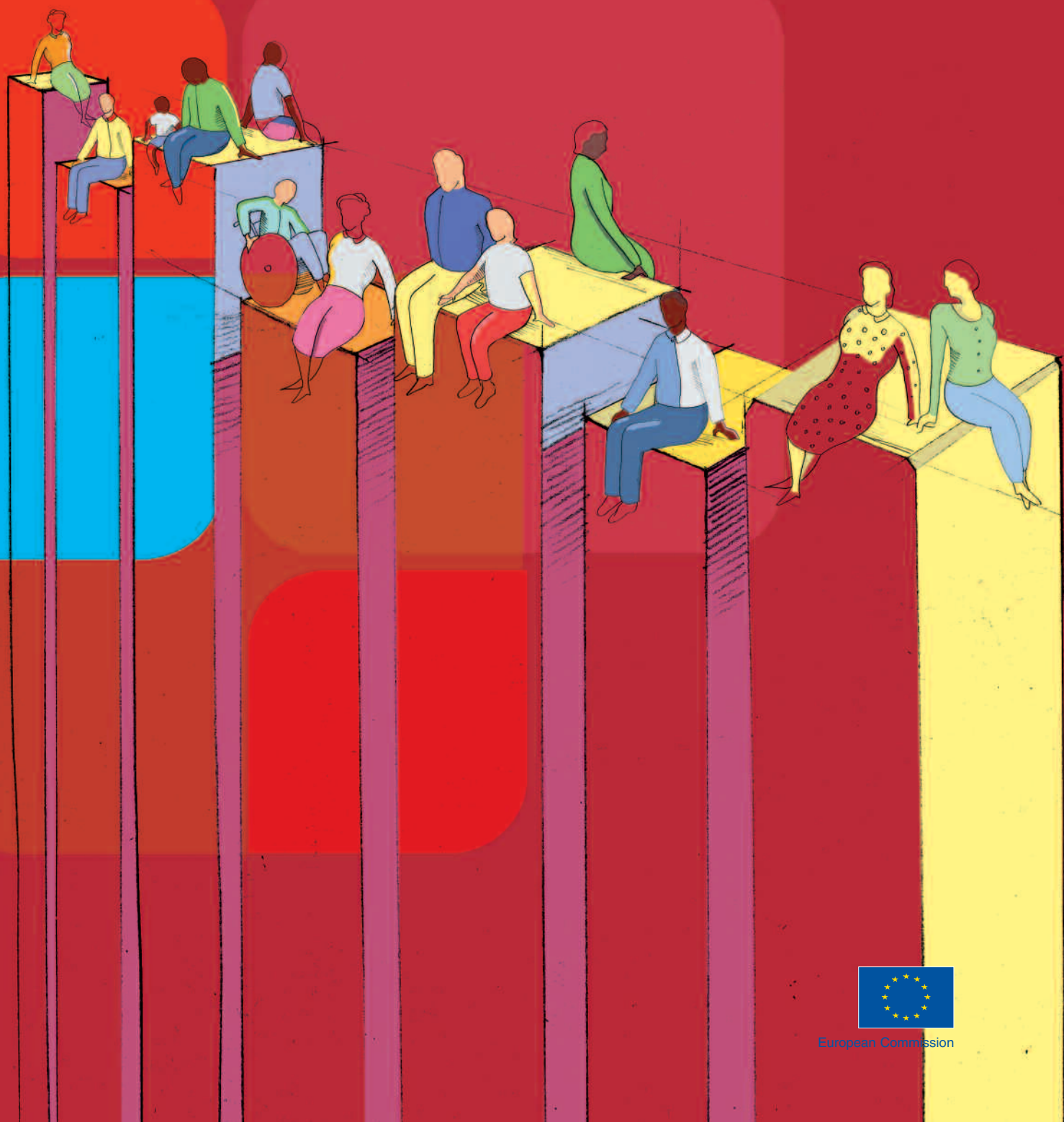




European handbook on equality data



European Commission

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

European Commission

Directorate-General for Employment, Social Affairs and Equal Opportunities
Unit G.4

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Foreword

The right to equal treatment is a universal human right and a fundamental value of the European Union. Equal treatment is about securing the rights and opportunities of all individuals and it is a key ingredient in achieving inclusive labour markets and social cohesion. Furthermore, pursuing equal opportunity policies also makes business sense, as these policies can help people to achieve their full potential and to match the right people to the right jobs.

