Fundamental Rights Agency, the European Monitoring Centre on Racism and Xenophobia (EUMC) in 2003.² Patterns of change are discussed in terms of objective indicators (statistics) and trends.

How the study was conducted

In July 2008, the International Centre for Migration Policy Development (ICMPD) had been contracted by the European Union Agency for Fundamental Rights (FRA) to compile an EU level comparative study based on reports submitted each year by the National Focal Points (NFPs) of the RAXEN network, as well as other material produced by the EU Fundamental Rights Agency. In addition, the study team³ draws on a range of additional sources, including research studies, commissioned reports, statistical data and reports from the Commission's statistical agency, Eurostat and the Organisation for Economic Co-operation and Development (OECD) as well as material collected in completed and on-going research projects undertaken by ICMPD.

Methodology and structure

The study provides a comparative analysis of inequality and discrimination in the labour market. Given the widely different historical trajectories of individual Member States, differences in administrative and political tradition, different histories of migration and in the presence of immigrant or autochthonous minorities, any comparison on the level of the European Union of 27 is an inherently difficult task. The difficulty of the task is compounded by large differences in national

data collection practices and the scarcity of in-depth information on migrants and minorities on the labour market on the level of the European Union. As the study is largely based on national level information provided by the Fundamental Rights Agency's RAXEN network, the comparison undertaken is inherently limited. Because of these limitations, the study team decided to highlight the central issues involved in the various topics areas, which are illustrated by examples taken from national RAXEN reports. Wherever possible, more systematic and comparable information has been included.

The study is divided into seven parts:

Chapter 1 describes patterns of ethnic and cultural diversity in the European Union and discusses the main concepts used in the European Union as a whole and in individual Member States to identify migrants and minorities. In addition, the chapter investigates availability, quality and comparability of data, and discusses changes in data collection since 2003.

Chapter 2 analyses patterns of employment of migrants and minorities in the European Union, looking at employment and unemployment rates, distribution across employment sectors, and differences in income and wages, to set the stage for an investigation of patterns of discrimination in the EU Member States undertaken in Chapter 4.2.

Chapter 3 provides a discussion of discrimination, as well as its different forms, as defined by the Racial Equality Directive (2000/43/EC). In addition, the chapter provides an overview of the implementation of the Racial Equality Directive in Member States and provides an outlook on the future development of equality and non-discrimination legislation in the European Union.

Chapter 4 provides a discussion of indicators of discrimination in the area of employment, including incidents, complaints and court cases, and the various types of research which have produced direct evidence of discrimination in employment.

Chapter 5 focuses on the nexus of legal status and vulnerability to marginalisation, social exclusion and unequal treatment. The chapter pays particular attention to the situation of non-EU nationals residing on a short term basis or without a legal status.

Chapter 6 analyses the position of migrant and minority women in employment, and provides a discussion of the interrelated concepts of intersectionality and multiple discrimination.

² EUMC (2003) *Migrants, Minorities and Employment: Exclusion, Discrimination and Anti-Discrimination in 15 Member States of the European Union*

³ Albert Kraller (co-ordinator), Saskia Bonjour, Alina Cibea, Mariya Dzhengozova, Christina Hollomey and David Reichel.

Chapter 7 is the concluding chapter and summarises the main findings of the study.

Note on terminology

In line with previous FRA/EUMC publications, we use 'migrants and minorities' as a short cut for minority groups and those with a migrant background who are vulnerable to social exclusion, marginalisation and discrimination. Using these terms, we do not imply that migrants and minorities are per se vulnerable groups. Rather, we investigate potential vulnerability as a consequence of being a minority member or a person with an immigrant background. Wherever possible and reasonable, we specify whether we are speaking about migrants or minorities or both or particular subgroups among the former.

1. Migrants and minorities: concepts, definitions, data

1.1. Introduction: ethnic and cultural diversity in the European Union

Ethnic, cultural and religious diversity is in many ways a central feature of today's Union of 27, both in the Union as a whole as well as in individual Member States. Migration has been a source of diversity in almost all Member States, but to greatly varying degrees and in different ways. In the European Union as a whole⁴ immigration has exceeded emigration since about 1960, with emigration exceeding immigration only for short periods after the first and second oil crisis and related return migration of recruited labour migrants. Net migration levels have been at about 240,000 on average per year in the 1970s and 198,000 in the 1980s. Net migration grew significantly to an average of 750,000 per year in the 1990s. With over 2 million, net migration peaked in 2003 and has since declined.

Northern and Western European States such as Austria, Belgium, France, Germany, the Netherlands, Sweden and the UK are long-standing countries of immigration with sizable minorities of immigrant origin.

Countries such as Finland, Ireland and the four Southern European countries of Greece, Italy, Portugal and Spain

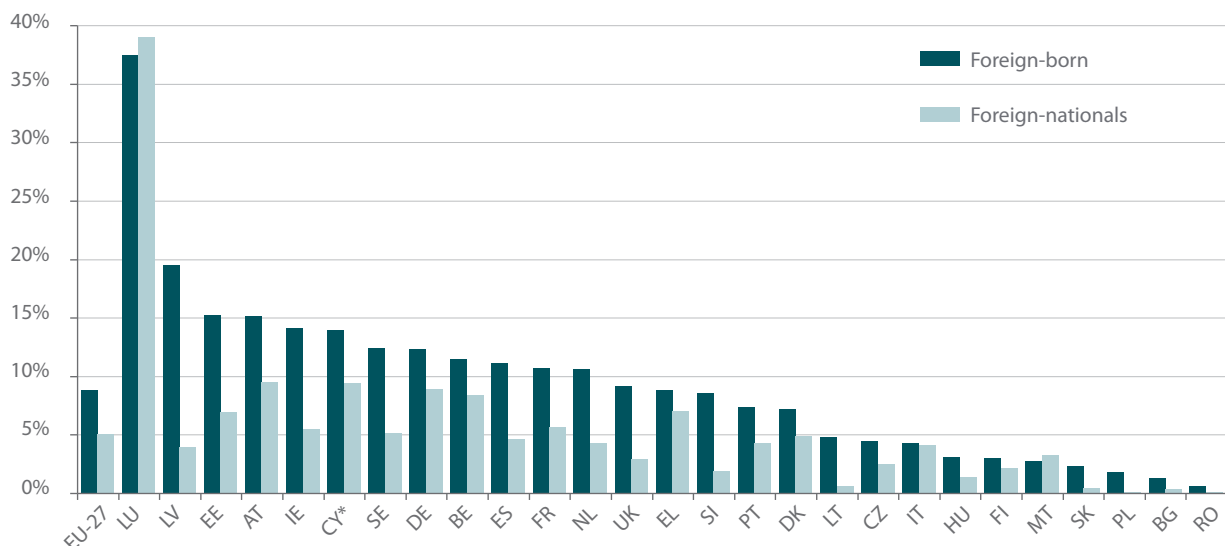
have turned from countries of emigration to countries of immigration in the 1980s and 1990s, respectively.

In Eastern Europe, the Czech Republic is an important receiving country for immigration, although a fair share of its migrant population are Slovaks, many of whom have been on the territory already before the dissolution of the former common state Czechoslovakia. Similarly, in Slovenia a large share of the foreign born population have migrated to Slovenia during the Yugoslav era. The countries continued to receive both labour migrants and refugees from this region since independence, while the number of migrants from other countries has remained relatively small.

The Russian speaking minorities of the three Baltic countries similarly are a historical legacy of the Soviet era, when large numbers of Russian speakers migrated to the area, often in the framework of state-led resettlement and migration programmes.⁵

In 2005, the number of foreign born population in the EU stood at just over 40 million or 8.8 per cent of the total population of 495 million. Of the more than 40 million persons born abroad, two thirds have been born outside the European Union.

Figure 1-1: Share of foreign-born population in the EU Member States, 2005



Note: * Greek part of Cyprus only.

Source: ICMPD presentation based on Table A.1 in the Statistical Annex

4 Data for EU-25 only. N. Diez Guardia, K. Pichelmann (2006) *Labour Migration Patterns in Europe: Recent Trends, Future Challenges*, European Commission Directorate General for Economic and Financial Affairs, Economic Papers No. 256, September 2006, available at: http://europa.eu.int/comm/economy_finance (29.11.2008), p. 5-6.

5 See A. Triandafyllidou, R. Gropas, D. Vogel (2007) 'Introduction', in A. Triandafyllidou, R. Gropas (eds.) *European Immigration. A Sourcebook*, Aldershot: Ashgate, pp. 1-17.

Reflecting the very different historical trajectories of individual countries, the share of immigrants, however, varies enormously. With a share of more than 37.4 per cent, Luxembourg had the highest percentage of foreign born in 2005. In long-standing countries of immigration, the share of foreign born is between 9.1 per cent (United Kingdom) and 15.1 per cent (Austria). The foreign born population in Latvia and Estonia is roughly in the same order, with 19.5 per cent and 15.2 per cent respectively. In various Eastern European countries, including Bulgaria, Poland, Romania and Slovakia, the share of the foreign born population, by contrast is much lower and varies between 0.6 and 2.3 per cent. In the Czech Republic, Finland and Hungary the share is somewhat higher and between three and four per cent, while in the majority of the remaining countries the share of the foreign born population is just below the EU average.⁶ Not all foreign born persons have a foreign background. Indeed, in some countries with a long history of emigration a sizable proportion of immigrants is made up of returning citizens and their descendants, for example in Poland.

The European Union's population of immigrant origin is also diverse in terms of legal status. While a sizable share of immigrants possess the citizenship of their current country of residence, some 28 million migrants or descendants of migrants had a foreign citizenship in 2007, of which some 17 million had a citizenship of a country outside the European Union.⁷

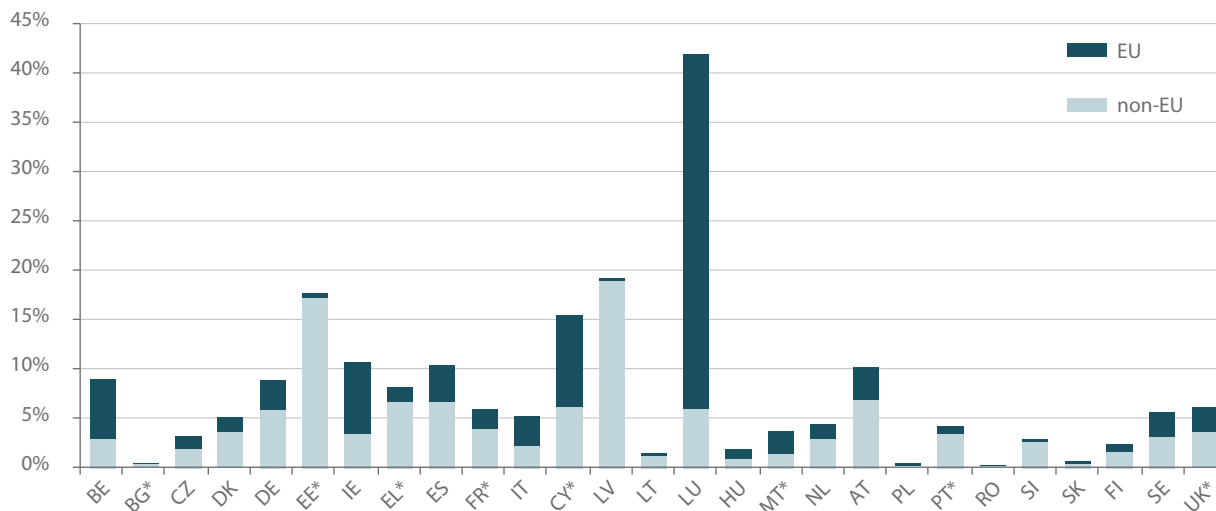
Not all foreigners are migrants, in the sense that they have physically migrated from another state to the current country of residence. Rather, a small but considerable number of foreigners were born on the territory of a Member State, reflecting prevalent *ius sanguinis* conceptions of citizenship and a general reluctance towards the automatic granting of citizenship upon birth in a country of the European Union.

Reflecting different histories of migration and different migration and citizenship regimes, the stock of foreigners varies considerably in the European Union. According to Eurostat data the percentage of foreigners in EU Member States ranges between about 0.1 per cent (Poland, Romania) and more than 41 per cent in Luxembourg.⁹

The term 'foreign national', however, itself is not a consistent legal category. Rather, the category comprises a great number of different statuses, differentiated along various axes, notably nationality, purpose of stay, the temporality of the permit (whether migrants possess a short term permit, a long term permit or a long term residence permit in the meaning of directive 2003/109/EC¹⁰) and in terms of the renewability of the legal status held.¹¹

In the context of the expansion of freedom of movement rights for European Union citizens and their family members in particular in the last two decades¹², the

Figure 1-2: Share of foreign population in total population in 2007⁸



Source: ICMPD presentation based on data extracted from Eurostat on 28 August 2008

6 R. Münz, T. Straubhaar, F. Vadean, N. Vadean (2006) 'What are the migrants' contributions to employment and growth? A European approach', *HWWI Policy Paper No. 3-3*, Hamburg: HWWI, available online at: [http://www.hwwi.org/Publikationen_Einzel.5119.0.html?&tx_wilpubdb_pi1\[publication_id\]=666&tx_wilpubdb_pi1\[back\]=484&cHash=1fda167c85](http://www.hwwi.org/Publikationen_Einzel.5119.0.html?&tx_wilpubdb_pi1[publication_id]=666&tx_wilpubdb_pi1[back]=484&cHash=1fda167c85), (27.11.2008) p. 21.

7 See Statistical Annex.

8 For countries marked with an asterisk (*) numbers include estimates by Eurostat.

9 <http://ec.europa.eu/eurostat> (28.08.2008).

10 Directive 2003/109/EC (25.11.2003).

11 A. Kraler (2006) 'The legal status of immigrants and their access to nationality', in R. Bauböck (ed.) *Migration and citizenship. Legal Status, Rights and Political Participation*. Amsterdam: Amsterdam University Press, p. 38.

12 Directive 2004/38/EC (29.4.2008).

abolition of internal border controls in the framework of the Schengen rules and the simultaneous emergence of migration policies vis-à-vis third country nationals, the distinction between Union citizens and their family members on the one hand, and third country nationals on the other, has become increasingly important.¹³

Legally, the status of Union citizens is almost equal to that of a citizen of the receiving states, although transitional regulations for the EU-8¹⁴ and Bulgaria and Romania temporarily limit freedom of movement rights and in particular, access to EU labour markets until 2011 and 2014, respectively.¹⁵ In addition, family members of EU citizens enjoy freedom of movement rights irrespective of their nationality.

Like EU citizens and their family members, third country nationals who are long term residents of a Member State¹⁶ enjoy more or less unrestricted freedom of movement rights and far-reaching protection from expulsion and withdrawal of residence status. Most importantly, unlike foreign nationals who are not covered by the long term residence directive, long term residents enjoy far reaching protection from discrimination on grounds of nationality (excluded from the Equality directives) and hence equality in access to the labour market and in particular to public sector jobs, and social benefits and services, amongst others (see chapter 5).

However, those foreign nationals who are not long term residents of a member state have highly varying legal statuses, depending on the purpose of stay and on whether they have been admitted on a temporary or a permanent basis. In addition, an unknown and probably relatively small share of Europe's population has been admitted as refugees:¹⁷ in 2005, 21,205 persons were granted refugee status in the EU-27, while 23,765

persons received subsidiary protection. More important in quantitative terms are asylum seekers, who have been an important feature of migration in the European Union since the 1990s, even though their status and probably their stay is largely of a transitional and temporary nature. In recent years, however, the number of asylum applications has significantly decreased.¹⁸

Yet migration is not the only source of cultural and ethnic diversity in the European Union. Autochthonous ethnic and linguistic minorities or 'historic minorities'¹⁹ are an equally important source of ethnic and cultural diversity. Virtually all European countries have autochthonous ethnic and/or linguistic minorities of some sort. Some, like the Basques and Catalans in Spain or German-speaking minorities in northern Italy, and Hungarian minorities in Slovakia and Romania, constitute large regionally concentrated minorities which frequently are majority groups in specific regions. Often, these regions enjoy far reaching autonomy and in some contexts, notably in Belgium and Spain, the federal organisation of the political system reflects the inherent diversity of these states. Such minorities are also often called national minorities to distinguish them from smaller autochthonous ethnic minorities without claims to political and cultural autonomy.

However, not only do such large national minorities often constitute the majority population in their main areas of settlement, they also usually differ little from the overall national population in terms of social, political and economic participation and thus are far from being 'vulnerable groups'. However, as the focus of this report is on the latter – on migrant and minority groups vulnerable to social exclusion and potentially or actually subject to discrimination – such minorities will not be further considered in this report.

Apart from such large autochthonous national minorities, there is a broad range of autochthonous minority groups of smaller size or other characteristics that distinguish them from national minorities. In several EU Member States such autochthonous minorities enjoy special protection under constitutional or other laws, including the Saami population in Finland, various smaller groups in Austria, and the Muslim minority of Thrace in Greece.²⁰ Such formal legal protection usually affords specific cultural rights to minorities so recognised, including

13 See for an account of the emergence of free movement and the evolution of EU migration policy A. Kraler, M. Jandl, M. Hofmann (2006) 'The Evolution of EU Migration Policy and Implications for Data Collection'. in: M. Poulain, N. Perrin, A. Singleton (eds.) *Towards the Harmonisation of European Statistics on International Migration (THESIM)*, Louvain-La-Neuve: UCLPresses Universitaires de Louvain, pp. 35-75.

14 Citizens of Cyprus and Malta were never subject to transitional regulations restricting access to EU-15 labour markets.

15 The two dates mark the dates by which all restrictions on freedom of movement and access to labour markets have to be lifted. Three states (IE, SE, UK) have immediately granted full freedom of movement to EU-8 citizens. Another 10 of the EU-15 countries have lifted restrictions between 2006 and 2009. Of the EU-15 Member States, only Austria and Germany will keep restrictions for EU-8 citizens in place until 2011. In respect to EU-2 citizens, six of the EU-15 Member States (Denmark, Spain, Finland, Greece, Portugal, Sweden) decided to open up their labour markets at the time of writing. Of the new EU Member States that acceded to the EU in 2004 all except Malta, which maintains restrictions against Bulgarians and Romanians, have opened up their labour markets (see <http://ec.europa.eu/social/BlobServlet?docId=119&langId=en> (31.1.2010)).

16 Directive 2003/109/EC (25.11.2003).

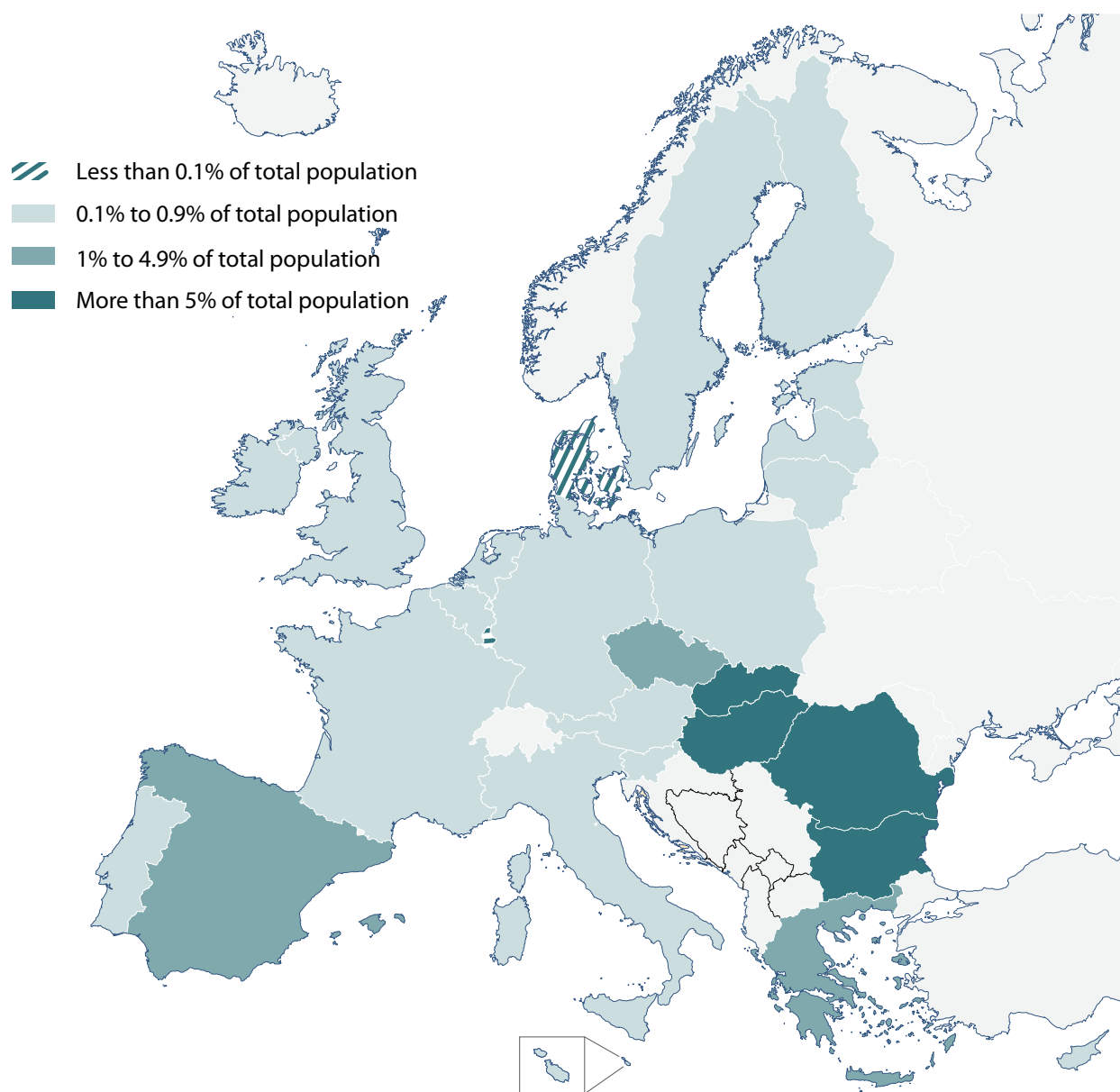
17 No data is generally available on the total stock of recognised refugees and only number of grants (and refusals) is collected.

18 Eurostat database, data extracted on 28.11.2008, available online at: http://epp.eurostat.ec.europa.eu/portal/page?_pageid=1996,45323734&_dad=portal&_schema=PORTAL&screen=welcomeref&open=/populat/migr/migr_asy&language=en&product=EU_MASTER_population&root=EU_MASTER_population&scrollto=0.

19 Council of Europe (2000) *Diversity and Cohesion: New Challenges for the Integration of Immigrants and Minorities*, Strasbourg: Council of Europe Publishing, p. 25f.

20 EUMC (2003) *Migrants, Minorities and Employment: Exclusion, Discrimination and Anti-Discrimination in the 15 EU Member States of the European Union*

Figure 1-3: Estimated share of Roma populations in the European Union



Source: ICMPD presentation. For underlying data see Statistical Annex Tables A.1 and A.2

using a minority language at court and/or as language of instruction in the education system or entitlements for public subsidies for minority media or other cultural activities. Some of these minorities are positioned at the margins of society and experience marginalisation and social exclusion. Others differ little from the overall population in terms of political, social and economic participation and diversity in their case is essentially an issue of cultural and political recognition rather than an issue of social exclusion and marginalisation.

Roma constitute one of the largest minority populations, numbering between a few thousands in the Baltic

countries and Slovenia to several hundred thousand in the Czech Republic, France, Slovakia and Spain, to possibly more than two million in Romania.²¹ Estimates on the total population of Roma background living in the territory of the European Union range from three to seven million mentioned in the 2004 European Commission report *The Situation of Roma in an Enlarged Europe*²² prior to EU enlargement, to 10 million in

21 J.-P. Liégois (2007) *Roma in Europe*, Strasbourg: Council of Europe Publishing, p. 31.

22 European Commission (2004) *The Situation of Roma in an Enlarged Europe*, p. 6 available at <http://www.errc.org/db/00/E0/m000000E0.pdf> (20.10.2009).

the EU 27 Member States, noted in a 2008 European Parliament Resolution on a European Strategy on the Roma.²³ The population usually referred to as Roma, however, is itself highly heterogeneous and comprises a large number of different groupings, including Roma in the narrow sense, Sinti, Travellers, Ashkali, Kale and Beash, amongst others.²⁴ Reflecting a long history of social exclusion, marginalisation, discrimination and persecution, the Roma are generally a particularly vulnerable group, although, again, conditions differ greatly between individual Member States.

1.2. Identifying migrants and minorities

1.2.1. Theoretical considerations

The general focus of this report is on migrants and minorities vulnerable to social exclusion, marginalisation and discrimination. Using these terms, we do not imply that migrants and minorities are *per se* vulnerable groups. Rather, we investigate potential vulnerability as a consequence of being a minority member or a person with an immigrant background and use the reference to migrants and minorities as a reference to vulnerable groups. Wherever possible and reasonable, we specify whether we are speaking about migrants or minorities or both or particular subgroups among the former.

The way the term migrants and minorities is used in this report – namely as a category referring to particular groups potentially vulnerable to exclusion, marginalisation and discrimination rather than as a term referring to migrants and minorities as a whole – points to more fundamental issues regarding concepts and categories used in social and political analysis and consequently data collection.

First, most categories of social analysis are simultaneously also categories of social and political practice. This is most evident perhaps in policy categories such as ‘foreign national’ or the increasing practice to refer to the migration of EU citizens with the term mobility and distinguish it sharply from migration involving third country nationals. In this context, scientific analysis may run the danger of reifying and in a way legitimising categories of social and political practice, whereas the actual task of any analysis should actually

be to critically investigate and deconstruct such categories, to study how these are reified and turned into meaningful categories of political and social practice and to study the impact of such categories on social and economic patterns and practices. As Roger Brubaker and Frederick Cooper have remarked, social scientists ‘should avoid unintentionally reproducing or reinforcing such reification by uncritically adopting categories of practice as categories of analysis.’²⁵

In respect to research on patterns of inequality and practices of discrimination concerning migrants and minorities, such criticism has in particular been raised regarding the concepts of ‘ethnicity’ and ‘race.’²⁶ While ethnicity is a widely used and accepted term, the exact meaning of the term is contested, reflecting its dual nature as a category of social analysis and a category of social and political practice.²⁷ There is, however, a growing awareness that ethnicity is a complex and fluid phenomenon, which involves self-identification processes of individuals, collective internal discourses of ethnic groups and external discourses on ethnicity in the mainstream population. As a consequence of the fluid and essentially contextual nature of the concept, ethnicity is difficult to nail down. Equally important, the meaning of ethnicity is not stable in a temporal perspective either.

‘Race’ is an even more problematic term. As the famous first UNESCO statement on race of 1950 has remarked ‘[f]or all practical social purposes race is not so much a biological phenomenon as a social myth’. This myth has ‘created an enormous amount of human and social damage’, and by implication, should be discarded altogether and replaced by ethnicity in social and political analysis.²⁸

However, even if more neutral and generic concepts are used such as immigrants or persons with a migrant background, the basic assumption still is that such categories are useful for explaining particular labour market outcomes or other social patterns. Such assumptions underlying the use of particular categories of analysis inherently underpin all social analysis and

23 The populations (of the Roma and non-Roma) increased significantly with the 2004 and 2007 enlargements. European Parliament Resolution of 23 January 2008 on a European Strategy on the Roma P6_TA(2008)0035, [http://www.europarl.europa.eu/sides/getDoc.do?pubRef=//EP//TEXT+TA+P6-TA-2008-0035+0+DOC+XML+V0//EN\(22.09.09\)](http://www.europarl.europa.eu/sides/getDoc.do?pubRef=//EP//TEXT+TA+P6-TA-2008-0035+0+DOC+XML+V0//EN(22.09.09))

24 J.-P. Liégeois (2007) *Roma in Europe*, Strasbourg: Council of Europe Publishing, p. 32.

25 R. Brubaker, F. Cooper (2000) ‘Beyond identity’, in: *Theory and Society*, Vol. 29, No. 1, p. 5.

26 P. Simon (2007) ‘Ethnic’ statistics and data protection in the Council of Europe countries, Study report, Strasbourg: Council of Europe; J. Wrench (2007) *Diversity Management and Discrimination: Immigrants and Ethnic Minorities in the EU*. Aldershot: Ashgate, pp. 104ff.

27 R. Brubaker (2002) ‘Ethnicity without groups’, in: *European Journal of Sociology / Archives Européennes de Sociologie*, Vol. 43, No. 2, pp. 163–189.

28 UNESCO (1952) *The Race Concept: Results of an Inquiry*, available at: <http://unesdoc.unesco.org/images/0007/000733/073351eo.pdf> (see Paragraph 14 of the ‘Text of the 1950 Statement’ in the Appendix). It should be noted that the first UNESCO statement attracted considerable criticism from physical anthropologists resulting in a reformulation of it just two years later. In the reformulated statement, the critique of race as a ‘social myth’ was dropped and reintroduced as a legitimate category of biological analysis, which was only reversed in much later UNESCO statements.

are as such not necessarily problematic. However, one should avoid taking these categories as self-explanatory and as terms connoting specific characteristics of the groups subsumed under a particular category. Thus, although many migrant groups in the European Union experience social exclusion and marginalisation, it is not necessarily the fact that they are immigrants that explain their positioning in society; statistical indicators should be taken as what they are – as indications of possible explanatory variables for particular social patterns (in our case gross labour market inequalities, social exclusion and discrimination). Taking these considerations seriously, concepts used to identify vulnerable groups need to be constantly reviewed and open to modification or change.

For the purpose of this report, migrants and minorities can be taken to comprise two distinct, although overlapping groups: (1) migrants and minorities with a migrant background and (2) autochthonous minorities. For the former, three identification methods can be distinguished:

- (a) Demographically, migrants can be defined as persons who have moved from another country to their current country of residence at least once in their lifetime, usually measured by country of birth. The broader group of persons with a migrant background can be identified by their parents' or grandparent's country of birth.
- (b) Traditionally the most common identifier of migrant minorities is citizenship and the related distinction between nationals and non-nationals. Given the very different migration and citizenship regimes, however, this category is less useful for social analysis and has been replaced or complemented in many official datasets by country of birth. At the same time, distinctions between citizens and non-citizens indicate important legal differences that may affect the social and economic position of migrants and therefore is a highly useful category of social analysis for specific groups and for specific research questions. Today, many official datasets permit the combination of the variables citizenship and country of birth, allowing, for example, to distinguish 'native immigrants' – immigrants who were citizens at birth – from immigrants with a foreign citizenship at birth, and thus are able to attain a more nuanced picture of the possible factors that influence the position of migrants in society.
- (c) Ethnicity is a third possible variable to identify both migrant and autochthonous minorities. Ethnicity is usually measured through self-identification. As a variable, it is employed mainly in surveys and censuses, whereas it in administrative datasets it

appears much more rarely.²⁹ In addition to self-identification of respondents with a given list of ethnic categories, colloquial language and/or religion may be used as an alternative and as proxy variables. Ethnicity is also often taken as synonymous with national origin, in which case citizenship or descent based variables (country of birth or country of parent's birth) or combinations of these are used. In the latter case, however, ethnicity is virtually synonymous with descent rather than a concept in its own right. The use of ethnicity as a synonym for migrant background such as in the UK signals a certain perspective on diversity that interprets diversity as an inherent feature of contemporary societies, so that diversity of origin should be addressed independently of one's migration status.

1.2.2. Data collection practices in EU Member States

In the following section, we will discuss how EU Member States define migrant and minority groups for policy purposes and how they collect statistical data on these groups. In addition, the section will also provide a limited analysis of data availability and comparability, although a thorough and systematic analysis is outside the scope of this chapter.

The previous EUMC study on migrants, minorities and employment (2003) grouped the then 15 EU Member States according to prevalent concepts used to measure migrants and minorities which the study related to the immigration histories of the countries.³⁰ The first cluster of countries identified by the study included those with colonial histories (FR, NL, UK), the second cluster included labour recruiting countries which actively recruited workers from the 1950s to the 1970s (AT, BE, DK, DE, LU, SE),³¹ and the third cluster was comprised of countries which only recently (since the late 1980s or 1990s) experienced considerable immigration (GR, IT, ES, PT, FI, IE).³² While this cluster has provided a useful approach for making sense of data collection practices and related ideas about migrants and minorities in the European Union of 15 in 2003, the two latest waves of enlargement and a number of developments in statistical data collection practices and concepts used to measure migrants and minorities have

29 See research results for 'ethnicity' in the PROMINSTAT database under <http://www.prominstat.eu/prominstat/database/> (4.2.2009).

30 EUMC (2003) *Migrants, Minorities and Employment: Exclusion, Discrimination and Anti-Discrimination in 15 Member States of the European Union*

31 Often referred to as 'guestworkers'; however, this ambiguous term is problematic since 'guest' and 'worker' is contradictory and it neglects the fact that those persons were actually immigrants (cf. A. Treibel (2008) *Migration in modernen Gesellschaften. Soziale Folgen von Einwanderung, Gastarbeit und Flucht*, Weinheim and Munich: Juventa, p. 116).

32 EUMC (2003) *Migrants, Minorities and Employment: Exclusion, Discrimination and Anti-Discrimination in 15 Member States of the European Union*, pp. 5-9.

superseded the analysis. In addition, the 2003 classification of countries focused on migrant minorities and did not incorporate a broader minority perspective.

Widening the scope, Patrick Simon (2007) identifies three categories of countries:

Based on an analysis of practices of European countries in the 2000 census round, Simon finds that most countries describe the population according to citizenship and country of birth and its various combinations. He calls these groups 'state-centred' as the variables are mainly related to states (geographically and politically). EU 15 countries except northern European countries are assigned to this group.

Simon labels data collection practices in his second category of countries 'mosaic-like'. Although they all focus on 'ethno-cultural' questions, actual practices differ widely in this country grouping. Generally, these countries use religion, language and nationality/ethnicity to describe their respective populations. Central and eastern European countries, the three Baltic States as well as Balkan countries are assigned to this cluster.

Finally, Simon identifies a third cluster of predominant practices which he terms 'post-migration multicultural' data collection practices. These countries use classifications which reflect their specific post-war migration histories as well as traditions of integration and non-discrimination policies and related concepts to account for immigrants. Simon includes the United Kingdom, Ireland, Netherlands and the Scandinavian countries in this category. In these countries ethnicity, religion and/ or descent (parents' country of birth) are important categories of data collection. Migrant minorities generally are seen as broader groups including both first generation migrants and their descendants.³³

Table 1-1: Types of variables collected

Type	Variables collected	Geographical area
State-centred	Country of birth and citizenship	EU 15 excepting northern European countries, Turkey
Mosaic	Nationality/ethnicity and language	Baltic countries, central and eastern Europe, Balkans
Post migration multicultural	Ethnic group and religion Parents' country of birth	United Kingdom, Ireland, Netherlands, Scandinavian countries

Source: P. Simon (2007), p.38³⁴

As a result of major changes in data collection practices in recent years, characterised by increasingly complex, multifaceted and internationalised data collection, a fairly broad range of variables are increasingly available to identify migrants and minorities in a large number of EU Member States. As a result, the differences between countries are increasingly blurred. In addition, individual countries, particularly in those where individual datasets cannot be easily linked, may not employ uniform concepts consistently in all datasets and may follow different practices at the same time, collecting data on ethnicity in one dataset and using other variables in others. An increasing number of countries are, however, moving towards register-based population systems, in which different variables and combinations of these can be used to identify migrants and minorities. The way migrants and minorities are represented in published statistics is usually less flexible and follows discernible national traditions. Some examples of country specific concepts are given below.

1.2.2.1. Country Specific Concepts

In France the most important variables used are citizenship and country of birth. Those variables are put together to create a specific definition of 'immigrant' (*immigré*) which is defined as a resident of France who was born abroad and had a foreign citizenship at birth. This concept was introduced for two reasons: (1) Born abroad was not considered clear enough since there are many French citizens who are born abroad and there are important differences of integration processes of citizens and foreigners once they come to France, and (2) if the concept of immigrant were defined solely on the basis of country of birth, different migration and integration trajectories of immigrants who are naturalised subsequent to immigration, and those who do not, would be obscured. Information on citizenship at birth, by contrast, allows distinction to be made between the two groups and hence to study possible differences in integration trajectories.³⁵ In many other countries in Europe, by contrast, citizenship at birth is not readily available from official datasets.

In the Netherlands, official statistics distinguish between allochtones or *allochtoons* and natives or *autochthons*.³⁶ Natives are defined as persons whose parents were both born in the Netherlands, while allochtones are persons with at least one foreign born parent. *Allochtoons* are

33 P. Simon (2007) "Ethnic" statistics and data protection in the Council of Europe countries, Study report, Strasbourg: Council of Europe, pp. 37-38.

34 P. Simon (2007) "Ethnic" statistics and data protection in the Council of Europe countries, Study report, Strasbourg: Council of Europe.

35 T. Eremenko, X. Thierry (2009) *Country Report France*, National Data Collection Systems and Practices, available at: www.prominstat.eu.

36 J. Doornik (2009) *Country Report The Netherlands*, National Data Collection Systems and Practices, available at: www.prominstat.eu.

further divided in Western and non-Western.³⁷ Western countries include all countries in Europe excluding Turkey as well as North America, Oceania, Indonesia, or Japan. The remainder is defined as non-Western. The inclusion of Indonesia and Japan to Western countries has been justified on the basis of socio-economic considerations.³⁸ Another distinction is made between the first generation with a foreign background and the second generation with a foreign background.³⁹ The former comprises foreign born with at least one parent born abroad, while 'second generation' comprises persons born in the Netherlands with at least one parent born abroad.

The concept of 'ethnic nationality' can be found in particular in Eastern European countries. 'Nationality' in this context does not refer to the legal relationship of an individual to a state but rather to national identity in the sense of ethnic identity. The term thus overlaps but is not synonymous with ethnicity. Historically, the concept dates back to the communist period. In this context, ethnic nationality usually, albeit not exclusively, referred to national origin in terms of a person's origin in one of the constituent 'nations' that made up the communist federations (notably Yugoslavia and the Soviet Union). In Latvia various statistics are differentiated by ethnic nationality. Ethnic nationality is usually not derived from country of birth or citizenship but measured through self-identification.

The use of ethnicity or 'race' in the United Kingdom is closely linked to anti-racist and anti-discrimination policies and in particular the Race Relations Act. The categories used to measure 'race', however, have been subject to considerable change. Ethnicity is measured through self-identification.⁴⁰ The ethnic groups available in the census 2001 were: 'White', 'Mixed', 'Asian or Asian British', 'Black or Black British', and 'Chinese or other ethnic group'. All those categories include several subcategories.⁴¹ This categorisation includes several different characteristics, namely colour of skin (White, Black-British) as well as national, ethnic and geographic

origin (India, Pakistan, China).⁴² Although ethnic monitoring in the UK has been justified in terms of anti-discrimination and equal opportunities policies, the use of race as a category of statistics has also been criticised and blamed for the 'racialisation' of British society.⁴³

1.2.2.2. Practices of EU Member States regarding the use of citizenship, country of birth and descent, and ethnicity⁴⁴

Although various countries use their own concepts to identify migrant and minority groups, both country of birth and citizenship are increasingly available from a variety of data sources. Under the recently adopted Regulation on Community Statistics on Migration and International Protection⁴⁵ Member States are obliged to provide data on stocks of international migrants by country of birth and citizenship. However, the regulation only covers general demographic information and information on the legal status of immigrants. Thus, while general population statistics usually include the variables of citizenship and country of birth this is not always the case in respect to national data sources on employment and other social areas.

On the European level, both the Labour Force Survey (LFS) and the European Survey on Income and Living Conditions (EU-SILC) include the variables citizenship and country of birth. In the case of the LFS the variable was introduced in the mid-1990s. The 2008 ad-hoc module on migrants on the labour market additionally included the variable of parents' country of birth to allow identifying the second generation. In some countries, notably Austria, the variable of parents' country of birth has been defined a core variable and will be maintained in future waves of the survey.

Legal status, or more precisely, **nationality status** is the most commonly used differentiation in EU Member States and is usually available from general datasets on the population, residence permit data and socio-economic datasets such as the LFS or national data sources on employment. Available data usually differentiates citizens, foreigners and EU nationals vs. third country nationals. The residence permit data usually also provides information on reasons of stay and type of legal status held. Under the EU Regulation on Community Statistics on Migration and International Protection, Member States are obliged to provide such information on an annual basis.

37 Cf. Statistics Netherlands website, available at: <http://statline.cbs.nl/StatWeb/publication/?VW=T&DM=SLEN&PA=37325eng&D1=a&D2=0-1,3-4,139,145,210,225&D3=0&D4=0&D5=0&D6=9-12&HD=080604-1108&LA=EN&HDR=G3,G4,G2,T&STB=G1,G5> and <http://statline.cbs.nl/StatWeb/publication/?VW=T&DM=SLNL&PA=37325&D1=a&D2=0-4,136,151,214,231&D3=0&D4=0&D5=0&D6=a,10-8&HD=080331-1216&HDR=G4,G2,G3,T&STB=G1,G5>, (09.10.2008).

38 Cf. Statistics Netherlands website, available at: <http://www.cbs.nl/en-GB/menu/methoden/begrippen/default.htm?ConceptID=1057> and <http://www.cbs.nl/en-GB/menu/methoden/begrippen/default.htm?ConceptID=1013>, (09.10.2008).

39 Cf. Statistics Netherlands website, available at: <http://www.cbs.nl/en-GB/menu/methoden/begrippen/default.htm?ConceptID=950> and <http://www.cbs.nl/en-GB/menu/methoden/begrippen/default.htm?ConceptID=1034>, (09.10.2008).

40 A. Singleton, A. Lenoel (2010) *Country Report United Kingdom*, National Data Collection Systems and Practices, available at: www.prominstat.eu.

41 Cf. http://www.statistics.gov.uk/census2001/pdfs/key_statistics_final.pdf, (05.11.2008).

42 P. Simon (2007) *"Ethnic" statistics and data protection in the Council of Europe countries*, Study report, Strasbourg: Council of Europe, p. 61.

43 P. Simon (2007) *"Ethnic" statistics and data protection in the Council of Europe countries*, Study report, Strasbourg: Council of Europe, p. 62.

44 This section draws on a preliminary analysis of the Raxen reports made available to the study authors and the ongoing FP6 research project 'Promoting quantitative comparative research in the field of migration and integration' (PROMINSTAT). On the project see www.prominstat.eu (1.12.2008).

45 Regulation (EC) 862/2007 (11.7.2008).

The most important variable for measuring the **origin** of persons is the variable of country of birth. In addition, the parents' country of birth and citizenship are important indicators of a person's descent. While country of birth is increasingly available from a variety of datasets, parents' country of birth and citizenship is not. Both origin (country of birth) and descent are proxy statistics for measuring the ethnicity of a person.

Ethnicity is a more complex category than legal status or origin, especially in regard to data collection and statistics. Only relatively few countries use ethnicity as a concept in social statistics.⁴⁶ Ethnicity may refer to characteristics of persons, including colour of the skin, national origin, religion, regional identification, language, amongst others.

The main reason for the unavailability of information on ethnicity and 'race' is the contested nature of the categories. Notwithstanding reservations about the use of ethnicity as a statistical category, the European Advisory Committee on Statistical Information in the Economic and Social Spheres (CEIES) has recently recommended the inclusion of information on ethnicity as a core variable of social statistics, to be collected at the European level in the future, particularly within the framework of the LFS and EU-SILC. In principle, these recommendations have been endorsed by the statistical agency of the European Commission, Eurostat.⁴⁷

1.3. Availability of statistics regarding discrimination in the area of employment

There are basically two ways to established statistical evidence of discrimination: (a) through direct evidence of discrimination or discriminatory practices, a more detailed discussion of which is provided below and (b) through indirect evidence and statistical inference. General labour market data may be used as general indicators of vulnerability and potential discrimination. Advanced statistical techniques which control for alternative explanatory factors can further help to indirectly identify possible discrimination.

Data on labour market performance of migrants and minorities is, by and large, readily available, although not always in sufficient quality or detail to make statements regarding the vulnerability of migrants and minorities or to allow inferences regarding the occurrence of discrimination.

1.3.1. Statistical data on inequality in the labour market

The most obvious indicators on labour market inequality are general statistics on employment patterns, and the most common are labour force participation and employment and unemployment rates. Large differences in employment patterns, however, may in itself be explained by a variety of factors. Thus, differences in labour force participation rates might be related to differences in legal status (access to labour market), differences in human capital endowments (and therefore lower chances of employment), differences in demographic composition of groups (e.g. more children and/or old persons), cohort effects (time and age at immigration and/or entry at the labour market) or discriminatory attitudes of employers. Thus, to be able to explain labour market outcomes, labour market statistics need to be linked to a wide range of additional information, including on demographic characteristics, educational attainment, working time (e.g. full time or part time), type of labour contract (fixed term vs. permanent), economic sector distribution, occupation and occupational status, working conditions, and wages.

General statistics on employment participation are commonly available in EU Member States; however, national data is rarely comparable due to different concepts used for employment characteristics on the one hand and for migrants and minorities on the other. More detailed data on labour market outcomes of certain groups (such as wages, working conditions, and education) are even scarcer and less comparable. To some degree, differences in concepts and definitions used reflect broader differences in welfare regimes, to which data production is closely linked. Although some comparative information is in principle available from harmonised European surveys such as the EU-SILC and the LFS, problems in accurately sampling immigrants and minorities, as well as low sample sizes and resulting problems in data quality and in possibilities to monitor smaller migrant and minority groups, collectively constitute considerable obstacles to comparative analysis.

46 P. Simon (2007) *"Ethnic" statistics and data protection in the Council of Europe countries*, Study report, Strasbourg: Council of Europe.

47 See M. Gaude (2007) *Statistics on discrimination within the context of social statistics – main issues. Reaction from Eurostat*, Paper given at 33rd CEIES Seminar on 'Ethnic and Racial Discrimination on the Labour Market: Measurement, statistics and indicators', 7-8 June 2007, Valletta, Malta.

1.3.2. Data on discrimination

There are basically five ways to identify discrimination or related practices and attitudes:⁴⁸

First, experiences of discrimination reported by victims of discrimination can be studied. Information on **experiences of discrimination** can be derived from reported incidents, complaints and court cases or, more systematically, from surveys. The very nature of information on incidents, complaints and court cases does not make it a useful source of information on broader patterns of discrimination. These problems of what the data collected in this manner can actually tell about patterns of discrimination are discussed in more detail below, in chapter 4.1. Surveys of victims of discrimination are generally more reliable sources of information. However, these are also fraught with problems; victims may not be aware that discrimination has taken place and may view unequal treatment as legitimate or commonplace. Or, by contrast, individuals may perceive unequal treatment as discrimination while there are other reasons that explain such behaviour.

In 2008 the EU Fundamental Rights Agency conducted an EU-wide victim survey investigating discrimination experiences, victimisation and treatment by authorities, the results of which became available in 2009.⁴⁹ This has for the first time provided comprehensive and comparable information on experiences of discrimination and victimisation in the EU-27. (See section 4.2.4 of this report.)

Secondly, matched pair **discrimination testing** can provide information on discriminatory practices and, potentially, information on employers (firms) discriminating against migrants and minorities. Discrimination testing may be used quasi-experimentally to study the probability and extent of discriminatory behaviour *vis-à-vis* specific groups. In respect of discrimination in employment, discrimination testing has almost exclusively been employed in recruitment processes. For methodological reasons, other forms of discrimination in employment (promotion, wage discrimination, discrimination in assigning tasks, etc.) are inherently difficult to study through discrimination testing. Potentially, discrimination testing would also permit analysing the characteristics of firms/employers engaged in discrimination. Existing discrimination tests, however, have usually only collected

very limited information on employers. Discrimination testing is discussed in more detail in section 4.2.

Inter-group comparisons of statistical data is a third method to identify discrimination. By statistically controlling for alternative explanatory variables such as education, age and gender, any remaining differences in labour market outcomes indicate potential discrimination. Through this method, only indirect evidence for discrimination can be obtained. The advantage of this method lies in the fact that it does not require specific survey tools and that it can be applied using available data sources on employment, if these are of sufficient depth and quality.

Fourth, information on **attitudes of the majority population** can provide information on the tolerance of members of the majority population towards discriminatory practices and attitudes, or, conversely, on the degree of rejection of discriminatory practices and attitudes and support for non-discrimination. Various European surveys, including the Eurobarometer and the European Social Survey regularly include items on discrimination, racism and xenophobia.⁵⁰

Such surveys are useful in two ways: First, they allow monitoring of majority attitudes towards migrants and minorities, and to some degree they also permit assessing the impact of policy initiatives such as awareness raising programmes, and similar initiatives, on public attitudes. Secondly, such surveys can potentially be used to identify reasons why persons hold discriminatory beliefs. Surveys on attitudes, however, are less useful in the study of discrimination practices. First, discriminatory attitudes do not necessarily find expression in discriminatory practices. Secondly, individuals may engage in discriminatory practices without holding explicit discriminatory beliefs or without admitting to hold such beliefs.

A fifth possible source of information on discrimination is **surveys of attitudes and discriminatory practices of 'gatekeepers'** – employers, human resource managers, employment agencies and suchlike. The fact that discriminatory attitudes do not necessarily find expression in discriminatory practices also applies to employer surveys, while information on actual practices may be distorted by a tendency to report only socially acceptable practices. Thus, information provided may reflect the broader acceptance of discriminatory practices (or non-acceptance) as much as concrete discriminatory behaviour as such. Despite these caveats, surveys on gatekeepers potentially provide explanations as to why employers engage in discriminatory practices. Such

48 Categorisation adapted from: A. Gächter (2004) *Detecting Discrimination Against Migrants*, ZSI Discussion Paper, No. 3, p. 10, available at: <http://www.zsi.at/de/publikationen/346/list> (28.10.2008).

49 See EU-MIDIS survey page, available at: <http://www.fra.europa.eu/> (10.11.2008) and S. Nevala (2008) *EU-MIDIS Surveying ethnic minorities and immigrants in the EU-27*, Presentation at the 13th International Metropolis Conference on 'Mobility, Integration and Development in a Globalised World', 27-31 October 2008, Bonn, available at: http://www.metropolis2008.org/workshop-information/speeches_and_presentations/index.php, (10.11.2008).

50 See, for example, the special module on discrimination implemented in the 2006 wave of the Eurobarometer: European Commission (2007) *Discrimination in the European Union*, Special Eurobarometer 263 Wave 65.4, TNS Opinion & Social, available at: http://ec.europa.eu/public_opinion/archives/ebs/ebs_263_en.pdf (11.12.2008).

information is particularly important for designing appropriate policy responses to discriminatory behaviour.

1.4. Developments of statistical data collection over the last five years

The 2003 EUMC study on migrants, minorities and employment highlighted several shortcomings of available statistical information on socio-economic characteristics of migrants and minorities and a lack of statistically sound data on discrimination. The study recommended that Member States should take necessary steps for the improvement of the availability, scope, and quality of data on migrants and minorities.⁵¹

Generally, data collection practices in the European Union have undergone major changes in the period under review. These changes concern a) changes of data collection systems, both in terms of improvement of existing datasets and in terms of the introduction of new survey instruments and other datasets; b) the broader availability of the core demographic variables identifying migrants and minorities, in particular country of birth; and c) changes linked to the harmonisation of data collection on the European level.

Thus, an increasing number of countries are currently moving to register based data collection systems. Although data collection systems based on administrative data are not without problems, the advantage of register based systems is that – in principle – information from different datasets can be linked systematically to each other, thus providing comprehensive information on the total population (or a subgroup among these) of considerable thematic scope and on a regular basis. The Scandinavian countries and the Netherlands have had register based data collection systems for a considerable time. In Belgium and Slovenia, register based data collection systems were established during the 1990s, although in Belgium registers have been more extensively used for the analysis of labour market patterns of migrants and minorities only more recently. Austria adopted a register based system in the early 2000s, in the wake of which several new registers were established. As a corollary, the next census will be completely register based. Similarly, Germany will implement a register based census in the next census round and has established new employment related datasets based on administrative registers in the past decade. In both countries, however, data linkage outside the census is subject to considerable legal constraints. Similarly, although the Baltic States

dispose of high quality registers, they are generally not used for statistical purposes on data protection grounds.⁵²

However, to be able to identify developments and changes over time and to be able to identify processes and factors leading to unequal labour outcomes of migrants and minorities, good longitudinal information is required. While consecutive cross-sectional surveys, as well as registers for which only snapshot statistics are produced, allow monitoring changes over time at an aggregate level, longitudinal data would be required to allow making statements on changes over time at the level of the individual. The availability of longitudinal data, however, in the European Union varies greatly. Such statistics are readily available only in countries with register based data collection systems, albeit panel surveys may be used as a substitute. On the EU level, the EU-SILC is the only survey tool explicitly incorporating a longitudinal perspective. However, the EU-SILC allows only allows for a limited longitudinal analysis – respondents remain in the EU SILC for 4 waves, i.e. four years.

Across Europe, the availability of the variable of country of birth has greatly improved in the past five years. However, in many national level data sources on employment and unemployment, for example social security registers or unemployment registers, citizenship is still the main variable used. By contrast, ethnicity remains a relatively rare concept in statistical data collection in the EU. While some countries have newly introduced variables on ethnicity and identity in censuses or surveys, such as in Ireland, where a question on ethnicity was included in the 2006 census for the first time, other countries are moving away from ethnicity based data collection. Thus, Lithuania and Slovakia, where data on ethnicity were available in employment statistics until 2004 and 1999 respectively, do not use the ethnicity variable any longer. In immigration contexts, however, ethnic monitoring might still be successfully implemented in spite of the absence of the variable of ethnicity by using descent as the main variable to identify ethnic groups.

On the European level, the introduction of the EU-SILC, which replaces the European Household Panel, provides a useful new survey instrument potentially relevant for the analysis of employment and incomes of migrants and minorities in a cross-national perspective. However, relatively small survey sizes mean that only the largest groups can be identified. In comparison, the European Labour Force Survey (LFS) is a much more robust survey instrument. In particular, the 2008 LFS ad-hoc module on immigrants provides an important new source of information on the labour market position

51 EUMC (2003) *Migrants, Minorities and Employment: Exclusion, Discrimination and Anti-Discrimination in 15 Member States of the European Union*, p. 89-93.

52 Information based on PROMINSTAT country reports, available at: www.prominstat.eu.

of immigrants.⁵³ Similarly, the earlier mentioned European Union Minorities and Discrimination Survey (EU-MIDIS) implemented under the auspices of the Fundamental Rights Agency is the first and largest EU-wide survey on experiences of discrimination of selected immigrant and minority groups and exists as an important information base on discrimination experiences of immigrants.⁵⁴ (See section 4.2.4)

An important step in improving the availability and comparability of European level data on immigrants has been the adoption of the EU regulation on community statistics on migration and international protection in July 2007.⁵⁵ The regulation requires Member States to provide statistics on the usual resident population, immigration and emigration, acquisition of citizenship, asylum applications and asylum decisions, prevention of irregular entry and stay, statistics on residence permits, and return. The regulation requires differentiations of most data by sex, age, citizenship and country of birth. The first reference year is 2008. Yet, initial provisions on the inclusion of socio-economic variables under article 8 of the regulation on additional disaggregations to be proposed by the Commission were dropped in the final version of the regulation.⁵⁶

Despite the non-inclusion of socio-economic variables in the final version of the regulation on migration statistics, there is a growing awareness of the need for comparable socio-economic data on migrants and minorities in general and on discrimination in particular. There is also a growing number of initiatives and measures to improve data on labour market performance of migrants and minorities and discrimination. For instance, the Community Action Programme against Discrimination 2001-2006, adopted in 2000⁵⁷, included various measures regarding the collection of equality data.

In this context, DG Employment established a working group on equality data in 2002, involving experts from ten EU Member States. The task of the working group was to assess the availability of equality data as well as the scope and possible improvements to the data. A

separate study financed under the action programme provides a detailed investigation of discrimination statistics and makes a number of recommendations on how data on discrimination can be improved.⁵⁸ A second study financed under the programme with a somewhat broader remit investigates equality statistics in a broader perspective.⁵⁹ Since 2005, Eurostat has been involved in compiling equality statistics for DG Employment. Since 2007, equality statistics are a separate action mentioned in the Community's annual statistical programme.⁶⁰

Possible approaches to collecting statistics on discrimination and specific national experiences were also discussed in a meeting of the European Advisory Committee on Statistical Information in the Economic and Social Spheres (CEIES) in 2007, an important expert network of European statisticians.⁶¹ Amongst others, the meeting recommended to explore ways to including ethnicity as a social core variable in the framework of existing EU survey instruments, and to improve the availability of other variables to enable the indirect identification of discrimination. These variables include:

- (1) demographic factors such as age, family composition and social networks;
- (2) human capital factors, including educational attainment, skills, knowledge of the majority language;
- (3) immigration related issues, including first/second/third generation, age at immigration, duration of living in the country and legal status in the country.

In addition, the meeting made recommendations to include questions on discrimination experiences, perceived discrimination of others and attitudes towards discrimination in EU wide survey tools such as the EU-SILC. Rather than general questions, these questions should refer to specific areas of discrimination (labour market, health services, housing, etc.).⁶²

53 For LFS ad-hoc modules, see http://circa.europa.eu/irc/dsis/employment/info/data/eu_ifs/LFS_MAIN/Adhoc_modules/Adhoc_modules_mainpage.htm, (07.11.2007).

54 See EU-MIDIS survey page, available at: <http://www.fra.europa.eu/> (10.11.2008) and S. Nevala (2008) *EU-MIDIS Surveying ethnic minorities and immigrants in the EU-27*, Presentation at the 13th International Metropolis Conference on 'Mobility, Integration and Development in a Globalised World', 27-31 October 2008, Bonn, available at: http://www.metropolis2008.org/workshop-information/speeches_and_presentations/index.php, (10.11.2008).

55 Regulation (EC) 862/2007 (11.7.2007).

56 See on the original proposal A. Kraler, M. Jandl, M. Hofmann (2006) 'The Evolution of EU Migration Policy and Implications for Data Collection', in: M. Poulain, N. Perrin, A. Singleton (eds.) *Towards the Harmonisation of European Statistics on International Migration (THESIM)*, Louvain-La-Neuve: UCL Presses Universitaires de Louvain, p. 69.

57 Council Decision 2000/750/EC (27.11.2000).

58 E. Olli, B. Kofod Olsen (eds.) (2006) *Common Measures for Discrimination II. Recommendations for Improving the Measurement of Discrimination*, The Norwegian Equality and Anti-Discrimination Ombud and Danish Institute of Human Rights, available at: http://www.prominstat.eu/drupal/?q=system/files/CMD_delrapport_2.pdf_0.pdf.

59 T. Makkonen (2006) *European Handbook on Equality Data. Why and how to build to a national knowledge base on equality and discrimination on the grounds of racial and ethnic origin, religion and belief, disability, age and sexual orientation*, Luxembourg: Office for Official Publications of the European Communities, available at http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/stud/hb07_en.pdf

60 M. Gaude (2007) *Statistics on discrimination within the context of social statistics – main issues. Reaction from Eurostat*, Paper given at 33rd CEIES Seminar on 'Ethnic and Racial Discrimination on the Labour Market: Measurement, statistics and indicators', 7-8 June 2007, Valletta, Malta.

61 33rd CEIES Seminar on 'Ethnic and Racial Discrimination on the Labour Market: Measurement, statistics and indicators', 7-8 June 2007, Valletta, Malta.

62 I. Stoop (2007) *Summing up*, Intervention at 33rd CEIES Seminar on 'Ethnic and Racial Discrimination on the Labour Market: Measurement, statistics and indicators', 7-8 June 2007, Valletta, Malta.

In addition to official data collection, a series of research studies have recently been undertaken, or are currently under way, collecting statistical information on labour market performance of migrants and minorities, for example the LIMITS and the TIES projects.⁶³ Similarly, a number of large-scale research studies have investigated the availability and comparability of European statistics in regard to migrants, including the project 'Towards harmonised European statistics on international migration' (THESIM)⁶⁴ and the ongoing project 'Promoting quantitative comparative research in the field of migration and integration in Europe' (PROMINSTAT).⁶⁵ In the framework of the latter, specific thematic studies are investigating the availability and comparability of European statistics in regard to employment, integration and discrimination.⁶⁶

In conclusion, substantial improvements have been made since the last report. Although detailed employment data on migrants and minorities is still scarce, in particular on the national level, substantial efforts have been made in recent years to close these gaps on the national as well as on the European level.

63 On TIES, see <http://www.tiesproject.eu/>; on LIMITS, see <http://www.limits-net.org/index.html> (1.12.2008).

64 Cf. M. Poulain, N. Perrin and A. Singleton (ed.) (2006) *Towards Harmonised European Statistics on International Migration (THESIM)*, Louvain-la-Neuve: Presses universitaires de Louvain.

65 See www.prominstat.eu (1.12.2008).

66 On employment see P. Bevelander, M. Hagström (2010) *Thematic Study on Employment*, PROMINSTAT Thematic Studies, available at: www.prominstat.eu. On integration see F. Heckmann, C. Köhler, M. Peucker, S. Reiter (2010) *Thematic Study on Integration*, PROMINSTAT Thematic Studies, available at: www.prominstat.eu. On discrimination see A. Gächter (2010) *Thematic Study on Discrimination*, PROMINSTAT Thematic Studies, available at: www.prominstat.eu.

2. Patterns of inequality

2.1. Inequality, social exclusion and vulnerability

Social and economic inequality is an inherent characteristic of advanced capitalist societies and in itself does not necessarily contradict notions of social justice. It is the permeability of social boundaries, equal opportunities, and in particular the availability of opportunities for social upward mobility and betterment, or in John Rawl's words, 'fairness' which underlie notions of social justice in liberal democratic societies.⁶⁷ Inequality thus is problematic in situations in which equal opportunities are not available, social boundaries of class and colour cannot be easily crossed, social mobility is blocked and inequality becomes ethnicised. In this context, inequality is closely linked to social exclusion, poverty and vulnerability.

Social exclusion, or marginalisation, is inequality in its most problematic form. It refers to processes where persons are pushed to the edge of society due to their poverty, lack of education and qualifications, or as a result of discrimination. Prevented from participating in social and economic life, they have little or no access to power and decision-making bodies.⁶⁸ Social exclusion and poverty are interlinked in the sense that being poor may lead to social exclusion; however, social exclusion has a wider remit. It includes exclusion from political participation, exclusion from educational opportunities, or limited access to the labour market.

Social exclusion is about belonging to society: it is about 'insiders' and 'outsiders' rather than about the 'poor' and the 'rich'.⁶⁹ Poverty and social exclusion imply vulnerability, in the sense that the groups concerned are exposed to discrimination and have little or no resources to defend themselves against it. In general terms, vulnerability refers to persons 'who are stigmatized, have low social status and who have very little power or control over their lives' (...) and who 'live under damaging legal, social

or institutional regimes.⁷⁰ Vulnerability thus is not solely about socio-economic status, rather, it is about social status and social standing in society more generally, and thus closely linked to inequalities in power, and symbolic and social capital. In summary, inequality in employment is closely associated with broader patterns of inequality: exclusion in the labour market may lead to exclusion in other domains; conversely, patterns of inequality and social exclusion, for example in housing or education, may lead or reinforce social exclusion and inequality in employment.

Although inequality in employment does not necessarily reflect discrimination, discrimination plays an important role in generating and sustaining inequality.

Generally, there are three ways of conceptualising equality, which inform different kinds of anti-discrimination policies:

First, **formal equality** is procedural in nature and requires consistent equal treatment: individuals should be treated alike, without considering irrelevant characteristics.

Second, **equality of results** means that measures, treatments and policies should result in equality and a fair distribution of goods and benefits. Differential treatment, such as the use of quotas and other strong public policy interventions, may be necessary to achieve equal outcomes.

Finally, **equality of opportunity** strives to strike a balance between formal equality and equality of results. It aims at ensuring equal chances for all to participate in activities and services.⁷¹

The following section considers statistical outcomes of labour market performances and thus focuses on inequality of results. However, we will discuss underlying factors that help to explain unequal outcomes.

In section 1.2.1 we have argued that migrants and minorities must not a priori be seen as vulnerable and subject to social exclusion. Rather, it is particular groups that experience vulnerability and social exclusion and which face the starkest disadvantages on Member States' labour markets. Thus, certain disadvantaged minorities, as, for example, the Roma, generally experience major

67 J. Rawls (1971) *Theory of Social Justice*. Cambridge, Mass.: Harvard University Press.

68 World Bank (2007): *Social Exclusion and the EU's Social Inclusion Agenda*. Paper prepared for the EU8 Social Inclusion Study, p. 4, available at: <http://siteresources.worldbank.org/INTECONEVAL/Resources/SocialExclusionReviewDraft.pdf>, (06.10.2008); World Bank (2007): *Social Exclusion and the EU's Social Inclusion Agenda*. Paper prepared for the EU8 Social Inclusion Study, p. 5, available at: <http://siteresources.worldbank.org/INTECONEVAL/Resources/SocialExclusionReviewDraft.pdf>, (06.10.2008).

69 T. Wagner (2007): *Vom „Ende“ der Armut und der „Entdeckung“ der Exklusion. Des Königs neue Kleider oder „neue“ Qualitäten der Ungleichheit?*, p. 2, available at: <http://www.sozialarbeit.ch/dokumente/ende%20der%20armut.pdf>, (06.10.2008).

70 J. Clements, M. Rapley, R. Cummins, Robert A. (1999): *On, to, for, with – vulnerable people and the practices of the research community*, *Behavioural and Cognitive Psychotherapy*, 27: 103–115.

71 European Commission (2006): *European handbook on equality data*, p. 14, available at: <http://ec.europa.eu/social/main.jsp?pager.offset=10&catId=423&langId=en&furtherPubs=yes>, (27.07.2010).

disadvantages on the labour market and relatively few individuals among the Roma population have access to opportunities on equal standing with the majority population or experience social upward mobility. Other minorities, for example many of the regionally concentrated ‘national minorities’ such as the German speaking populations of Northern Italy or Eastern Belgium or Slovenes in Austria, by contrast, by and large have largely similar opportunities as the majority population in those countries.

In respect to migrants, there is a marked segmentation between migrants on the upper levels of skills spectrum and those on the bottom. As a recent report suggests, ‘the skill structure of European immigrant population is favourable in terms of high-skills, however, less favourable concerning medium-skills. While the high-skill ratio of the foreign-born population is slightly higher than the one of the EU-25 natives (25.7% vs. 24.4%), the medium-skilled ratio of the foreign-born is significantly lower (38.3% vs. 47.4%) and the low-skilled rate significantly higher (36.0% vs. 28.2%).’⁷² Data collected by the Fundamental Rights Agency’s RAXEN network suggest that it is especially migrants from outside the European Union, and among these, in particular migrants from lower and middle-income countries which occupy the most disadvantaged positions on European Member States’ labour markets. The RAXEN data thus show marked differences in labour market outcomes for different categories of migrants.

In the following, we will investigate these differences in more detail and will analyse inequality on the labour market on the basis of a range of indicators, including labour force participation, unemployment, self-employment, income and wages, and skills. An additional factor contributing to vulnerability and social exclusion on the labour market, legal status, will be analysed in depth in chapter 5, below.

Given that little systematic information on working conditions of migrants and minorities in employment is available, we will not examine these in a separate chapter. Relevant information would include information on working time, job satisfaction, information on employment related health risks, information on work accidents, and vacation, amongst others. Largely due to the specific focus of the report and limitations in financial resources and time available to conduct the study, we have not investigated a series of complementary issues that would shed light on some of the consequences of the labour market position of migrants and minorities and how the labour market position impacts on

patterns of social inclusion and exclusion more generally, including work-life balance, time use, or access to and use of transfers and social benefits.

2.2. Indicators of inequality

Inequality is a complex concept and, like most analytical concepts used to make sense of social reality, cannot be directly observed or measured. To measure inequality on the labour market a number of indicators are commonly used, including labour force participation and unemployment rates, the distribution of migrants and minorities across economic sectors and branches, information on occupations and occupational status, income and wage disparities, and information on the skill structure of the working population. These indicators, or sets of indicators, represent distinct dimensions of inequality on the labour market which, however, are mutually intertwined and closely connected to each other.

2.2.1. Labour force participation, employment and unemployment

2.2.1.1. Participation in employment

As the 2003 EUMC Study on Migrants, Minorities and Employment has argued, ‘[t]he integration of immigrants and minorities in their respective host societies is to a considerable degree determined by their opportunities to actively participate in gainful employment.’⁷³ Indeed, using the full employment potential of immigrants was identified by the European Commission as one of the most important political priorities within national integration policies, both to address the (potential) vulnerability of migrants resulting from low levels of labour force participation and marginalisation on the labour market and in view of the Lisbon strategy and the potential of migrant populations to contribute to economic growth.⁷⁴ Because of the lack of data on ethnic minorities without a migration background, or without a recent migration background, this section will only deal with immigrant populations.

In 2005, an estimated 19.4 million legal immigrants – including migrants from other EU Member States – were economically active in the EU-27, representing a share of roughly 9.3 per cent in the total labour force. Of these 19.4 millions, some 12.2 million had a foreign⁷⁵

72 R.Münz, T.Straubhaar, F.Vadean, N.Vadean (2006) ‘What are the migrants’ contributions to employment and growth? A European approach’ HWWI Policy Paper 3-3, Hamburg: HWWI, available online at [73 EUMC \(2003\) *Migrants, Minorities and Employment: Exclusion, Discrimination and Anti-Discrimination in 15 Member States of the European Union*, p. 23](http://www.hwwi.org/Publikationen_Einzel.5119.0.html?&tx_wilpubdb_pi1[publication_id]=666&tx_wilpubdb_pi1[back]=484&cHash=1fda167c85,(27.11.2008) p. 21</p>
</div>
<div data-bbox=)

74 COM (2004) 508 final

75 i.e. third-country nationals and citizens of other EU countries

citizenship.⁷⁶ Indeed, in the EU-15 there has been a considerable growth of migrant employment in the period 2000 to 2005 – migrant employment grew by some 40 per cent in this period, which has been the main factor in total growth of employment in this period.⁷⁷

As the migrant population in general, the share of migrants in the labour force varies widely. Table 2-1, below, shows the share of the migrant labour force in the total labour force for selected EU Member States based on data from the European Labour Force Survey.

Table 2-1: Migrant Labour Force (foreign born), 2005, selected EU Member States

	Migrant labour force as % of total labour force	Migrant labour force (in thousands)	(Thousands)			
			EU born		Third countries	
			Male	Female	Male	Female
Austria	15.6%	624.6	87	96	252	190
Belgium	11.6%	401.0	103	83	133	83
Cyprus	17.7%	84.4	12	9	26	37
Czech Republic	1.9%	98.5	38	31	19	11
Denmark	6.0%	171.9	29	21	61	61
France	11.1%	2,974.6	439	401	1,216	919
Greece	8.9%	421.7	25	28	223	146
Hungary	1.9%	78.9	6	6	36	32
Ireland	11.9%	222.2	n.a.	n.a.	n.a.	n.a.
Italy	7.9%	1,907.2	n.a.	n.a.	n.a.	n.a.
Luxembourg	44.4%	89.8	44	34	7	5
Netherlands	11.5%	966.6	97	104	445	321
Portugal	7.8%	405.5	41	39	165	161
Spain	13.8%	2,782.0	215	189	1,326	1,052
Sweden	12.2%	560.0	100	105	188	167
United Kingdom	10.3%	2,703.1	399	386	1,074	844

Note: n.a. stands for 'not applicable'.

Source: LFS, table B1 J. Rubin, M.S. Rendall, L. Rabinovich, F. Tsang, C. van Oranje-Nassau, B. Janta (2008) *Migrant women in the European labour force. Current situation and future prospects*, Cambridge: RAND Corporation

76 R.Münz (2008) 'Migration, Labor, Markets, and Integration of Migrants: An Overview for Europe' *World Bank SP Discussion Paper No.0807*, Available online at <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Labor-Market-DP/0807.pdf> (10.2.2009), p. 9

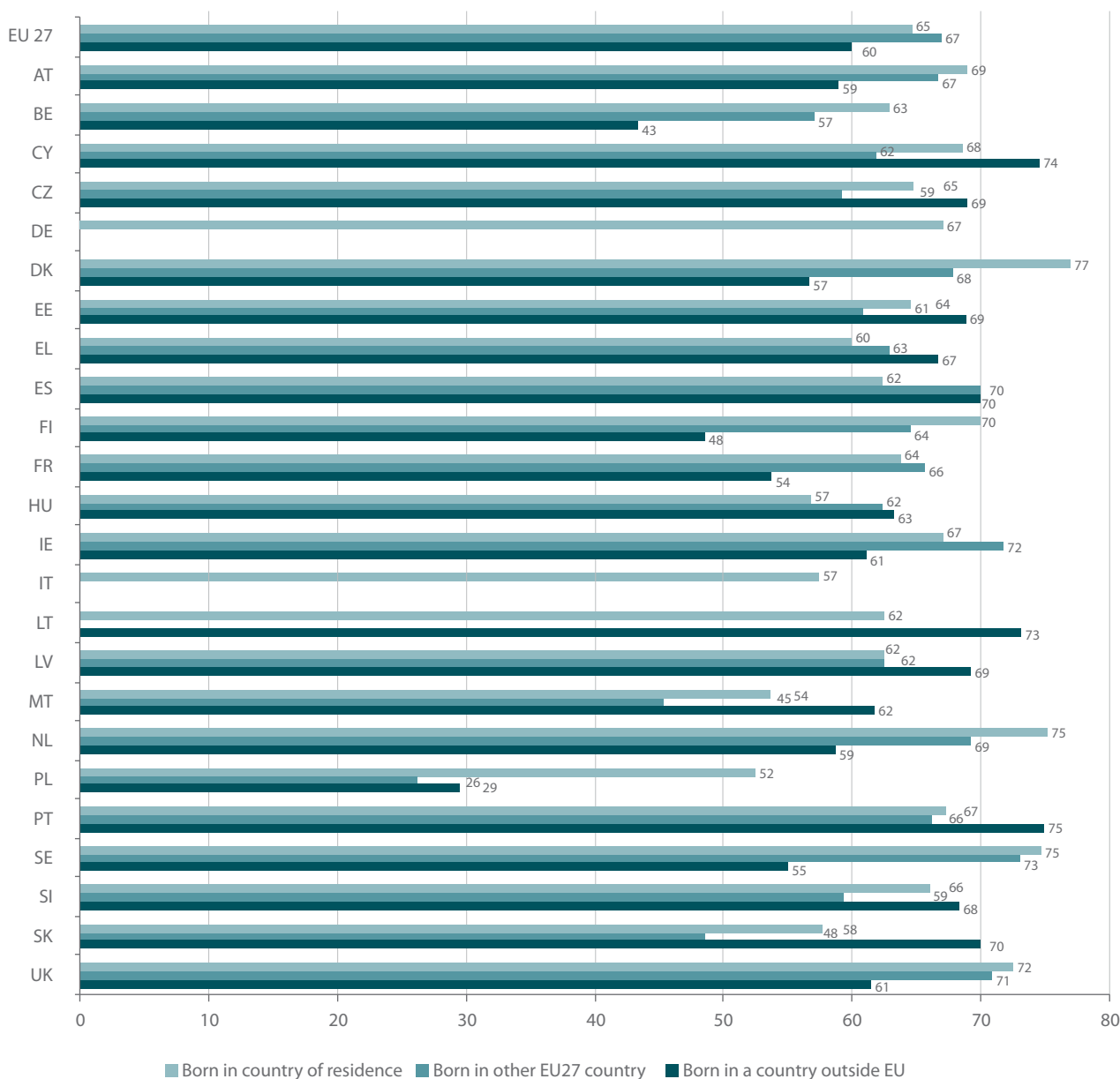
77 R.Münz (2008) 'Migration, Labor, Markets, and Integration of Migrants: An Overview for Europe' *World Bank SP Discussion Paper No.0807*, Available online at <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Labor-Market-DP/0807.pdf> (10.2.2009), p. 10

In the following, we use employment rates as a measure of participation in gainful employment. The employment rate is defined as the share of the number of employed persons in the total population of working age (i.e. the population aged 15-64 years).⁷⁸

comparability of employment rates calculated on the basis of the Labour Force Survey data and major limitations of data quality in respect to several countries⁷⁹, remarkable differences in employment rates between the natives, EU and non-EU migrants can be observed.

Figure 2-1, below, shows the employment rates of immigrants for the EU-27 for natives, migrants born in another EU Member States and migrants from outside the European Union. Keeping in mind the limited

Figure 2-1: Employment rates in 24 EU Member States for natives, migrants from the EU-27 and non-EU migrants, 2005 (%)



Source: European Labour Force Survey (LFS), See Table A3, in the Statistical Annex for detailed references

78 See the webbased OECD glossary of statistical terms under <http://stats.oecd.org/glossary/detail.asp?ID=785> (10.2.2009)

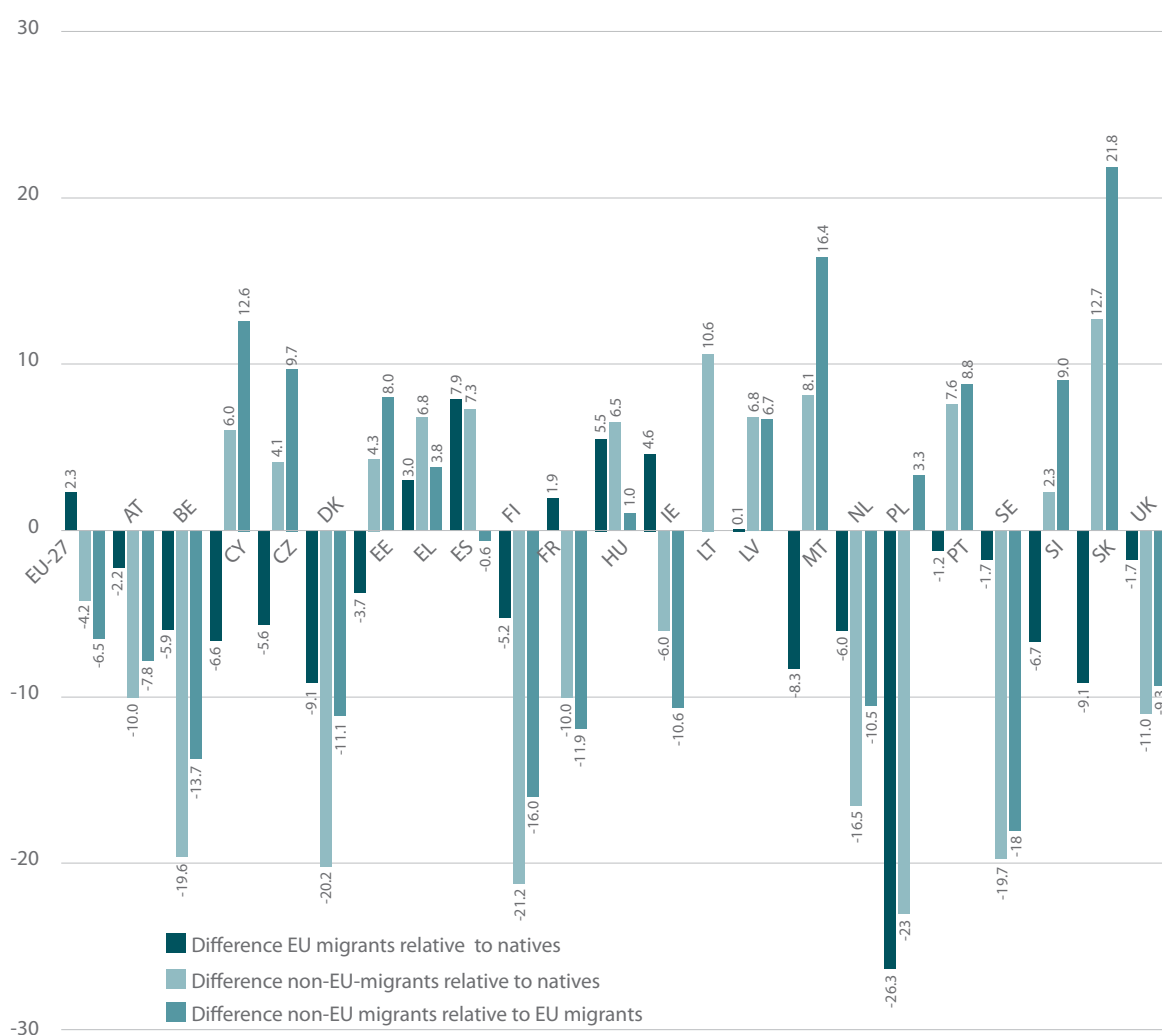
79 See for more detail the statistical annex, at the end of the report

Figure 2-2, below, graphically shows these differences. In 16 out of the 22 countries for which data is available, employment rates of immigrants born in another EU country are lower than those of the native born population, while the employment rates of non-EU migrants are below those of non-EU migrants only in 10 countries. However, differences between non-EU migrants and natives are on the whole much larger.

States living in the EU-15 had relatively high employment rates of 68.4 per cent (EU-8) and thus employment rates well above the average employment rate for the total population of 65.4 per cent. Immigrants from North America and Australia had even higher employment rates (74.1 per cent). By contrast, immigrants from middle and low income countries such as Turkey (47 per cent), the Middle East and Africa (57 per cent) and Asia (59 per cent) had considerable lower employment rates.⁸⁰

However, also within the categories of EU migrants and non-EU migrants, respectively there are considerable differences. Thus, immigrants from new EU Member

Figure 2-2: Difference of employment rates between EU-migrants/natives and non-EU migrants/natives (percentage points)



Note: Positive differences mean that the target group has higher employment rates than the group to which it is compared and vice versa for negative differences.