Two EU Directives on equal treatment were adopted in 2000. Directive 2000/78/EC prohibits discrimination in employment on the grounds of religion and belief, disability, age and sexual orientation. Directive 2000/43/EC prohibits discrimination on the grounds of racial or ethnic origin in wide range of areas, including employment, education, social security and provision of goods and services. These Directives have significantly raised the level of protection against discrimination across the EU.

Yet we must recognise that equality of treatment has not yet become a reality in the EU today. Europe still has a long way to go to reach that goal. The available evidence unequivocally shows that the social and economic achievement of many groups and individuals is being dramatically undercut by discrimination. This is unacceptable and must be urgently addressed.

As we seize the opportunity to make a difference to the lives of groups and individuals who face discrimination, we need to ensure that we proceed on the basis of sound knowledge. Policies and practices in all areas of life, including political, administrative and business life, should be based on objective and reliable data. No one can afford costly mistakes based on faulty assumptions. This also holds for issues regarding equal treatment. There is more need than ever to have – and to use – equality data. Yet all too often, the required data are lacking. And if the information is available, it is frequently incomplete or difficult to compare across borders. As a consequence, major gaps remain in our knowledge and understanding of discrimination issues.

This handbook, produced by the Finnish Ministry of Labour with the support of the European Commission, represents an important step in tackling this knowledge gap. It does so by analysing what information can usefully be gathered, and by providing advice on how best to collect these data in practice. It provides some concrete suggestions on how national data collection measures could be developed. Its advice should prove useful for politicians, civil servants, equality groups, specialised bodies for the promotion of equal treatment, those working within the justice system and non-governmental organisations.

The aims of this handbook are to stimulate an informed public debate as well as to bring about improvements in the collection of equality data. 2007 is the European Year of Equal Opportunities for All. With this handbook, we want to help contribute to making equal treatment a reality.

Brussels, November 2006



Vladimír Špidla
Commissioner for Employment,
Social Affairs & Equal Opportunities
European Commission

Helsinki, November 2006



Tarja Filatov
Minister of Labour
Finland

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Executive summary

Evidence suggests that each year millions of people living in Europe experience discrimination on the basis of their racial or ethnic origin, religion, belief, disability, age or sexual orientation. Yet little is known about the causes, extent, nature and effects of discrimination. This Handbook sets out to address the ways in which this knowledge gap can be remedied. The objectives of the Handbook are twofold: (i) to analyse **why**, and **what** kind of data should be gathered in relation to equality and discrimination (this data is called 'equality data' in this Handbook), and (ii) to show **how** that data can be gathered, and to issue recommendations in that regard.

The EU Member States have, on political and legal levels, committed themselves to equal treatment and the fighting of discrimination. Data is needed to assess what impact this commitment is having in social reality. This Handbook is part of the action taken in the wake of the adoption and national implementation of two EU Directives in this area, namely the Racial Equality Directive and the Employment Equality Directive. These Directives prohibit direct and indirect discrimination on the grounds of racial or ethnic origin, religion and belief, disability, age and sexual orientation. These are also the grounds of discrimination focused upon in this Handbook. Sex discrimination is dealt with in this Handbook only from the point of view of multiple discrimination.

This Handbook is targeted at a wide audience, particularly all those who are, or would need to be, involved in the promotion and planning of data collection and/or in use of the data. This group includes decision-makers, civil servants, members of equality groups, and those working for equality bodies and NGOs. It is hoped that this Handbook can provide useful insights also to those who are, or would need to be, involved in the collection of data, including statisticians, researchers and employers.

The need for data collection

The Handbook analyses the information needs, identifying six major purposes for which equality data should be gathered.

First, data is needed to guide and support **policy development and implementation**. Measures need to be taken to promote equality of treatment, as denial of equal opportunities comes at a high price for those con-

cerned and the society at large. Discrimination undermines the rights and opportunities of its victims, damages their quality of life and can lead to various degrees of deprivation and ill health. At the social level discrimination leads to the wasting of human resources, causes social disintegration and leads to macro-economic losses. For example, estimates from the UK indicate that the lower level of employment among older workers, resulting both from structural factors and from outright age discrimination, costs the country's economy £19-£31 billion every year in lost output and taxes and increased welfare payments. Data is needed to support policies that target these phenomena, and these policies can only be as good as the information on which they are based. Data is also needed to evaluate and assess the impact of these policies.