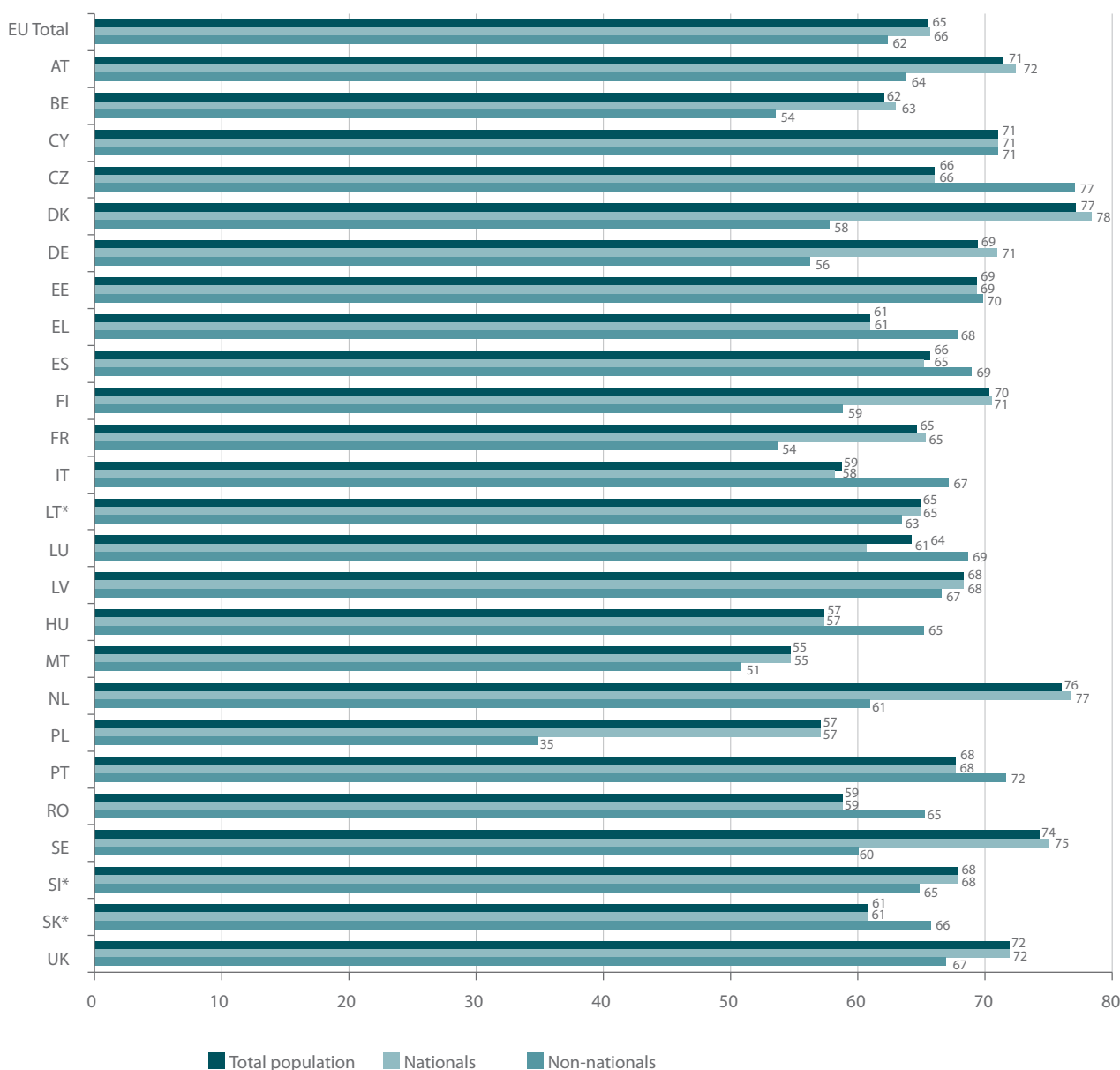
Source: LFS, See Table A3 in the Statistical Annex for detailed references

80 R.Münz (2008) 'Migration, Labor, Markets, and Integration of Migrants: An Overview for Europe' *World Bank SP Discussion Paper No.0807*, Available online at <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Labor-Market-DP/0807.pdf> (10.2.2009), p. 11

Generally, labour market performance as measured by employment rate of foreign nationals is significantly worse than that of immigrants more generally, although the general situation conceals considerable differences between different migrant groups, with particularly clear differences between non-nationals from Turkey and Maghreb countries and persons born in these countries, notably in Belgium, Denmark, France, the

Netherlands, Austria and Sweden (Turks) and in France, Belgium, the Netherlands, Spain and Denmark (citizens of vs. persons born in Maghreb countries). This suggests particularly exclusionary mechanisms in the labour market in these countries, but also shows that legal status (citizenship) may make a difference⁸¹. Overall employment rates for citizens, non-citizens and for the total population are shown in figure 2-3, below.

Figure 2-3: Employment rates for non-nationals, nationals and the total population, 2007 (%)



Note: * indicates unreliable or uncertain data.

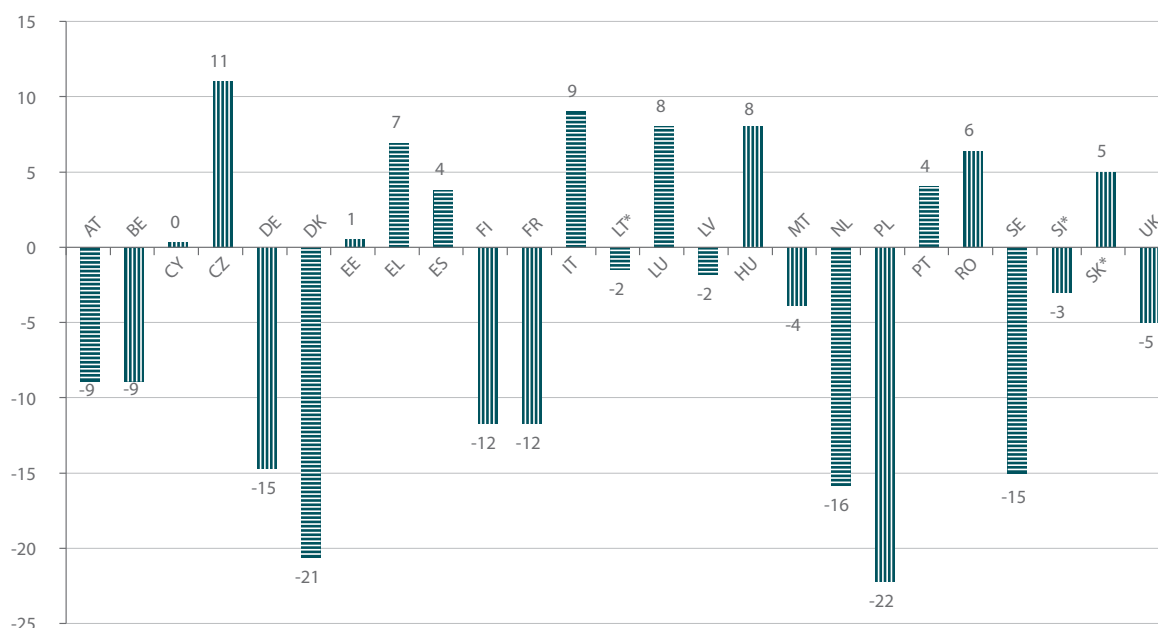
Source: LFS, Eurostat database, data extracted on 11 November 2008

81 It may also be that once they are counted as citizens, they become more or less invisible in the statistics, since they are submerged in the large group of 'majority population' in terms of citizenship. In this case employment rates by country of birth might be more telling.

The (weighted) average employment rate for the total population in the EU in 2007 was 65.4 per cent. Nationals have a slightly higher employment rate (65.6 per cent), while the employment rate for non-nationals is 62.3 per cent or 3.3 percentage points lower than that of citizens. In 14 EU Member States, the employment rates of the non-nationals are lower than that of citizens. In most countries with significantly higher employment rates among foreigners the employment rates of citizens are below the EU average. The largest differences can be observed in Poland (22.2 percentage points below natives), Denmark (20.6 percentage points lower), the Netherlands (15.3 percentage points lower), Sweden (15.3 percentage points) and Germany (14.7 percentage points). Figure 2-4, below, graphically shows these differences.

Two main factors explain the extent of differences of employment rates. First, the composition and characteristics of migrant groups in particular countries, and secondly, legal barriers, with the first factor probably being the more important. Thus, in Denmark and Sweden, the large share of humanitarian migration (refugees and asylum seekers) partly explains the wide differences of employment rates of citizens and non-citizens, albeit barriers (lack of access to work for asylum seekers) and lengthy asylum procedures and resulting penalties for non-participation in the labour market are an additional factor to be taken into account. Similarly, both in Germany and the Netherlands humanitarian migration has been important in particular during the 1990s and early 2000s. In addition, current employment patterns among foreign nationals also reflect a history of recruitment of low skilled migrants and subsequent family reunification with family members of by and large similar characteristics in terms of skills. Generally, lower skilled migrants face considerably higher barriers on

Figure 2-4: Differences in employment rates between citizens and non-citizens, 2007



Notes: Data for Bulgaria and Ireland are missing. Positive values indicate countries where employment rate of non-citizens is higher than that of citizens in the country, and negative values show where employment rate of citizens surpasses that of non-citizens. Horizontally striped bars indicate countries where the total employment rate is below EU average and striped vertically means a general employment rate which is above EU average. * indicates unreliable or uncertain data.

Source: LFS, Eurostat database, data extracted on 11 November 2008.

the labour market than more highly skilled categories of immigrants or the low skilled native population.

However, legal barriers also play an important role. Thus, before 2005, it was estimated that about a third of the foreign resident population in Germany had no or only a restricted access to the labour market.⁸² It is plausible to assume that lack of access to employment has negative effects on future patterns of participation in gainful employment. This assumption is corroborated by the findings of recent study on labour market performance of migrants regularised in the 2000 regularisation campaign in Belgium. The study suggests that restricted access to employment or lack of access to legal employment (and irregular, if any employment) has significant negative effects on labour market outcomes in a long term perspective. By contrast, regularised migrants who already had access to legal employment (specific categories of asylum seekers with access to work also benefiting from regularisation) had a considerably higher chance of being employed and generally a much better labour force performance.⁸³ The consequences of legal barriers on employment are analysed in more detail in chapter 5, below.

In addition to differences in employment rates on grounds of legal status, migrant status and region of origin, there are also important differences by gender and generation. Gender differences and the labour market position of migrant and minority women are discussed in more detail in chapter 6, below and will not be addressed here. Suffice is to note that gender does play major role in inequality in employment.

A second group of concern are young migrants and the second generation. Reflecting the history of migration in the EU, the second generation is predominately young. Second generation migrants have started to enter labour markets already in the 1980s in long-standing countries of immigration, when the first cohorts of descendants of labour migrants reached working age and now represent a significant share of young people entering the labour market. In new countries of immigration, by contrast notably the Southern European countries, Ireland and Finland, the second generation is not yet a significant group on the labour market. A growing number of studies have shown that young migrants

and young persons of immigrant origin continue to face major disadvantages on the labour market, despite the fact that a large share of this group of persons has been socialised or born in their country of residence.⁸⁴ Thus, a comparative survey of second generation migrants in seven EU Member States found that none of the surveyed migrant groups fared better than the native population. The most disadvantaged groups in the study were the second generation of Turkish origin in Belgium, Germany, and the Netherlands; the second generation of Moroccan or other North African ancestry in Belgium, France, and the Netherlands; of Caribbean or Pakistani origin in Britain; and of Surinamese ancestry in the Netherlands. Disadvantaged but faring considerably better than majority groups were persons of Italian origin in Belgium, of Portuguese origin in France and Germany, of Yugoslav origin in Austria and Germany; of Caribbean origin in the Netherlands, and of Indian origin in Britain.⁸⁵

Similarly, a recent study on the labour market integration of young persons in the European Union, based on a special module of the 2002 Labour Force Survey and commissioned by the European Commission (DG Employment and Social Affairs) highlights the disadvantaged position of migrant youth on the labour market. At the same time, it also shows the importance of educational opportunities in increasing participation in employment, although the effect of education for migrant youth is lower than for other disadvantaged groups (women and disabled persons).⁸⁶

Structural barriers in the educational system, comparatively low educational attainments and disadvantages experienced in transitions from school to work explain part of the disadvantaged position of migrant youth and the second generation on the labour market.⁸⁷ Discrimination, however, equally plays an important role and ongoing research documents a

82 R.Münz, T.Straubhaar, F.Vadean, N.Vadean (2006) 'What are the migrants' contributions to employment and growth? A European approach' *HWWI Policy Paper 3-3*, Hamburg: HWWI, available online at [http://www.hwwi.org/Publikationen_Einzel.5119.0.html?&tx_wilpubdb_pi\[publication_id\]=666&tx_wilpubdb_pi\[back\]=484&cHash=1fda167c85](http://www.hwwi.org/Publikationen_Einzel.5119.0.html?&tx_wilpubdb_pi[publication_id]=666&tx_wilpubdb_pi[back]=484&cHash=1fda167c85), (27.11.2008) p. 8

83 Centrum voor Sociaal Beleid, Université d'Anvers, Groupe d'études sur l'ethnicité, le racisme, les migrations et l'exclusion, Université Libre de Bruxelles (2008) 'Before and After La situation sociale et économique des personnes ayant bénéficié de la procédure de régularisation en 2000 (Loi du 22 Décembre 1999)', available at <http://www.ulb.ac.be/socio/germe/documentsenligne/BAfr.pdf>, (19.11.2008).

84 See for discussions of the second generation M.Crul, H.Vermeulen (2003) 'The Second Generation in Europe. Introduction' *International Migration Review*, vol. 37, nr.4: pp. 965-986; M.Thomson, M.Crul (2007) 'The Second Generation in Europe and the United States: How is the Transatlantic Debate Relevant for Further Research on the European Second Generation'. *Journal of Ethnic and Migration Studies* vol.33, nr.7: pp. 1025-1041

85 F.Heath, C.Rothon, E.Kilpi (2007) 'The Second Generation in Western Europe: Education, Unemployment, and Occupational Attainment'. *Annual Review of Sociology* vol.34: p. 218-219

86 D.Paparella, L.Savino (eds) (2008) 'Pathways to work: Current practices and future needs for the labour market integration of young people' *YOUTH: Young in Occupations and Unemployment: Thinking of their better integration in the labour market. Final Report*, online at <http://ec.europa.eu/social/BlobServlet?docId=1704&langId=en> (13 February 2009): pp. 106 and p. 109

87 A.F.Heath, C.Rothon, E.Kilpi (2007) 'The Second Generation in Western Europe: Education, Unemployment, and Occupational Attainment'. *Annual Review of Sociology* vol.34: pp. 211-235, see also below, chapter 2.2.4

significant extent of experiences of discrimination by second generation youth.⁸⁸

2.2.1.2. Unemployment rates of foreign and foreign-born population⁸⁹

In general, patterns of unemployment among migrant minorities closely mirror broader employment patterns of immigrants as discussed in the preceding chapter. In the following, we analyse patterns of unemployment based

Table 2-2: Unemployment rates for the total population, foreign population and foreign-born population 2006

Country	Total population	Foreign population	Foreign population non-EU27	Foreign population	Migrant labour force (in thousands)
EU-27	8.2	13.2	15.5	9.2	-
Austria	4.7	10.6	12.8	6.8	9.8
Belgium	8.2	17.3	33.0	11.7	17.3
Bulgaria***	9.0				
Czech Republic	7.1	6.2*	7.5*	4.8*	11.5
Cyprus	4.5	5.8	4.5*	7.0	
Denmark	3.9	8.2	10.3*		7.5
Estonia	5.9	10.7*	10.9		
Finland	7.7	18.4	25.4		18.1
France	8.8	16.6	23.0	8.0	16.2
Germany	10.2	18.8	23.3	12.1	16.2
Greece	8.9	7.9	7.9	7.5	9.4
Hungary	7.5				7.0
Ireland	4.4				6.0
Italy	6.8	8.6	8.7	8.4	8.5
Latvia	6.8				
Lithuania	5.6				
Luxembourg	4.7	6.7	21.5*	5.6	6.5
Malta	6.9				
Netherlands	3.9	8.8	12.9	4.6*	10.7
Poland	13.8				
Portugal	7.7	11.1	11.1		9.8
Romania***	7.3				
Slovenia	6.0				
Slovakia	13.4				25.5**
Spain	8.5	11.8	12.6	9.6	11.2
Sweden	7.1	13.6	20.2	7.8	13.4
United Kingdom	5.4	8.3	9.8	6.2	7.6

Notes: * Unreliable or uncertain data ** 2005 *** Non-EU members in 2006

Sources: LFS, Eurostat database, data extracted on 30 September 2008. Data on foreign-born: OECD (2008), 'International Migration Outlook' SOPEMI 2008, pp. 87 – 92.

88 P.Simon (2008) 'The Second Generation – Is it about Integration or Discrimination?' Presentation at the 13th International Metropolis Conference, Bonn, 27-31 October 2008.

89 Unemployment rates are generally calculated as the percentage of unemployed persons of the total active population which includes employed and unemployed persons at a certain age.

on data from the European Labour Force Survey. Despite certain limitations in data quality, it is the only source of data providing comparable information on patterns of unemployment in the EU-27 in general and patterns of unemployment among migrant population in particular.

The overall unemployment rate of EU-27 countries in 2006 is 8.2 per cent, ranging from 3.9 per cent in Denmark and the Netherlands to 13.8 per cent in Poland.⁹⁰

The unemployment rate of foreign nationals in the EU is significantly higher with 13.2 per cent, ranging from 5.8 per cent in Cyprus to 18.8 per cent in Germany. Greece and the Czech Republic are the only countries where the unemployment rate of foreigners (both EU and non-EU citizens in Greece) lies below the rate of the total population. An explanation for the lower rate of foreigners in Greece could be the large number of (undocumented) foreigners employed in the informal sector, who might be underrepresented in the Labour Force Survey. The low rate in the Czech Republic might result from particularly tight eligibility conditions for obtaining work or residence permits.⁹¹

However, when distinguishing the unemployment rates of EU citizens and non-EU citizens, it becomes clear that the high unemployment rate of foreigners mainly stems from the unemployment of foreigners from non-EU countries. The unemployment rates of EU citizens living in another EU country were also higher than the overall unemployment rates, but much less so than that of non-EU citizens. Only in Cyprus is the unemployment rate of EU citizens reported to be higher than that of non-EU citizens, and the Cypriot data on EU citizens are not reliable. There are only three countries where the unemployment rates of EU and non-EU nationals do not differ significantly (with less than two per cent difference), namely Greece, Spain and Italy. In these countries however, migrants with irregular statuses – who are mostly from third countries – make up a large part of the foreign population.⁹²

Apart from underrepresentation of irregular migrants in surveys, another explanation of lower unemployment rates could be that an irregular status forces foreigners into employment since they have no prospect of

receiving unemployment benefits and thus depend on income from employment. In addition, migrants without a regular status might have a higher propensity to return when unemployed. Strikingly high unemployment rates among non-EU nationals are observed in Belgium (33.0 per cent), Finland (25.4 per cent), Germany (23.3 per cent), and France (23.0 per cent).

In addition to employment rates of the foreign population, the foreign-born population is of interest. This group differs from foreigners in so far that it also includes naturalised immigrants and excludes persons who were born in the country but hold foreign citizenship. The number thus includes all immigrants. Differences between those two groups are related to naturalisation policies in EU Member States which influence the share of foreigners within the group of foreign-born. In countries where citizenship may be acquired after a short period of residency, the category of 'foreigners' will comprise relatively few established migrants and many migrants who entered the country recently. As recently arrived migrants are more likely to be unemployed, the unemployment rate among foreigners might be relatively high in countries where migrants naturalise early.⁹³

Another explanation for high unemployment rates of foreigners in comparison to the foreign-born population could be lower unemployment of naturalised immigrants. Indeed, proof of sufficient financial means (which usually implies employment) is a common condition for obtaining citizenship in EU Member States.⁹⁴ The unemployment rates of foreign-born persons are in fact lower than those of foreigners, but the difference is not large, with an average value of 11.9 per cent for foreign citizens against 11.6 per cent for foreign-born citizens. There are only two countries where the unemployment rate of the foreign-born population is higher than of the foreign population, namely in the Czech Republic and in Greece.

Figure 2-5, graphically shows differences in unemployment rates between the foreign born population and foreign population.

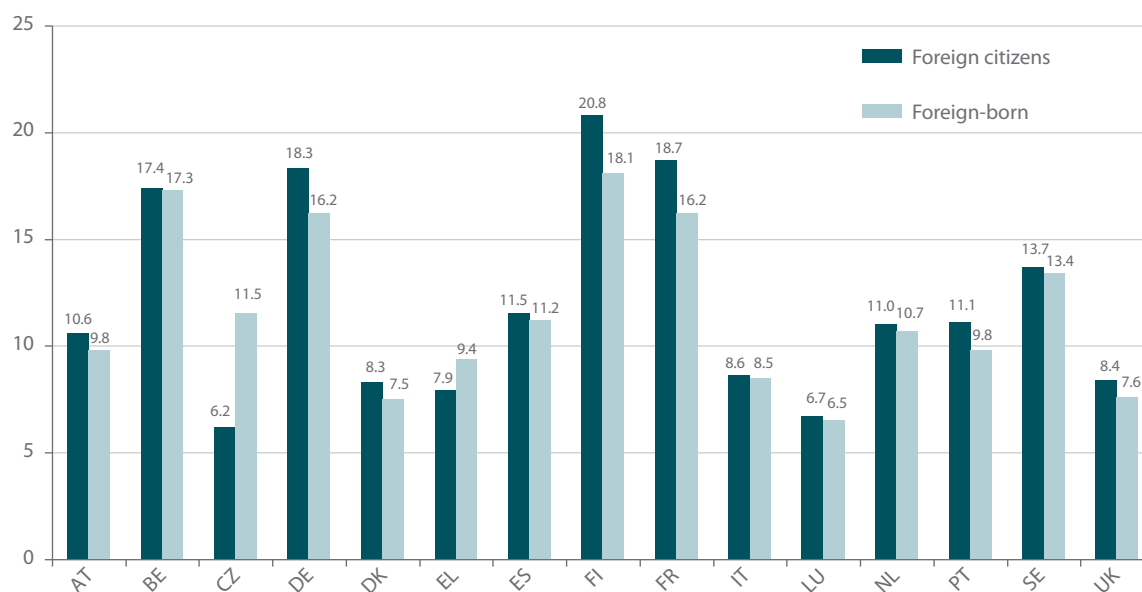
90 The unemployment rate on the basis of the LFS is the share of unemployed persons in the total number of active persons in the labour market. Active persons include employed and unemployed persons. Unemployed persons are all persons who are between 15 and 74 years of age who were not employed during the reference week, had actively sought for work during the past four weeks and were ready to start working immediately or within two weeks. Employed persons include all persons who worked at least one hour for pay or profit, or were temporarily absent from such work during the reference week. Cf.: http://europa.eu.int/estatref/info/sdds/en/une/une_sm.htm and http://europa.eu.int/estatref/info/sdds/en/lfsi/lfsi_sm.htm (30.09.2008)

91 FRA (2007): *Report on Racism and Xenophobia in the Member States of the EU*, p. 44.

92 Cf. <http://irregular-migration.hwwi.net/>

93 FRA (2007): *Report on Racism and Xenophobia in the Member States of the EU*, p. 43.

94 A. Kraler (2006): *The legal status of immigrants and their access to nationality*, in: R. Bauböck (Ed.): *Migration and Citizenship. Legal Status, Rights and Political Participation*, Amsterdam University Press: IMISCOE Reports, p. 46.

Figure 2-5: Unemployment rates by nationality and country of birth 2006, selected Member States

Source: OECD (2008), *International Migration Outlook SOPEMI 2008*, pp. 87-92.

Again, the rates in Finland, France, Germany and Belgium are remarkably high for foreigners as well as for foreign-born persons, yet the rates for foreign-born are, as expected, significantly lower since naturalised migrants on the whole perform better than foreigners in economic terms.⁹⁵ Belgium however is an exception to this rule, with high rates of unemployment among both foreigners and foreign-born persons lying at 17.3 per cent.

As in the case of employment rates, average unemployment rates for the migrant population conceal considerable differences between migrant groups. Thus, while the unemployment rate for foreigners in general in Belgium was 17.3 per cent in 2006, it was 33 per cent for third-country nationals and around forty per cent for Moroccans, Turks, Congolese and Algerians, reflecting that third country nationals in Belgium also had significantly lower employment rates. In addition, also the activity rate more generally

is relatively low among third country nationals. These gaps narrow when controlling for place of birth, ('born in Belgium', 'born in the EU', and 'born outside the EU'), but differences remain.⁹⁶

Surprisingly, large differences still remain even when qualification is controlled for, as a recent more detailed analysis of Labour Force Data shows for 2005: among unqualified workers, unemployment rates still range from 40.3 per cent among non-EU nationals to 14.8 per cent for EU25 nationals and 12.9 per cent for Belgians. The same holds true for qualified workers (34.9 – non-EU 25, 11.4 – EU 25, and 7.9 per cent – Belgians). Among highly qualified workers the unemployment rate is highest for non-EU 25 nationals as well, yet the rate of Belgians (7.1 per cent) is higher than that of EU 25 nationals (5.3 per cent).⁹⁷

2.2.1.3. Unemployment among the Roma population

A survey conducted by the United Nations Development Programme (UNDP) and the International Labour Organization (ILO) among Roma in Bulgaria, the Czech Republic, Hungary, Romania and the Slovak Republic in 2001 provides a valuable dataset on the Roma

95 See: P. Bevelander & J. Veenman (2004): Naturalization and immigrants' employment integration in the Netherlands. Paper prepared for conference: Immigrant Ascension to Citizenship: Recent Policies and Economic and Social Consequences. IMER, Malmoe University, 7 June 2004; D. DeVoretz & S. Pivnenko (2004): The Economics of Canadian Citizenship. Paper prepared for conference: Immigrant Ascension to Citizenship: Recent Policies and Economic and Social Consequences. IMER, Malmoe University, 7 June 2004; I. Kogan (2003): Ex-Yugoslavs in the Austrian and Swedish labour markets: the significance of the period of migration and the effect of citizenship acquisition. *Journal of Ethnic and Migration Studies* Vol. 29, No. 4, pp. 595-622; J. L. Rallu (2004): Access to citizenship and integration of migrants: Lessons from the French case. Paper prepared for the 12th Biennial Conference of the Australian Population Association, 15-17 September 2004, Canberra.

96 Raxen National Focal Point Belgium, National Data Collection Report Belgium – 2007, p. 51. Data referring to unemployment rates in 2005.

97 Raxen National Focal Point Belgium, National Data Collection Report Belgium – 2007, ANNEX Table 10.

population.⁹⁸ Amongst others, the survey gathered information on the current socio-economic status of the Roma population, including unemployment.⁹⁹

The survey shows a remarkably high share of Roma who described themselves as unemployed in the survey. Extremely high percentages are reported for Slovakia (61.8 per cent of respondents), Bulgaria (56.4 per cent) and Romania (52.6 per cent). The shares of unemployed in the Czech Republic (31.2 per cent) and in Hungary (26.2 per cent) are lower but still very high. Unemployment is higher among respondents with a lower education and among male respondents. Women report lower unemployment (38.6 against 52.4 per cent); however, they report lower employment as well (14.3 against 24.3 per cent). This difference results from the large percentage of women who define their socio-economic status as housekeepers (11.8 per cent women against 1.5 per cent of men) and women who are on maternity leave (14.5 per cent of women against 0.5 per cent of men).¹⁰⁰

In the 2002 census in Slovenia, data on nationality and ethnicity were collected. Cross-tabulating ethnicity with activity, the unemployment rates of the respondent can be analysed and compared. According to this data, the unemployment of Roma is striking: 66 per cent of all Roma (including the inactive population) are unemployed. Interestingly, the share of unemployed persons was above average among all respondents who did not identify themselves as Slovenians or Italians, ranging from 9.3 per cent among Croats to 15.3 per cent among Albanians.¹⁰¹

2.2.2. Self-employment

There is little comparative research and quantitative information on patterns of migrant and minority self-employment in the European Union. The Labour Force Survey is not a useful source, as the share of migrants in self-employment in the sample in most countries is too small to provide reliable information on patterns of self-employment among immigrants. Information on non-migrant minorities is even scarcer.

Studies on migrant self-employment often confounds self-employment with ethnic entrepreneurship and largely focuses on the latter. Against the background of the considerable growth of atypical and precarious forms of employment on the fringes of the labour market, however, it seems increasingly important to distinguish between different types of self-employment and distinguish self-employment amounting to dependent employment from self-employment proper. However, to date, no sufficiently detailed information is available that would allow analysing different types of self-employment among migrants and minorities. Existing research on minority businesses suggests that there are high differences of self-employment rates between different minority groups. Indeed in some cases, self-employment rates of minority members are well above self-employment rates for the majority population.

Thus, in the UK, men who identified themselves as Pakistani or as Indian were found to be most likely to be self-employed in 2004. 25.8 per cent of Pakistani men and 18.2 per cent of Indian men in work were self-employed, against 16.9 per cent of 'white men' in work. The picture for women looks different, with those who identified themselves as Chinese most likely to be self-employed: 12.8 per cent of women in work against 7.1 per cent of 'white women'.¹⁰² In Romania, no less than 71.7 per cent of employed Roma were reported to be self-employed.¹⁰³

The available literature suggests that a majority of ethnic-businesses are small-scale businesses and largely serve ethnic minority customers. In addition, migrant businesses seem to be largely concentrated in specific sectors such as retail, restaurant and hospitality services as well as personal services.¹⁰⁴

Migrant entrepreneurs face specific difficulties, as they have less access to financial credits due to lack of references.¹⁰⁵ In a survey conducted in Austria among entrepreneurs with a migration background, half of the male entrepreneurs and almost 40 per cent of the female entrepreneurs indicated that procurement of financing was an important barrier when starting their business. The survey results also showed that access to finance was even more difficult for entrepreneurs with

98 More recently the FRA's EU-MIDIS survey has produced comprehensive data on Roma experiences of unemployment across the EU – see FRA *EU-MIDIS Main Results Report* 2010 p. 38–40, http://fra.europa.eu/fraWebsite/attachments/eumidis_mainreport_conference-edition_en_.pdf

99 UNDP (2002): *Avoiding the dependency trap. Roma in Central and Eastern Europe*, available at: <http://europeandcis.undp.org/environment/show/62BBCD48-F203-1EE9-BC5BD7359460A968>, (02.10.2008).

100 UNDP (2002): *Avoiding the dependency trap. Roma in Central and Eastern Europe*, p. 95, available at: <http://europeandcis.undp.org/environment/show/62BBCD48-F203-1EE9-BC5BD7359460A968>, (02.10.2008).

101 Not considering ROMA. Raxen National Focal Point Slovenia, National Data Collection Report Slovenia – 2007, Annex Table 5.11. On the basis of data compiled by the Statistical Office of the Republic of Slovenia.

102 Raxen National Focal Point United Kingdom, National Data Collection Report United Kingdom – 2006, p. 14.

103 Raxen National Focal Point Romania, National Data Collection Report Romania – 2006

104 CEEDR (2000) *Young Entrepreneurs, Women Entrepreneurs, Ethnic Minority Entrepreneurs and Co-Entrepreneurs in the European Union and Central and Eastern Europe. Final Report to the European Commission*, DG Enterprise, available at <http://ec.europa.eu/enterprise/entrepreneurship/craft/craft-studies/documents/ethnicminority.pdf> (13.2.2009), J.Rath,R.Kloosterman (2000) *A Critical Review of Research on Immigrant Entrepreneurship*. *International Migration Review*, vol.34, no.3, pp. 657–681

105 EUMC (2003) *Migrants, Minorities and Employment: Exclusion, Discrimination and Anti-Discrimination in 15 Member States of the European Union*, p. 33–34.

lower education.¹⁰⁶ A survey among business support organisations conducted in 2000, which, amongst others, asked respondents about difficulties encountered by clients with a minority background shows similar findings. According to business support organisations access to finance, closely followed by access to markets were among the main problems faced by minority entrepreneurs, although these barriers may be common to small businesses in general. However, access to finance and markets seem to be more problematic for entrepreneurs of a migrant background, who, in addition face considerable discrimination by finance providers.¹⁰⁷

Although ethnic businesses often are reasonable successful, ethnic businesses are not without problems. Thus, low capitalisation of businesses, low profit margins and high competition in those segments of the market in which migrant business are most often found often results in both self-exploitation and exploitation of others, notably family members; and, in the case of non-family labour, employees are often employed irregularly. In addition, work in migrant businesses is often characterised by poor working conditions – long working hours, lack of leisure and lack of breaks during work.¹⁰⁸

Thus, employment in an ethnic minority business is not necessarily beneficial for minority members. Indeed, as a survey among Turks in the Netherlands showed, half of those interviewed adamantly did not wish to work in a business of one of their compatriots in the Netherlands.¹⁰⁹ Moreover, while self-employment and entrepreneurship may be a way of achieving social upward mobility, it is often a response to disadvantage on the labour market.¹¹⁰ However, research on migrant self-employment also shows that self-employed and those employed in migrant businesses often consciously accept some of these disadvantages and evaluate their quality of life higher than their difficult working conditions would suggest.¹¹¹

2.2.3. Economic sectors and occupations

The distribution of migrants across economic sectors shows a marked concentration in specific sectors and an underrepresentation in others. Across the EU, migrants are concentrated in agriculture, industry and the service sector, albeit with marked gender differences.¹¹² These patterns of unequal distribution of the migrant and minority labour force across different sectors clearly has implications for wider patterns of inequality and social exclusion, not least since wages, working conditions and vulnerability to unemployment are closely linked to sector distribution. Generally, the distribution of the migrant labour force across economic sectors is an expression of past migration patterns, skill characteristics (discussed in the next chapter), occupations, but importantly also economic changes and opportunity structures.

Based on the OECD immigrant database, which in turn largely contains data from the 2000 census round, we have calculated sector distribution rates for the four broad sectors distinguished in the database – (1) agriculture and industry, (2) producer services, (3) distributive services and (4) personal services. Sector distribution rates have been calculated as the ratio of the share of native born to the share of the foreign born population in a given sector. A sector distribution rate above 1 signals overrepresentation of immigrants, whereas a sector distribution rate below 1 indicates an underrepresentation of migrants. Figure 2-6, overleaf, graphically shows these sector distribution rates.

These sector distribution rates vary greatly between the countries. On average the share of foreign-born population is higher in producer services and almost equal in personal and social services. On average the share of foreign-born is lower in agriculture and industry as well as in distributive services. However, the differences in certain sectors vary strongly among the EU Member States. The highest variation is observed for producer services.

106 E. Enzenhofer, I. Kessler, F. Lechner, A. Riesenfelder, W. Reiter, P. Wetzel (2007) *Ethnische Ökonomien – Bestand und Chancen für Wien. Kurzfassung des Endberichts*, Wien: L & R Sozialforschung, p. 10, available at: [http://www.lrsocialresearch.at/files/Kurzfassung_EB_LR_Sozialforschung_Ethnische_Oekonomien_\(V2\).pdf](http://www.lrsocialresearch.at/files/Kurzfassung_EB_LR_Sozialforschung_Ethnische_Oekonomien_(V2).pdf) (25.11.2008).

107 CEEDR (2000) *Young Entrepreneurs, Women Entrepreneurs, Ethnic Minority Entrepreneurs and Co-Entrepreneurs in the European Union and Central and Eastern Europe*. Final Report to the European Commission, DG Enterprise, available at <http://ec.europa.eu/enterprise/entrepreneurship/craft/craft-studies/documents/ethnicminority.pdf> (13.2.2009); p. 99

108 J.Rath (2000) *Immigrant Business: The Economic, Political and Social Environment*. Houndsmill, Basingstoke and London: Macmillan

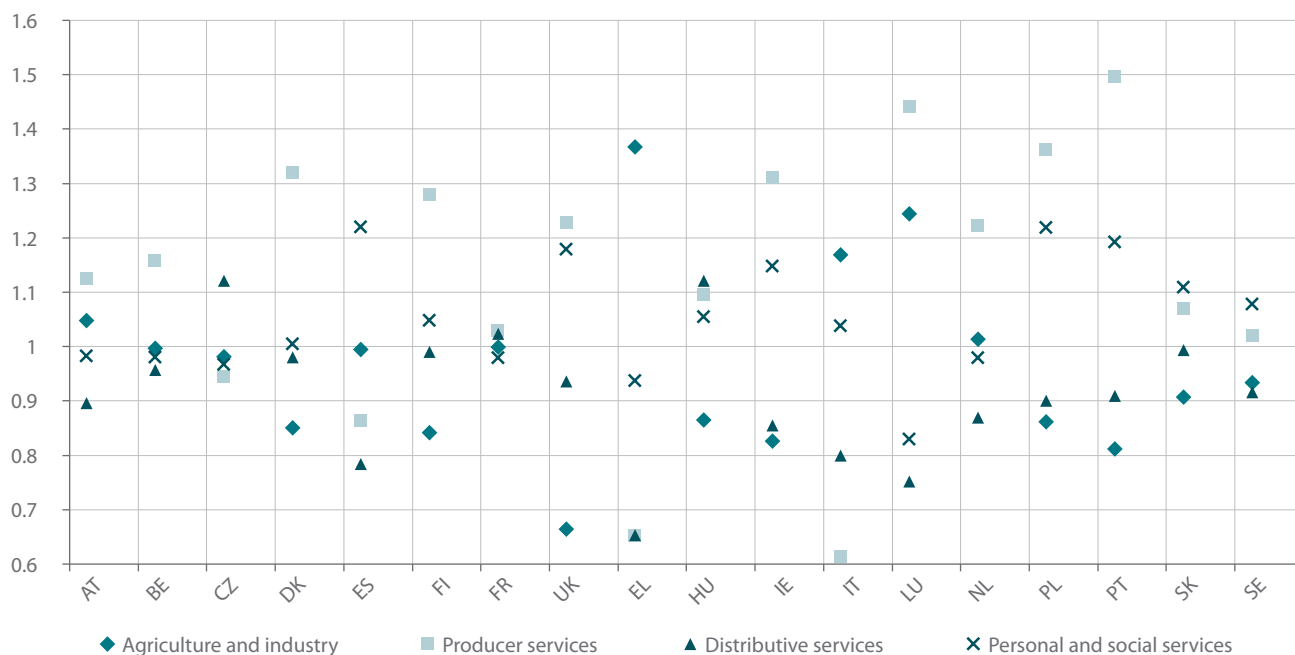
109 J.Rath,R.Kloosterman (2000) 'A Critical Review of Research on Immigrant Entrepreneurship'. *International Migration Review*, vol.34, no.3, p. 660

110 A. Pécoud (2003) 'Self-Employment and Immigrants' Incorporation: The Case of Turks in Germany'. *Immigrants & Minorities*, vol.22, no.2/3: pp. 247-261

111 U.Apitzsch (2005) 'The Chances of the second Generation in Families of migrant Entrepreneurs: Quality of Life Development as a biographical Process'. *Revue Européenne des Migrations Internationales*, vol.21, no.3, pp. 83-94

112 OECD (2008): *A Profile of Immigrant Populations in the 21st Century: Data from OECD Countries*. Paris: OECD

Figure 2-6: Distribution rate of foreign-born compared to native-born, by economic sectors



Notes: The sector distribution rate has been calculated as the ratio of the share of foreign-born in a sector to the share of native-born in the same sector. A ratio above 1 indicates overrepresentation of foreign born in a sector, a ratio below 1 that foreign born are underrepresented. Data exclude people with unknown sector of activity, place of birth or gender. Classification according to International Standard Industrial Classification (third revision), see: <http://www.ilo.org/public/english/bureau/stat/class/isc.htm>, (03.12.2008).

Source: Own figure, based on OECD (2008): *A Profile of Immigrant Populations in the 21st Century: Data from OECD Countries*, pp. 153-155, data available at: <http://dx.doi.org/10.1787/248340756866>, (03.12.2008).

The share of foreign-born in agriculture and industry is remarkably lower than the share of native-born (rate lower than 0.9) in Denmark, Finland, United Kingdom, Hungary, Ireland, Poland, and Portugal. Only in Greece, Italy, and Luxembourg a considerable higher participation in agriculture and industry is observable. Rates for participation in producer services are outstandingly high in Denmark, Ireland, Luxembourg, and Portugal (more than 30 per cent higher) and lower than the native-born population only in Czech Republic (0.94), in Spain (0.86), and in Italy (0.8). The variations of the rates are not as high for distributive services and for personal and social services.

Taking Germany as an example, the distribution in economic sectors differs between persons with a migration background and persons without.¹¹³ In 2005, people with a migration background were overrepresented in manufacturing and extractive industry (35 per cent against 29 per cent) as well as in the trade, hotel and restaurant industry (28 per cent

against 22 per cent). In contrast, persons without a migration background were overrepresented in agriculture and forestry, as well as in other services.¹¹⁴

This concentration is confirmed when looking at the share of foreigners in occupational areas. The share of foreigners is highest in manufacturing occupations followed by occupations in the primary service sector. The lowest share of foreigners is observable in the secondary service sector. Hence, foreigners and migrants in Germany are more likely to be found in branches with lower incomes and less favourable working conditions.

113 Migration background includes persons who immigrated to Germany, foreigners who are born in Germany, naturalised migrants, and persons with at least one parent who immigrated to Germany or at least one parent who was born in Germany as a foreigner.

114 Statistisches Bundesamt Deutschland (2007) *Bevölkerung und Erwerbstätigkeit. Bevölkerung mit Migrationshintergrund – Ergebnisse des Mikrozensus 2005*, available at: <https://www-ec.destatis.de/csp/shop/sfg/bpm.html.cms.cBroker.cls?cmspath=struktur,vollanzeige.csp&ID=1020312> (05.09.2008), pp. 224 – 225.

Table 2-3: Share of foreigners in occupational areas in Germany 2003 to 2005

Share of foreigners	Occupational area		
	Manufacturing	Primary service sector	Secondary service sector
2003	11.0 %	6.4 %	3.7 %
2005	10.6 %	6.3 %	3.6 %
2007	10.5 %	6.5 %	3.8 %

Note: Only employees subject to compulsory social insurance (without persons in education, self-employed and civil servants).

Source: Institut für Arbeitsmarkt- und Berufsforschung der Bundesagentur für Arbeit (2007), *Berufe im Spiegel der Statistik 1999-2007*, available at: <http://www.pallas.iab.de/bisds/berufsgliederung.asp?level=BF> (05.09.2008)

While the distribution of migrants across economic sectors reflects patterns of labour market segmentation along ethnic lines as specific sectors are linked to specific opportunity structures within these sectors, data on occupations of migrants generally provide a much more detailed information and comprehensive picture of labour market segmentation in the European Union. Generally, occupations are closely related to human capital factors and thus characteristics of migrants. However, as we discuss below, migrants and presumably also other ethnic minorities do also experience significant deskilling, in other words, they are not able to use their skills to the full potential and are often employed in jobs below their level of qualification.

The new OECD database on immigrants in OECD countries (DIOC) provides statistical data drawn largely from data from the 2000 census round by detailed occupation of immigrants following the ISCO standard classification. For ease of analysis, the data was then grouped into three broad categories:

- (1) professionals, referring to ISCO major groups 1 and 2,
 - (2) technicians, referring to ISCO major groups 3 and 4 and
 - (3) operators, referring to ISCO major groups 5, 6, 7, 8 and 9.
- (armed forces (ISCO group 0) have been excluded.)

These three categories reflect certain positions on the skills ladder: operators are the least skilled category, technicians are placed in the middle to upper position on the skill spectrum, while professionals refer to highly skilled persons. For this report, only OECD countries which are also EU Member States have been considered.

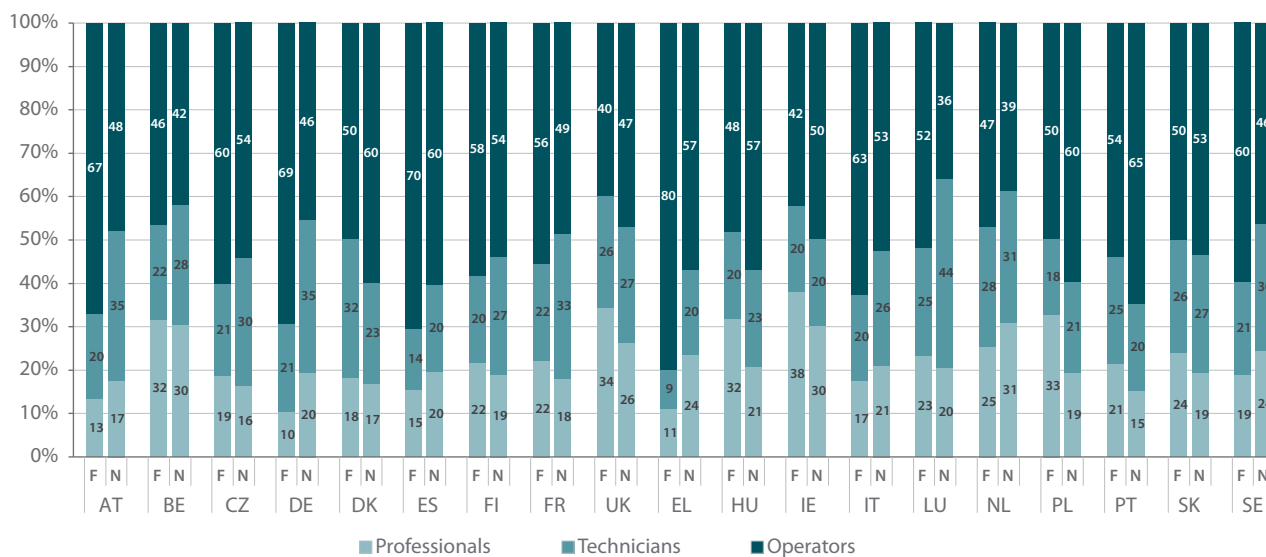
In most countries (12 out of 19) the share of 'operators' among foreign-born population is higher than among native-born population, suggesting lower labour market positions of migrants. However, in most countries also the share of foreign-born persons working as 'professionals' is higher as the share in the native-born population as (12 out of 19). In almost all countries where comparable data are available (except in Denmark and Portugal) the share of 'technicians' is higher among the native-born population than among the foreign-born population.

This pattern clearly shows that migrants are over-represented in the highly qualified and in the least skilled occupations, whereas migrants are under-represented in the middle spectrum of the labour market.

Generally, the distributions of occupations in the foreign-born and native-born populations vary strongly among 19 EU Member States. Tubergen (2006) found that country of origin, country of destination as well as combinations thereof are important for occupational status of immigrants. He furthermore found that people originating from politically suppressive countries have lower occupational status than other migrants (who have moved for economic reasons), suggesting broadly lower labour market positions of humanitarian migrants. Moreover, 'non-white' immigrants more often face discrimination against them leading to lower occupational status.¹¹⁵ Figure 2-7, below, graphically shows occupational characteristics of the foreign-born compared to the native born in the European Union.

115 F. van Tubergen (2006): Occupational status of immigrants in cross-national perspective: A multilevel analysis of seventeen Western societies, pp. 147-171, in: C. A. Parsons & T. M. Smeeding (Ed): *Immigration and Transformation of Europe*, Cambridge University Press.

Figure 2-7: Distribution of occupations by place of birth in 19 EU Member States



Note: F = foreign-born population and N = native-born population. Professionals include all occupations with ISCO¹¹⁶ code 1 and 2; Technicians include all occupations with ISCO code 3 and 4; Operators include all remaining groups, except armed forces, which have been excluded.

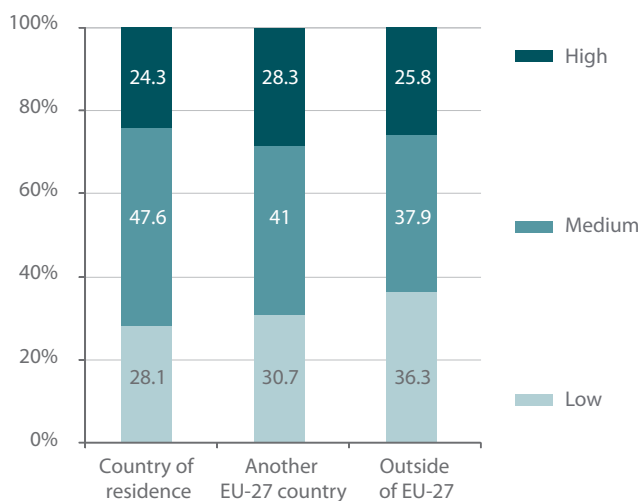
Source: Own presentation based on OECD (2008): *A Profile of Immigrant Populations in the 21st Century: Data from OECD Countries*, pp. 141-142, data available at: <http://dx.doi.org/10.1787/248322247831>

2.2.4. Skills, educational attainment and employment

Human capital factors – skills and educational attainment – are among the main explanatory factors for labour market outcomes. Indeed, there are marked differences in the educational levels between the foreign-born and native-born population in the European Union. As discussed by Münz et al. (2006) the immigrant population in the EU-27 is generally underrepresented in the medium-skilled group. Almost half of the native-born population has a medium educational attainment, according to the classification used, but only 41 per cent of the immigrant population born in another EU-27 country and 37.9 per cent of immigrants originating from countries outside EU-27. Educational attainments of immigrants are shown in figure 2-8, below.

116 International Standard Classification of Occupations, see <http://www.ilo.org/public/english/bureau/stat/isco/index.htm>, (03.12.2008).

Figure 2-8: Level of education of population aged 25 to 64 by place of birth, 2005

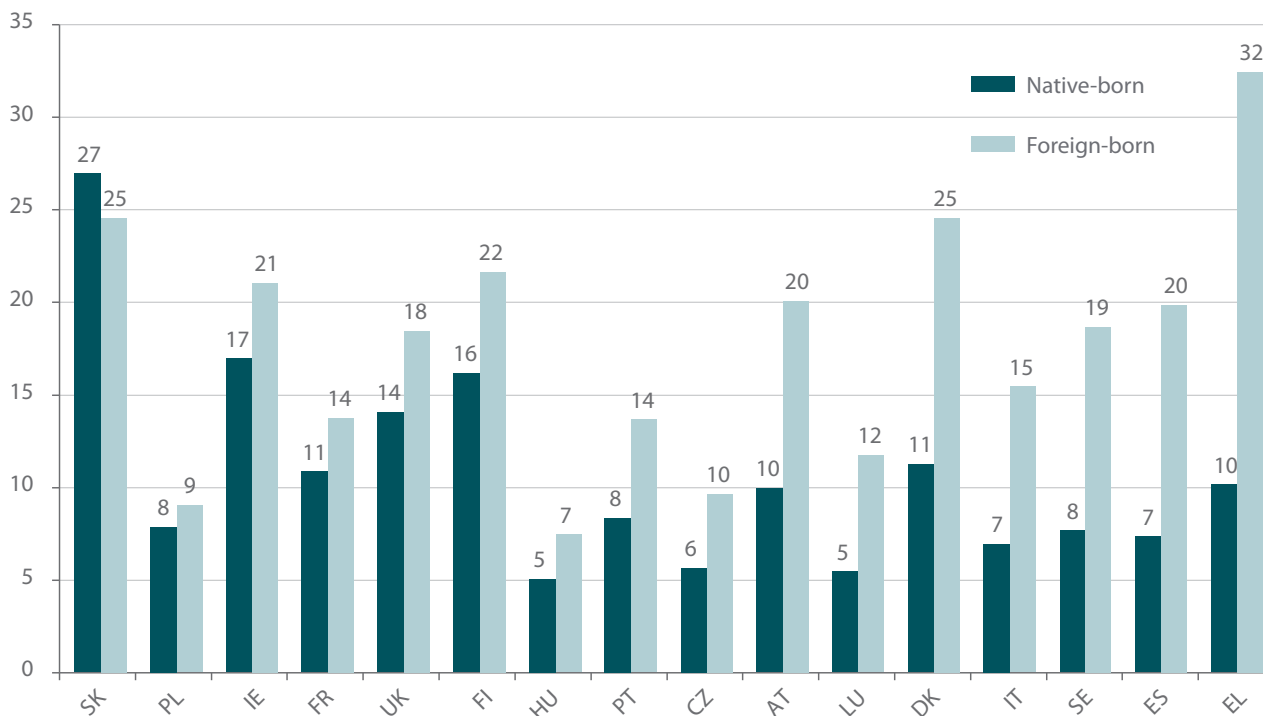


There is a large body of research on the effects of educational attainment on migrants' employment patterns. Indeed, comparatively low human capital endowments of particularly vulnerable migrant and minority groups is one of the most important factors explaining adverse labour market outcomes. Nevertheless, even when educational levels of migrants or minorities are taken into account, inequalities in employment remain, suggesting considerable deskilling among migrants and minorities. Figure 2-9, below, shows overqualification rates for natives and immigrants in EU Member States, drawing on data from the OECD immigrant database.

Note: Incomplete numbers (without Luxembourg; education levels of immigrants do not include data for Germany, Italy and Luxembourg)

Source: LFS, for detailed references see Table A6 in the Statistical Annex

Figure 2-9: Overqualification of foreign-born compared to native-born population in 16 EU countries (%)



Note: Education and job qualification levels are grouped into three categories: low, intermediate and high. An overqualified individual is a person who holds a job that requires lesser qualifications that would theoretically be available at his education level. The overqualification rate is defined as the ratio of the share of foreign born overqualified for their work compared to the respective share of native born. Overqualification rates are calculated for individuals with an intermediate or higher education.

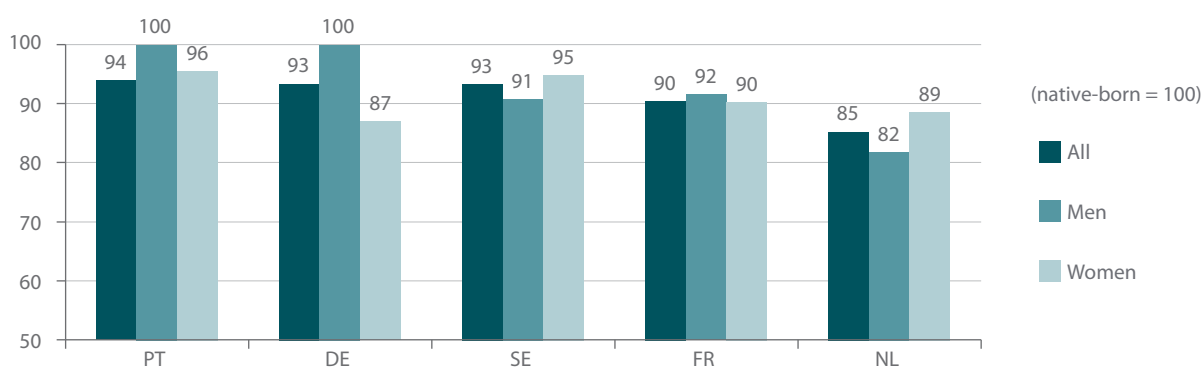
Source: OECD (2008): A profile of Immigrant Populations in the 21st Century. Data from OECD countries, p. 139, Database on Immigrants in OECD Countries (DIOC), <http://dx.doi.org/10.1787/247334814281>, (02.12.2008).

Again, not all migrants are similarly subject to deskilling and migrants from non-EU countries are generally much more likely to experience deskilling. Thus, in Denmark non-Western immigrants are more likely to be overeducated (i.e. their educational level is higher than required for the job they are employed in). 25 per cent of non-Western immigrant wage earners with at least a vocational education are overeducated, against only 15 per cent of the native Danes. Deskilling generally affects those who acquired their education abroad most.¹¹⁷ This suggests transfer of skills and educational attainments across countries as a major problem area. Underlying the limited transferability of skills and education are several factors, including employer preferences for skills and education acquired in a country, non-equivalence of skills and education acquired abroad, but also discrimination. Similar patterns can be observed in Austria, where seven per cent of women and five per cent of men who completed higher education in Austria are employed in un- or semi-skilled jobs, compared to 32 per cent of women and men with higher education completed outside of Austria. Additionally, unemployment among persons who completed their education outside of Austria is twice as high as the unemployment of persons who have completed their education in Austria for women and three times as high for men.¹¹⁸ As can be seen in Figure 2.9, considering 16 EU Member States, in all countries, except Slovakia, the foreign-born population is more likely to be overqualified. This is particularly pronounced in southern Europe (Italy, Greece and Spain) and in some countries of northern Europe (Denmark and Sweden).¹¹⁹

2.2.5. Income and wages

Income and wage disparities are among the most important consequences of labour market disadvantages and among the most obvious signs of social exclusion. Data on household incomes is available from the EU Survey on Incomes and Living Conditions (EU-SILC) and its predecessor, the European Community Household Panel (ECHP). Like all surveys, these are limited in terms of sample sizes; like in other surveys, ethnicity as such is not measured and data is only available for persons with an immigration background and we thus limit ourselves to migrant minorities and disregard other vulnerable ethnic minorities. In addition to the EU-SILC, information on incomes can be derived from various national data sources, although in fact also in national contexts, the EU-SILC is often used as the main source of information in the absence of adequate alternative data-sources. The EU-SILC also provides information on salaries. As this analysis is mainly based on secondary data, available publications and statistical data readily available from the Eurostat online database and so far, there has been no analysis of migrant incomes on the basis of the EU-SILC, we have used data from a pilot study undertaken by the OECD and available only for a small number of EU Member States to show wage disparities (See figure 2-10). Data for this figure are derived from national data sources and largely refer to the years 2005 and 2006.¹²⁰

Figure 2-10: Median wages of immigrants relative to the native-born in five EU countries, 2005-2006



Source: OECD (2008): *International Migration Outlook: SOPEMI*, p. 81, data available at: <http://dx.doi.org/10.1787/427665878636>, (03.12.2008).

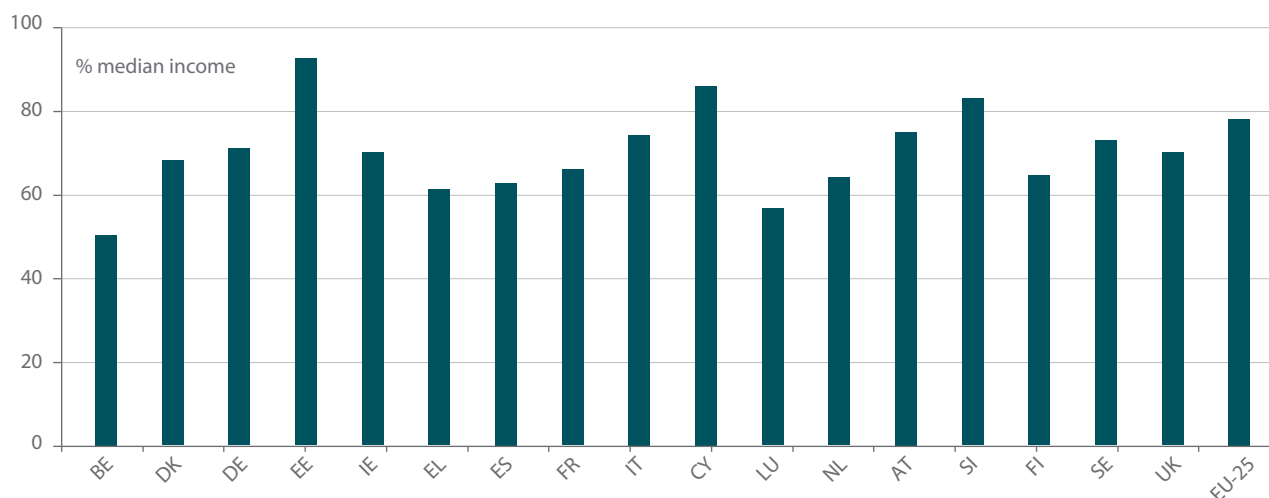
117 C. P. Nielsen (2007): 'Immigrant Overeducation: Evidence from Denmark' AKF, Danish Institute of Governmental Research, p. 1, available at: www.amid.dk/assets/pdf/overeducation_final.pdf (23.09.2008).

118 A. Gächter (2007) 'Bildungsverwertung auf dem Arbeitsmarkt', in: H. Fassmann (Ed.): 2. Österreichischer Migrations- und Integrationsbericht. 2001 – 2006, Klagenfurt: Drava Verlag, pp. 248 – 249.

119 Including Slovakia, Poland, Ireland, France, UK, Finland, Hungary, Portugal, the Czech Republic, Austria, Luxembourg, Denmark, Italy, Sweden, Spain and Greece, cf. OECD (2008): *A profile of Immigrant Populations in the 21st Century*. Data from OECD countries, p. 139.

120 Cf. OECD (2008): *International Migration Outlook: SOPEMI*, p. 79.

Figure 2-11: Median household incomes of migrant households with children relative to the native-born in 18 EU countries, 2004



Note: The figure represents the median disposable household income of migrant households with at least once child, equalised for differences in the size and composition of households.

Source: EU-SILC, taken from Eurostat (2008): *The Social Situation in the European Union, 2007*, p.93 (Figure 17)

The results of the OECD pilot study suggest that migrants earn considerably less than the native-born population. An earlier study of migrant wages based on the European Community Household Panel (ECHP) suggests that wage disparities are particularly large at the time of arrival of migrants. The analysis shows that migrants' earnings are 38 per cent (men) and 42 per cent (women) below those of natives.¹²¹ The study, however, also shows that wage disparities vary greatly between countries, with migrants in Germany and Portugal faring the best, and those in Sweden, Denmark, Luxembourg and Spain the worst. Although the ECHP is problematic as a source of information on immigrants and the results are likely to be distorted because of deficiencies of the sample, the general direction of the results might still hold true. The study also shows that wage disparities are closely related to origin. Thus, in 6 out of the 15 countries included in the analysis, wages of migrants born outside the EU are below those born in the EU.¹²² Again, given the deficiencies of the ECHP sample in regard to migrants and the fact that migrants from non-EU countries are likely to be underrepresented, wages of non-EU migrants are probably lower than those of EU-born migrants in more countries than suggested by the study. However, the study also suggests that

wage disparities reduce over time and become equal of that of natives after about 19 years of residence.¹²³

Major disparities between natives and foreign born in respect to available household incomes are shown in the most recent edition of the Eurostat report on the social situation in the European Union. The report analysed household incomes of migrant households with at least one child and covers 18 EU Member States on the basis of the EU-SILC survey.¹²⁴ Figure 2-11, below shows median household incomes of households with at least one child as compared to the native population.

The report shows that household incomes of migrant households with at least one child are on average 80 per cent below the level of natives, with particularly large income disparities in Belgium and Luxembourg.

Lower household incomes of migrant households reflect disadvantages on the labour market in at least two respects. First, household incomes reflect wage disparities, which in turn are closely linked to the concentration of migrants in low wage sectors and occupations. Secondly, and perhaps even more important, disparities in household incomes are a consequence of comparatively low employment and activity rates among migrants and much higher vulnerability to unemployment.

121 A.Adserà, B.R.Chiswick (2005) Divergent Patterns of Immigrant Earnings Across European Destinations. In: C.A.Parsons, T.M.Smeeding (eds.) *Immigration and the Transformation of Europe*. Cambridge: Cambridge University Press, p. 97

122 A.Adserà, B.R.Chiswick (2005) Divergent Patterns of Immigrant Earnings Across European Destinations. In: C.A.Parsons, T.M.Smeeding (eds.) *Immigration and the Transformation of Europe*. Cambridge: Cambridge University Press, p. 97

123 A.Adserà, B.R.Chiswick (2005) Divergent Patterns of Immigrant Earnings Across European Destinations. In: C.A.Parsons, T.M.Smeeding (eds.) *Immigration and the Transformation of Europe*. Cambridge: Cambridge University Press, p. 105

124 Eurostat (2008): *The Social Situation in the European Union*, online at http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KE-AG-08-001/EN/KE-AG-08-001-EN.PDF (15.2.2009)

**Table 2-4: Risk of poverty of those in households with and without children by place of birth, 2004
(%with income below the at-risk-of-poverty threshold)**

Country	Born in country of residence		Born outside the EU		% point difference: born outside EU minus born in country	
	With children	Without Children	With children	Without Children	With children	Without Children
BE	12	12	64	37	53	25
DK	8	15	39	42	31	28
DE	12	14	33	24	20	10
EE	21	19	26	25	5	6
IE	20	21	40	28	20	7
EL	18	19	43	23	25	4
ES	22	19	53	21	31	2
FR	11	12	41	32	30	21
IT	23	16	33	21	10	6
CY	11	27	30	33	18	6
LU	9	5	53	34	44	29
NL	13	8	51	16	38	8
AT	12	10	35	29	23	19
SI	11	16	19	23	9	7
FI	9	14	30	45	21	31
SE	6	10	28	30	21	20
UK	21	18	40	26	20	8
EU-25	18	15	40	25	23	10

Source: EU-SILC, taken from Eurostat (2008): *The Social Situation in the European Union, 2007*, p.95 (Table 20)

Thus, the report on the social situation in the European Union shows that the proportion of children living in households without a person in employment was larger for migrant children than for native children. Similarly, in 12 of the 17 countries included in this analysis, the household ‘work intensity’ – a measure for the share of household members in working age in employment – was less than 1 for over 60 per cent of households with children (signalling that not everyone of working age was in employment throughout the year), with households without children presumably showing similar patterns.¹²⁵

Similarly, the share of migrant households falling below the official poverty line – 60 per cent of the Median income – is significantly higher among immigrants than among natives. The presence of children in the household or the size of the family contributes to poverty risks in a large number of countries, but being born outside the

European Union seems to be the decisive factor. In all EU-Member States persons born outside the EU and living in households without children are exposed to a higher poverty risks than natives in households without children. The difference in the proportion of persons at risk of poverty in migrants’ households with children and those without are largest in the Netherlands, Belgium, Greece and Spain with between 21 and 30 percentage points difference, while the relative differences between native households with and without children are relatively small. Table 2-4, below, shows provides a summary of the share of persons at risk of poverty for natives with and without children vs. natives with or without children.

125 Eurostat (2008): *The Social Situation in the European Union*, online at http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KE-AG-08-001/EN/KE-AG-08-001-EN.PDF (15.2.2009), p. 96

2.3. Evidence of change and continuity

It is difficult, if not impossible to present a clear picture of change in regard to patterns of inequality regarding migrants and minorities in employment. Partly, this is an issue of data availability and comparability. Thus, for various indicators – for example distribution across economic sectors, occupations and occupational status and educational attainment – only snapshot statistics for a certain point in time are available, thus precluding any analysis of developments over time. Similarly, longitudinal data in the narrow sense, which would allow to monitor labour market experiences of specific cohorts of migrants and minorities are not available on the EU-level at all, and available nationally only in a relatively small number of countries. Information on vulnerable ethnic minorities other than migrant minorities data is generally much less readily available, let alone cross-sectional or longitudinal data allowing to analyse developments over time.

Changes of readily available labour market indicators such as activity rates, employment and unemployment rates, on the other hand, are not good indicators of changing patterns of inequality for three main reasons. First, changes in unemployment and employment rates above all reflect the changing economic climate. Thus employment declines and unemployment rises during economic downturns, while the reverse happens when the economy catches up. This said, available evidence suggests that employment and unemployment rates of migrants and minorities are subject to much greater variations than those of the majority population. In particular, migrants and minorities are much more vulnerable to economic downturns. Secondly, in the context of significant net migration into the EU and the resulting constant re-composition of the migrant population, overall employment patterns conceal considerable differences between different cohorts of migrants, which in turn reflect differences in the characteristics of immigrants as well as differences in type of migration. For example, large inflows of humanitarian migrants is likely to negatively affect employment patterns, while the reverse is likely to be true if there are large inflows of economic migrants. To be able to distinguish between different cohorts of immigrants, to monitor changes in employment patterns of specific groups and to be able to assess the impact of policy measures good longitudinal data would be required which, so far, are not available.

Perhaps most important, however, is that labour market inequalities described in this chapter are deeply entrenched in labour market structures and are unlikely to radically change. Rather, any changes will be incremental and small, although they might be significant for specific subgroups. Again, to be able to discern such changes and to monitor and assess the impact of policy measures, more sophisticated and fine-tuned monitoring mechanisms would be needed.

On the basis of the available information, we must conclude that fundamental patterns of inequality have not changed significantly in the last five years. Major disparities persist between the migrants and minorities on the one hand, and majority populations, on the other. Generally, migrants and minorities are more likely to experience disadvantage on the labour market, to be less likely to be in employment, and to be subject to unemployment more frequently and to a larger degree than the majority population. In addition, migrants and minorities are more likely to earn less than natives, to have lower educational attainments and to be employed in occupations at the lower end of the skill spectrum. And migrants and minorities are more likely to be employed in more precarious and undesirable jobs. These general patterns seem to have remained stable since 2000.¹²⁶

Causes for inequalities between the overall population and migrants or minorities are manifold. Differences in labour market statistics exist due to different compositions of groups (different age groups, gender relation, etc.) and different education and qualification levels of the groups of interest, both leading to different labour market performances. Moreover, inequalities originate from weak and insecure legal statuses of migrants, including limited access to education and training possibilities and to the labour market. Last but not least discrimination is an important factor influencing labour market performance. However, discrimination against migrants and minorities is not only limited to the labour market (e.g. in hiring or promoting). Discrimination in education and in social life in general also influences the labour market performance of migrants and minorities. Therefore, policy responses which aim at eradicating inequalities need also to address several areas beyond that of employment.

126 Fundamental Rights Agency (FRA) (2007): Trends and Developments 1997 – 2005 – Combating Ethnic and Racial Discrimination and Promoting Equality in the European Union, p. 22.

3. Racial/ethnic discrimination in employment: EU law

'Discrimination', in the broadest sense, refers to differential treatment which is not justified. It is thus an inherently normative concept, applied to describe behaviour deemed reprehensible because it violates the norm of equality.

To abolish discrimination between workers from different Member States has been one of the core objectives of the European Communities from the very beginning. The fight against gender discrimination has an equally long history in the EU. It is only recently, however, that the scope of European anti-discrimination law and policy has been extended beyond nationality and gender.

3.1. The Equality Directives

In 2000, the European Union took an important step in the fight against discrimination, by adopting two new directives: the 'Racial Equality Directive'¹²⁷ and the 'Employment Equality Directive'¹²⁸. These directives set a common framework for all Member States to implement anti-discrimination laws and policies. The provisions of the directives are minimum requirements, i.e. Member States may always do more, but never less, to combat discrimination. The deadline for the transposition of both directives into national law was 2003 for the EU-15, and 2004 for the newer Member States.¹²⁹

The 'Employment Equality Directive' prohibits discrimination in employment and occupation – access to employment, access to vocational training, working conditions, and membership of workers organisations – on the grounds of religion or belief, disability, age, or sexual orientation.¹³⁰ The 'Racial Equality Directive' prohibits discrimination on the grounds of race and ethnic origin, not only in the field of employment, but also with regard to social protection and advantages, education and access to public goods and services, including housing. Thus, the current European legal framework offers especially strong protection in the field of employment, and on the grounds of race and ethnic origin.

The formulation of both directives builds on lessons learned in the prohibition of discrimination between nationals of Member States as well as discrimination on grounds of gender, two bodies of anti-discrimination law which are as old as the European Communities themselves.¹³¹ The Directives are also said to reflect an "Anglo-Dutch" model, based on individual litigation rights with an emphasis on access to key social goods such as employment.¹³²

In many ways, the directives reflect the wish to strengthen the position of victims of discrimination. For instance, as experience has shown that it is difficult in practice to prove discrimination, the directives stipulate that victims must only bring forward facts 'from which it may be presumed that discrimination has occurred'. The burden of proof then shifts to the defendant: the court will assume the principle of equal treatment has been breached, unless the defendant can prove otherwise. In addition, the Directives compel Member States to prevent victimisation, i.e. to protect persons who file a discrimination complaint from any adverse consequences or ill treatment.¹³³

The Equality Directives stipulate that Member States shall ensure that judicial or administrative procedures are available to victims of discrimination, and that associations or other legal entities have the possibility to engage such procedures on behalf or in support of individual victims. The Racial Equality Directive prescribes that an independent specialised body shall be designated in all Member States to promote equal treatment irrespective of racial or ethnic origin. This body shall be responsible for providing assistance to victims of discrimination, conducting surveys, publishing reports and making recommendations. By October 2007, all EU Member States except the Czech Republic

127 Council Directive 2000/43/EC (29.06.2000).

128 Council Directive 2000/78/EC (27.11.2000).

129 With the exception of disability and age, where the deadline could be extended until 2006. M. Bell (2008). 'The Implementation of European Anti-Discrimination Directives: Converging towards a Common Model', in: *The Political Quarterly*, Vol. 79, No. 1, p. 36; FRA (2007) Report on Racism and Xenophobia in the Member States of the EU, p. 19.

130 In July 2008, the Commission has presented a proposal (COM (2008) 426 final) for a Council Directive which would extend the protection against discrimination on these four grounds beyond the field of employment.

131 E. Ellis (2007) 'Definitions of key concepts: Direct and Indirect Discrimination, Harassment'. Paper presented at the ERA conference The Fight against Discrimination: The Equal Treatment Directives of 2000, Trier 26-27 November 2007. Available at: http://www.era.int/web/en/resources/5_1095_6110_file_en.8758.pdf, (12.10.2008)

132 M. Bell (2008). 'The Implementation of European Anti-Discrimination Directives: Converging towards a Common Model', in: *The Political Quarterly*, Vol. 79, No. 1, p. 36.

133 European Commission/DG Employment (2007) *Developing Anti-Discrimination Law in Europe. The 25 EU Member States compared*, p. 58.

had designated such an equality body, although it was not yet operational in Spain and Luxemburg.¹³⁴

Both Directives include an obligation for the Member States to promote social dialogue between employers and employees to further equal treatment, and to encourage agreements between the social partners on anti-discrimination rules as well as dialogue with non-governmental organisations involved in the fight against discrimination.

The Racial Equality Directive specifies that ‘this prohibition of discrimination should also apply to nationals of third countries, but does not cover differences of treatment based on nationality and is without prejudice to provisions governing the entry and residence of third-country nationals and their access to employment and to occupation’. Thus, migration policies as well as the regulation of access of foreigners to the labour market fall outside of the scope of the Directive.

3.2. The concepts of discrimination in the Equality Directives

The Equality Directives distinguish three types of discrimination: direct discrimination, indirect discrimination and harassment. In addition, the Directives stipulate that an ‘instruction to discriminate’ shall be regarded as discrimination.

Direct discrimination is taken to occur where ‘one person is treated less favourably than another is, has been or would be in a comparable situation on grounds of racial or ethnic origin’.¹³⁵ The formulation ‘is, has been or would be’ is important: it implies that a claimant may point not only to an actual comparator – a colleague receiving better pay for the same work – but also to a past or even a hypothetical comparator. This significantly broadens the possibility for a victim of discrimination to build a convincing argument. A key element in the legal definition of direct discrimination is ‘causation’: race or ethnic origin has to be the cause for the unequal treatment. If there was another reason – e.g. a white employee received better pay than his black colleague

because he had more experience – then the differential treatment is not considered discrimination.¹³⁶

Whereas the provisions on direct discrimination aim at formal equality, the prohibition of *indirect discrimination* aims at substantive equality: at eliminating the inequalities that persist in practice even when formal equality is achieved. Indirect discrimination is deemed to take place where ‘an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim is appropriate and necessary’. By referring to a ‘provision, criterion or practice’, the directives have broadened the scope of indirect discrimination beyond formal requirements imposed by employers, to include expressions of preference of informal practices. For instance, this may include the practice of word-of-mouth recruitment, which puts ethnic minorities at a disadvantage because they do not belong to the social networks where the news of vacancies circulates. The use of the phrase ‘would put’ implies that the disadvantage need not already have occurred: it is sufficient to show that a provision may result in disadvantage in the future. Furthermore, the directives have been formulated in such a manner as to open up the possibility to demonstrate disadvantage for a particular group without having to deliver statistical proof, relying instead on the ‘common sense’ of a judge. For instance, if an employer insists on working hours that are incompatible with certain religious obligations, a claimant should not be required to produce data on the number of persons affected to convince the court that these requirements amount to indirect discrimination. Finally, unlike direct discrimination, indirect discrimination may be justified if the differential treatment is an appropriate and necessary means of reaching a legitimate aim. It is up to the defendant however to prove that this is the case.¹³⁷

Harassment, finally, is a new term in EU legislation. It is defined as ‘unwanted conduct related to racial or ethnic origin (...) with the purpose or the effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment’. Unlike direct and indirect discrimination then, harassment does not imply any

134 European Commission/DG Employment (2007) Developing Anti-Discrimination Law in Europe. The 25 EU Member States compared, p. 66; Raxen National Focal Point Luxemburg, National Data Collection Report Luxemburg – 2007, Luxemburg; Raxen National Focal Point Spain, National Data Collection Report Spain – 2007; Raxen National Focal Point Bulgaria, National Data Collection Report Bulgaria – 2007; Raxen National Focal Point Romania, National Data Collection Report Romania – 2007; Raxen National Focal Point Czech Republic, National Data Collection Report Czech Republic – 2007.

135 Here and in the following, we quote the Racial Equality Directive; the definition of direct and indirect discrimination and harassment in the Employment Equality Directive is the same, only the grounds are different (and special provisions apply to disability).

136 E. Ellis (2007) ‘Definitions of key concepts: Direct and Indirect Discrimination, Harassment’. Paper presented at the ERA conference The Fight against Discrimination: The Equal Treatment Directives of 2000, Trier 26-27 November 2007, p. 2-4. Available at: http://www.era.int/web/en/resources/5_1095_6110_file_en.8758.pdf, (12.10.2008)

137 O. Doyle (2007) ‘Direct Discrimination, Indirect Discrimination and Autonomy’, in: Oxford Journal of Legal Studies, Vol. 27. No. 3, p. 540; E. Ellis (2007) ‘Definitions of key concepts: Direct and Indirect Discrimination, Harassment’. Paper presented at the ERA conference The Fight against Discrimination: The Equal Treatment Directives of 2000, Trier 26-27 November 2007, p. 4-8. Available at: http://www.era.int/web/en/resources/5_1095_6110_file_en.8758.pdf, (12.10.2008).

comparison with a more privileged individual or group. Although this clause was most probably included so as to broaden the scope of discriminatory behaviour punishable by law, there is concern among lawyers that it might actually be more difficult to prove harassment than direct or indirect discrimination. Up to the time of writing, there had been no case law from the European Court of Justice on this provision.¹³⁸

Motivation is irrelevant in establishing direct discrimination, indirect discrimination or harassment. What matters is the discriminatory effect of the action; whether it was inflicted intentionally or unintentionally is of no importance.¹³⁹

3.3. The implementation of the Directives

The following overview is based on information found in the annual RAXEN country reports of 2006 and 2007; the country reports presented by the RAXEN national focal points in 2006 under the title *Combating Ethnic and Racial Discrimination and Promoting Equality: Trends and Developments 2000-2005*; the European Commission's most recent report on implementation of the Directives in the 25 Member States¹⁴⁰; and finally the national anti-discrimination legislation of the Member States accessible through the internet portal of the European Commission's DG for Employment and Social Affairs.¹⁴¹

Since the Equality Directives entered into force, all Member States have introduced or amended national anti-discrimination law. In some countries, it was the first time enforceable legislation on equal treatment was put in place; in most countries, the transposition of the Directives into national law contributed to clarification and strengthening of the legal protection against discrimination. The implementation of the Directives is not yet complete or perfect however. The Commission sent a 'reasoned opinion' to 14 Member States¹⁴² in June 2007 for failing to implement the Racial Equality

Directive fully, and to 11 Member States¹⁴³ in January 2008 for incorrect implementation of the Employment Equality Directive. Main problem areas include definitions of discrimination, assistance to the victims of discrimination – such as the shift in burden of proof and victimisation – and the scope of the protection granted.¹⁴⁴

3.3.1. Grounds of discrimination

The grounds of discrimination prohibited by the Directives in the field of employment are racial and ethnic origin, religion or belief, disability, age or sexual orientation. By the end of 2007, Sweden had not yet introduced legislation on age discrimination.¹⁴⁵ In some Member States, the provisions on sexual orientation are highly sensitive for religious and political reasons. For instance, in Latvia sexual orientation is included in the amendments to civil law which were pending in 2007, but not in anti-discrimination provisions in labour and administrative law, due to objections raised in Parliament.¹⁴⁶

Many Member States go beyond the minimum requirements of the Directives, and prohibit discrimination on grounds such as civil or marital status – e.g. Portugal, Estonia, the Netherlands and Ireland; social status or wealth – e.g. Belgium, Rumania, and Slovenia; or membership of a trade union or political party – e.g. Bulgaria, Lithuania, Greece and Poland.

The reference to 'racial origin' was a controversial issue in the negotiations among the Member States about the Equality Directives.¹⁴⁷ A compromise was reached with the inclusion in the preamble of the explicit statement that the use of the term 'race' in the Directive did not imply any admission by the EU of 'theories which attempt to determine the existence of separate human races'. The different views taken by the Member States are reflected in the formulations adopted in national legislations: Austria and Sweden for

138 E. Ellis (2007) 'Definitions of key concepts: Direct and Indirect Discrimination, Harassment'. Paper presented at the ERA conference The Fight against Discrimination: The Equal Treatment Directives of 2000, Trier 26-27 November 2007, p. 12-13. Available at: http://www.era.int/web/en/resources/5_1095_6110_file_en.8758.pdf, (12.10.2008)

139 E. Ellis (2007) 'Definitions of key concepts: Direct and Indirect Discrimination, Harassment'. Paper presented at the ERA conference The Fight against Discrimination: The Equal Treatment Directives of 2000, Trier 26-27 November 2007, p. 12. Available at: http://www.era.int/web/en/resources/5_1095_6110_file_en.8758.pdf, (12.10.2008)

140 European Commission/DG Employment (2007) Developing Anti-Discrimination Law in Europe. The 25 EU Member States compared.

141 http://ec.europa.eu/employment_social/fundamental_rights/legis/lgms_en.htm, (20.10.2008).

142 These were Spain, Sweden, Czech Republic, Estonia, France, Ireland, United Kingdom, Greece, Italy, Latvia, Poland, Portugal, Slovenia and Slovakia.

143 The Czech Republic, Estonia, Ireland, Greece, France, Italy, Hungary, Malta, Netherlands, Finland and Sweden received a reasoned opinion. In addition, the Commission sent a letter of formal notice to Germany and two complementary letters of formal notice to Latvia and Lithuania.

144 European Commission (2007) Commission acts to close gaps in equality rules. Press release 27 June 2007, available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/news/ip07_928_en.pdf, (16.10.2008); European Commission (2008) Commission acts to close gaps in employment equality rules. Press release 31 January 2008, available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/news/ip08_155_en.pdf, (16.10.2008)

145 European Commission/DG Employment (2007) Developing Anti-Discrimination Law in Europe. The 25 EU Member States compared., p. 16

146 Raxen National Focal Point Latvia, National Data Collection Report Latvia – 2007; Raxen National Focal Point Latvia (2006) Combating ethnic and racial discrimination and promoting equality. Trends and developments 2000-2005.