Second, data is needed in **judicial processes**, because it is sometimes difficult if not impossible to prove discrimination in the absence of **empirical evidence**. Such evidence can play a decisive role in the proof of both direct and indirect discrimination, but can also be used to rebut a discrimination claim.

Third, national specialised bodies, such as the equality bodies that the Racial Equality Directive requires all EU Member States to designate, and international monitoring bodies, such as the UN treaty bodies, need quantitative and qualitative information in order to be able to perform their **monitoring** functions. The Directive requires the equality bodies to 'conduct independent surveys concerning discrimination', and the international bodies have frequently and persistently called upon the states to collect data on equality and discrimination.

Fourth, data is needed by government agencies and businesses that want to ensure that their hiring, firing and other policies and practices comply with the equal treatment laws. They can do this by means of **internal monitoring**, that is, by means of monitoring the composition of their workforce by the equality grounds. Organisations would also benefit from the existence of benchmark data, such as labour market data, against which to compare their own results.

Fifth, qualitative and quantitative data is needed for **sensitising** and **awareness-raising** purposes. Scientific evidence on the extent and nature of discrimination can serve as a compelling, factual baseline for national discussion on equality and discrimination.

Sixth, equality data is needed because it is an indispensable resource for researchers seeking to improve our understanding of discrimination as a phenomenon. **Research**, again, is a prerequisite for developing and implementing more effective policies.

Overall, the information needs are substantial. The scope of information that is gathered should ideally cover

- All groups that are protected by the national and European anti-discrimination law;
- All areas of life in which discrimination is prohibited (employment, education, etc.);
- The extent, nature, causes, and consequences of discrimination.

No single data source, such as national official statistics, justice system data, or survey data, can alone meet all the data needs. It is therefore necessary to set up and support several mechanisms by which equality data is compiled. Each of these mechanisms is described in this Handbook and illustrated in the light of best practices.

Official statistics

All EU Member States compile population-wide statistics in relation to such core areas of interest as employment, education, income, standard of living, health and wealth. These official statistics are compiled on the basis of three kinds of data sources: population censuses, administrative registers and surveys. This data can be made to indicate differences in the situation of the different groups, provided that the pertinent personal data relating to the equality grounds (e.g. age, ethnic origin, disability) is collected alongside the other data or is otherwise available. In many countries the necessary information is not collected or is not made use of. It is recommended that each EU country investigate what information is presently collected and whether the range of information collected could be expanded so as to obtain equality data.

Complaints data

Complaints data is generated in the course of the functions of those bodies that, in one way or the other, handle discrimination complaints. These bodies include the police, prosecutors, courts and other judicial bodies, equality bodies and ombudsmen. Complaints data, in the broad sense of the term, may also be available through the work of non-governmental organisations that provide services to victims of discrimination.

Complaints data typically includes information on the numbers and types of complaints filed with a particular body or organisation within a particular timeframe, typically a year. Also other data may be available: justice system statistics may for instance reveal aggregate profiles of offenders/respondents and complainants. Complaints data represents the 'tip of the iceberg' level of information. As such, it describes only the nature and extent of *reported* discrimination, whereas many studies have shown that only a small portion of all discrimination is reported. Complaints data is most useful when analysed in the light of other information, such as victim survey data. To make the most out of complaints data, the Handbook suggests that the organisations concerned should develop systematic recording procedures and practices that allow them to ensure the completeness, reliability and usefulness of the data.

Research

Whereas official statistics measure discrimination only indirectly and complaints data reveals only a portion of all discrimination, various research methods provide for more robust means by which to measure discrimination. It is therefore absolutely essential, in order to achieve a reasonably comprehensive and accurate picture of discrimination, to conduct research into equality and discrimination. Some of the most important research methods in this area include the following:

- Victim surveys, by which people who are at a particular risk of discrimination are asked about their experiences;
- Self-report surveys, by which members of the general population or some specific target group (e.g. those in charge of recruitment) are surveyed about their attitudes and/or behaviour towards the equality groups;
- Discrimination testing, by which the actions of some key groups, such as employers or service providers, are investigated by means of real-life experiments;
- Qualitative research, which includes a wide range of different research strategies such as in-depth interviews and panel interviews.