147 M. Bell (2008). 'The Implementation of European Anti-Discrimination Directives: Converging towards a Common Model', in: *The Political Quarterly*, Vol. 79, No. 1, p. 37.

instance do not mention ‘race’, referring only to ‘ethnic’ belonging or origin. Belgium refers to ‘presumed race’, and France to ‘real or presumed’ racial belonging.¹⁴⁸

The Directive does not define what ‘ethnic or racial origin’ should be taken to mean. Many countries explicitly mention skin colour – e.g. Belgium, Bulgaria, Estonia, and Slovakia – and nationality or national origin – e.g. Latvia, the Netherlands, Poland, and Romania. France prohibits discrimination on physical appearance and name; language is included as a separate protected ground in Estonia, Finland, Lithuania, Romania and Slovakia. In Hungary, belonging to a national or ethnic minority is cited as a protected ground. The boundary between religion and ethnicity is ambiguous: in Dutch case law and in the UK, discrimination against Jews, Muslims and Sikhs has been recognised as race discrimination.¹⁴⁹

3.3.2. Definitions of discrimination

The large majority of Member States follow the distinction between direct and indirect discrimination as defined in the Directives. France and the Netherlands mention direct and indirect discrimination in national legislation without providing a definition of these terms.¹⁵⁰

In most Member States, the concept of ‘harassment’ was introduced into national legislation as a consequence of the Equality Directives. The national definitions of ‘harassment’ therefore predominantly follow the formulation of the Directives closely. In France, harassment is not included in the anti-discrimination provisions, but covered by the general protection against moral and sexual harassment at work.¹⁵¹ Some countries, such as Austria, Denmark and France, explicitly oblige employers to take action against harassment by third parties, for instance by other employees.¹⁵² In Italy, the legal definition refers to unwanted conduct creating an ‘intimidating, hostile, degrading, humiliating and offensive environment’. In the Directive, the word used

is ‘or’: a small but potentially significant difference.¹⁵³ In Estonia, the law prohibits unwanted conduct ‘against a person in a relationship of subordination or dependency’ and therefore offers narrower protection than the Directive, which offers protection irrespective of the relation between victim and perpetrator.¹⁵⁴

Almost all Member States have included ‘an instruction to discriminate’ as a prohibited form of discrimination. France is one of the few exceptions; however, general French principles on complicity and liability ‘may produce the same effects.’¹⁵⁵ The Czech Republic, Poland and Slovakia have gone beyond the minimal requirements of the Directives, prohibiting also the ‘incitement’, ‘instigation’ or ‘inducement’ to discriminate.¹⁵⁶

Bulgaria is exceptional, in that persecution and racial segregation also fall within the legal definition of discrimination.¹⁵⁷ Since 1 January 2007, segregation is also prohibited in Hungary unless there is a ‘clear statutory authorisation for the separate treatment’.¹⁵⁸

3.3.3. The scope of the protection against discrimination

One major flaw in the implementation is the failure of Estonia, the Czech Republic and Poland to extend the prohibition of discrimination on grounds of race and ethnicity beyond the realm of employment to include social protection, education and access to public goods and services, including housing. In October 2007, comprehensive anti-discrimination legislation which would bring national law in line with the Racial Equality Directive was still pending in all three countries.¹⁵⁹ On the other hand, a great many Member States extend protection on grounds other than race

148 Austria/Bg 65 (23.06.2004); Sweden/SFS 2003:307 (05.06.2003); Belgium/BS 30 V 07 (10.05.2007); France/2001-1066 (16.11.2001)

149 European Commission/DG Employment (2007) Developing Anti-Discrimination Law in Europe. The 25 EU Member States compared., p. 17.

150 European Commission/DG Employment (2007) Developing Anti-Discrimination Law in Europe. The 25 EU Member States compared., p. 24-25.

151 Raxen National Focal Point France (2006) Combating ethnic and racial discrimination and promoting equality. Trends and developments 2000-2005.

152 Raxen National Focal Point France (2006) Combating ethnic and racial discrimination and promoting equality. Trends and developments 2000-2005, Paris; Raxen National Focal Point Austria (2006) Combating ethnic and racial discrimination and promoting equality. Trends and developments 2000-2005, Vienna; Raxen National Focal Point Denmark (2006) Combating ethnic and racial discrimination and promoting equality. Trends and developments 2000-2005

153 Raxen National Focal Point Italy (2006) Combating ethnic and racial discrimination and promoting equality. Trends and developments 2000-2005.

154 Raxen National Focal Point Estonia (2006) Combating ethnic and racial discrimination and promoting equality. Trends and developments 2000-2005.

155 European Commission/DG Employment (2007) Developing Anti-Discrimination Law in Europe. The 25 EU Member States compared, p. 26.

156 Raxen National Focal Point Czech Republic (2006) Combating ethnic and racial discrimination and promoting equality. Trends and developments 2000-2005; Raxen National Focal Point Slovakia (2006) Combating ethnic and racial discrimination and promoting equality. Trends and developments 2000-2005, Bratislava; Raxen National Focal Point Poland, National Data Collection Report Poland – 2004.

157 Bulgaria/DV 86/2003 (30.09.2003)

158 Raxen National Focal Point Hungary, National Data Collection Report Hungary – 2007.

159 European Commission/DG Employment (2007) Developing Anti-Discrimination Law in Europe. The 25 EU Member States compared, p. 11; Raxen National Focal Point Poland, National Data Collection Report Poland – 2007, Warschau; Raxen National Focal Point Estonia, National Data Collection Report Estonia – 2007; Raxen National Focal Point Czech Republic, National Data Collection Report Poland – 2007.

and ethnicity beyond the realm of employment and thus exceed the requirements of the Directive.¹⁶⁰

Where the scope of protection against discrimination in the field of employment is concerned, many Member States fall short in some way of the standard set by the Directives. In Estonia, the norm of equal treatment has been introduced only in the labour law for the private sector, leaving out the civil service. In Hungary on the other hand, not all private sectors are covered. Self-employment is not fully covered in the Czech Republic, Estonia, Greece, Latvia, Lithuania, Malta, Portugal, Sweden and the United Kingdom. Swedish law does not mention 'working conditions' as an area where discrimination is forbidden; Lithuania, Estonia and Latvia do not fully cover membership or involvement in organisations of workers or employers.¹⁶¹

3.3.4. Complaint procedures and protection of victims

The Directives stipulate that member states shall ensure that persons who consider themselves victims of discrimination shall have access to 'judicial and/or administrative procedures'. All member states combine judicial procedures – where disputes can be taken before the courts – with non-judicial procedures, e.g. complaint or conciliation mechanisms before either specialised bodies or Inspectorates, Ombudsmen, or Human Rights Institutes. The competence of such non-judicial bodies varies from delivering recommendations to issuing binding decisions.¹⁶²

According to the Directives, associations and organisations which have 'a legitimate interest in ensuring that the provisions of [these directives] are complied with may engage, either on behalf or in support of the complainant, with his or her approval' in judicial or administrative procedures. This leaves some leeway to the member states: offering 'support' is less far-reaching than allowing associations to engage in procedures on a victim's behalf. Most member states only permit associations to provide assistance in complaint procedures. Greece, Ireland, Estonia and Slovenia permit associations to represent a complainant in court. Spain, Latvia, Poland, Cyprus and Hungary also allow them to engage in procedures on a victim's behalf; this will be permitted in Lithuania too if the Law on Equal Treatment

which was pending in late 2007 is adopted.¹⁶³ There is also variance among the member states with regard to the criteria associations have to meet in order to be involved in discrimination procedures. In Germany, an association has to have at least 75 members; in Belgium, France and Luxemburg, the association has to be at least 5 years old. In Luxemburg, associations have to be recognised by the ministry of Justice as being 'nationally representative in the field of anti-discrimination'; in France, the association's statutes must include the fight against discrimination or slavery; in Italy, associations must be on a list drawn up by the ministries of Labour/Welfare and Equal Opportunities. Among the criteria for being included in the list is the promotion of equal opportunities and the fight against discrimination as the only or primary objective. In Spain, only trade unions can engage in procedures on complainants' behalf in the field of employment.¹⁶⁴

The shift in the burden of proof was one of the major problem areas in the implementation of the Directives identified by the Commission. For instance, in Latvia, Poland and Estonia the burden of proof only shifts to the defendant in the field of employment.¹⁶⁵ Provisions on the burden of proof were absent in Lithuanian legislation; the draft Law on Equal Treatment which was pending in late 2007 should fill this void. Cyprus and Hungary have implemented legal reforms in 2007 to comply with this provision in the Directives.¹⁶⁶ In Belgium, a new law of May 2007 specifies which type of evidence should be presented by a complainant for the judge to shift the burden of proof. These include 'a pattern of unequal treatment' or 'comparison with a person of reference' – to be demonstrated for instance by a recurrence test or situation testing – in case of direct discrimination, and 'general statistics' or an 'inherently suspicious criterion' in case of indirect discrimination.¹⁶⁷

The protection of complainants against victimisation – adverse treatment or consequences – is another problematic issue in the implementation of the Directives. Estonia and Lithuania have not transposed this provision; in Estonia, a law was pending in late 2007 which would repair this omission. In a great many countries – Belgium, France, Czech Republic, Malta,

160 European Commission/DG Employment (2007) Developing Anti-Discrimination Law in Europe. The 25 EU Member States compared, p. 38.

161 European Commission/DG Employment (2007) Developing Anti-Discrimination Law in Europe. The 25 EU Member States compared, p. 33-36; Raxen National Focal Point Estonia, National Data Collection Report Estonia – 2007.

162 European Commission/DG Employment (2007) Developing Anti-Discrimination Law in Europe. The 25 EU Member States compared, p. 51-54.

163 European Commission/DG Employment (2007) Developing Anti-Discrimination Law in Europe. The 25 EU Member States compared, p. 55-57; Raxen National Focal Point Lithuania, National Data Collection Report Lithuania – 2007, Vilnius; Raxen National Focal Point Cyprus, National Data Collection Report Cyprus – 2007.

164 European Commission/DG Employment (2007) Developing Anti-Discrimination Law in Europe. The 25 EU Member States compared, p. 58.

165 European Commission/DG Employment (2007) Developing Anti-Discrimination Law in Europe. The 25 EU Member States compared, p. 55-57

166 Raxen National Focal Point Lithuania, National Data Collection Report Lithuania – 2007; Raxen National Focal Point Cyprus, National Data Collection Report Cyprus – 2007; Raxen National Focal Point Hungary, National Data Collection Report Hungary – 2007.

167 Raxen National Focal Point Belgium, National Data Collection Report Belgium – 2007.

Latvia, Poland, Portugal, Spain and Luxemburg – the protection against victimisation does not extend beyond the field of employment. In countries such as France, Belgium, Poland and Portugal, the law only protects the complainant him or herself, not others who may suffer negative treatment, such as colleagues who acted as witnesses. The French government disagrees with the Commission's interpretation of the Directives, and maintains that the guarantee of protection does not extend to individuals who offered support to the complainant. Finally, in certain countries the definition of 'adverse treatment' is rather narrow: French law for instance covers only disciplinary action or dismissal by the employer, and Polish labour law prohibits solely denunciation or dissolution of a labour contract.¹⁶⁸

3.4. Outlook

The Equality Directives have now by and large – be it imperfectly – been transposed into national law. In the following years, it will be up to the courts and the Equality Bodies to apply the clauses of the Directives to concrete cases brought before them. It is only through this process of interpretation that the meaning and significance of the Directives will become fully clear.

The European Court of Justice (ECJ) will have an important role to play in ensuring that the Directives are interpreted and applied in a consistent fashion throughout the EU. Quite recently, the Court has passed its first judgement dealing with the Racial Equality Directive. It concerned a dispute between the Belgian Centre for Equal Opportunities and Opposition to Racism and the firm Feryn, which sells doors. One of Feryn's directors declared in an interview with a Flemish newspaper that he would not recruit Moroccan fitters, because his customers did not want Moroccans entering their houses to install doors. In a preliminary ruling¹⁶⁹ of 10 July 2008, the European Court ruled that public declaration by an employer that he will not recruit persons of a specific ethnic or racial origin constitutes direct discrimination. The Court disagreed with Ireland and the UK, which had argued that the Directive could only apply if there was an identifiable victim of discrimination, stating that 'the objective of fostering conditions for a socially inclusive labour market would be hard to achieve' if the scope of the Directive were interpreted so restrictively.¹⁷⁰ Thus, this first ruling might indicate that the Court wishes to

guarantee a high level of protection, so as to turn the Directive into a true instrument of change.

The European legal framework does not explicitly cover multiple discrimination, i.e. discrimination on several grounds at the same time: disability *and* age, gender *and* religion, sexual orientation *and* ethnic origin. The Equality Directives allow for national legislation which addresses multiple discrimination, but as it is not compulsory, only Spain, Romania, Germany and Austria have introduced it. In legal practice throughout Europe, the so-called 'single ground approach' is dominant. Legal advisors generally assess that their chances of winning the court case for their client are best if they 'choose the strongest ground' and disregard the other grounds. Courts may thus fail to recognise either the severity or the particular nature of the discrimination which a complainant suffered.¹⁷¹ One of the recommendations of the 2007 EU report "Tackling Multiple Discrimination" was that EU and national anti-discrimination and equal treatment legislation should cover the grounds of age, disability, religion/belief and sexual orientation outside the area of employment, and that the new legislation should also provide provisions to address intersectional discrimination.¹⁷²

168 European Commission/DG Employment (2007) Developing Anti-Discrimination Law in Europe. The 25 EU Member States compared, p. 58-59; Raxen National Focal Point Estonia, National Data Collection Report Estonia – 2007, Tallinn; Raxen National Focal Point France, National Data Collection Report France – 2007.

169 In a preliminary ruling, the European Court of Justice, on request of a national court, clarifies the meaning of European legislation. The national court is then obliged to follow this interpretation in its ruling.

170 ECJ/C-54/07 (10.07.08)

171 European Commission/DG Employment (2007). Tackling Multiple Discrimination. Practices, Policies and Laws, p. 19-22.

172 European Commission/DG Employment (2007). Tackling Multiple Discrimination. Practices, Policies and Laws, p. 53.

4. Indicators of discrimination

4.1. Incidents, complaints and court cases

Though undeniably the existing range of incidents, complaints and court cases convey important information about the situation regarding racial and ethnic discrimination in the Member States, there are several reasons why caution must be exercised when dealing with this data and drawing conclusions from it. Specifically, the number of registered complaints may not necessarily reflect the extent of discrimination in a given Member State, rather the effectiveness of the system for reporting and recording complaints or the level of awareness among potential victims regarding their rights and the available options for seeking redress.

Moreover, as pointed out in all previous EUMC/FRA reports, the available data is not directly comparable due to the differences that exist in the Member States in terms of methods for recording and reporting complaints, the reporting timeframes, competences and powers of specialised bodies, and sanctions actually issued.¹⁷³ For our specific purpose of looking at the extent of racial and ethnic discrimination in employment, it is even more difficult to find concrete data on the number of complaints and court cases that deal with this precise area, mainly due to the fact that most countries do not publish data segregated by grounds and areas of discrimination. However, where such observations can be made, the complaints and court cases on racial/ethnic discrimination in employment appear to be predominant. For example, in France 42.8 per cent of the total 4,058 complaints brought before the High Authority against Discrimination and Equality (HALDE) in 2006 dealt with discrimination in employment, and in 2007 the respective value increased to more than 50 per cent (out of a total of 6,222 discrimination complaints).¹⁷⁴ Also in Italy, the Office against Racial Discrimination (UNAR) has concluded that in 2007 racial/ethnic discrimination had occurred in 265 cases (out of a total 440 recorded complaints), of which 23.8 per cent related to employment.¹⁷⁵

173 See the collection of EUMC/FRA Annual Reports available at www.fra.europa.eu (21.11.2008).

174 HALDE (2008) Annual Report 2007, p. 10; HALDE (2007) Annual Report 2006, p. 10, both available at: http://www.halde.fr/-Rapports-annuels-.html?page=rubrique_domaine&id_mot=1 (21.11.2008).

175 UNAR (2008) Un Anno di Attività Contro la Discriminazione razziale – Rapporto 2007, p. 17-18, available at: http://www.pariopportunita.gov.it/Pari_Opportunita/UserFiles/Il_Dipartimento/UNAR/Notizie/report_2007.pdf (21.11.2008).

4.1.1. Barriers to access to justice

Although the total numbers of complaints and court cases on racial and ethnic discrimination have increased over the past five years, partly as a consequence of the changes in the implementation status of the Equality Directives (see chapter 3.3), there is still a low volume of case law on racial/ethnic discrimination in most Member States so far.¹⁷⁶ This situation reflects the existence of a series of barriers to access to justice, the most important of which are summarised below under three main categories: (1) legal and administrative barriers, (2) technical barriers and other de facto obstacles to accessing legal remedies against discrimination.

4.1.1.1. Legal and administrative barriers

- Lack of a service clearly mandated or trained to process complaints (such as in the Walloon Region in Belgium¹⁷⁷) or lack of effective equality bodies: by the end of 2007, this was still the case in the Czech Republic, Estonia, Germany, Luxembourg, Malta, Poland, Portugal, Slovenia and Spain.¹⁷⁸
- Complex and slow procedures, such as in Ireland (where it can take up to three years to be heard by the Equality Tribunal), Portugal or Slovenia (where some judicial proceedings may take five years or more).¹⁷⁹
- Complexity or unclear wording of the legislation, cited for instance by legal experts from Austria and the UK.¹⁸⁰
- Short time limits for filing an application, for example two months after an incident in the Netherlands, Germany and Ireland, which can be problematic for

176 EC/DG Employment, Social Affairs and Equal Opportunities (2007) Developing Anti-Discrimination Law in Europe. The 25 EU Member States compared; EUMC/FRA Annual Reports from 2003 until 2008, available at www.fra.europa.eu (21.11.2008); also based on the information collected by RAXEN National Focal Points during 2003-2007, provided by the FRA.

177 Answer from the Cell Employment of the cabinet of Jean-Claude Marcourt, Minister of Economy and Employment of the Walloon Region, to the Belgian NFP's request for information.

178 FRA (2008) Annual Report, p. 17. Specifically, in 2007 equality bodies had not been established in Czech Republic, Spain and Luxembourg; were not operational in Germany and Malta; and were ineffective in Estonia, Poland, Portugal and Slovenia.

179 EC/DG Employment, Social Affairs and Equal Opportunities (2007) Developing Anti-Discrimination Law in Europe. The 25 EU Member States compared, p. 54 and p. 63; Raxen National Focal Point Portugal, National Data Collection Report Portugal – 2007, p. 15.

180 EC/DG Employment, Social Affairs and Equal Opportunities (2007) Developing Anti-Discrimination Law in Europe. The 25 EU Member States compared, p. 53.

people with literacy difficulties, inadequate command of the official national language, and disabled persons.¹⁸¹

- Limited powers of the equality bodies which cannot, for instance, file a case in court on behalf of plaintiffs or represent them in court free of charge, as is the case in Austria,¹⁸² Lithuania or Greece.¹⁸³

4.1.1.2. Technical barriers

- Prohibitive costs of bringing a case to court.
- High cost of legal advice and lack of access to free legal services: in the Czech Republic and Lithuania legal aid is provided under very limited circumstances;¹⁸⁴ in Slovakia a significant number of people cannot afford legal services due to a high threshold for qualification for legal aid;¹⁸⁵ in Denmark, though the Complaints Committee for Ethnic Equal Treatment can grant free legal aid for court procedures, it has used this power only once in 2007.¹⁸⁶

4.1.1.3. Other obstacles to accessing legal remedies against discrimination

- Infrequency of litigation itself¹⁸⁷ and the perception of a low success rate for actions taken to court (for instance in Ireland, out of a total of 43 employment related decisions on 'race' reached by the Equality Tribunal from 2003 to mid-2007, only 11 were in favour of the complainant).¹⁸⁸
- Lack of effective, proportional and dissuasive sanctions (during 2006-2007 no sanctions and/or awards were made in 12 of the Member States).¹⁸⁹

- Lack of mediatisation of the decisions reached in courts or by the equality bodies and generally a lack of public debates on the fight against discrimination (as suggested for instance in a recent report of the *Commission for Refugees' Support* in Spain.¹⁹⁰
- Low level of awareness among the victim population regarding their rights and available options for seeking redress or low levels of trust in the effectiveness of the system (e.g. in 2005 ECRI noted that, in Cyprus, awareness amongst members of the legal profession as well as members of the public with regard to the new anti-discrimination legislation transposing the Equality Directives was very limited).¹⁹¹
- Fear of victimisation.

On the other hand, the information collected by the RAXEN National Focal Points also provides examples of practical ways in which some of these barriers are tackled in the Member States, either by public institutions or by NGOs and other stakeholders. For instance, in order to ease the process of submitting complaints, an anti-discrimination hotline has been introduced in the Czech Republic, Estonia and France. However, staff of the hotline in the Czech Republic revealed that a large number of complaints received on the hotline remain unofficial due to lack of evidence or the high costs of actually taking them to court.¹⁹² In order to increase the levels of awareness about the emerging case law, a number of courts may include in their judgements demands to have them published in newspapers, as in the 'Moulin rouge' case from 2003 in France.¹⁹³ Moreover, the high impact of information campaigns is suggested by the impetus received by the HALDE in France following the implementation of its communication strategy during 2006-2007, when the number of complaints it received in a year increased from 1,822 in 2005 to 4,058 in 2006 and to 6,222 in 2007.¹⁹⁴ In order to supplement the legal assistance services provided by anti-discrimination organisations

181 EC/DG Employment, Social Affairs and Equal Opportunities (2007) *Developing Anti-Discrimination Law in Europe. The 25 EU Member States compared*, p. 54.

182 Raxen National Focal Point Austria (2006) *Combating ethnic and racial discrimination and promoting equality: Trends and developments 2000-2005*, Vienna, p. 34; FRA (2008) *Annual Report*, p. 20.

183 FRA (2008) *Annual Report*, p. 18.

184 EC/DG Employment, Social Affairs and Equal Opportunities (2007) *Developing Anti-Discrimination Law in Europe. The 25 EU Member States compared*, p. 54; FRA (2008) *Annual Report*, p. 53.

185 EC/DG Employment, Social Affairs and Equal Opportunities (2007) *Developing Anti-Discrimination Law in Europe. The 25 EU Member States compared*, p. 54; FRA (2008) *Annual Report*, p. 53.

186 Raxen National Focal Point Netherlands, *National Data Collection Report Netherlands – 2007*.

187 EC/DG Employment, Social Affairs and Equal Opportunities (2007) *Developing Anti-Discrimination Law in Europe. The 25 EU Member States compared*, p. 54.

188 Raxen National Focal Point Ireland, *National Data Collection Report Ireland – 2007*.

189 FRA (2008) *Annual Report*, p. 17. The 12 countries are Cyprus, the Czech Republic, Denmark, Estonia, Germany, Greece, Lithuania, Luxembourg, Poland, Portugal, Slovenia and Spain.

190 Comisión Española de Ayuda al Refugiado (CEAR) (2007) *La situación de los refugiados en España – Informe 2007*, p. 144, available at: http://www.cear.es/upload/informe_2007.pdf (25.06.2007).

191 Council of Europe/ECRI (2006) *Third report on Cyprus, CRI(2006)17*, adopted on 16.12.2005, Strasbourg, available at: http://www.coe.int/t/e/human_rights/ecri/1-ecri/2-country-by-country_approach/Cyprus/Cyprus_CBC_3.asp#TopOfPage (21.11.2008).

192 Raxen National Focal Point Czech Republic, *National Data Collection Report Czech Republic – 2007*, p. 31.

193 France/Cour d'Appel de Paris; 11ème/CA-2003-10-17/03-00387, *SOS Racisme and Marega vs. Beuzit and Association du Moulin rouge* (17.10.2003).

194 Raxen National Focal Point France (2006) *Combating ethnic and racial discrimination and promoting equality: Trends and developments 2000-2005*, p. 57; FRA (2008) *Annual Report*, p. 25.

with free in-depth legal expertise, UNAR has signed agreements with two associations of lawyers in Italy.¹⁹⁵

Finally, if we are to consider the frequency and severity of sanctions as indicators of the importance placed on anti-discrimination and the effectiveness of the complaints system in a Member State, then the UK is truly a role model in this area, given that it awards a larger number of and more severe sanctions than all other Member States together. In 2007, the average compensation award for racial discrimination cases was of GBP 14,049 (EUR 20,792) with the maximum award of GBP 123,898 (EUR 183,369).¹⁹⁶ Exemplary sanctions have recently also been applied in Ireland, where the average award in employment cases heard before the Equality Tribunal was of EUR 12,798 in 2005¹⁹⁷ and in Latvia.¹⁹⁸ An interesting development might also take place in Spain, where a bill linking the level of sanctions and a company's turnover was discussed in the Parliament in 2007.¹⁹⁹

4.1.2. Areas of discrimination and interpretations of legislation

The available information on incidents, complaints and court cases illustrates the ways in which racial and ethnic discrimination are manifested on the labour markets of the Member States, as well as how the main concepts of the anti-discrimination legislation are being interpreted across the EU.²⁰⁰ By 2007, specialised bodies, equality tribunals and judicial courts throughout the EU had dealt with cases covering all three types of discrimination and the whole scope of the Equality Directives. For instance, there have been cases on racial/ethnic discrimination in access to employment including selection criteria, recruitment practices (Bulgaria,²⁰¹

France,²⁰² Ireland,²⁰³ Slovenia²⁰⁴) and promotion (Ireland²⁰⁵), as well as access to self-employment (Greece²⁰⁶); access to vocational training, including practical work experience (Denmark²⁰⁷); employment and working conditions (Austria,²⁰⁸ the UK²⁰⁹),²¹⁰ including dismissals and pay (Hungary,²¹¹ Ireland,²¹² Poland²¹³); membership of, and involvement in, an organisation of workers or employers (Cyprus²¹⁴). There is also an increase in the number of cases on direct and blatant discrimination against Roma that reach the courts or the equality bodies and, among these, the litigations concerning access to employment and unfair dismissal are predominant (e.g. Czech Republic,²¹⁵ Hungary,²¹⁶ Ireland,²¹⁷ Latvia²¹⁸).

Regarding the types of discrimination, most of the litigations so far have concerned direct discrimination, but both indirect discrimination and harassment at the workplace have also been addressed in some Member States. For instance, in the first (and by the end of 2007 also the last) case of ethnic discrimination taken to court in Latvia, the judgement was that there has been indirect discrimination against a Roma woman who was denied a job because she had a foreign accent.²¹⁹ Also in Cyprus, a case dating from 2005 deals precisely with indirect discrimination and is further relevant on several levels: the complaint was not filed by a victim but by the Raxen National Focus Point Cyprus in the absence of a victim, it was based on statistical data provided in a report of the Ministry of Labour and Migration Department, and it was

195 UNAR (2007) Siglati i protocolli d'intesa tra l'UNAR e l'Associazione Italiana Giovani Avvocati (AIGA) e con l'Onlus Avvocati per Niente, Press Release (18.05.2007), available at: www.pariopportunita.gov.it/DefaultDesktop.aspx?doc=1180 (21.11.2008).

196 Raxen National Focal Point UK, National Data Collection Report UK – 2007, annexes, p. 23.

197 EC/DG Employment, Social Affairs and Equal Opportunities (2007) Developing Anti-Discrimination Law in Europe. The 25 EU Member States compared, p. 62.

198 In the three discrimination cases decided in Latvia in 2005, in awarding damages the courts specifically expressed the need for the sanction to fulfil the preventative function. Information available in EC/DG Employment, Social Affairs and Equal Opportunities (2007) Developing Anti-Discrimination Law in Europe. The 25 EU Member States compared, p. 61.

199 EC/DG Employment, Social Affairs and Equal Opportunities (2007) Developing Anti-Discrimination Law in Europe. The 25 EU Member States compared, p. 63.

200 A searchable database with significant case law concerning the Racial Equality Directive is available on the FRA website, at www.raxen.fra.europa.eu (21.11.2008).

201 Bulgaria/СОФИЙСКИ РАЙОНЕН СЪД, I ГК, II ГО, 49/Civil Case No 2079/2004, *Metodi Alexandrov Asenov vs. Lyubimka Ltd.* (01.08.2005).

202 France/Cour d'Appel de Paris; 11ème/CA-2003-10-17/03-00387, *SOS Racisme and Marega vs. Beuzit and Association du Moulin rouge* (17.10.2003).

203 Ireland/Equality Tribunal/DEC-E2007-077 (31.12.2007).

204 Slovenia/Vrhovno sodisce Republike Slovenije/VIII Ips 265/2006 (07.11.2006).

205 Ireland/Equality Tribunal/DEC-E2007-072 (6.12.2007).

206 Greece/Συνήγορος του Πολίτη (ΣΤΠ)/Ombudsman Recommendation n. 4409/06.2.1/17.07.2006 (17.07.2006).

207 Denmark/Klagekomitéen for Etnisk Ligebehandling/730.4 (01.09.2004) and Denmark/Ostre Landsret/B-4028-05 (27.06.2006).

208 Austria/Senat II der Gleichbehandlungskommission/OETII – II/02/05 (2005).

209 The case is described at: <http://www.personneltoday.com/Articles/2007/07/18/41568/pauline+taylor+wins+34000+compensation+after+suffering+eight+years+of+racial+abuse.html> (21.11.2008).

210 'Working conditions' may include unequal pay or underpayment, working hours offences, lack of provision of benefits, no compensation for working overtime, working during sick leave, insults, bullying and/or harassment, no investigation into alleged complaints etc.

211 NEKI (2007) Fehér Füzet 2006, available at: http://www.neki.hu/index.php?option=com_docman&task=cat_view&gid=32&Itemid=45 (21.11.2008).

212 Ireland/Equality Tribunal/DEC-E2007-073 (05.12.2007).

213 Poland/Sad Najwyższy/II PK 14/07 (2007).

214 Cyprus/Equality Authority/File No. A.K.I. 2/2005 (2005).

215 http://www.romea.cz/index.php?id=detail&detail=2007_3174 (21.11.2008).

216 Hungary/Egyenlő Bánásmód Hatóság/Case 180/2006 (2006); EC/DG Employment, Social Affairs and Equal Opportunities (2006) Equality and non-discrimination – Annual Report, p. 17; FRA (2008) Annual Report, p. 46.

217 Ireland/Equality Tribunal/DEC-E2007-062 (05.11.2007).

218 Latvia/ Jelgavas tiesa/ Case No C 15066406 (25.08.2006).

219 Latvia/ Jelgavas tiesa/ Case No C 15066406 (25.08.2006).

aimed at correcting a piece of discriminatory legislation regarding the prohibition of political and trade union activity for migrants.²²⁰ Moreover, in addition to deciding in favour of the plaintiff, the Equality Authority went beyond the complaint received to examine and decide on another issue arising from the investigation of the case, namely that of the level of salaries for migrants.

With respect to harassment, in Ireland, the Equality Tribunal has awarded EUR 5,000 compensation for harassment and discriminatory treatment and an additional EUR 45,000 for discriminatory dismissal in one case in 2007, and EUR 7,000 in another case the same year concerning discrimination in recruitment against Roma.²²¹ On the other hand, in Austria, although the Senate II of the Equal Treatment Commission found harassment on grounds of ethnic origin in a case from 2004 regarding a man of Arab origin who had been regularly insulted in a racist manner by his colleagues and on one occasion beaten up, it only recommended that the harassers should acquire some knowledge about the Equal Treatment Act.²²² However, this case was further relevant also because for the first time it was explicitly mentioned that employers have the responsibility to ensure a non-discriminatory working environment and an obligation to investigate any discrimination complaints their employees may bring forward as well as protect the potential victims from such incidents. This approach can also be found in the Netherlands following an opinion of the Equal Treatment Commission for a case in 2003 which, in addition to dealing with questions of termination of employment and non-recruitment following a complaint submitted by the plaintiff regarding incidents involving discrimination from colleagues, also clarifies the concept of ‘victimisation’.²²³

4.1.2.1. Burden of proof

The case law available so far also illustrates the way the courts are applying the shift in the burden of proof, which, as pointed out in Chapter 3, is one of the more thorny issues regarding the implementation of the Directives. Concrete cases in which the burden of proof was shifted to the defendant were noted for instance in Bulgaria, Latvia, Ireland and the UK,²²⁴ and the overall impression is that there is a higher rate of success among plaintiffs who had the burden of proof shifted to the defendants than when the burden is shared or lies solely with the complainant, which after all it is not so surprising given the difficult nature of proving either

the occurrence of discrimination or its non-occurrence. However, there are significant differences in the way different courts interpret and apply this principle.

In the UK, a judgement of the Court of Appeal dating from 2005 and concerning three separate appeals from the decisions of the Employment Appeal Tribunal (two on racial discrimination and one on sexual discrimination) set out guidelines to be followed by courts in determining whether a discrimination claim has been proved.²²⁵ Also recently the European Court of Justice (ECJ) has issued its first preliminary ruling²²⁶ dealing with the Racial Equality Directive,²²⁷ which ruled that public statements by an employer that he will not recruit persons of a specific ethnic or racial origin constitutes direct discrimination and that it is then for that employer to prove that there was no breach of the principle of equal treatment.²²⁸ (See chapter 3, section 3.4)

In Denmark, the High Court disagreed with the preliminary and non-binding opinion of the Complaints Committee for Ethnic Equal Treatment which found direct discrimination in a school’s compliance with discriminatory demands from employers in connection to access to vocational training, on the grounds that the plaintiff had not proven his case.²²⁹ The narrow interpretation of the concept of shared burden of proof was also the ground on which the City Court of Copenhagen had initially rejected both the allegations in relation to the violation of the Act on Ethnic Treatment and those regarding the victimisation of the plaintiff, before the case was appealed to the High Court.²³⁰

4.1.2.2. Instructions to discriminate

This issue has been tackled in at least one case in Austria, where the Equal Treatment Commission assessed as void the argument most used by employers in order to flee responsibility for actions committed by their employees, namely pleading ‘misunderstanding of instructions.’ Three persons had filed an application against the owner of a fast food restaurant in Vienna where they had been denied service by a new waitress who had received instructions not to serve ‘black drug dealers.’ The Commission concluded that the employers have a responsibility for the discriminating behaviour of

220 Cyprus/Equality Authority/File No. A.K.I. 2/2005 (2005).

221 Ireland/Equality Tribunal/DEC-E2007-062 (05.11.2007); Ireland/Equality Tribunal/DEC-E2007-072 (6.12.2007).

222 Austria/Anwältin für die Gleichbehandlung/OETII – II/02/05 (2005).

223 Netherlands/ Commissie Gelijke Behandeling/Opinion 2003-48 (15.11.2003).

224 See the online case law database available at: www.raxen.fra.europa.eu (21.11.2008).

225 UK/Court of Appeal/[2005] 3 All ER 812, *Wong v Igen Ltd, Emokpaev Chamberlin Solicitors; Webster v Brunel University* (7, 8, 18 February 2005), available at: http://www.raxen.fra.europa.eu/data/6/15/00056626_m.pdf (21.11.2008).

226 In a preliminary ruling, the ECJ, on request of a national court, clarifies the meaning of European legislation. The national court is then obliged to follow this interpretation in its ruling.

227 ECJ/Judgement C-54/07, *Centrum voor gelijkheid van kansen en voor racismebestrijding v NV Firma Feryn* (30.08.2008).

228 It can do so for instance by showing that the company’s actual recruitment practice does not correspond to those statements.

229 Denmark/Ostre Landsret/B-4028-05 (27.06.2006).

230 See: http://www.raxen.fra.europa.eu/1/webmill.php?s_id=32813&dlocale=748944130&lin=detail&s_displayed=748944130 (21.11.2008).

their employees and therefore their instructions have to be sufficiently clear so that an average person cannot understand it as an instruction to discriminate.²³¹

4.1.2.3. Discrimination on multiple grounds

The available case law also reflects the fact that multiple discrimination is addressed in a number of Member States, though by considering separately the allegations on each different ground (e.g. sex, age, disability, race and/or ethnicity) in the same court case, as observed in Denmark, Latvia, Sweden, Ireland and the UK.²³² In Ireland, the Equality Tribunal found in a case from 2007 that the respondent had discriminated against the complainant in terms of discriminatory dismissal, harassment and discriminatory treatment with regard to promotion and re-grading, on grounds of race and gender.²³³ However, in the UK, the Employment Appeal Tribunal and the Court of Appeal overturned a decision of the Employment Tribunal which compared an Asian woman to a white man in order to establish discriminatory treatment on the grounds of race/ethnic origin and of gender. The reasoning of the appeal courts was that this was not possible because each ground had to be disaggregated, separately considered, and a ruling made on it, even if the claimant had experienced them as inextricably linked.²³⁴

4.1.3. Further identifiable trends

One of the first observations that can be made on the basis of the available information on court cases in the Member States is that the chances for plaintiffs to successfully settle a dispute regarding racial or ethnic discrimination in any area and on any ground are dramatically increased if legal and technical support is available from competent bodies, and proportionally so with the type of support received (i.e. legal advice, representation in court, application for legal proceedings on behalf of the victim, investigation into alleged discrimination incidents and use of situation testing etc.). However, this is closely linked to the role and effectiveness of the equality bodies in each Member State, namely their specific competencies and powers and the extent to which they make full use of them.

An illustration of this comes from Latvia. Once the National Human Rights Office represented a victim in court in 2006, the number of total complaints received by this specialised body increased by four per cent and those regarding ethnic discrimination by seven

per cent as compared to the previous year.²³⁵ An even more remarkable example is that of the equality body in France. As already mentioned above, HALDE received 6,222 discrimination complaints in 2007 and 4,058 in 2006, which represented a major and progressive increase from the 1,822 incidents reported in 2005, the first year that HALDE had been functional.²³⁶ This success is due to an effective information campaign developed by HALDE in order to increase awareness of anti-discrimination legislation among the population, as well as to a proactive approach at promoting equality, which includes concrete actions developed in partnership with relevant stakeholders such as large companies, employment agencies, trade unions and other social partners.²³⁷

Furthermore, available data shows that the cases which benefit from the joint action of different stakeholders (e.g. equality bodies and other public institutions, NGOs, trade unions, private employers etc.) on the whole tend to lead to rapid and successful conclusion in favour of the victims, which recommends such collaborations as good practice. Examples of joint interventions during investigations and proceedings are available for example from France,²³⁸ Cyprus²³⁹ and the UK.²⁴⁰

Conversely, the list of barriers to access to justice summarised in the first section of this chapter points towards the correlation that exists between the absence of an effective equality body, or the existence of one with only a limited role, and the absence of sanctions and/or awards in the respective Member States. On the other hand, most sanctions applied by the courts, equality tribunals or equality bodies, which have the power to issue them, tend to combine several financial and non-financial elements. Financial compensation to the victim may include compensation for past and future loss (most common), compensation for injury to feelings, damages for personal injury such as psychiatric damage, or exemplary damages to punish the perpetrator (much less common).²⁴¹ Non-pecuniary sanctions, which tend to be more preventive rather than remedial in nature, might include diversity training of staff, development of internal non-discrimination and equal opportunities policy by employing companies,

231 Austria/Anwältin für die Gleichbehandlung/OETII – III/05/05 (2006).

232 EC/DG Employment, Social Affairs and Equal Opportunities (2007) Tackling Multiple Discrimination. Practices, policies and laws, p. 20-21.

233 Ireland/Equality Tribunal/DEC-E2007-072 (6.12.2007).

234 UK/IRLR 799/2004, case described in EC/DG Employment, Social Affairs and Equal Opportunities (2007) Tackling Multiple Discrimination. Practices, policies and laws, p. 20.

235 See: http://www.raxen.fra.europa.eu/1/webmill.php?s_id=32813&dlocale=748944297&lin=detail&s_displayed=748944297 (21.11.2008).

236 HALDE (2008) Annual Report 2007, p. 10; HALDE (2007) Annual Report 2006, p. 10; HALDE (2006) Annual Report 2005, p. 11, all available at: http://www.halde.fr/-Rapports-annuels-.html?page=rubrique_domaine&id_mot=1 (21.11.2008).

237 http://www.halde.fr/Promotion-de-l-egalite,11031.html?page=article_domaine&id_mot=1 (21.11.2008).

238 France/Tribunal Correctionnel de Nantes/Arrêt Valton vs. Rivaud (2006).

239 Cyprus/Equality Authority/File No. A.K.I. 2/2005 (2005).

240 UK/Court of Appeal/[2005] 3 All ER 812, Wong v Igen Ltd, Emokpae v Chamberlin Solicitors; Webster v Brunel University (7, 8, 18 February 2005).

241 EC/DG Employment, Social Affairs and Equal Opportunities (2007) Developing Anti-Discrimination Law in Europe. The 25 EU Member States compared, p. 60.

review of recruitment procedures and employment conditions, obligation to make the decision public and to inform all employees about it etc.²⁴²

And last but not least, it is encouraging to note that statistical data is increasingly used to support decisions in discrimination cases (as reflected for instance by examples in Bulgaria, Cyprus and the Czech Republic), as is the evidence provided through situation testing, which in most cases is developed with the help of anti-discrimination organisations (e.g. in Hungary, Czech Republic and France).²⁴³

4.2. Research evidence for discrimination

This section presents and discusses research evidence for discrimination in the area of employment on grounds of ethnicity. Although the primary aim is to present the main findings of research done so far, strengths and weaknesses of different methodologies will be discussed as well. The first section examines statistical data on labour market performance, which provides only indirect evidence of discriminatory treatment of migrants and minorities in the area of employment. The second section presents results obtained through ‘discrimination testing’, which shows direct evidence of discrimination. The third section briefly considers results of research on the majority population, especially on employers’ discriminatory attitudes and behaviour. Finally, the fourth section addresses the subjective dimension of discrimination, based on surveys and interviews with migrants and minorities about their experiences of discrimination in employment.