The challenge with research as a means of gathering equality data is that research projects tend to require external funding, the obtaining of which often has to be secured separately each time. It is therefore recommended that governments recognise the fundamental importance of research in this area by means of allocating adequate financial resources for these purposes.

Diversity monitoring

Diversity monitoring is quite likely the most effective measure an organisation can take to ensure it is in compliance with the equality laws. Monitoring refers to the process by which an organisation observes the impact of its policies and practices upon the equality groups. A distinction can be made between quantitative and qualitative monitoring. Quantitative monitoring, which is focused upon in the Handbook, refers to situations where an organisation collects data on the make-up of its workforce for instance in terms of age and/or ethnic origin in order to track down any imbalances, whereas qualitative monitoring refers to less systematic forms of obtaining feedback. Quantitative monitoring, especially if required by law (so that the data is systematically collected) and insofar as the resultant aggregate data are transmitted to a competent body (such as an enforcement agency), can provide data that tells not just about existing imbalances within individual workplaces but also within the society in general. Accordingly, the Handbook recommends that the governments enter into a dialogue with the social partners, equality groups and other stakeholders on the need to introduce requirements for workplace monitoring.

Some challenges

Collection of equality data is beset with many challenges. In self-report surveys, people may not truthfully answer questions about their attitudes or behaviour towards the equality groups. In victim surveys, people may not always report their discrimination experiences, for instance because they are not aware of having been discriminated against or they are not sure about it. On the other hand, sometimes people may erroneously attribute a negative event to discrimination even if discrimination played no part in it. The resulting risk of over- or underestimation of discrimination in surveys can be diminished significantly by careful design of the surveys and particularly by the selection of the most appropriate mode of data collection.

Another challenge relates to the use of concepts such as 'ethnic origin'. Comparability of the different data sets, both at the national and international level, would be significantly enhanced by means of the adoption of stan-

dardised approaches with respect to definitions, classification standards and categorisation principles. Presently the level of standardisation is rather low.

A third challenge relates to the fact that some forms of data collection involve processing of sensitive data. Whereas the international and European legal standards relating to the right to privacy and data protection do not preclude the collection of sensitive data, they set out strict conditions under which data collection is allowed and lay down several principles that must be respected when data is collected or otherwise processed. In addition, domestic data protection and privacy laws may go beyond these standards and pose further limits to the collection of equality data.

The Handbook addresses each of these challenges.

The need for action and cooperation at the national level

One of the main shortcomings in present data collection practices is the lack of coordination at the national level. Only a few countries have taken a systematic approach to the building of a national knowledge base on discrimination, and even in these countries the action taken has tended to focus only on particular grounds of discrimination and/or particular areas of life. Because of this it is often not known what data exists and what data could be obtained by means of developing the national data collection mechanisms. There is therefore a need for broad dialogue, cooperation and action at the national level. This should preferably lead to the adoption of a national plan of action on data collection.

In addition to action and cooperation at the national level, there is also a need for international cooperation and standard-setting, particularly in order to achieve, in the long run, common statistical indicators in this area.

Recommendations

In each Chapter of the Handbook makes a number of recommendations, directed mainly at national decision-makers, on how to improve domestic data collection mechanisms. These recommendations are listed in Chapter 8 of the Handbook.

1 | The fundamentals of equality data

1.1. | Introduction

The right to equal treatment is among the most fundamental principles of a modern-day society. In Europe, this is reflected in the fact that all EU Member States have adopted legislation that prohibits discrimination, and they have all become parties to the main human rights conventions, concluded under the auspices of the United Nations and the Council of Europe, each of which prohibit discrimination. The adoption in the year 2000 of two EU Directives on equal treatment, namely the Racial Equality Directive and the Employment Equality Directive,¹ significantly raised the level of protection against discrimination across the EU. At the political level, the achievement of a high level of employment, the promotion of social cohesion, and the creation of an area of freedom, security and justice – all of which are related to or depend on equal opportunities – have become objectives of high priority.² The **legal and political commitment** to the fight against discrimination is stronger than ever.

Despite this high-level commitment, the available evidence suggests that discrimination continues at alarming levels. Indeed, discrimination, in its many forms, is likely to be the most frequently occurring human rights violation in Europe. Each year, millions of people living in Europe experience discrimination, and millions more live in fear of being so treated.³ Denial of equal opportunities comes at a high price for those concerned and the society at large, as discrimination prejudices the rights and opportunities of individuals, leads to the wasting of human resources, and causes social disintegration. Furthermore, given Europe's current demographic tendencies – low birth rate, aging population and thus a shrinking workforce – equal treatment is no longer only a question of social justice but also of economic necessity.

Legal and political commitment not enough

It appears fair to conclude that discrimination persists because legal and political commitment alone cannot achieve equality. Ample evidence comes from the field of gender discrimination: the principle of equal pay has been part of the international and EU law since the 1950s, but there still isn't a single country in the EU where women's wages are equal to those of men.⁴ Legal frameworks and political commitment are necessary, but not sufficient, elements of an overall approach to combating discrimination.

A range of other measures is therefore needed. The fight against discrimination requires vigorous **enforcement** of anti-discrimination law, active identification and **analysis** of discriminatory patterns in all areas of life, **monitoring** of the progress made in elimination of discrimination, adoption of sensitising and awareness-raising **programmes**, and – if the circumstances so warrant – adoption of **positive action** measures to remedy the situation of those individuals and groups that suffer from disadvantages caused by discrimination. All of these core anti-discrimination activities have one thing in common: they require, or at any rate benefit from, the existence of **empirical evidence** of discrimination. Statistical and other information renders discrimination, which can otherwise remain concealed, visible, making it possible to target it more effectively by means of informed action.

The importance of building a knowledge base on discrimination has been recognised already for quite some time, with increasing international and national pressure towards the development of national data collection mechanisms. Various experts and expert bodies have described the collection of equality data as 'fundamental',

¹ Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('Racial Equality Directive') and Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation ('Employment Equality Directive').

² The European Employment Strategy (EES) is based on the strategic goal of the EU becoming the 'most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion.' For more information, please visit: http://ec.europa.eu/employment_social/employment_strategy/index_en.htm#ees

³ It is obviously very difficult, given the present low levels of data collection on discrimination, to give anything like a reliable estimate of the extent of discrimination in Europe. However the available evidence, even though fragmented, makes it justified to estimate that there are indeed millions of people each year that experience discrimination. For instance a large-scale survey directed at the general population in Ireland found that 12.5% of the population reported having experienced some form of discrimination in the course two preceding years (see Chapter 3 of this Handbook). This result is well in line with research conducted in other countries and by other research methods. If extrapolated to the EU area, this would mean that well over 20 million people experience discrimination on a yearly basis. The actual amount of discrimination may however be more or less than this because of national variations in the levels of discrimination and because victim surveys may to some degree overestimate or underestimate prevalence of crime, as discussed in this Handbook.

⁴ Commission of the European Communities, *Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on equality between women and men 2006*. Brussels 22.2.2006, COM(2006) 71 final.

'absolutely necessary', 'critically important', 'a pivotal tool', and 'a basic prerequisite'.⁵ A survey conducted by the European Commission in 2004 found that altogether 93% of the respondents, most of whom were experts in the area of anti-discrimination, were of the view that data collection is 'important' or 'very important' for the development of effective policies to promote equality and tackle discrimination.⁶

Where is Europe at in terms of data collection?

In the field of gender equality it is already widely accepted that commitment to equality requires measuring of progress made towards equality. All EU countries have taken **some measures** in order to produce equality data, also with respect to discrimination on the grounds of ethnic origin, religion, age, disability and/or sexual orientation, but only a few countries have developed anything like a systematic or institutionalised framework for doing this.⁷ It can be said that the data so far collected tends to be good as far as it goes, but it does not go very far. Some of the problems of the present data collection activities are that:

- They are not systematically planned or carried out;
- They tend to be conducted on an *ad hoc*, not regular basis;
- They tend to focus only on some grounds of discrimination;
- They are often based on the use of proxy indicators (with the exception of age) which lead to results that are not fully representative of the target groups;
- They tend to be limited in terms of the areas of life covered; and

- They tend to be limited in terms of the type of information gathered.