4.2.1. Evidence of discrimination from official statistics

One possible way to identify ethnic and ‘racial’ discrimination in the labour market is the analysis of existing statistical data. As demonstrated in the second chapter, there are significant statistical differences in labour market performance between migrant and minority groups on the one hand and the overall population on the other hand. Now, many of these differences can be explained by the distinct composition of the groups under investigation. For instance, different educational levels or legal restrictions of foreigners’ access to the labour market – amongst other factors – may account for higher unemployment rates. In fact, inequalities in the labour market between immigrants or minorities and the majority population are predominantly

explained by factors other than discrimination, such as education, sex, age, occupational level, and region of residence.²⁴⁴ However, if unequal outcomes can still be observed even when these explanatory variables are controlled for, such statistical evidence indirectly indicates the existence of discrimination.²⁴⁵

In this regard discrimination can be defined as discrepancy between outcomes and inputs, that is to say discrimination causes equal inputs to result in unequal outcomes.²⁴⁶ As it is very difficult to identify and include all factors that might influence labour market performances, however, this type of statistical evidence cannot provide direct proof of discrimination. Nevertheless, unexplained residuals of statistical inequalities may point to the occurrence of discrimination.

Since 2003, many studies in various Member States have demonstrated that even when other variables such as age, gender and education are held constant, migrants’ labour market performance is worse than that of the native population.²⁴⁷ The results of these studies are not quite comparable however, due to two main reasons. First, the enormous divergences in data collection discussed in the first two chapters of this study lead to significant differences in availability of data and hence to dissimilar research designs. Second, statistical calculations which indicate discrimination by controlling for relevant variables require sophisticated multivariate analyses (mostly regression analyses) and creative approaches which have rarely been carried out in similar, comparable ways. In the following, we discuss a selection of studies, which do not allow for generalisation but which exemplify the potential, limitations and outcomes of recent discrimination research based on advanced statistical analysis.

For example, in Germany, the transition from in-firm vocational training to the labour market of German nationals and foreigners was analysed. Different outcomes between nationals and foreigners were identified with regard to unemployment, occupational mismatch and skill mismatch. The analysis showed that even when covariates such as sex, school education, occupational field, and size of training firm are controlled for, nationality has an impact on successful transition to

242 EC/DG Employment, Social Affairs and Equal Opportunities (2005) Remedies and Sanctions in EC non-discrimination law.

243 See the online case law database available at: www.raxen.fra.europa.eu (21.11.2008).

244 A. Gächter (2004): Detecting Discrimination Against Migrants, *ZSI Discussion Paper*, Nr. 3, p. 17, available at: <http://www.zsi.at/de/publikationen/346/list> (28.10.2008).

245 J. Wrench & T. Modood (2001): *The effectiveness of employment equality policies in relation to immigrants and ethnic minorities in the UK*, International Migration Paper 38, International Labour Organization, pp. 25 – 26 and A. Rea, J. Wrench and N. Ouali (1999): Introduction, in: A. Rea, J. Wrench and N. Ouali: *Migrants, Ethnic Minorities and the Labour Market. Integration and Exclusion in Europe*, Macmillan Press Ltd and St. Martin’s Press, Inc.

246 A. Gächter (2004): Detecting Discrimination Against Migrants, *ZSI Discussion Paper*, Nr. 3, p. 17, available at: <http://www.zsi.at/de/publikationen/346/list> (28.10.2008).

247 Fundamental Rights Agency (2008): Annual Report, p. 43.

the labour market. Thus, foreigners living in Germany face higher risks of being unemployed or experiencing occupational and skill mismatch, which is especially true for Turkish nationals.²⁴⁸ Other studies comparing access to employment of equally qualified minority and majority populations in Belgium,²⁴⁹ the Netherlands²⁵⁰ and the UK²⁵¹ similarly found that after correcting for other variables – e.g. age, gender, education – there were still differences between majority and minorities in accessing jobs at various levels. Also in Sweden, differences in employment and earnings between immigrants and natives which cannot be explained by differences in education and experience have also been observed.²⁵²

Beside discrimination, the economists who conducted the Swedish study considered a second factor which could explain processes of selection on ground of ethnicity in the labour market, namely an increasing demand of 'nation-specific human capital', which is defined as language skills and 'social competence'.²⁵³ Similarly, British research has shown that disadvantages in job interviews of ethnic minority groups do not result from a lack of language fluency but from 'hidden demands on candidates to talk in institutional credible ways and from a mismatch of implicit cultural expectations'.²⁵⁴ The question arises whether preferential treatment – be it intentional or unintentional – of those possessing 'nation-specific human capital' is a legitimate form of differential treatment, or rather a more subtle and therefore more dangerous form of discrimination.

In order to control for all kinds of human capital including 'nation-specific human capital', Dan-Olof Rooth (2002) used a creative and sophisticated approach: he analysed the probability of employment of adopted children in Sweden according to differences of colour of the skin. Only children who were adopted by Sweden-born parents were included, so as to eliminate the effect of different

labour market networks which might exist between migrant and native parents. While holding constant variables such as age, sex, schooling in Sweden and age of adoption (before five), differences in probability of employment between native Swedes and adopted individuals born outside Europe were observed. This difference was not observed between native Swedes and adopted individuals who were born in Northern Europe. Assuming that the skin colour of persons born outside Europe differs from persons born in Northern Europe, the results can be interpreted as pointing to the existence of discrimination on grounds of colour of the skin.²⁵⁵

Many efforts have been made to provide indirect statistical evidence of discrimination. However, such studies will never provide watertight proof that unexplained inequalities in labour market performance result from discrimination against migrants and minorities. It is impossible to include all aspects which affect employment probabilities. Nevertheless, indirect statistical evidence can provide a strong indication of the existence of discrimination and a first indication of its overall extent.

4.2.2. Discrimination testing

This section deals with a highly effective and objective method of verifying the occurrence of discrimination, namely 'discrimination testing', also referred to as 'situation testing' and 'practice tests'. In discrimination testing, two or more testers elicit a response from a decision-maker in a real life situation. The characteristics of the testers are completely equal except for certain characteristics which are to be tested, such as ethnicity. Different responses from decision-makers can then be traced back to this particular ground. The usual approach to testing discrimination in employment implies sending two similar curricula vitae (CVs) to a number of employers. If the only differences between the CVs relate to ethnic characteristics, such as different names or pictures of the applicants, then differences in response rates can only be explained by discriminatory behaviour of the employers. The testing may comprise several stages in an application process, from sending a CV to attending an interview if selected.

The strength of discrimination testing, compared to other research methods which provide evidence of discrimination, lies in its ability to demonstrate discrimination against certain groups of persons directly and to reveal the extent of disadvantages suffered. In addition, the method is very flexible, as the indicator of difference – name, physical appearance, language skills, accent, etc. – may be adapted to the

248 C. Burkert & H. Seibert (2007): Labour market outcomes after vocational training in Germany. Equal opportunities for migrants and natives? *IAB Discussion Paper* No. 31/2007, available at: doku.iab.de/discussionpapers/2007/dp3107.pdf, (30 October 2008).

249 VDAB (2007) *VDAB ontcijfert nummer 3*, available at <http://www.vdab.be/trends/ontcijfert/ontcijfert2007nr3.pdf> (15.01.2008).

250 H. Langenberg, H. Lautenbach (2007) 'Beroepsniveau niet-westerse allochtonen lager', in: *Socialeconomische trends*, 1 kwartaal, pp. 37-45.

251 Botcherby, S. (2006) *Pakistani, Bangladeshi and Black Caribbean women and employment survey: aspirations, experiences and choices*, Manchester: Equal Opportunities Commission.. http://83.137.212.42/sitearchive/eoc/PDF/bme_gfi_women_employment_survey.pdf?page=19471 (17.10.2007).

252 T. Bengtsson, C. Lundh and K. Scott (2005): From Boom to Bust: The Economic Integration of Immigrants in Postwar Sweden', in: K. Zimmermann (Ed.) *European Migration. What Do We Know?*, Oxford University Press, pp. 41 – 45.

253 T. Bengtsson, C. Lundh and K. Scott (2005): 'From Boom to Bust: The Economic Integration of Immigrants in Postwar Sweden', in: K. Zimmermann (Ed.) *European Migration. What Do We Know?*, Oxford University Press, pp. 41 – 45.

254 C. Roberts & S. Campbell (2006) *Talk on Trial. Job interviews, language and ethnicity*, research report No. 344, p. 1, available at: <http://www.dwp.gov.uk/asd/asd5/rrs-index.asp>, (30.10.2008).

255 D. Rooth (2002) 'Adopted Children in the Labour Market – Discrimination or Unobserved Characteristics?', in: *International Migration*, Vol. 40 (1), pp. 71 – 98.

research question. However, the main weakness of discrimination testing is that it provides information mainly on outcomes of selection processes and not on the workings of the process itself or on the attitudes of decision-makers.²⁵⁶ Thus, discrimination testing solidly proves the existence of discrimination against migrants and minorities, but does not explain it.

According to the RAXEN reports prepared by the National Focal Points, discrimination tests on grounds of ethnicity in the area of employment have so far been carried out in about half of the EU-27 Member States. A number of tests were commissioned by the International Labour Office (ILO) and conducted in the EU15 countries in the 1990s.²⁵⁷ In 2003 the ILO re-started the testing programme with Italy²⁵⁸, and in 2006 included France²⁵⁹ and Sweden²⁶⁰. Discrimination tests conducted generally showed that in more than a third of the cases, the candidate from the minority groups was excluded.²⁶¹ Another way of presenting results is to state that the minority candidates usually have to make three to five times more tries as majority candidates to obtain a positive response in the employment application process²⁶²

The main results of selected examples of discrimination tests involving sending CVs to companies will be presented below.

In the Netherlands, 150 CVs were sent to job vacancies where half of the CVs carried 'traditional Dutch names' and the other half 'foreign names'. Ninety two per cent of the 'Dutch CVs' received an invitation for a job interview, whereas only 44 per cent of the 'foreign CVs' received a positive response.²⁶³ In France, it was shown that when a native French man has 100 chances to obtain

a job interview, a man of Maghrebian origin only has 36 chances. In other words, the majority of native men have a 2.8 times higher chance of making it through the first barrier of the job application process.²⁶⁴

In Greece it was found that male Albanians have much lesser chances of accessing occupation than male Greeks.²⁶⁵ After sending equal CVs to vacancies for office jobs, factory jobs, café and restaurant services and shop sales, Albanian candidates faced a net discrimination rate of 43.5 per cent.²⁶⁶ The discrimination rate was highest for office jobs (65.7 per cent), followed by shop sales (50.64 per cent) and factory jobs (39.77). Applications for Restaurant and Café Services showed the lowest, but still considerable discrimination rate with 24.19 per cent. In almost half of the cases, both the Greek and the Albanian candidate received a positive response. In these cases, differences in terms of potential wage and of insurance coverage were investigated. The net discrimination rate for Albanians with regard to social insurance coverage was 36.6 per cent. This means that in more than one third of the cases where an employer offered insurance coverage, it was offered only to Greeks and not to Albanians. In the remaining cases insurance was offered to both applicants. Discrimination regarding insurance coverage was higher in Restaurant and Café Services (54 per cent) and Shop Sales (50 per cent) and lower in Factories (26.5 per cent) and Office Jobs (16.7 per cent).²⁶⁷ Moreover, the wages offered to Greeks and Albanians differed significantly. The average wages offered to Albanians were 8.9 per cent lower than those offered to Greeks. This difference was highest for Office Jobs (12 per cent), followed by Shop Sales and Factories (app. 10 per cent) and lowest for Restaurant and Café Services (6.1 per cent).²⁶⁸ To sum up, male Albanians face discrimination in Greece concerning invitation to job interviews as well as concerning offered insurance coverage and wages. The extent of discrimination varies between different economic sectors.

256 R. Zegers de Beijl (1999) (ed.): *Documenting discrimination against migrant workers in the labour market. A comparative study of four European countries*, International Labour Office – Geneva, pp. 13-18. See also: J. Wrench & T. Modood (2001): *The effectiveness of employment equality policies in relation to immigrants and ethnic minorities in the UK*, International Migration Paper 38, International Labour Organization, pp. 26 – 29.

257 FRA (2007): *Trends and Developments 1997 – 2005 – Combating Ethnic and Racial Discrimination and Promoting Equality in the European Union*, p. 25.

258 Allasino, E., Reyneri, E., Venturini, A. and Zincone, G. (2004): *Labour Market Discrimination against Migrant Workers in Italy*, Geneva: International Labour Office

259 Cediey, E. and Foroni, F. (2007): *Les Discriminations à raison de 'l'origine' dans les embauches en France – Une enquête nationale par tests de discrimination selon la méthode du BIT*, Geneva: International Labour Office

260 Attström, K. (2008): *Discrimination against Native Swedes of Immigrant Origin in Access to Employment*, Geneva: International Labour Office

261 FRA (2007): *Trends and Developments 1997 – 2005 – Combating Ethnic and Racial Discrimination and Promoting Equality in the European Union*, p. 25.

262 Taran, P. (2008): 'Situation Testing' – assessing discrimination in access to employment, Paper presented at 13th International Metropolis Conference, Bonn, September

263 EUMC (2006): *The Annual Report on the Situation regarding Racism and Xenophobia in the Member States of the EU*, p. 48.

264 FRA (2007): *Report on Racism and Xenophobia in the Member States of the EU*, p. 58.

265 In the following, Albanian and Greek only refers to men, since the study was only conducted for men.

266 Net discrimination rate, as defined by ILO, is the percentage of preferences of Greeks (46.9 %) minus the percentage of preferences of Albanians (3.4 %). Cf. N. Drydakos & M. Vlassis (2007): *Ethnic Discrimination in the Greek Labour Market: Occupational Access, Insurance Coverage, and Wage Offers*, pp. 11-12, available at: http://www.soc.uoc.gr/econ/wpa/docs/Correspondence_Test-1.pdf, (18.11.2008).

267 N. Drydakos & M. Vlassis (2007): *Ethnic Discrimination in the Greek Labour Market: Occupational Access, Insurance Coverage, and Wage Offers*, pp. 13-14, available at: http://www.soc.uoc.gr/econ/wpa/docs/Correspondence_Test-1.pdf, (18.11.2008).

268 N. Drydakos & M. Vlassis (2007): *Ethnic Discrimination in the Greek Labour Market: Occupational Access, Insurance Coverage, and Wage Offers*, pp. 15-16, available at: http://www.soc.uoc.gr/econ/wpa/docs/Correspondence_Test-1.pdf, (18.11.2008).

A comparable test has been carried out in Sweden, where similar CVs were sent to employers in two types of 'couples': either a native with a Swedish sounding name and a native with a Middle Eastern sounding name, or a native and an immigrant both with Middle Eastern sounding names. Regrettably, the test once again only included male applicants. The call-back rate was 41 per cent for natives with Swedish sounding names, 24 per cent for natives with Middle Eastern sounding names, and 20 per cent for immigrants. In other words, a Swedish sounding name increased the probability of getting an interview by 170 per cent. The authors concluded that around 23 per cent of the discrimination against immigrants can be traced back to assumed differences in education acquired abroad. Additionally, characteristics of employers (if available) were included in the analysis. It was found that discrimination of men with Middle Eastern sounding names is higher if the recruiters are men as well and if the workplace employs less than 20 persons. The observed discrimination is lower for workplaces located in Stockholm and for recruitment agencies.²⁶⁹ The ILO observed much lower discrimination rates in Sweden for the important first stage of application than for any other country where the ILO had carried out discrimination testing.²⁷⁰

The ILO reports that in general more than one in three qualified applicants of immigrant background were unfairly excluded in employment selection procedures in several 'Western industrialised' countries. Discrimination rates have been observed up to 41 per cent. Women can face double discrimination in employment and society²⁷¹ and it is therefore unfortunate that a considerable number of studies (including many of those mentioned above) exclude women and therefore provide an incomplete picture of employment discrimination.

As indicated in the beginning of the section, discrimination testing is a robust method to provide evidence of discrimination against any group of persons which allows measuring the extent of discrimination as well as cross-country comparisons if implemented in the same way. However, the methodology does not provide insight in attitudes or motivations of employers. This issue will be discussed in the following section.

4.2.3. Research on attitudes of the population

This section investigates existing research on discriminatory attitudes of the overall population towards migrants and minorities, with special regard to attitudes of employers. Besides interviewing persons on their own attitudes on migrants and minorities, surveys often also collect information on respondents' perceptions of discrimination occurring in their environment. After outlining general advantages and problems related to the methodology, international surveys on general attitudes towards migrants and minorities will be discussed. This section concludes with a discussion of studies investigating attitudes of employers towards migrants and minorities.

Researching attitudes of the overall population towards migrants and minorities has several advantages. It may provide not only an indication of the occurrence of discriminatory behaviour, but also information on the persons who discriminate and on the grounds for their behaviour. However, quite obviously, the major drawback of this methodology is that persons often do not openly admit to their negative attitudes towards certain groups of persons. In addition, it is not clear to what extent attitudes correspond to actual behaviour. For instance, persons might not be aware of their discriminatory attitudes or behaviour, in which case their statements will not match their behaviour. A final problem arising from this methodology is that respondents are confronted with explicit categorisations of people and asked to differentiate between these categories. Respondents who in their daily life pay little attention to ethnic categories may thereby be 'seduced' to express preference or reticence. Altogether, it appears that negative attitudes tend to be underestimated rather than overestimated.²⁷²

International attitude surveys enable us to identify the groups of persons who suffer discrimination as well as the characteristics of the persons who have discriminatory views. They also offer some possibilities to compare discriminatory attitudes in different countries. Cross-country comparability is limited however for numerous reasons, such as differences of samples (e.g. different refusal rates), language differences (e.g. different translations or meanings of terms), different political debates in the countries at the time of the survey, and overall different historical contexts.²⁷³

269 M. Carlsson & D. Rooth (2008): Is It Your Foreign Name or Foreign Qualifications? An Experimental Study of Ethnic Discrimination in Hiring, *Institute for the Study of Labour (IZA) Discussion Paper* No. 3810, available at: <http://ftp.iza.org/dp3810.pdf>, (18.11.2008).

270 FRA (2007): Report on Racism and Xenophobia in the Member States of the EU, p. 58.

271 International Labour Organization (ILO) (2006): *Facts on Discrimination against migrants*, available at: <http://www.ilo.org/public/english/protection/migrant/equality/download/discrimination/factsheet.pdf>, (18.11.2008).

272 For a discussion on measuring attitudes and stereotypes see: J. Agerström, R. Carlsson and Dan-Olof Rooth (2007): *Ethnicity and obesity: evidence of implicit work performance stereotypes in Sweden*, Institute for Labour Market Policy Evaluation, working paper 2007:20, pp. 5-9, available at: <http://www.ifau.se/upload/pdf/se/2007/wp07-20.pdf>, (12.11.2008).

273 Cf. A. Gächter (2004): Detecting Discrimination Against Migrants, *ZSI Discussion Paper*, Nr. 3, p. 18-19, available at: <http://www.zsi.at/de/publikationen/346/list> (28.10.2008).

In February and March 2008, the Special Eurobarometer No 296 'Discrimination in the European Union' was carried out in each of the Member States. The sample size was around 1,000 respondents in each country, except Germany (1,562), United Kingdom (1,306) and Cyprus, Luxembourg and Malta (500 each), including all residents aged 15 years and over.²⁷⁴ The survey contained a question on whether persons feel comfortable with having a neighbour from a different ethnic origin than their own. The respondents could assess their attitude on a scale ranging from '1' meaning very uncomfortable to '10' meaning totally comfortable. The EU average value was 8.1, with the highest average value found in Luxembourg (9.2) and Lithuania, Estonia, Poland and Sweden (9.1). The lowest values were found in Italy (6.6), Czech Republic (6.5) and Austria (6.3). The same question was asked with reference to Roma instead of 'other ethnic group' and yielded significantly different results. Indeed, the answers to this question paint a very grim picture of public attitudes towards Roma, in all EU Member States. The average in the EU-27 was 6.0, with lowest values in Italy and the Czech Republic. No peculiar differences were observed regarding the gender of the respondents, but age did prove relevant. Older persons felt rather more uncomfortable than younger persons. Additionally, persons with lower education were more likely to show discriminatory attitudes.²⁷⁵ Altogether, the survey shows that there is a considerable share of the population which has discriminatory attitudes towards ethnic minorities. Compared to discrimination on other grounds such as disability and sexual orientation, discrimination on grounds of ethnicity is perceived as most widespread by the respondents.²⁷⁶ However, it might well be the case that discrimination on other grounds is equally or more widespread but that people are simply not aware of it.

The study of **employers' attitudes and practices** adds another dimension of information in this area. There is no such study concerning migrants and minorities which covers all EU-27 countries, but several studies dealt with the issue in national contexts.

For example, interviews in Germany in 2006 showed that when recruiting for jobs, people such as personnel managers are not only guided by relevant factors like education, qualification and work experience, but also by cultural stereotypes and prejudices towards Turkish

migrants (e.g. they are 'not ambitious', 'too macho', or 'incapable of working in a team'), and some employers themselves clearly displayed personal prejudices towards Turkish applicants. Also many German employers explained that they would worry about problems with clients or German employees if they recruited a Turk.²⁷⁷

Below are summarised the results of other examples of studies, done in Belgium, Bulgaria, Romania, Malta and Sweden, where employers were asked whether they would have problems with hiring persons who belong to certain minorities. The samples are not always representative and not comparable. For instance, the minority groups addressed depend strongly on the specific research question. All studies find a good deal of respondents who state that they do not hire persons from certain ethnic groups for their company, ranging from over 90 per cent declining to recruit refugees for skilled positions in Malta (although 100 per cent *would* hire them for unskilled jobs) to 80 per cent refusing to hire a foreigner in Belgium, to 77 and 60 per cent unwilling to employ Roma people in Bulgaria and Romania respectively. A sophisticated study in Sweden showed that while 12 per cent of interviewed employers state explicitly that Arab-Muslims perform poorly on the work floor, no less than 78 per cent harbour implicit low-performance stereotypes. As justification for their refusal to employ persons of a specific ethnic origin, respondents claimed that these persons are lazy and steal, or lack the necessary language and professional skills.²⁷⁸

In the study on discrimination testing applied in Greece mentioned above, employers were confronted with the general outcomes of the study and had the chance to rationalise the factors responsible for wage discrimination in their sectors. Employers were asked to accept or reject three different motivations for lower wages offered to Albanians. Almost three-quarters of employers agreed that it results from firms' profit maximisation strategies; one quarter agreed that dislike against Albanians played a role and almost 20 per cent agreed that wage difference was based on perceptions of low productivity of Albanians.²⁷⁹ This result could be interpreted to imply that employers do not offer lower

274 European Commission (2008): *Discrimination in the European Union: Perceptions, Experiences, and Attitudes*, Report, annex, available at: ec.europa.eu/public_opinion/archives/ebs/ebs_296_en.pdf, (13.11.2008).

275 European Commission (2008): *Discrimination in the European Union: Perceptions, Experiences, and Attitudes*, Report, pp. 41-45 and annex, available at: ec.europa.eu/public_opinion/archives/ebs/ebs_296_en.pdf, (13.11.2008).

276 European Commission (2008): *Discrimination in the European Union: Perceptions, Experiences, and Attitudes*, Report, p. 7, available at: ec.europa.eu/public_opinion/archives/ebs/ebs_296_en.pdf, (13.11.2008).

277 FRA (2007) *Report on Racism and Xenophobia in the Member States of the European Union*, European Union Agency for Fundamental Rights, Vienna p. 56-57

278 Studies on Belgium, Bulgaria and Romania cited in: FRA (2008): Annual report 2008, p. 52, available at: fra.europa.eu/fra/material/pub/ar08/ar08_en.pdf, (13.11.2008). Study on Malta cited in: National Focal Point Malta (2005): National Data Collection Report Malta – 2008, p. 14. Study on Sweden: J. Agerström, R. Carlsson and Dan-Olof Rooth (2007): Ethnicity and obesity: evidence of implicit work performance stereotypes in Sweden, *Institute for Labour Market Policy Evaluation, working paper* 2007:20, available at: <http://www.ifau.se/upload/pdf/se/2007/wp07-20.pdf>, (12.11.2008).

279 N. Drydakis & M. Vlassis (2007): *Ethnic Discrimination in the Greek Labour Market: Occupational Access, Insurance Coverage, and Wage Offers*, pp. 17-19, available at: http://www.soc.uoc.gr/econ/wpa/docs/Correspondence_Test-1.pdf, (18.11.2008). See also section 4.2.2.

wages to migrants and minorities because of dislike or perceptions of different productivity, but simply because they can, since such vulnerable groups have fewer resources to defend their rights and interests. In this view, discrimination is a rational course of action for employers to make more money. However, this interpretation is contradicted by the fact that migrants or minorities are invited to job interviews less often. It is far from certain that discrimination against certain groups of persons is rational behaviour.

4.2.4. Research on discrimination experiences of migrants and minority groups

Research on discrimination experiences of migrants and minorities is an additional highly useful approach, even though it needs to be taken into account that persons often do not admit to being discriminated against, or, in other contexts, may interpret employer behaviour as discriminatory when it is not.

Many different studies on experiences of discrimination against migrants and minorities have been carried out in almost all Member States in the past years. Yet, it is rather difficult to draw a general comparison from those studies due to their different research designs. The studies comprise sample surveys amongst minority groups (some of them claim to be representative) as well as qualitative interviews with persons who have experienced discrimination.

Altogether, migrant and minority groups frequently report negative treatment related to their origin, skin colour, name, and language.²⁸⁰ For example, in 2006, surveys of Russian speakers in Estonia, immigrants in Denmark, Turks in Germany, Serbs and Bosniacs in Slovenia and Somalis, Russians, Estonians and Vietnamese in Finland all reported subjective experiences of discrimination in employment. In France, immigrants and descendants of immigrants reported that they were routinely subjected to negative treatment related to their origin, skin colour, name or speech. And in Germany, of 1,000 Turkish people surveyed in 2004, over 56 per cent stated that they had experienced discriminatory treatment at their workplace.²⁸¹

In Finland, it was found that persons with a darker skin experience more discrimination in employment than other minority or migrant groups.²⁸² Experiences reported in studies include general feelings of maltreatment, less pay and benefits as well as harassment at the workplace. Most often studies investigate discrimination in recruitment situations. Rejections of job applications on grounds of ethnicity were experienced and reported differently, varying from general feelings of discrimination on grounds of ethnicity, to being informed that a vacancy is available on the phone but then being told in person that the vacancy has already been filled, and also to experiences of open discrimination.²⁸³

Following the earlier EUMC Pilot Study 'Migrants Experiences of Racism and Xenophobia in 12 EU Member States' published in 2006,²⁸⁴ the FRA carried out in 2008 its EU-MIDIS (European Union Minorities and Discrimination Survey) survey on criminal victimisation and policing, which included questions on discrimination in employment. In total 23,500 minority respondents were interviewed. One result from the survey is that, of all the minority groups surveyed, reported rates of discrimination were consistently highest among the Roma, and those with a Sub-Saharan background, followed by those with a North African background. Furthermore, of those who indicated they were discriminated against, the survey showed that the overwhelming majority did not report their experiences of discrimination to an organisation or at the place where it occurred.

Respondents were asked if they knew of any organisation in their Member State that could offer support or advice to people who have been discriminated against – for whatever reason. The results indicate that the majority of respondents in all groups – ranging from Roma in Greece and Africans in Malta, through to Somalis in Sweden and Russians in Finland – did not know of any organisation offering support or advice to people who have been discriminated against.

280 EUMC (2006): *The Annual Report on the Situation regarding Racism and Xenophobia in the Member States of the EU*, p. 48.

281 EUMC (2006): *Annual Report on the Situation regarding Racism and Xenophobia in the Member States of the EU*. European Monitoring Centre on Racism and Xenophobia, Vienna, p. 48

282 Country of origin was used as an indicator for skin colour in this study. Raxen National Focal Point Finland (2006) *Combating ethnic and racial discrimination and promoting equality: Trends and developments 2000-2005*, Helsinki, pp. 8-9.

283 Almost 41 per cent of respondents of a representative survey in Slovakia report personal or second-hand experiences with employers openly refusing to employ Roma job seekers. Cf. FRA (2007): *Report on Racism and Xenophobia in the Member States of the EU*, p. 59 – 60.

284 Belgium, Germany, Greece, Spain, France, Ireland, Italy, Luxemburg, the Netherlands, Austria, Portugal, United Kingdom.

The survey was the first of its kind to systematically survey minority groups across all EU member states using the same standardised questionnaire, and has provided data allowing comparisons to be made between different minority groups and different member states.²⁸⁵

Although manifold studies on experiences of discrimination on grounds of ethnicity in the area of employment exist, more qualitative research is needed to better understand the forms of discrimination against migrants and minorities, and more quantitative research to improve assessments of the extent of discrimination in employment and comparability of results among the Member States of the European Union. Comprehensive knowledge on patterns of discrimination is a prerequisite to combat discrimination efficiently.

285 The two reports published at the time of writing – *Data in Focus Report 1: The Roma*, and *Data in Focus Report 2: Muslims*, along with the full EU-MIDIS *Main Results Report*, are available at www.fra.europa.eu/eu-midis

5. Legal status and vulnerability

5.1. The concept of 'discrimination by law' – a European dilemma

Since the adoption of the Amsterdam Treaty and Article 13 as the legal basis for legislation and measures against discrimination on the European level, the European Union has developed a broad action programme to terminate all forms of discrimination, racism and xenophobia. Yet, when looking at the situation of migrants and minorities in employment there is still one major 'missing link': the national legal frameworks regulating entry, residence, and employment of non-nationals. These must be considered as a decisive source of inequality between persons residing on European territory holding a nationality of a European Member State/ the European Union and those who do not and hence are subject to migration control. While complete equality between citizens and non-citizens from third countries must remain utopia, given that borders and hence migration controls are likely to remain as central features of the international system, the question in what ways, to what extent, and for how long non-citizens from third countries should be subject to unequal treatment has been a focus of debate and policy development since at least the early post-war years, when the first conventions on the rights of migrant workers were drafted.

While introducing a very broad framework to combat discrimination against migrants and minorities in employment, the Equality Directives²⁸⁶ explicitly refrain from touching upon 'any treatment which arises from the legal status of the third-country nationals and stateless persons'.²⁸⁷ Hence, citizenship remains one of the last grounds on which Member States may legally engage in unequal treatment of persons. Immigration laws construct a legal hierarchy between citizens and non-citizens, and differentiate the latter into many diverse status categories that are each entitled to different rights.²⁸⁸ Such forms of unequal treatment inherent to states' laws are referred to as 'formal'²⁸⁹ or 'prescribed' discrimination, 'legal discrimination'²⁹⁰ or 'discrimination by law'.²⁹¹

The kind of legal status assigned impacts on the socioeconomic position of migrants as a whole as it may directly or indirectly limit their access to other basic rights and resources, such as housing, education, further training, political participation, social welfare, etc. Persons with an insecure status are thus more vulnerable to discrimination and exploitation in employment and other areas of socioeconomic life.²⁹² There is also evidence that restrictive immigration systems contribute to irregular living and working situations of immigrants and reinforce the segmentation of labour markets along ethnic and national lines.²⁹³

Although it is especially third country nationals who often reside and work on an insecure legal basis, until the Tampere Council in 1999 this phenomenon was only tackled with regard to citizens of other EU states. Following the adoption of the Tampere agenda, which amongst others contained a commitment to approximate the rights of third-country nationals who are long term residents of a member states to those of nationals, a number of measures in view of this goal, most importantly a directive on the rights of long term residents, have been adopted. Despite these developments, formal discrimination against third country nationals in general has remained an under-represented and under-researched field.²⁹⁴ This may be due to the dilemma inherent to the phenomenon of discrimination by law itself. In the current context, restrictions on the admission of new members are considered not only legitimate but also necessary for the maintenance of the national community as such.²⁹⁵ Immigration laws are thus regarded as decisive instruments to safeguard social cohesion. At the same time however, they are producing inequalities between certain categories of persons. Although the system of nation states and citizenship as such is not broadly challenged today²⁹⁶, it is crucial to address the impacts this system has on non-nationals living and working in European societies.²⁹⁷ Arguing

286 Council Directive 2000/43/EC (29 June 2000) and Council Directive 2000/78/EC (27.11.2000)

287 See Council Directive 2000/43/EC (29 June 2000), p. 23.

288 EUMC (2003) Migrants, Minorities and Employment: Exclusion, Discrimination and Anti-Discrimination in 15 Member States of the European Union, p. 10.

289 See the definition by Kevin Boyle: 'Formal discrimination is that sanctioned by law, particularly in respect of non-citizens', in the introduction to *Dimensions of Racism* OHCHR/UNESCO, New York/ Geneva 2005

290 J. Wrench *Diversity Management and Discrimination* Ashgate, Aldershot, 2007, p. 120.

291 A. Gächter 'Researching discrimination against immigrants' in *Dimensions of Racism* OHCHR/UNESCO, New York/ Geneva 2005 p. 137

292 FRA, Annual Report 2005, p. 35

293 A. Gächter (2004): Detecting Discrimination Against Migrants, *ZSI Discussion Paper*, Nr. 3, p. 9, available at: <http://www.zsi.at/de/publikationen/346/list> (28.10.2008)

294 A. Gächter (2004): Detecting Discrimination Against Migrants, *ZSI Discussion Paper*, Nr. 3, pp. 7-10, available at: <http://www.zsi.at/de/publikationen/346/list> (28.10.2008)

295 J. Seglow (2005) 'The Ethics of Immigration', in: *Political Studies Review*, Vol. 3, pp. 317-334

296 For a collection of explorations of the 'migration without borders' scenario by migration scholars, see A. Pécod & P. de Guchteneire (eds.) (2007) *Migration without borders. Essays on the free movement of people*. Paris/Oxford: Unesco Publishing/Berghahn Books.

297 R. Bauböck (2007) 'Migration and citizenship', in: R. Cohen, H. Laxton (eds.) *The Politics of Migration*, Cheltenham/Massachusetts: Edward Elgar Publishing, p. 223

from the perspective of social cohesion, it is desirable for the society as a whole that the largest possible part of the resident population enjoys a secure legal status and is granted access to basic rights and resources. Thus, discrimination by law may be regarded as one of the major dilemmas the European Union faces today.

5.1.1. Public-sector exclusion of non-nationals

While discrimination by law in principle affects all non-nationals, third country nationals as well as EU nationals, nearly all legal restrictions towards the latter have been abolished within the EU. Member States may only deny EU citizens entry to their territory in case of serious and individual threats to public policy and security, or in case of risking an epidemic.²⁹⁸ In addition, some Member States restrict full labour market access for citizens of new Member States through transitional arrangements, for a maximum period of seven years.²⁹⁹

Another, much more influential set of regulations that restrict the free movement of workers concerns the exclusion of non-nationals, including EU nationals from jobs in the public sector.³⁰⁰ Almost all European countries have specific regulations to partly or fully restrict employment in the public sector to nationals, or specific requirements that result in the preferential treatment of own nationals. Member States are in principle allowed to restrict access to public sector jobs, but only if these jobs involve the exercise of public authority or the responsibility for safeguarding the general interest of the state. Examples may be jobs in the forces of the maintenance of the order, the judiciary, or tax authorities.³⁰¹ All other jobs must be open to other EU nationals, and also to third country nationals with a long-term residence permit in the meaning of the long term residence directive (see in more detail below). Member States may only close specific posts to non-nationals, not whole fields of work or the public sector in general.

The issue of public sector exclusion of non-nationals first appeared on the European agenda as early as 1957, at the very moment the European Community was established. When laying down the principle of free movement of workers, employment in the public sector was explicitly excluded.³⁰² However, this limitation to the free movement of workers was interpreted very restrictively by the Commission (see above), and the first action to ensure the equal access of all EU citizens to

public sector employment dates back to the late 1980s.³⁰³ More detailed definitions regarding the implementation of equal treatment in public sector employment were laid down only in 2002 in the Commission's Communication entitled 'Free movement of workers – achieving the full benefits and potential'.³⁰⁴ The main obstacles to the thus formulated aim were found in national legislations, but also in the insufficient administrative implementation of existing legislation. In 2006 – the European Year of Workers' Mobility – a study compiled by the Austrian EU Presidency finally presented an exhaustive collection on the state of implementation of 'Cross-border mobility of public sector workers' in the 27 Member States.³⁰⁵

Table 5-1: Mode of public sector regulation regarding restrictions to the employment of non-nationals

Mode of public sector regulation	Countries
Direct application of EU law	CZ
Case-by-case decision on basis of guidelines/criteria	AT, BE, DM, DE, EL, MT, UK
Exhaustive/exemplary lists of restricted posts	BG, CY, HU, IE, IT, FI, NL, SE, SI, SK/ EE, LT, LV
Not restricted, except for specific posts	ES, FR, PT
Restricted, except for specific posts	LU
Fully restricted	PL, RO

Source: Austria/Österreichisches Bundeskanzleramt (2006) Cross-border mobility of public sector workers

The study showed that the extent to which EU countries restrict their public sectors to non-nationals still varies a great deal and is regulated in different national regulations. The Czech Republic is the only Member State which has not adopted any specific regulation but applies Article 39(4)EC directly (see Table 5-1, above). Some countries restrict public sector employment only for certain jobs defined in exhaustive lists (e.g. Sweden, the Netherlands), others decide on a case-by-case basis (e.g. Austria, Greece, the United Kingdom). Only two countries, Poland and Romania, still reserved all jobs in the public sector to their own nationals. Furthermore, in a number of Member States specific regulations often apply to the health and education sectors. The study also showed that all countries had made efforts to bring their respective legislation in line with the Community law. At

298 European Parliament and Council Directive 2004/38/EC (29.04.2004).

299 http://ec.europa.eu/employment_social/free_movement/docs_en.htm (24.11.2008), see also footnote 13

300 Article 39 (4) EC Treaty

301 European Commission (2002) Communication 'Free movement of workers – achieving the full benefits and potential' (COM(2002)694final), pp. 17-19

302 Article 39 (4) EC

303 'Freedom of movement of workers and access to employment in the public service of Member States – Commission action in respect of the application of Article 48(4) of the EEC Treaty', OJ C-72/2 (18.03.1988)

304 COM(2002)694final

305 Austria/Österreichisches Bundeskanzleramt (2006) Cross-border mobility of public sector workers.

the same time, there is still a lack of data regarding the implementation of legislation in administrative practice.³⁰⁶

Next to the nationality criteria, regulations on the recognition of professional experience and qualifications were identified as main obstacles for foreign citizens to access public sector jobs. Such regulations play a role in recruitment procedures as well as working conditions (e.g. moving-up, salary scale) in the public sector in almost all Member States.³⁰⁷ Although these criteria affect all public sector employees, foreign applicants are particularly disadvantaged since professional experience and seniority, as well as qualifications and diplomas are most often not equally recognized when acquired in another state.³⁰⁸ The absence of regulations on the recognition of foreign diplomas may thus indirectly exclude non-nationals from public sector jobs and place them in less favourable positions.

Evidence from Italy illustrates this point: in 2006, doctors with a diploma acquired in a non-EU country were paid 30 to 50 per cent less than their colleagues with a national diploma.³⁰⁹ Already in 2002 the European Commission stipulated that all Member States should ensure the equal treatment of all intra-EU migrant workers in recruitment procedures by recognising work experience and qualifications irrespective of whether they were acquired in the home or another EU country.³¹⁰ In at least three Member States (Estonia, Latvia, Lithuania), experience acquired in another Member State was not taken into account when determining working conditions in 2006.³¹¹ Applicants from third countries are specifically disadvantaged in this respect as European public sector institutions are mostly less familiar with non-European educational systems. The recognition of foreign qualifications and seniority is particularly important in sectors that show a high demand for foreign labour, such as the health sector. To ensure equal opportunities in recruitment procedures may be difficult though in practice, as recruitment is largely a local affair.

Based on the freedom granted to all EU citizens, most of the efforts to open the public sector to non-nationals have remained limited to EU citizens in rhetoric as in practice. Since the entry into force of the Directive 2003/109/EC third country nationals who are long-term residents are entitled to access to public employment on equal standing with EU citizens.³¹² Information about the implementation of the directive in national legislation and

practice, and in particular its impact on access to public sector employment, is scarce, however. In addition, the focus of European debates on public sector employment remains restricted to EU citizens, whereas access of third country nationals to public sector jobs hardly feature in these debates. While third country nationals who are long term residents now at least theoretically enjoy equal access to public sector jobs, public sector employment of third country nationals who are not remains a matter of national discretion. It seems that a large number of jobs with the most secure working conditions remain closed to immigrants from third countries.³¹³ Public sector exclusion is thus one factor that increases the vulnerability of non-EU migrant workers and contributes to their marginalisation on European labour markets.

The issue however is more complex, as two specific problems exemplify. The first problem is interpreting the respective Community laws, the second problem is being fully aware of their scope and of implementing them. Opinions differ on the question which jobs do in practice involve public authority or the interest of the state and may therefore be legitimately closed to non-nationals. The Commission's Communication of 2002 tries to clarify this issue by giving examples of public sector jobs that may not be reserved to own nationals only: these are administrative, maintenance or technical consultation tasks, even if in fields generally falling under the regulations, such as the judiciary or the armed forces.³¹⁴ Nevertheless, many Member States still restrict jobs which do not plausibly fall under these restrictions, and where the necessity of restriction is questionable. This especially concerns jobs in the education and health system, which belong to the public sector, but are not per se nationally sensitive fields.³¹⁵ However, the dividing line is still unclear and is currently negotiated on a national level as a number of contradictory court rulings show. In Italy, the nationality requirement was approved as legitimate exclusion criteria in the case of a foreign cook working in a public school. In another Italian province however the very same fact was found to be unjustified in the case of a foreign doctor and an anaesthetist.³¹⁶ Clearly, there is a need for a more consistent application of relevant legislation in all Member States and further clarification on when exclusion of non-nationals from public sector employment is legitimate and when it is not.

Furthermore, the implementation of freedom of movement in the public sector largely remains limited to intra EU labour migrants. Many states do not seem

306 Austria/Österreichisches Bundeskanzleramt (2006) Cross-border mobility of public sector workers, pp. 10/f

307 Austria/Österreichisches Bundeskanzleramt (2006) Cross-border mobility of public sector workers.

308 COM(2002)694final, pp. 21-24

309 FRA, Annual report 2007, p. 62

310 COM(2002)694final

311 Austria/Österreichisches Bundeskanzleramt (2006) Cross-border mobility of public sector workers, p. 12

312 Official Journal of the European Union, Directive 2003/109/EC, Article 11

313 EUMC (2003) *Migrants, Minorities and Employment: Exclusion, Discrimination and Anti-Discrimination in 15 Member States of the European Union*

314 COM(2002)694final, pp. 19/f

315 Cf. FRA, Annual Report 2007, p. 62; Guía para implantar el Principio 6 del Pacto Mundial "No Discriminación en el empleo y la ocupación", available at: <http://www.pactomundial.org/index.asp?MP=16&MS=0&MN=1> (24.11.2008)

316 FRA, Annual Report 2007, p. 63/f

be fully aware of their duty to grant equal access to jobs and recruitment procedures also to third country nationals with a long-term permit. On the contrary, some Member States even introduced new regulations that explicitly excluded migrants from third countries from certain occupations. In Italy and in Greece for example third country nationals could only be employed in the public sector on the basis of temporary contracts. In Italian hospitals, foreign nurses may only be employed as subcontractors.³¹⁷ While some countries have (partly) opened their public sectors to other EU nationals, civil service positions often explicitly or implicitly remain fully closed to third country nationals (e.g. Estonia, Latvia, Italy).

In sum, specific problems and concerns persist especially on the level of implementation of the free movement of workers in the public sector. They will have to be tackled by the EU Member States on a legislative as well as administrative level in the coming years. Many Member States are just in the process of reforming their respective legislations and administrations. The most impressive example for this is probably France: with an estimated six million jobs³¹⁸ – almost one third of the labour market – partially or totally closed to non-nationals before 2005, France ranged as ‘the’ worst practice example with regard to the scope public sector exclusion may have when interpreted in a highly restrictive way. In 2005 France brought its legislation in line with Community law by opening civil servant employment in its public sector to EU-citizens. (Non EU-nationals can only be employed as temporary or contract employees by the public sector.) In 2006 the above-mentioned study on “Cross-border mobility of public sector workers” even complimented France: ‘There are not any national rules or administrative practices which might cause an obstacle to cross border mobility of public sector workers.’³¹⁹ Despite this laudation, for France and for all other European countries the implementation of legislative changes into the administrative practice will remain a major topic in the next years.

5.1.2. Legal insecurities and civic stratification of third country nationals

Non-EU nationals (third countries plus Switzerland and Norway) represent the largest group of immigrants in the majority of European countries as well as in the European Union in general (see Figure 1-2). At the same time third country nationals occupy a disadvantaged position in the labour market in comparison to nationals

and EU/EEA citizens. While these differences in labour market outcomes reflect a variety of factors, including the legacy of recruitment policies, the skill structure and sector distribution of foreign nationals, (see chapter 2) the legal status of third country nationals and restrictions attached to it is an important factor, too. Thus, different categories of third country nationals face different requirements in regard to acquiring residence status or citizenship. This legal stratification manifested in national immigration laws represent a ‘formalized mode of civic stratification’³²⁰ that may become a permanent ‘impediment’ to obtain a more secure residence status and to gain access to basic rights and resources.³²¹

The distinction between short- and long-term residents is perhaps the most important current form of ‘civic stratification’ in relation to legal migrants. It divides third country nationals into two categories, entitled to temporary or permanent stay, and having no, limited, or full access to the labour market as well as to other areas of socioeconomic life. In addition, not all persons are granted an independent status. Family migrants, for example, are commonly issued a temporary status which may be withdrawn in case of family break down or if other criteria – such as the income requirement – are no longer met. The family reunification directive – the central piece of legislation on the rights of family members on the European level allows for a probationary period of up to five years.³²² In current national regulations, it ranges from two years (Portugal, the Czech Republic) to five years (e.g. Sweden, Poland).³²³ The close linkage constructed between employment and residence is another ‘key element of the passage through a hierarchy of statuses to secure residence.’³²⁴ To acquire a more secure residence status or even to maintain the current one depends on fulfilling a number of requirements; the most important are a regular income, social insurance, uninterrupted and legal stay, and not posing a threat to public order.

The limitation of first permits to one specific employer, preferential hiring procedures placing third country nationals as the last ones to be hired after nationals, EU

317 M. A. Bernadotti (2006) ‘Sindacati e discriminazioni razziali nella Sanità italiana: il caso degli infermieri’, in: A. Megale. (ed.) *Immigrazione e sindacato*. IV Rapporto Ires, Rome: Ediesse.

318 FRA, Annual Report 2007, p. 63

319 Austria/Österreichisches Bundeskanzleramt (2006) Cross-border mobility of public sector workers, p. 33: France has even established ministerial committees in charge of comparing national and foreign diplomas.

320 In relation to immigrants, civic stratification can be defined as the hierarchy of stratified rights resulting from processes of exclusion and inclusion which classifies and sorts out migrants and the realisation of rights formally associated with these locations. See L.Morris (2002): *Managing Migration. Civic stratification and migrants*. London, p. 7

321 L. Morris (2001) ‘The Ambiguous Terrain of Rights: Civic Stratification in Italy’s Emergent Immigration Regime’, in: *International Journal of Urban and Regional Research*, Vol. 25/3, p. 504

322 Article 15 of Council Directive 2003/86/EC (22.9.2003) on the right to family reunification.

323 K. Groenendijk, R. Fernhout, D. van Dam, R. van Oers & T. Strik (2007). *The Family Reunification Directive in EU Member States; the First Year of Implementation*. Nijmegen: Centrum voor Migratierecht, p. 35; A. Szczepanikova (2008) Family Migration Policies in the Czech Republic: Actors, Practices and Concerns, project report available at <http://research.icmpd.org/1291.html#c2507> (1.12.2008), p. 9

324 L. Morris (2001) ‘The Ambiguous Terrain of Rights: Civic Stratification in Italy’s Emergent Immigration Regime’, in: *International Journal of Urban and Regional Research*, Vol. 25/3, p. 499

citizens and recognised refugees, or additional obligations tied to the recruitment of non-nationals are examples of how a weak residence status may interrelate with a weak employment status. In Luxembourg the employer until very recently was obliged to provide a bank guarantee of 1,500 EUR for each third country national hired (in order to cover eventual repatriation costs).³²⁵ Such measures heighten the threshold for third country nationals to access the most secure jobs and thereby render them more dependent on their employers. They may thus have to accept worse working conditions and disadvantageous contractual conditions. Furthermore, specific regulations on certain types of temporary migrant labour, such as seasonal work or domestic work, undermine regulations on minimum wages or working time.³²⁶ In Cyprus, a regulation on domestic workers prohibited membership in trade unions, with the threat of expulsion in cases of non-compliance.³²⁷

The interrelation between employment and residence status may degenerate into a vicious circle of precarity: a weak legal status may prevent someone from accessing the jobs which would permit him or her to fulfil the criteria (income, housing) to obtain a better residence status. Mechanisms of discrimination by law are also gendered: women are more often working part-time and in marginalised or irregular segments of the labour market than men and thus find it harder to fulfil the requirements to maintain or consolidate their residence status (notably income requirement), or to obtain a more secure permit (see chapter 6 for more details). The consolidation of the residence status is neither a linear process, nor does it happen automatically after a certain period of stay. Rather, the success of such a project is shaped by the various categories of differentiation which immigration laws ascribe to foreigners and their effect on the opportunity structures of the persons affected.

At its meeting in Tampere in 1999, the European Council acknowledged the necessity of ensuring 'fair treatment of third country nationals who reside legally on the territory of [EU] Member States' and of 'granting them rights and obligations comparable to those of EU citizens'.³²⁸ The first concrete steps to approximate the rights of third country nationals to those of EU citizens followed four years later in the form of Council Directive 2003/109/EC, the Long Term Residence Directive, concerning the status

of third-country nationals who are long-term residents.³²⁹ For the time being the scope of the Directive covers only those third country nationals who have legally and continuously resided in a Member State of the EU for a minimum period of five years, who can prove sufficient and stable resources as well as a health insurance and who do not pose a threat to public order or security. Persons residing 'on a short-term basis' and those in a 'precarious' situation (e.g. temporary workers, refugees or persons enjoying subsidiary protection) are explicitly excluded from the scope of the Directive.³³⁰ Yet, it is these groups that are most vulnerable to exploitation and marginalisation in employment and other areas of social life. Consequently, although the Directive 2003/109/EC undoubtedly is very ambitious in its aims, it may unwittingly reinforce the already existing legal dichotomy between long-term and short-term permit holders.

Regarding the scope of the Directive, while it defines to whom it should be applied, it omits to delineate clearly who may be excluded. On the national level developments can be observed that may weaken or even contradict the long-term residents Directive. For example, Austria in its new Aliens and Settlement Act of 2005 narrowed down access to long-term residence permits not only for students, but also for specific professions. Artists, for example, are defined as temporary migrants and may not consolidate their status over time. To obtain a long-term residence permit, it does not suffice any more to be continuously and legally resident (and employed) for a certain period of time, but the kind of employment engaged in is decisive as well.³³¹ Consequently, persons may be locked in a temporary status and reside and work on an insecure basis, even if living on EU territory for years. Another obstacle to the full implementation of the Directive is the fact that fulfilling the requirements does not automatically lead to the acquisition of an EU long-term status: one has to apply for it. The simultaneous, yet sometimes conflicting application of national and EU law, unfamiliarity with EU law and the reluctance of local municipalities to inform migrants adequately about their rights may thus considerably weaken the Directive.

The RAXEN reports pointed to another trend which similarly opposes the principles of the EU integration and anti-discrimination agenda. There seems to be a general restrictive trend in Member States' immigration laws in recent years, with reforms tightening conditions for family migration (e.g. Denmark, the Netherlands, France), naturalisation (e.g. Austria, the Czech Republic, Ireland), and asylum (e.g. Austria, Luxembourg).³³² At the same

325 Raxen National Focal Point Luxembourg, National Data Collection Report Luxembourg 2004, p. 16, and Raxen National Focal Point Luxembourg, National Data Collection Report Luxembourg 2006, p. 22

326 M. Jandl, Ch. Hollomey, S. Gendera, A. Stepien, V. Bilger (2008) *Migration and Irregular Work in Austria. A case study of the structure and dynamics of irregular foreign employment in Europe at the beginning of the 21st century*, Amsterdam: Amsterdam University Press

327 FRA, Annual Report 2006, p. 12

328 European Council (1999) *Presidency Conclusions. Tampere European Council, 15 and 16 October 1999*, available at: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/00200-r1.en9.htm (01.12.2008)

329 Council Directive 2003/109/EC (25.11.2003)

330 Summary of Council Directive 2003/109/EC (25.11.2003), available at: <http://europa.eu/scadplus/leg/en/lvb/l23034.htm>

331 S. Schumacher, J. Peyrl (2006) *Fremdenrecht. Asyl, Ausländerbeschäftigung, Einbürgerung, Einwanderung, Verwaltungsverfahren*, Vienna: ÖGB Verlag

332 FRA, Annual Report 2005, p. 24

time, an increasing number of new migrants is 'invited' to fill labour market- and skill shortages.³³³ Most of those labour migrants however are only issued a temporary permit that does not allow for the consolidation of their status. Both developments are therefore part of the trend to confine full access to residence and employment to a relatively small number of persons and thus reinforce legal insecurities of many third country nationals already residing on European territory.

Apart from measures to improve the legal situation of long-term residents there have been similar efforts addressed at other specific groups of concern, namely refugees and persons with subsidiary protection, asylum seekers, and victims of human trafficking. Specific directives were adopted to improve the legal security of the latter two groups.³³⁴ In response, Italy for example has already established measures to widen access of asylum seekers to the labour market.³³⁵ Furthermore, in 2007 the Commission presented a proposal to extend the scope of the Long Term Residence Directive (2003/109/EC) to refugees and persons enjoying subsidiary protection, two groups that were explicitly excluded in the first bill.³³⁶

In sum, a number of very positive and ambitious developments to address and improve legal insecurities of third country nationals have taken place on the national and the EU level, but at the same time, significant contradictory trends may be observed at the national level. At the time of writing this report there was no detailed information available on the implementation of the Long Term Residence Directive from the Member States, but it appears there might be a gap between the letter and spirit of EU legislative measures on the one hand and national legislation and administrative practices on the other.³³⁷ In addition, the measures taken so far to combat exploitations of third country nationals in employment have by and large remained selective and singular, thereby failing to start a fundamental discussion about the impact of legal insecurities on vulnerable groups.

5.1.3. The situation of undocumented migrant workers

Generally, irregular migration cannot be discussed outside the context of state regulation of migration. Only if there are explicit rules on legal entry and stay of foreign nationals, can there be irregular migration.³³⁸ Irregular migration thus is not an objective 'given', but varies according to the specific context, which may be subject to change in temporal perspective. Indeed, it is only since the 1970s in the context of the 'recruitment stop' that irregular migration became an issue of concern to policy makers. Yet only since the 1990s has irregular migration become a main focus of migration policy making, largely as a result of the combined effect of the geopolitical changes after the collapse of the Communist regimes in eastern Europe, the massive rise in immigration to the European Union in the late 1980s, and the increase of asylum- and conflict-related migration.

The "fight" against irregular migration has been a priority of European Union policies on immigration and asylum ever since the communitarisation of migration policies in the wake of the Amsterdam Treaty 1997, and the first five year policy plan in the area of migration and asylum announced at the Tampere summit in December 1999. Although over time, the evaluation of irregular migration and possible policy responses against it has been subject to change,³³⁹ by and large the focus has been on prevention and control. At the same time, irregular migration raises a number of humanitarian concerns which have received much less attention from policy makers so far. These include the precarious living and working conditions of undocumented migrants, which must be considered separately from the concern of enforcing legal regulations. To bring these two concerns together is a major challenge the European Union faces today.

In public perception, irregular migration is often predominantly associated with irregular border crossing – unlawful entry and subsequent irregular stay. In practice, the pathways into irregularity are more complex. In most countries, overstaying the validity of a visa or of a short term residence permit is a more important pathway into irregularity than irregular entry. Withdrawal or non-renewal of a legal status – for example, because residence requirements are no longer met or conditions of residence have been breached – is another important reason why migrants often lapse into irregularity, although in a number of countries humanitarian

333 FRA, Annual Report 2005, p. 35

334 Council Directive 2004/81/EC(1) (29.4.2004) on residence permits for victims of trafficking, and EU Directive 2003/9/EC (27.1.2003) on the reception of asylum seekers that defines that asylum seekers must be granted labour market access after 6 months of residence.

335 European Migration Network (2006) Synthesis Report for Small Scale Study I 'Reception Systems, their Capacities and the Social Situation of Asylum Applicants within the Reception System in the EU Member States'

336 COM (2007) 298 final. Council decision pending in June 2008.

337 Generally, although administrative practices may reinforce legal barriers defined by national legislations, there is little information about their impact on the implementation of Community law. FRA, Annual Report 2006, p. 50.

338 Ch. Joppke (1998) 'Immigration challenges the nation state', in: Ch. Joppke (ed.) *Challenge to the nation-state*, Oxford: Oxford University Press, pp. 5-46; See also website of the project 'Undocumented Migration: Counting the Uncountable Data and Trends Across Europe', available at: <http://www.eliamep.gr/en/ clandestino/> (25.11.2008)

339 M. Baldwin-Edwards, A. Kraler (2008) REGINE. *Regularisations in Europe. Study on practices in the area of regularisation of illegally staying third country-nationals in the Member States of the EU. JLS /B4/05. Vienna: ICMPD, chapter 3.*

provisions specifically attempt to prevent this. In particular in Northern and Western Europe, the failure of individual migrants to return after a negative asylum decision and non-enforceability of return for practical, technical or legal reasons has to be considered another major pathway into irregularity.³⁴⁰

Although undocumented persons are identified as a group particularly vulnerable to exploitation in employment, Member States largely 'remained passive' on this issue in the last years.³⁴¹ Undocumented migrants are particularly vulnerable to precarious living and working conditions as they lack legal entitlements to base their claims upon.

Although irregular migration, by its very nature, eludes comprehensive observation, there has been a growing number of research studies that have investigated irregular migration from both quantitative and qualitative angles. A recent quantitative study on irregular migration in the EU thus provides some indications on the size of the phenomenon. The study suggest that the number of irregular immigrants³⁴² in the EU-27 is considerably lower than previously believed and is likely to lie between 1.9 and 3.8 million in 2008. At the same time, the study also shows that the number of irregular immigrants has considerably decreased since 2002 – from between 3.1 and 5.3 million in 2002 to between 1.8 and 3.3 million in the EU-15, largely reflecting the impact of large-scale regularisations (some 1.8 million persons were regularised between 2002 and 2008), the regularising effect of enlargement and presumably also a decrease of new arrivals in the EU.

Various studies have also shown that, especially in the economies of Southern European countries, with their relatively large informal sector, undocumented migrants represent a large share of the migrant labour force.³⁴³ But also in other EU Member States undocumented migrants constitute a sizeable share of workers in particular sectors, although the situation varies greatly between different Member States, Even more so than documented third country nationals, undocumented

workers are concentrated in sectors that are characterized by a high degree of competition, flexibility, seasonality and low profit margins, such as construction, agri- and horticulture, domestic work, and catering and other hospitality services.³⁴⁴ These sectors generally show a significant involvement of foreign workers and record a high share of irregular employment. Undocumented persons are likely to occupy the least profitable, least-paid and most difficult and dangerous jobs. Non-payment of wages, non-compliance with workers' rights, and other forms of exploitations affect undocumented workers to a much higher degree than persons in a legal situation. Furthermore, they are much more dependent on their employers who may abuse their lack of a legal status to force them to conform to otherwise unacceptable working conditions.³⁴⁵ In this regard, the situation of minorities in some Member States also raises specific concern. Reports from Romania and Slovenia highlighted that it is specifically Roma persons who may lack identity papers. As a result, they and their families do not have access to employment, or to health and education services.³⁴⁶

As a result of a number of factors (the increasing labour force participation of native women, changing family patterns and forms of family solidarity in the wider society, the ageing of Europe's population and the associated increasing demand for care services) the domestic sector³⁴⁷ has drawn in an increasing number of migrants, many of them undocumented and the large majority of them female. Indeed, domestic workers have been among the main categories of irregular migrants regularised in various regularisation programmes in Southern European countries in the course of the 1990s and 2000s. At the same time domestic workers seem to be among the two groups most at risk of falling back into irregularity, which highlights the precarious nature of employment relationships in this sector (see also section 6.2.1.3 in the next chapter).³⁴⁸

Women are also more vulnerable to become victims of forced labour and human trafficking. An ILO research project in Germany found that among the 42 cases of forced labour identified, the majority of forced labour victims were female and worked in the sex business; men were mostly employed in the agriculture or construction

340 See F.Düvell (2009): Pathways into Irregularity: The Social Construction of Irregular Migration. Comparative Policy Briefs Clandestino Project. Available online at http://central.radiopod.gr/wp-content/uploads/2008/05/pdf_ic.png. The typology of pathways into irregularity is taken from A.Kraler & D. Reichel (2010): Irregular Migration Flows – Ever Increasing Numbers? Special Issue, International Migration (forthcoming)

341 FRA, Annual Report 2005, p. 99

342 The study defines irregular immigrants "as residents without any legal resident status in the country they are residing in, and those whose presence in the territory – if detected – may be subject to termination through an order to leave and/or an expulsion order because of their status." See D. Vogel (2009): Size and Development of Irregular Migration in the EU. Comparative Policy Briefs Clandestino Project. Available online at http://central.radiopod.gr/wp-content/uploads/2008/05/pdf_ic.png

343 See for example EUMC (2003) *Migrants, Minorities and Employment: Exclusion, Discrimination and Anti-Discrimination in 15 Member States of the European Union*, p. 53

344 Commission of the European Communities (2007) Commission Staff Working Document accompanying document to the proposal for a Directive providing for sanctions against employers of illegally staying third-country nationals – Impact assessment (16.5.2007), p. 7

345 M. Jandl, Ch. Hollomey, S. Gendera, A. Stepien, V. Bilger (2008) *Migration and Irregular Work in Austria. A case study of the structure and dynamics of irregular foreign employment in Europe at the beginning of the 21st century*, Amsterdam: Amsterdam University Press

346 FRA, Annual Report 2008, p. 12

347 Broadly defined as encompassing both housekeeping tasks and care work
348 A. Kraler (2010): Regularisation of Irregular Immigrants – An Instrument to Address Vulnerability, Social Exclusion and Exploitation of Irregular Migrants in Employment? *FRA Discussion Paper*: http://fra.europa.eu/fraWebsite/products/publications_reports/studies_discussion_papers/studies_discussion_papers_en.htm

sector.³⁴⁹ While only a few cases involved outright violence (e.g. sexual exploitation), a larger number of persons were affected by some form of coercion, such as for example the threat by the employer to be reported to the authorities, holding back the passport, non-payment of wages, etc. Again, particularly women who were forced to work in the sex industry reported having been exposed to physical violence.³⁵⁰ Hence, the irregular status of migrants shapes conditions conducive to coercion of migrant workers.³⁵¹

Based on the analysis that irregular employment presents one of the main 'pull factors' for irregular immigration³⁵² a proposal to harmonise sanctions against employers of unlawfully staying third country nationals was adopted by the Commission in 2007.³⁵³ Although the Employer Sanctions Directive raised a variety of concerns from civil society organisations, trade unions and others, the shift from penalising undocumented migrants to sanctioning employers represents a marked change in policy focus. In addition, it also sends an important message to the public, who in many Member States have almost exclusively put the blame on migrants for being in an undocumented situation and engaging in irregular work.³⁵⁴ Despite this shift in policy focus, however, addressing vulnerability and exploitation of undocumented migrants is still not a major priority in EU policies on irregular migration.

However, the European Union, in trying to improve access to legal migration in parallel with measures combating irregular migration, has recognized that legal and irregular migration are closely interrelated. Measures to improve the legal security of third country nationals may be regarded as doing both simultaneously. As noted in the previous section, however, European debates and legislative action in this field so far stretch mainly to persons who are long-term legal residents, and to persons seeking international protection. The situation of the majority of persons most vulnerable to lose their legal status, and those resident on European territory for years, even if undocumented, thus has not been tackled

comprehensively. Contrary to the increasing realization that irregular migration cannot be sharply separated from either legal migration or asylum related migration, irregular migration is still generally treated as a distinct phenomenon, and is excluded when, for instance, issues such as social cohesion, integration and discrimination are addressed.³⁵⁵

349 N. Cyrus (2005) *Menschenhandel und Arbeitsausbeutung in Deutschland*. Sonderaktionsprogramm zur Bekämpfung der Schwarzarbeit, Geneva: ILO

350 Germany, Bundeskriminalamt (2003) 'Lagebild Menschenhandel 2003'

351 International Labour Office (2005) *A Global Alliance Against Forced Labour*. Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and rights at Work, Geneva: ILO, pp. 48-50

352 European Commission (2000) *Communication from the Commission to the Council and the European Parliament on a Community immigration policy (COM (2000)757 final)*, p. 12

353 In 2007, all European Member States except for the UK already foresee administrative fines for employers who are illegally employing third country nationals, even if to a very different extent (see: Commission of the European Communities (2007) *Commission Staff Working Document accompanying document to the proposal for a Directive providing for sanctions against employers of illegally staying third-country nationals – Impact assessment (16.5.2007)*, pp. 76-85).

354 See for example FRA, *Annual Report 2006*, p. 51

355 FRA, *Trends and developments report 1997-2005*, p. 14

6. The situation of migrant and minority women in employment

The principle of equal treatment of women and men has been anchored in the European Union since its very establishment. However, women still face considerable disadvantages and marginalisation on the labour market: the employment rate of women still ranges under the targeted 60 per cent in the Lisbon Employment Targets, and in 2005 women in the European Union were on average earning 15 per cent less than men per working hour.³⁵⁶ These inequalities can only partly be traced back to objective reasons, such as educational or professional differences. If women are concentrated in particular segments of the labour market, it is to a large extent due to their being assigned to professions and sectors which were traditionally dominated by women and which are still today less valued. Likewise, the concentration of women in lower positions, or the higher share of female part-timers in total employment (7.4 per cent of men against 32.6 per cent of women are employed part-time in the EU) point to structural inequalities.³⁵⁷

The European Union addresses this 'complex and persistent problem'³⁵⁸ in the Roadmap for Equality between Women and Men 2006-2010.³⁵⁹ On the basis of this roadmap, the European Pact for Gender Equality has been adopted in 2007.³⁶⁰ The pact focuses on six priority areas (equal economic independence, reconciliation of private and professional life, equal representation in decision-making, eradication of all forms of gender-based violence, elimination of gender stereotypes, promotion of gender equality in external and development policies) that are considered particularly significant for achieving gender equality, and most of which bear relevance also in the area of employment.

Migrant and minority women may be even more vulnerable to discrimination in employment than majority women or migrant and minority men. They experience discrimination not only due to their gender, but may be subject to multiple discrimination on several grounds, such as gender *and* ethnic or national background, legal status, skin colour, religion, etc. Their experiences of discrimination may therefore be qualitatively different

from the experiences of their male counterparts. In light of this, the Roadmap acknowledges the need to promote gender equality also in regard to migration and integration policies 'in order to ensure women's rights and civic participation, to fully use their employment potential and to improve their access to education and lifelong learning'.³⁶¹ In the European Pact for Gender Equality however the specific situation of migrant and minority women was no longer addressed. Furthermore, the single-ground approach European anti-discrimination law is committed to today has been criticised as unsuitable to respond to the multiple and intersecting forms of discrimination migrant and minority women may face. As a result, migrant and minority women are not only marginalised in employment, but also in political discourses and regulations on gender equality, migration and integration, and non-discrimination.

6.1. The concept of multiple and intersectional discrimination

In recent years, EU anti-discrimination legislation has been expanded and now addresses a fairly broad range of grounds of discrimination. However, it still perceives claimants as uni-dimensional subjects who belong to one main identity group only and thus experience discrimination on one main ground.³⁶² Thus, it is common to think of women, or migrant groups and ethnic minorities, as homogenous groups whose members in principle share similar experiences of discrimination. As a consequence, it is all but impossible in current legal practice to bring allegations of discrimination on multiple grounds before court (see also Chapter 3). Also in policy practice, the focus tends to be on collective target groups, disregarding differences within the group and thereby often overlooking the specific problems faced by those who find themselves at the intersection of two or more axes of differentiation.

In the early 1990s, Kimberlé Crenshaw was one of the first to criticise this single-ground approach which shapes anti-discrimination legislation.³⁶³ In pointing to the multi-dimensionality of any person's identity she claimed that a person may experience discrimination on

356 European Commission (2007) Communication 'Tackling the pay gap between women and men' (COM(2007)424 final (18.7.2007)), pp. 1/f

357 European Commission (2006) Communication 'A roadmap for equality between women and men 2006-2010' (COM(2006)92 final (1.3.2006)), p. 5

358 European Commission (2007) Communication 'Tackling the pay gap between women and men' (COM(2007)424 final (18.7.2007)), p. 2

359 European Commission (2006) Communication 'A roadmap for equality between women and men 2006-2010' (COM(2006)92 final (1.3.2006))

360 Council of the European Union (2006) European Pact for Gender Equality, Annex II, in: Presidency Conclusions – 23/24 March 2006, Brussels European Council, available at: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/en/ec/89013.pdf (26.11.2008)

361 European Commission (2006) Communication 'A roadmap for equality between women and men 2006-2010' (COM(2006)92 final (1.3.2006)), p. 4

362 European Commission (2007) Tackling Multiple Discrimination – Practices, Policies and Laws, Luxembourg: Office for Official Publications of the EC

363 K. Crenshaw (1993) 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics', in: D.K. Weisenberg (ed.) *Feminist Legal Theory: Foundations*, Philadelphia: Temple

more than one ground simultaneously. In addition, these grounds may interact and thus become inseparable. Crenshaw introduced the concept of 'multiple' discrimination, which refers to situations in which two or more grounds of discrimination add up – the more a person deviates from the norm, the smaller are her/his chances to be, for example, appointed for a job.³⁶⁴ Thus, a migrant or ethnic minority woman may be put at double disadvantage in comparison to her competitors because she is a woman and because of her ethnic background. The different grounds of discrimination are additive in nature, and can still be treated separately. However, in other cases several grounds of discrimination are interconnected so as to constitute a unique situation that is distinct from any single form of discrimination. Crenshaw described such cases as 'intersectional' discrimination. When several grounds of discrimination intersect, migrant and minority women may face a 'qualitatively different experience'³⁶⁵ from that of majority women or migrant and minority men.

Multiple or intersectional discrimination may in principle affect all persons. Migrant and minority women are particularly vulnerable as they embody two grounds of persistent discrimination, namely gender and ethnicity. But men may experience multiple discrimination on the basis of the same two categories too. Thus, in the current context many young Muslim wearing a religious dress and a beard may experience discrimination because of suspicions of associations with radicalism – a suspicion that would not have applied equally to Muslim women, or to persons with a different religious and ethnic background.³⁶⁶ The mechanisms inherent to multiple and intersectional discrimination thus are multi-faceted and have to be accounted for on a case-by-case basis.

6.2. Complex experiences of discrimination – The situation of migrant and minority women in employment

Migrant and minority women find themselves at the intersections of gender inequalities on the one hand, and inequalities between the native and immigrant/ethnic minority population on the other. While women are generally worse off in terms of labour market participation, income and occupational

level, migrant and minority women are even more affected by these structural inequalities. Within the migrant and ethnic minority community they are attributed to, women also perform significantly worse than their male counterparts. Data on income differentials from Austria and the UK show that the pay gap between female and male immigrants is higher than that between the native and immigrant population.³⁶⁷ A study by the RAND Corporation titled 'Migrant women in the European labour force. Current situation and future prospects' (2008)³⁶⁸ on the basis of LFS data identifies third-country migrant women as specifically disadvantaged in terms of their labor market participation. Their labor force participation rate, employment and unemployment rates are substantially higher than those of migrant women from EU countries, native-born women, and third-country men.³⁶⁹ However, the study also shows significant differences between the various EU countries: Thus, in traditional migrant-receiving countries (Austria, Belgium, France, Luxembourg, the Netherlands, the UK) the labour force participation rate of third-country women is substantially lower than that of native-born women, while it is equal or even higher in 'new' receiving countries (EL, ES, PT). The Nordic countries (DK, SE) show similar figures as the traditional receiving countries, despite differing in their migration history. Only in the new Member States (CY, CZ, HU) does no clear picture emerge.

The study also highlights another interesting aspect that has only received little attention so far and may put the data presented in the above into perspective: By considering the phenomena of underemployment (defined as involuntary part-time employment) and temporary-contract employment, it is demonstrated that 'even when migrant women are actually employed, the quality of their employment tends to be poor, exposing them to social and economic vulnerability'³⁷⁰ This is especially true for the 'new' migrant-receiving countries, where migrant women are relatively well integrated into the labour market, yet often in temporary or insecure positions.

Generally, the identified gaps between the labour force participation rate of foreign- and native-born women are specifically high in the initial 5 to 10 years of stay,

364 G. Moon (2008) Multiple discrimination: the need for justice for the whole person, available at: http://www.era.int/web/en/html/nodes_main/4_1649_490/4_1087_539/5_1070_66/5_1070_7701.htm (26.11.2008)

365 S. Hannett (2003) 'Equality at the Intersections: The Legislative and Judicial Failure to Tackle Multiple Discrimination', in: *Oxford Journal of Legal Studies*, Vol.23, No.1, p. 68&f

366 See for an example European Commission (2007) *Tackling Multiple Discrimination – Practices, Policies and Laws*, Luxembourg: Office for Official Publications of the EC, p. 21

367 EUMC (2003) *Migrants, Minorities and Employment: Exclusion, Discrimination and Anti-Discrimination in 15 Member States of the European Union*, p. 41

368 J. Rubin, M.S. Rendall, L. Rabinovich, F. Tsang, C. van Oranje-Nassau, B. Janta (2008) *Migrant women in the European labour force. Current situation and future prospects*, Cambridge: RAND Corporation

369 The large majority of female migrant workers comes from third countries, except for Luxembourg and Belgium.

370 J. Rubin, M.S. Rendall, L. Rabinovich, F. Tsang, C. van Oranje-Nassau, B. Janta (2008) *Migrant women in the European labour force. Current situation and future prospects*, Cambridge: RAND Corporation, p. xxi

but are reduced or even vanish thereafter.³⁷¹ Even highly skilled women from third countries are confronted with major disadvantages on the European labour markets: although labour market integration improves with a higher skill level, the labour force participation rates and unemployment rates of highly skilled foreign-born women are significantly worse than that of native-born or EU migrant women. Furthermore, foreign-born women are affected twice as much by de-skilling than are the latter groups.³⁷²

As a result of legal barriers but also of structural discriminations European labour markets are highly segregated along ethnic and gender lines: migrant and minority women largely occupy those jobs least valued, least paid and which offer least security in the sectors that are generally dominated by foreign workers, such as agriculture, tourism and catering, but also the care and cleaning sector.³⁷³ Those sectors are characterised by high flexibility, seasonality, poor working conditions, low payment and preponderance of unskilled tasks. In addition, these sectors show a high proportion of irregular working activities, especially the domestic sector, which offers most employment opportunities to migrant women.

6.2.1. Differences 'within' – Civic stratifications among migrant and minority women

In addition to these main axes of differentiation – gender and national or ethnic origin – the group of migrant and minority women is further stratified by other factors, such as legal status, qualification, skin colour, religious clothing, etc. All those characteristics interact and may produce crucially different situations for women embodying different individual traits and occupying different social strata. A Spanish study demonstrated that migrant women had to accept jobs below their level of qualification more often than migrant men and that they found employment mostly in the domestic sphere. Particular groups, such as Roma, Moroccan or Sub-Saharan women, were found to be most vulnerable to such mechanisms of stratification.³⁷⁴ Similarly, another Spanish study showed that significantly more women from Latin American, African and Asian countries were employed as home helps than migrant women from EEA states (26 per cent in contrast to 0.06 per cent).³⁷⁵

A study from Portugal on the three largest immigrant groups (immigrants from Portuguese-speaking African countries,³⁷⁶ Brazil, and Eastern Europe) revealed that the unemployment rate for women of all three groups taken together was higher than for native women, but within the researched groups women from Portuguese-speaking African countries showed the highest unemployment rates, followed by women from Brazil and only then by women from Eastern European countries.³⁷⁷

6.2.1.1. Intersectional discrimination and the headscarf

An example for the difficulties in attributing certain forms of discrimination to a single ground is discriminations against Muslim women wearing the headscarf. While the headscarf is a much contested symbol all over Europe, the issue of discrimination against women wearing the headscarf receives much less attention. Complaints of such discrimination are particularly hard to prove as the ground or grounds on which the discrimination took place are not easy to identify, but may involve gender, religion, or ethnic discrimination or a combination of those. In addition, a kind of 'legal discrimination' (selective bans of wearing the Islamic headscarf) also plays a role, and apart from the impact on those directly affected, has the potential to affect public perceptions of the headscarf issue, and to increase the 'acceptability' of such discrimination against women.