Present lack of data collection can largely be attributed to an 'awareness gap', meaning that there is a lack of awareness about how the data can be collected and what the benefits are that the equality data can bring. There are also misgivings and misunderstandings in relation to what data collection entails in practice and what kind of an impact privacy and data protection laws have on data collection, in addition to which the idea of collecting personal data in this connection (which is required by some but not all forms of data collection) has been subject to reluctance in some countries. The issues at hand can also sometimes be rather complex, requiring expertise in multiple areas of law and social science. These factors at least partly explain the current lack of action in this area.

The purpose of this Handbook is to target this awareness gap by showing **why** and **how** statistical and other information should be collected, processed, and used in the context of the fight against discrimination.

About this handbook

This Handbook is part of the action taken in the wake of the adoption and national implementation of two EU Directives, namely the Racial Equality Directive and the Employment Equality Directive.⁸ As such, it deals with the grounds of discrimination covered by these Directives, namely racial and ethnic origin, religion and belief, age, disability and sexual orientation. Therefore this Handbook does not deal with sex discrimination except as a cross-cutting issue from the point of view of multiple discrimination. However, many, if not all, of the data collection mechanisms discussed here are also applicable with respect to investigating other types of discrimination, including sex discrimination.

⁵ Jansen, Bernhard, 'Address by the European Commission', in Simo Mannila (ed), *Data to Promote Equality* (Helsinki: Edita, 2005); Goldston, James, 'Race and Ethnic Data: A Missing Resource in the Fight against Discrimination' in Andrea Krizán, *Ethnic Monitoring and Data Protection* (Budapest: CEU Press, 2001); National Research Council, *Measuring Racial Discrimination*. Panel on Methods for Assessing Discrimination. Rebecca M. Blank, Marilyn Dabady, and Constance F. Citro, eds. Committee on National Statistics, Division of Behavioral and Social Sciences and Education (Washington, DC: The National Academies Press, 2004); Wrench, John, 'The Measurement of Discrimination: Problems of Comparability and the Role of Research', in Simo Mannila (ed), *Data to Promote Equality* (Helsinki: Edita, 2005); Committee on the Elimination of Discrimination Against Women (1989), General Recommendation No 9. *Statistical data concerning the situation of women*, HRI/GEN/1/Rev. 6.

⁶ Response statistics for Green Paper on anti-discrimination equal treatment. Available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/green/stats.pdf (visited 1.10.2006).

⁷ Lack of data collection on ethnic discrimination has been clearly demonstrated in the course of the work carried out by the European Monitoring Centre on Racism and Xenophobia (EUMC). See e.g. EUMC, *Racism and Xenophobia in the EU Member States – trends, developments and good practice. Annual Report 2005 – Part 2*. EUMC 2005. The situation appears to be even worse with respect to the other grounds of discrimination, possibly with the exception of age.

⁸ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('Racial Equality Directive') and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ('Employment Equality Directive').

Target audience

This Handbook is targeted at a wide audience, particularly all those who are, or should be, involved in the promotion and planning of data collection and/or in use of equality data. This group includes decision-makers, civil servants, members of equality groups and those working for equality bodies and NGOs. It is also hoped that this Handbook can provide useful insights to those who are, or would need to be, involved in the production of the data, including statisticians and researchers. Given the wide audience, the Handbook has been written in such a way that reading it does not require prior knowledge of statistical science or anti-discrimination law.

Contents

This Handbook discusses **why** and **how** equality data should be compiled. While it also discusses how equality data can be made use of, its primary objective is – given the present paucity of data collection – to encourage EU Member States to collect and compile the necessary data in the first place.

In summary, the first Chapter of the Handbook provides a general introduction to the topic, and discusses issues such as what is discrimination and how statistical and other information can be used in the fight against discrimination. Chapter 2 includes a discussion of data collection techniques, particularly from the point of view of conducting surveys, and examines privacy and data protection issues.