The results of an EU funded research project on policies and discourses on the Islamic headscarf³⁷⁸ point to the great variety among European states with regard to legislation and regulation on the Muslim headscarf. While countries such as Austria, Denmark, Greece and the United Kingdom have introduced no explicit legislation, France and certain German federal states have prohibited teachers and other civil servants from wearing the Muslim headscarf. In the Netherlands, specific decrees on clothing apply to the police, judiciary, ministries, etc.³⁷⁹ In contrast, in Sweden members of the police force are allowed to wear a turban, headscarf or Jewish kippah in order to avoid sex- or religious discrimination, and in the UK there is also flexibility in the police on this issue.³⁸⁰

371 J. Rubin, M.S. Rendall, L. Rabinovich, F. Tsang, C. van Oranje-Nassau, B. Janta (2008) *Migrant women in the European labour force. Current situation and future prospects*, Cambridge: RAND Corporation, pp. xv-xvii
 372 J. Rubin, M.S. Rendall, L. Rabinovich, F. Tsang, C. van Oranje-Nassau, B. Janta (2008) *Migrant women in the European labour force. Current situation and future prospects*, Cambridge: RAND Corporation, p. xxiii
 373 EUMC (2003) *Migrants, Minorities and Employment: Exclusion, Discrimination and Anti-Discrimination in 15 Member States of the European Union*, p. 33
 374 FRA, Annual Report 2003-2004, p. 75
 375 Pajares, Miguel (2004) *Inserción laboral de la población inmigrada en Catalunya*. Informe 2004, Barcelona: CCOO-CERES

376 Angola, Cape Verde, Guinea Bissau, Equatorial Guinea, Mozambique and São Tomé and Príncipe, referred to as PALOP in Portuguese.
 377 J. Peixoto et al. (2005) *O tráfico de Migrantes: perspectivas sociológicas, jurídicas e políticas*, Lisboa: Observatório da Imigração
 378 <http://www.veil-project.eu/> (26.11.2008) Note that in some countries the headscarf is known as the 'veil', although in British English usage the term 'veil' more normally suggests a covering of the face.
 379 S. Berghahn (2008) *Judicial expertise on current regulations as well as on explanations for varieties in regulations and in the framing of European headscarf debates*, pp.13-14, available at: <http://www.veil-project.eu/> (26.11.2008)
 380 FRA, Annual Report 2007, p. 74

National headscarf bans have been criticised as indirect discrimination on the grounds of sex and religion, as they affect women more than men and Muslims more than Christians. The headscarf bans in some federal states of Germany may even be regarded as direct religious discrimination as they include an exception clause for 'Christian-occidental' symbols.³⁸¹

Beside the legislative level, there is evidence that Muslim women wearing the headscarf experience discrimination as a 'visible minority' on grounds of gender and religion. A report by the European Commission entitled 'Tackling Multiple Discrimination' reports the case of a nurse who is continuously confronted with prejudices and negative comments by her colleagues and clients because of wearing the headscarf. Furthermore, some cases of denying a specific job to women with headscarf lack sufficient justification and may therefore be regarded as discriminatory. The exclusion of women wearing the headscarf from jobs that involve customer contact is a case in point.³⁸² An incident which occurred in Austria clearly illustrates a case of intersectional discrimination. There, an employer of a cleaning company threatened some female employees that he would withdraw their social security payments if they would not remove their headscarves.³⁸³

6.2.1.2. The specific situation of Roma women

In a resolution adopted in 2006, the European Parliament called for attention for the specific situation of Roma women in the EU and for concrete action by national governments and EU institutions to improve this situation. The Parliamentary Rapporteur pointed out that Roma women are still amongst those most vulnerable to human rights abuses, exclusion of health services, discrimination and unemployment.³⁸⁴ There is ample evidence that Roma women are assigned the least valued jobs and generally find a very limited range of jobs available to them. A survey from Slovenia from the years 2005-2006 showed that 67 per cent of the Roma population in general, but 78 per cent of Roma women have never been employed before.³⁸⁵ Racist and sexist stereotypes often lie at the root of such patterns of inequality. In the

Czech Republic and Latvia, cases were brought to court in which Roma women were refused a job as salesperson only because of their ethnic origin.³⁸⁶ Reports by two Spanish NGOs demonstrated how stereotypes of Roma women on the one hand and their socioeconomic marginalisation on the other hand may mutually reinforce each other and ultimately lead to a vicious circle of precariousness. The NGO SOS Racismo revealed that employment chances for Roma women are limited due to widespread prejudice of them being 'lazy' and unwilling to work; yet at the same time, this prejudice stems from and is nurtured by the fact that Roma women are almost exclusively employed in the informal labour market, particularly in domestic work, and are therefore invisible on the labour market.³⁸⁷ Additionally, the largely irregular nature of their employment poses an obstacle to the obtainment or retention of a regular residence status.³⁸⁸

6.2.1.3. The case of domestic workers

Due to labour market restrictions, negative stereotyping of migrant women and their insecure legal position, work in the domestic sphere is often the only niche where migrant and minority women can find employment. Domestic and housekeeping tasks that were traditionally performed by female family members are increasingly performed by immigrant women. Bridget Anderson argues that demand and supply factors contribute equally to this development. As a result of the growing labour market participation of women, the demand for paid domestic labour has increased. On the supply side, the availability of cheap labour provided by migrant workers has made it possible for a rising number of private households to employ domestic personnel. Despite the indispensable contribution of migrant workers to the national health system, their work is not equally valued and hence is not rewarded with equal pay.³⁸⁹ Jobs in the domestic sphere are not recognised as productive work and range among those least-paid, with most insecure and often irregular working conditions. In 2005, the Cypriot National Equality Body reported that migrant domestic workers earned as little as one-fifth compared to native domestic workers, which was clearly condemned as discriminatory treatment.³⁹⁰ Research done in Italy in 2005 and 2007 revealed that in the domestic and care sector, which almost exclusively employs women, wages were lower than in other sectors

381 S. Berghahn (2008) Judicial expertise on current regulations as well as on explanations for varieties in regulations and in the framing of European headscarf debates, p. 9, available at: <http://www.veil-project.eu/> (26.11.2008)

382 European Commission (2007) *Tackling Multiple Discrimination – Practices, Policies and Laws*, Luxembourg: Office for Official Publications of the EC, p. 42

383 FRA, Annual report 2007, p. 54

384 Committee on Women's Rights and Gender Equality (2006) Report on the situation of Roma women in the European Union (2005/2164(INI) (25.4.2006)), available at: <http://www.europarl.europa.eu/sides/getDoc.do?objRefId=115178&language=EN> (26.11.2008)

385 N. Babič Ivaniš, S. Urh, V. Klopčič, M. Adamič (2006) 'Raziskava izobraževalnih in poklicnih interesov Romov', in: N. Žagar, V. Klopčič (eds.) *Poklicno informiranje in svetovanje za Rome – PISR*, Črnomelj: Zavod za izobraževanje in kulturo, pp. 223-225

386 FRA, Annual Report 2007, pp. 48/52

387 L. Azevedo, S. Duarte, A. Cruz (2005) Inquérito às "Cámaras Municipais sobre mulheres imigrantes e pertencentes a minorias étnicas" Imigração e Etnicidade. *Vivências e trajetórias de Mulheres em Portugal*, Lisboa: SOS Racismo pp. 11-28

388 E. Sertório, F.S. Pereira (2004) *Mulheres Imigrantes*, Lisboa: Ela por Ela, p. 41

389 B. Anderson (2001) Reproductive Labour and Migration (WPTC-02-01), available at: <http://www.transcomm.ox.ac.uk/working%20papers/WPTC-02-01%20Anderson.doc.pdf> (26.11.2008)

390 Greece, Ombudswoman (2005) Ombudswoman. Report File No. A.K.I 2/2005, p. 4.

dominated by migrant workers.³⁹¹ Domestic workers from the Philippines and Peru showed the lowest vertical mobility in comparison to all other domestic workers.³⁹²

This under-valuation of domestic work is reflected in states' employment models, such as the au-pair system: the mostly young and female migrant workers are defined as 'guests' who receive 'pocket money' instead of a salary.³⁹³ Similarly, standard contracts for home helps often explicitly leave out basic workers' rights, such as the right to trade union membership (as in the United Kingdom, Cyprus, and Greece) and set very low minimum wages.³⁹⁴ The Spanish National Focal Point criticised the fact that migrants as well as native home helpers are not entitled to unemployment benefits, and are de facto not entitled to paid sick leave either.³⁹⁵ Bridget Anderson identifies such forms of disfranchised employment models as 'sticking plaster' with which states try to accommodate the increasing demand for domestic labour, while keeping its costs low.³⁹⁶

Generally, despite the high demand for domestic services, many states apply entry quotas to domestic workers or do not grant them work visas at all.³⁹⁷ Partly as a result of these restrictive entry policies, many migrant domestic workers do not have a regular residence status, which in turn compels them to accept irregular employment. The high share of irregular labour in domestic work is also enhanced by the under-regulation of this sector.³⁹⁸ In 2003, an ILO study revealed that out of 65 countries studied, only 19 had adopted specific laws and regulations on domestic work.³⁹⁹ In general, there is little possibility and even less political will to control for compliance with workers' rights, covering aspects such as working time and level and payment of wages, of domestic workers in private households.⁴⁰⁰ The

vulnerability of migrant domestic workers to exploitative and irregular working conditions is reinforced by their often insecure or irregular residence status. While the employee in case of worksite checks risks being expelled, employers only runs the risk of a financial fine, if they face sanctions at all.⁴⁰¹ This legal insecurity reinforces the degree of dependency in the employer-employee relationship. The fact that in many countries it is the responsibility of the employer to apply for a work visa further contributes to this dependency.⁴⁰² A study by the International Labour Office in 2005 showed that due to 'the unprotected nature of their work and the highly personalised relationship between the workers and the employer', domestic workers are most vulnerable to forced labour and experience forms of coercion that may even involve physical violence.⁴⁰³

The degree of dependency is especially high in 'live-in' arrangements, when the employee lives in the household of the employer and is de facto available 24 hours a day. According to Bridget Anderson such forms of domestic work predominate in Southern European countries which are generally characterised by a high share of informal work, and by a high feminisation of this informal sector. As the worker is defined as 'part of the family', the boundary between paid work and unpaid leisure time, formal and informal work is specifically blurred in such arrangements. As several research projects on the situation of migrant domestic workers in Austria have shown, such live-in arrangements may be beneficial only to circular migrants – to women whose centre of life still lies in their country of origin. All others would prefer a so-called live-out arrangement that would allow for more personal freedom and privacy, an increased control over their working hours and a clearer definition of work duties. In addition, live-out arrangements are generally better rewarded than live-in arrangements.⁴⁰⁴ On the other hand, live-out domestic work demands high flexibility from the workers as they may have to co-ordinate several jobs at the same time. Such flexible and insecure working arrangements make it particularly difficult for migrant women to reconcile private and work life,⁴⁰⁵ which is one of the priorities in the European Pact for Gender Equality.

In conclusion, in order to address the situation of migrant women in the labour market comprehensive measures

391 F. Di Maggio, A. Fucillitti (eds.) (2006) 'Immigrants' wages', in: Caritas/Migrants (2006) *Immigration. Statistical Dossier 2006*. XVI Report, Rome: Idos, p. 281

392 Raxen National Focal Point Italy, National data collection report Italy 2005, p. 6

393 B. Anderson (2001) Reproductive Labour and Migration (WPTC-02-01), available at: <http://www.transcomm.ox.ac.uk/working%20papers/WPTC-02-01%20Anderson.doc.pdf> (26.11.2008), p. 4

394 FRA, Annual report 2006, p. 51

395 An entitlement only emerges after an excessively long period of 28 days of sick leave (Raxen National Focal Point Spain, National Data Collection Report 2003, p. 33).

396 B. Anderson (2001) Reproductive Labour and Migration (WPTC-02-01), available at: <http://www.transcomm.ox.ac.uk/working%20papers/WPTC-02-01%20Anderson.doc.pdf> (26.11.2008), p. 4

397 B. Anderson (2001) Reproductive Labour and Migration (WPTC-02-01), available at: <http://www.transcomm.ox.ac.uk/working%20papers/WPTC-02-01%20Anderson.doc.pdf> (26.11.2008), p. 7

398 See for example Ireland, MRCI (2006) MRCI Annual Report 2006

399 International Labour Office (2005) *A Global Alliance Against Forced Labour. Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and rights at Work*, Geneva: ILO, p. 50

400 M. Jandl, Ch. Hollomey, S. Gendera, A. Stepien, V. Bilger (2008) *Migration and Irregular Work in Austria. A case study of the structure and dynamics of irregular foreign employment in Europe at the beginning of the 21st century*, Amsterdam: Amsterdam University Press

401 S. Gendera, B. Haidinger (2007), 'Ich kann in Österreich als Putzfrau arbeiten. Vielen Dank, ja.' Bedingungen der bezahlten Haushalts- und Pflegearbeit von Migrantinnen, in: *grundrisse*, Oktober 2007, p. 3

402 B. Anderson (2001) Reproductive Labour and Migration (WPTC-02-01), available at: <http://www.transcomm.ox.ac.uk/working%20papers/WPTC-02-01%20Anderson.doc.pdf> (26.11.2008), p. 7

403 International Labour Office (2005) *A Global Alliance Against Forced Labour. Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and rights at Work*, Geneva: ILO, p. 50

404 S. Gendera, B. Haidinger (2007), 'Ich kann in Österreich als Putzfrau arbeiten. Vielen Dank, ja.' Bedingungen der bezahlten Haushalts- und Pflegearbeit von Migrantinnen, in: *grundrisse*, Oktober 2007, p. 1

405 See also: <http://research.icmpd.org/1282.html>

are needed, as the specific situation of migrant women is related to a multiplicity of factors, such as gender, national or ethnic origin, education and skill level, language proficiency, number of children, but also to structural characteristics, such as legal barriers and discrimination.⁴⁰⁶ Although the situation of migrant and minority women in employment is distinct from any other group, anti-discrimination as well as immigration regulations by and large neglect their specific situation. Migrant and minority women, although not at all a homogenous group, experience discriminations that are 'qualitatively different' to discrimination experiences of male immigrants, but also of majority women. Their situation is thus exemplary for the need to acknowledge multiple and intersectional discrimination in European anti-discrimination law.

In addition, the legally insecure situation of migrant domestic workers demonstrates the need to provide legal employment models that do not create double standards for natives or long-term residents on the one hand, and short-term workers on the other. Migrants without a secure legal position are vulnerable to exploitation which may degenerate into outright coercion. The study on female migrants in employment by the RAND Corporation demands action particularly in two areas: immigration and integration policies need to facilitate migrant women's access to permanent employment, as well as to positions at their skill level.⁴⁰⁷ In order to achieve the targets defined in the European Pact for Gender Equality, both equality policies *and* immigration policies must consider the specific situation of migrant and minority women.

406 J. Rubin, M.S. Rendall, L. Rabinovich, F. Tsang, C. van Oranje-Nassau, B. Janta (2008) *Migrant women in the European labour force. Current situation and future prospects*, Cambridge: RAND Corporation, p. xxiv

407 J. Rubin, M.S. Rendall, L. Rabinovich, F. Tsang, C. van Oranje-Nassau, B. Janta (2008) *Migrant women in the European labour force. Current situation and future prospects*, Cambridge: RAND Corporation, p. xxv

Conclusions

Conclusions on some common and some specific problems in relation to discrimination in employment

Data collection and research

Data collection practices and data availability still differs greatly between the Member States. Often, different Member States use different concepts to identify migrants and ethnic minorities. The report concludes that there are still severe limitations to the comparability of existing data on discrimination and more general data on labour market outcomes of migrants and minorities, both between Member States and regarding comparability within Member States. Yet there is ample evidence that inequalities between the socioeconomic situation of the overall population and the foreign, migrant and ethnic minority population persists, including that of un/employment rates, wages, working conditions, etc. The causes of labour market inequality are complex and structural and it would be naïve to expect radical changes within short periods of time or immediate large-scale changes in response to policy measures addressing inequality in employment. As a corollary, policy measures addressing inequality in employment need to follow a comprehensive approach and address different dimensions contributing to vulnerability in employment.

Racial/ethnic discrimination in employment: the EU law

The European Equality Directives have now by and large been transposed into national law. Even if full and correct transposition in all 27 Member States is yet to be achieved, the Directives have contributed to clarifying and strengthening legal measures against discrimination throughout the European Union.

Indicators of discrimination – incidents and court cases

During the period covered by this report, specialised bodies, equality tribunals and judicial courts throughout the EU have dealt with cases covering all types of discrimination and the whole scope of the Equality Directives. While doing so, they have also advanced different interpretations of several sensitive issues related to the directives, such as the shift of burden of proof, instruction to discrimination, responsibility of employers for the behaviour of their employees, addressing multiple discrimination, use of discrimination testing as evidence in court, etc. However, though the

total number of complaints of discrimination reported and processed during 2003-2007 has increased as compared to the previous years, probably as a direct consequence of the advances in the implementation of the Equality Directives in the Member States, there is still a low amount of case law on racial/ethnic discrimination in employment. This situation points towards several legal, administrative, technical and perceived barriers to access to justice. A central factor seems to lie in the efficiency of the equality bodies in a number of countries that are either not fully effective, have limited powers, or do not make full use of their powers. Another problem, as shown by the FRA's 2008 EU-MIDIS study, is that the majority of those migrants and minorities who are vulnerable to discrimination are still not aware of the legal remedies and bodies that might be drawn upon to assist them in cases of discrimination.

Indicators of discrimination – research evidence on discrimination

In the past years considerable research has been carried out on discrimination in the area of employment, although it is generally subject to certain limitations and problems (e.g. data gaps). Existing studies point both directly and indirectly towards the existence of significant discrimination against migrants and minorities. Discrimination on grounds of ethnicity and 'race' is part of social reality; however, much more research – especially cross-national and longitudinal – is needed to raise awareness and to understand and combat the phenomenon of discrimination in employment in a comprehensive manner.

Legal status and vulnerability

Legal restrictions and insecurities may render a person more vulnerable to exploitation in employment and contribute to his or her marginalisation in socioeconomic life. One such area of concern is the employment of non-nationals in the public sector – although most countries have made efforts to bring their national laws in line with EU law, there are still significant grey areas of application and inconsistencies in regard to the implementation of the EU Free Movement Directive into national laws.

Third country nationals are generally among those most affected by legal discriminations and related mechanisms of civic stratification. The close interrelationship between the residence and employment status inherent in immigration regulations may render migrants unable to obtain a more secure socioeconomic position over time and hence lead to a 'vicious circle' of precariousness

and uncertainty. This applies in particular to migrants not covered by the Long-Term Residence Directive (2003/109/EC).

The specific situation of migrant and minority women in employment

Migrant and minority women face significant structural disadvantages on the labour market in comparison with the majority of women and both minority and majority men. The share of migrant and minority women who occupy the least-paid and least-skilled jobs in the most marginalized segments of the labour market is larger than among migrant and minority men. However, anti-discrimination as well as immigration regulations by and large neglect the specific situation of migrant and minority women. They find themselves at the intersections of two or more axes of differentiation and may experience discrimination on more than one ground. Their situation vividly shows the need to address multiple and intersectional discrimination in European anti-discrimination law. The domestic services sector stands out as a sector in which women not only constitute a large majority of those employed, but where women are also highly vulnerable. Informal employment is particularly widespread in this sector, while the insecure legal position of many migrant domestic workers contributes to their vulnerability to exploitation and even to outright coercion.

Statistical Annex

Table A1: Total and foreign population in EU Members States

Country	Total population	Foreign population (2007)		Foreign population non-EU (2007)		Foreign-born population (2005)		Foreign-born non-EU (2005 estimated)	
		Total	%	Total	%	Total	%	Total	%
BE	10,584,534	932,161	8.8	300,816	2.8	1,186,000	11.4	575,000	5.5
BG	7,679,290	25,500*	0.3	21,690*	0.3	104,000	1.3	-	-
CZ	10,287,189	296,236	2.9	186,370	1.8	453,000	4.4	109,000	1.1
DK	5,447,084	278,096	5.1	196,877	3.6	389,000	7.2	273,000	5.0
DE	82,314,906	7,255,949	8.8	4,788,792	5.8	10,144,000	12.3	-	-
EE	1,342,409	236,400	17.6	229,709*	17.1	202,000	15.2	192,000	14.4
EL	11,171,740	887,600*	7.9	729,840*	6.5	974,000	8.8	760,000	6.9
ES	44,474,631	4,606,474*	10.4	2,856,796	6.4	4,790,000	11.1	3,385,000	7.8
FR	63,392,140	3,650,100*	5.8	2,369,540*	3.7	6,471,000	10.7	4,346,000	7.2
IE	4,312,526	452,300	10.5	141,156	3.3	585,000	14.1	156,000	3.8
IT	59,131,287	2,938,922	5.0	606,188	1.0	2,519,000	4.3	-	-
CY	778,684	118,100	15.2	47,184*	6.1	-	-	-	-
LV	2,281,305	432,951	19.0	426,687	18.7	449,000	19.5	406,000	17.6
LT	3,384,879	39,687	1.2	37,354	1.1	165,000	4.8	154,000	4.5
LU	476,187**	198,213	41.6	27,227	5.7	174,000	37.4	-	-
HU	10,066,158	167,873	1.7	66,827	0.7	316,000	3.1	116,000	1.1
MT	407,810	13,877	3.4	4,610*	1.1	11,000	2.7	7,000	1.7
NL	16,357,992	681,932	4.2	437,014	2.7	1,736,000	10.6	1,382,000	8.4
AT	8,298,923	826,013	10.0	550,129	6.6	1,234,000	15.1	745,000	9.1
PL	38,125,479	54,883	0.1	30,955	0.1	703,000	1.8	462,000	1.2
PT	10,599,095	434,887	4.1	339,295	3.2	764,000	7.3	586,000	5.6
RO	21,565,119	26,069	0.1	20,095	0.1	103,000	0.6	-	-
SI	2,010,377	53,555	2.7	50,549	2.5	167,000	8.5	153,000	7.8
SK	5,393,637	32,130	0.6	12,912	0.2	124,000	2.3	18,000	0.3
FI	5,276,955	121,739	2.3	79,277	1.5	156,000	3.0	93,000	1.8
SE	9,113,257	491,996	5.4	266,509	2.9	1,117,000	12.4	559,000	6.2
UK	60,852,828	3,659,900*	6.0	2,203,028*	3.6	5,408,000	9.1	3,816,000	6.4

Source(s): Foreign population: Eurostat database, <http://epp.eurostat.ec.europa.eu>, data extracted on: 27.11.2008, * Eurostat estimate, ** Estimated value; Foreign-born population: R. Münz, T. Straubhaar, F. Vadean, N. Vadean (2006): What are the migrants' contributions to employment and growth? A European approach, Migration Research Group, HWWI, p. 21.

Table A2: Estimates on Roma in European countries

Country	Minimum	Maximum
AT	20,000	30,000
BE	25,000	35,000
CY	1,000	1,500
CZ	200,000	250,000
DK	2,000	4,000
EE	1,000	1,500
FI	9,000	12,000
FR	300,000	400,000
DE	110,000	140,000
EL	180,000	250,000
HU	550,000	650,000
IE	30,000	35,000
IT	110,000	150,000
LV	7,000	10,000
LT	3,000	4,000
LU	100	200
NL	30,000	35,000
PL	35,000	45,000
PT	40,000	50,000
RO	1,800,000	2,400,000
SK	400,000	480,000
SI	8,000	10,000
ES	650,000	800,000
SE	35,000	450,000
UK	150,000	200,000
Total	4,696,100	6,443,200

Source: J.-P. Liégeois (2007): *Roma in Europe*, Strasbourg: Council of Europe Publishing, p. 31

Table A3: Employment rates of population aged 15 to 64, by place of birth and gender, 2005 (%)

Country	Born in country of residence			Born in other EU-27 country			Born in a country outside EU-27		
	Total	Males	Females	Total	Males	Females	Total	Males	Females
EU-27	64.5	71.2	57.7	66.8	74.4	60.2	60.3	69.8	51.2
AT	68.8	74.5	63	66.6	71.3	63.1	58.8	66.2	51.5
BE	62.8	68.7	56.7	56.9	67.6	47.2	43.2	55.6	31.2
CY	68.4	80.1	56.8	61.8	73.8	52.2	74.4	76.9	72.8
CZ	64.7	73.3	56.1	59.1	64.6	53.1	68.8	88.1	46.4
DK	76.8	80.8	72.6	67.7	71.8	64	56.6	68	48.4
EE	64.4	65.4	63.4	60.7			68.7	73.6	64.8
FI	69.6	71.2	68	64.4	70.9	58	48.4	53.9	43.6
FR	63.6	68.6	58.6	65.5	73.7	58.6	53.6	63.4	44.1
DE	67	72.2	61.8						
EL	59.8	73.8	45.9	62.8	77.3	53.6	66.6	83.8	47.8
HU	56.7	62.8	50.9	62.2	73.9	52.6	63.2	70.9	56.5
IE	67	75.8	58	71.6	81.8	60.6	61	71	50.2
IT	57.3	69.4	45.3						
LV	62.3	65.6	59.3	62.4	66.3	58.4	69.1	79.3	60.4
LT	62.4	65.8	59.1				73	82.7	64.5
MT	53.5	73.6	33.3	45.2	72.7	26	61.6	73.1	48.2
NL	75.1	81.6	68.5	69.1	76.4	63.5	58.6	67.4	49.6
PL	52.4	58.3	46.6	26.1	25.2	27.1	29.4	36.5	22.5
PT	67.2	73.1	61.4	66	74.4	58.1	74.8	79.8	70.4
SK	57.5	64.1	50.9	48.4	62.6	36.8	70.2		
SI	65.9	69.8	61.8	59.2	69.9	51.1	68.2	75.5	61
ES	62.3	74.4	50	70.2	79.6	61.4	69.6	79.5	60
SE	74.6	76.3	72.9	72.9	75.3	70.7	54.9	58.4	51.4
UK	72.4	77.9	67	70.7	76.6	65.7	61.4	71	52.4

Note: Incomplete EU-27 average employment rates of natives do not include data for Bulgaria, Luxembourg and Romania; employment rates of immigrants (born in another EU country or outside the EU-27) do not include data for Bulgaria, Germany, Italy, Luxemburg and Romania. Highlighted values are of limited reliability due to the small sample size.

Source: LFS, taken from R.Münz (2008) 'Migration, Labor, Markets, and Integration of Migrants: An Overview for Europe' World Bank SP Discussion Paper No.0807, Available online at <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Labor-Market-DP/0807.pdf> (10.2.2009), Table 8

Table A4: Employment rates of population aged 15 to 64, by citizenship and gender, 2005 (%)

Country	Citizen of Country of Residence			Citizen of another EU country			Citizen of a country outside the EU		
	Total	Males	Females	Total	Males	Females	Total	Males	Females
EU-27	64.9	71.4	58.4	67	75.1	59	54.4	64.8	43.7
AT	68.3	74.1	62.5	70.5	76.3	65.9	57.1	64.6	49.2
BE	61.9	68.3	55.4	59.8	68.3	50.4	34	48	19.5
CY	68.3	80.1	56.8	66.8	75	58.2	75.8	74.3	76.6
CZ	64.6	73.2	56	74	84.7	62.2	70.8	88.3	49.7
DK	76.3	80.5	72	67.3	78.2	57.1	50.1	61.5	42.2
EE	65.7	66.3	65.2				61.8	67.3	56.4
FI	69.5	71.1	67.8	61.3	70.9	51.7	45.1	52.9	38.6
FR	63.5	68.6	58.5	66.3	75.1	57.9	44.3	58.6	29.4
DE	66.7	72.1	61.2	64.2	73	54.8	47.7	58.5	36.3
EL	59.8	73.8	46	62.5	78.6	52.3	69.4	86.6	49.2
HU	56.7	62.9	50.9	65.2	76.4	56.1	67.8	76.1	59.5
IE	67	75.9	58.1	73.5	83.1	61.7	58.9	70	46.8
IT									
LV	63.1	66.9	59.5				64.3	:	:
LT	62.6	66.2	59.2				72.8	87.5	:
MT	53.6	73.6	33.4	40.1	68.2	25.4	62.9	73	52.7
NL	74.1	80.7	67.5	75.2	82.3	68.1	41.2	53.8	28.7
PL	52.2	58.2	46.4				44.4	64.3	31.4
PT	67.5	73.3	61.8	69	76.3	59.5	72.2	78.7	66.1
SK	57.4	64.1	50.8						:
SI	66	70.2	61.8				54.5	76.9	:
ES	62.5	74.5	50.2	70.8	79	62.9	69.4	78.8	60.1
SE	73.5	75.3	71.6	71.9	75	68.9	44.7	49.2	40.6
UK	72.1	77.8	66.5	70.2	76.4	64.9	57.7	65.8	50.1

Note: incomplete EU-27 average: employment rates of natives do not include data for Bulgaria, Luxembourg and Romania; data highlighted in grey are of limited reliability due to the small sample size.

Source: LFS, taken from R.Münz (2008) 'Migration, Labor, Markets, and Integration of Migrants: An Overview for Europe' World Bank SP Discussion Paper No.0807, Available online at <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Labor-Market-DP/0807.pdf> (10.2.2009), Table 8

Table A5: Employment rates by sex, age groups and nationality (%)

Country	Total population	Nationals (a)	Non-nationals (b)	Difference (b)-(a)
EU total	65.4	65.6	62.3	-3.3
BE	62	62.9	53.5	-9.4
CZ	66.1	66	77	11
DK	77.1	78.3	57.7	-20.6
DE	69.4	70.9	56.2	-14.7
EE	69.4	69.3	69.8	0.5
EL	61.4	60.9	67.8	6.9
ES	65.6	65.1	68.9	3.8
FR	64.6	65.3	53.6	-11.7
IT	58.7	58.1	67.1	9
CY	71	70.9	71.2	0.3
LV	68.3	68.3	66.5	-1.8
LT	64.9	64.9	63.4	-1.5
LU	64.2	60.6	68.6	8
HU	57.3	57.3	65.1	7.8
MT	54.6	54.7	50.8	-3.9
NL	76	76.7	60.9	-15.8
AT	71.4	72.4	63.8	-8.6
PL	57	57	34.8	-22.2
PT	67.8	67.6	71.6	4
RO	58.8	58.8	65.2	6.4
SI	67.8	67.8	64.8	-3
SK	60.7	60.7	65.7	5
FI	70.3	70.5	58.8	-11.7
SE	74.2	75	59.7	-15.3
UK	71.5	71.9	66.9	-5

Source: Eurostat Database, data extracted on 11 February 2009

Table A6: Population aged 25 to 64 by place of birth, level of education, and country of residence, 2005 (%)

Country	Born in country of residence			Born in other EU-27 country			Born in a country outside EU-27		
	Low	Medium	High	Low	Medium	High	Low	Medium	High
EU-27	28.1	47.6	24.3	30.7	41	28.3	36.3	37.9	25.8
AT	16.5	65.8	17.7	14	57.7	28.3	45.6	41.5	12.9
BE	32.7	36.2	31.1	41.8	26.5	31.7	48.3	25.4	26.3
CY	33.9	40.2	26	25.1	31.8	43.1	38.1	29.5	32.4
CZ	9.9	77.2	13	23.6	62.2	14.3	15.9	54.2	29.9
DK	17	50.5	32.4	10.6*	42.2	47.2	26.4	35.7	37.8
EE	11	56.2	32.8				10.5	52.5	37
FI	20.8	44.6	34.6	20.5	47	32.5	28.3	44.8	26.9
FR	31.3	43.5	25.2	51	28.7	20.3	47.6	27.9	24.5
DE	12.4	62.2	25.4						
EL	40.4	38.9	20.8	25.3	51.3	23.4	44.4	40.5	15
HU	24.1	59	16.8	16.4	60.8	22.8	11	57.9	31.1
IE	37	35.9	27.2	25.5	35.5	39	13.1	27.9	59
IT	50	38.1	11.9						
LV	16.7	62.4	20.9	33.7*	43.6		12.1	62.6	25.3
LT	13.1	60.5	26.5				7.7	65.3	27
MT	74.7	13.7	11.5	68.2	10.9	20.9	50.4	26.1	23.5
NL	28	40.8	31.2	14.9	51.2	33.9	33.8	44.1	22.1
PL	15.3	68.2	16.5	38.7	47.4	13.9*	19.9*	58.1	22
PT	75.7	12.5	11.8	45.3	27.9	26.8	50.5	25.9	23.6
SK	12.3	73.9	13.8	15.5*	63.9	20.6			
SI	18.4	60.7	20.8	21.8*	60.9*	17.3*	30.3	57.5	12.2
ES	52.8	19.1	28.2	32.2	33	34.8	43.9	30	26.1
SE	15.7	55.1	29.2	16.6	50.3	33.1	23	46.1	30.9
UK	14.4	56.2	29.5	14.8	56.7	28.6	20	50	30

Note: Incomplete EU-27 average: education levels of natives do not include data for Bulgaria, Luxembourg and Romania; education levels of immigrants (born in another EU-27 country or outside EU-27) do not include data for Bulgaria, Germany, Italy, Luxembourg and Romania. * data are of limited reliability due to the small sample size.

Source: LFS, taken from R.Münz (2008) 'Migration, Labor, Markets, and Integration of Migrants: An Overview for Europe' World Bank SP Discussion Paper No.0807, Available online at <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Labor-Market-DP/0807.pdf> (10.2.2009), Table 5

Table A7: National data on active population, employment and unemployment rates from National Focal Points

Country	Year	Source	Economic active population Target group	Employment numbers/rates	Unemployment numbers/rates	RAXEN Report
BE	2005	LFS ADSEI/DGSIE (EAK/EFT)	Age 16-64 Nationals: 6 284 012 EU nationals: 390 486 Non-EU: 201 704	3 895 647 (62.2%) 236,126 (60.5%) 67,710 (33.6%)	328,772 (7.8%) 26,045 (9.9%) 35,851 (34.6%)	2007:55
BG	2006	Annual Report for the Youth of the Republic of BG	Born in BE: 5 988 927 Born in EU: 405 113 Born outside EU: 482 160	3,753,439 (62.7%) 233,264 (57.6%) 134,466 (56.5%)	299,091 (7.4%) 22,472 (8.8%) 69,104 (24.5%)	2007:56
BG	2006	Annual Report for the Youth of the Republic of BG	Unemployment among young people (18-35)		Ethnic Bulgarians (14.3%) Ethnic Turks (36.1%) Roma (62.7%)	2007: 136
CZ	2005	Analysis of Socially Excluded Roma Localities and Absorption Capacity of Surrounding Subjects	No official data	No official data	Overall unemployment level recorded 31.08.06 was 7.9% Roma average unemployment for 2005: 45-50%. Roma living in socially excluded localities-90-100%.	2006:17
DK	2006	Integrationsministeriets udlændingedatabase i Danmarks Statistik	Age 16-64	Total population 75% Immigrants& descendants from Non-Western countries: 50%	Total: 5% Immigrants and descendants from Non-Western countries 12%	2007: 87
DE	2005	Germany/Statistisches Bundesamt, Bevölkerung und Erwerbstätigkeit, Bevölkerung mit Migrationshintergrund, Mikrozensus 2005 Labour participation of the population by migration status in 1000 (2005)	Total- Persons without a migration background- Persons with a migration background wider sense- Persons with a migration background narrow sense-	36,566,500 30,513,100 6,053,400 5,861,900	4,583,200 3,263,000 1,320,200 1,290,000	2007: 157
EE	2006	Estonian LFS	Age 15-74		Ethnic Estonians: 4% Ethnic non-Estonians: 9.7%	2007:92
EL	2007	Social Insurance Foundation (IKA)	Foreign workers	Represent 14.2% of the insured workforce Men 16.48%, Women 9.49%		2007:46
ES	Q2, 2007	Instituto Nacional de Estadística (INE) Encuesta de Población Activa, 3er trimestre de 2007.	Spanish: Dual nationality: Foreigners:	17,478,200 (67.2%) 186,000 2,846,400 (52.73%)	7.4% 11.78%	2007: 21-22: 41

Country	Year	Source	Economic active population Target group	Employment numbers/rates	Unemployment numbers/rates	RAXEN Report
FR	2003	DPM (2006), Immigration et présence étrangère en France en 2004.	Foreign working population	Accounts for approx. 1.5 million people – 5.7% of the overall working population.	Foreign workers are more often victims of unemployment (19%) than French workers (9.4%).	2006:26
		Insee survey "Formation et qualification professionnelle", 2003	French people aged between 18 and 65 years, born in France		No immigrant parents-9.4% One immigrant parent- 11.9% Two immigrant parents-17.9%	2007: 175
	March May 2006 2007	Quarterly national Household Survey, Q2 2007 www.cso.ie		EU15-27 account for 5.6% from all "in employment" and TCNs for 2.7%	Irish nationals 4.3% TCNs – 7.7%	2007: 52;
IT	31.12.05	Calculations of Laboratory on Immigration "Ca' Foscari" University on Caritas data.		Total number of workers in all sectors 17,204,416 Migrant workers 1,763,952 (10.3%)		Annex 2007: 81
CY		No data				
LV	2007	State Employment Agency	Officially registered unemployed according to their ethnicity (31.07.2007)		Latvian: 53.5% of the unemployed 59% % of total population Russian: 31.4% of the unemployed 28.3 of total population Belarusian: 4% of the unemployed 3.7% of total population Ukrainian: 2.6% of the unemployed 2.5% of total population Roma 0.7% of the unemployed 0.5% of total population	Annex 2007: 19
	2007	Central Statistical Bureau	Economic Characteristic of Population, 15-64, first half of 2007	All employed 1,054,100 Latvians 648,300 (61.5%) Others: 405,100 (38.4%)	All unemployed: 74,400 Latvians: 40,400 (54.3%) Others: 34,000 (45.7%)	Annex 2007: 22
LT			No data			

Country	Year	Source	Economic active population Target group	Employment numbers/rates	Unemployment numbers/rates	RAXEN Report
LU	2006	LFS		Nationals 60.9% Foreigners 67.2%		2007: 33
	31.12.06	ADEM for the figures on employment, IGSS for the figures on the active population. Calculation: BODSON, CEPS/Instead			Nationals: 3.4% of unemployed Former Yugoslavia: 12.3% of unemployed Cape Verde: 13% Maghreb and Arab countries: Algeria, Morocco, Tunisia, Iran, Iraq, Mauritania, Libya, Syria: 27.6% Sub-Saharan Africa 25.3% of the unemployed	Annex 2007: 13
HU			No data			
MT	2007	Malta/House of Representatives (2007) Parliamentary Question No. 27196 17.07.2007		People from Ex-Yugoslavia form 12% of all foreign workers. North Africa and the Middle East, another source of foreign labour, provide 7% of the total. In addition, 305 foreign workers hail from the former Soviet Union		2007:25, 116
NL		Central Bureau of Statistics	2007	Dutch natives (67%) Western migrants (64%) Surinamese (60%) Lowest employment rate: Turks (44%), Moroccans (39%) and 'other non-western ethnic minorities' (among which are refugees).	Dutch 4% Western migrants: 7% Non-western ethnic minorities: 1.2%-17% Moroccans & Antilleans/Arubans- highest unemployment rates (17%).	2007:41-42
AT	2006	Statistik Austria, Jahresergebnisse 2006 – Mikrozensus		Nationals: 71.1%; EU-25: 73.1% Turkey: 47.1% Ex-YU: 66.3% Others: 50.9%		2007:35
PL		Arbeitsmarktservice	No data		Nationals: 6.4% Non-nationals: 9.7%	2007:36
PT	2007	Instituto de Emprego e Formação Profissional	Registered unemployed in employment centres of continental Portugal		Total number August 2003/07: 380,362 Increase in the total number of foreigners registered: August 2003: 16,010 August 2007: 19,061	2007: 35; Annex 5

Country	Year	Source	Economic active population Target group	Employment numbers/rates	Unemployment numbers/rates	RAXEN Report
RO						
SI	2003-2005	Survey: University of Ljubljana, faculty of Economics (2006), Trendi zaposlovanja in ekonomskih migracij na slovenskem trgu dela	No data		Average unemployment rates: Nationals 2003- 11.2% 2004- 10.6% 2005- 10.2% Foreigners 2003- 8.4% 2004- 7.5% 2005- 7.2% Relatively good integration of foreign population into the Slovenian labour market. However, it is probably also true that this reflects the current structure of the Slovenian economy and market demands for less-qualified labour force	2007:49-50
SK						
FI	01.01.2007-30.04.2007	Ministry of Labour	No data		Overall unemployment rate of the majority population 2007: 5.9% Overall unemployment rate of foreigners: 2007: 20% 2006: 24%; 2005: 28% The unemployment rate of men and women with mother tongue other than Finnish is significantly higher at all levels of education than those men and women whose mother tongue is Finnish. The contrast is starker among people with higher education qualifications, but significant also among those with only basic education or secondary education qualifications	2007:42, 45
	2007	Survey: T. Joronen (2007) "Työmarkkinoiden monenlaiset maahanmuuttajalaiset: Haaste suomalaiselle sukupolijärjestelmälle"				2007:43
	2004	City of Helsinki Urban Facts	Foreigners refer to foreign citizens and foreign-born Finnish citizens	Employed: 68871 Employment rate (15-64 age): 48.6 %	Unemployed: 21.374 (23.7 %)	2007:111

Country	Year	Source	Economic active population Target group	Employment numbers/rates	Unemployment numbers/rates	RAXEN Report
SE	2006	Reworking based on: Sweden/ Integrationsverket (2007) Statistiskrapport 2007			Swedish born women: 3.2% Foreign born women: 8.7% Swedish born men: 3.8% Foreign born men: 10% The unemployment rate has decreased overall in 2006, the difference in unemployment rate between foreign-born and Swedish-born has increased	2007: 84
	April 2006	Statistics Sweden,	Occupational rate of total population (20-64 age)	SE born: 80, 5% Foreign born: 61,8%	SE born: 4.5% Foreign born: 10, 6%	2006: 16
UK	Spring 2006	Minority Employment Task Force (2006) Ethnic Minorities in the Labour Market: Spring 2006.	Key labour market statistics, Great Britain	Entire population: 26,448,000 (74,7%) ¹ BME: 2,123,000 (59, 7%) White male: 79,4% BME male: 69,5% White Female: 72,3% BME Female: 52%	Entire population: 1,452,000 (5, 2%) BME: 267,000 (11, 2%) White Male: 5,2% BME Male: 11, 5% White Female: 4,4% BME Female: 10,8%	Annex 2007: 66
	Spring 2006	LFS: people of working age – men aged 16-64 and women aged 16-59	Unemployment and employment rates by ethnic group, Great Britain	The gap in employment rates between white people and people from minority ethnic groups is about ten percentage points for men, but 20 for women.		2006: 31

Notes: No official data on employment and unemployment rates: CY; HU; LT; PL; RO; and SK.

Roma: data unemployment rates is provided by BG and CZ, the data in CZ is survey-based and in the case of BG data includes Roma only people between 18 and 35.

Source(s): Raxen National Focal Points: National Data Collection Reports 2006 and 2007

List of contributors

Principal Authors of the Comparative Report:

Albert Kraler

Research Officer at the International Centre for Migration Policy Development (ICMPD), Vienna

Saskia Bonjour

Research Officer at the International Centre for Migration Policy Development (ICMPD), Vienna

Alina Cibeá

Associate Researcher at the International Centre for Migration Policy Development (ICMPD), Vienna

Mariya Dzhengozova

Research Assistant at the International Centre for Migration Policy Development (ICMPD), Vienna

Christina Hollomey

Research Assistant at the International Centre for Migration Policy Development (ICMPD), Vienna

David Reichel

Research Assistant at the International Centre for Migration Policy Development (ICMPD), Vienna

Scientific Advisors

August Gächter

Senior Researcher at the Centre for Social Innovation (CSI), Vienna

Pieter Bevelander

Associate Professor at the Department of International Migration and Ethnic Relations (IMER) and Malmö Institute for Studies of Migration, Diversity and Welfare (MIM), Malmö University

European Union Agency for Fundamental Rights

Migrants, minorities and employment

Exclusion and discrimination in the 27 Member States of the European Union
Update 2003 – 2008

2011 – 92 p. – 21 x 29.7 cm

ISBN 978-92-9192-497-4

doi: 10.2811/43290

A great deal of information on the European Union Agency for Fundamental Rights is available on the Internet. It can be accessed through the FRA website (fra.europa.eu).

**Europe Direct is a service to help you find answers
to your questions about the European Union**

Freephone number (*):
00 800 6 7 8 9 10 11

(*) Certain mobile telephone operators do not allow access to 00 800 numbers or these calls may be billed.

HOW TO OBTAIN EU PUBLICATIONS

Free publications:

- via EU Bookshop (www.bookshop.europa.eu);
- at the European Union's representations or delegations. You can obtain their contact details on the Internet (www.ec.europa.eu) or by sending a fax to +352 2929-42758.

Priced publications:

- via EU Bookshop (www.bookshop.europa.eu).

Priced subscriptions (e.g. annual series of the *Official Journal of the European Union* and reports of cases before the Court of Justice of the European Union):

- via one of the sales agents of the Publications Office of the European Union (www.publications.europa.eu/others/agents/index_en.htm).

This report provides a comparative overview and analysis of data and information documenting discrimination in the workplaces and labour markets across the EU. It highlights developments that occurred between 2003 and 2008, and assesses the lack of data with a view to developing strategies to improve data availability and comparability at the EU level. While the total number of complaints of discrimination reported and processed has increased as a direct consequence of the implementation of the Equality Directives in the EU Member States, there are still barriers for victims that need to be reduced. The report highlights persistent patterns of inequality between migrants and minority groups in the labour market and the overall majority populations. Considerable research on employment discrimination has been carried out over recent years, and this provides ample evidence to identify discrimination as an important factor leading to inequality for migrants and minorities.

European Union Agency for Fundamental Rights (FRA)

Schwarzenbergplatz 11

1040 Wien

Austria

Tel.: +43 (0) 1 580 30 - 0

Fax: +43 (0) 1 580 30 - 691

Email: information@fra.europa.eufra.europa.eu[facebook.com/fundamentalrights](https://www.facebook.com/fundamentalrights)twitter.com/EURightsAgency

Publications Office

ISBN 978-92-9192-497-4



9 789291 924974