Chapters 3, 4, 5 and 6 each discuss in more detail the different sources of data, namely official statistics, complaints data, research, and workplace and service delivery monitoring, illustrating them in the light of best practices from different countries. The focus is on ‘tried and true’ data collection mechanisms and therefore no new methods are proposed. Chapter 7 discusses the reasons why national coordination is needed and describes the steps that should be taken in order to develop national practices in this area.

By so doing, this Handbook seeks to provide decision-makers and other stakeholders with the means by which to **assess** and **improve** the national compilation of equality data. While it does make a number of recommendations, directed mainly at decision-makers at the national level, its purpose is not to propose the adoption of a uniform and standardised model of data collection across

Europe. This follows from the recognition of the fact that the EU Member States are heterogeneous in many respects, including in their statistical infrastructures.

The purpose of this Handbook is to **drive action** and to furnish the various stakeholders with **adequate background information** needed to take that action. The purpose of the Handbook is not to provide an account of how discrimination manifests itself in contemporary Europe, although some research findings are presented for the purpose of illustrating what can be achieved with a particular research method. Moreover, the purpose of the Handbook is not to provide legal advice, a comprehensive academic account of discrimination as a phenomenon, or a comprehensive introduction to the statistical science.

Key terminology

To begin with, the key concepts involved need to be defined. As there is no universal consensus on the definition of most of these concepts, the following definitions are given for the purposes of this Handbook only.

Data refers to any piece of information, whether in numerical or in some other form.⁹ The function of data is that it reveals something about some aspect of reality and can therefore be used for analysis, reasoning or decision-making. The data may relate to an identifiable person, in which case it is called *personal data*. The individual to whom the data relates to is called the *data subject*. Where personal data relates to matters such as racial or ethnic origin, religion or belief, disability or sexual orientation it is considered *sensitive data*, although it should be noted that the EC Data Protection Directive does not speak about sensitive data but about ‘special categories of data’. Any operation performed upon personal data, including collection, recording, disclosure and destruction, is referred to as *processing*.

The notion of *equality data* is used in this Handbook in reference to any piece of information that is useful for the purposes of analysing the state of equality. The information may be quantitative or qualitative in nature. The main focus is on *equality statistics*, by which are meant aggregate data that reflect inequalities or their causes or effects in the society. The notion of *equality groups* is used as a collective name for groups that have an interest in promoting equality and/or that have experienced discrimination or inequality on the grounds of racial

⁹ A more refined definition for data would be ‘The physical representation of information in a manner suitable for communication, interpretation, or processing by human beings or by automatic means’. United Nations Statistical Commission and Economic Commission for Europe, *Terminology on Statistical Metadata* (Geneva: UN, 2000), p. 6.

or ethnic origin, religion or belief, age, disability or sexual orientation.

1.2. | Equality and discrimination

Before reviewing the data needs and the methods by which equality data can be collected, it is essential to have a solid understanding of what is meant by 'equality' and 'discrimination', and to outline the basic dynamics and mechanisms involved in the operation of discrimination. This is essential for understanding what it is that in fact should be measured, and how. To achieve a sound theoretical and conceptual framework it will be necessary to approach the subject area from two different angles, namely law and the social sciences.

1.2.1. | Three approaches to equality

It is important to realise that equality can be, and has historically been, theorised and framed in very different ways. A widely-accepted contemporary way to theorise about equality is to distinguish between three different ideals of equality:

- **Formal equality.** Formal equality is procedural in nature: it requires consistent treatment of individuals. Individuals who are alike should be treated alike, not on the basis of their characteristics that are not objectively relevant in a given situation. Formal equality is enforced through a strict prohibition of discrimination. The realisation of formal equality can be measured by means of assessing the prevalence of individual acts of discrimination.
- **Equality of results.** Equality of results is substantive in nature: it focuses on the end results of policies and aims at achieving a fair distribution of goods and benefits in fact. The achievement of equality of outcomes requires action that goes beyond the enforcement and implementation of basic anti-discrimination laws and policies, and may require action such as the use of quotas and other strong public policy interventions.¹⁰ The realisation of equality of results can be measured by means of so-called outcome statistics that measure differences in income and wealth between groups, for example.

- **Equality of opportunity.** Equality of opportunity seeks to strike a balance between these two approaches, and describes an approach that intends to ensure that people have an equal chance to participate in activities and services such as education, employment and health care. The equal opportunities approach focuses on levelling the playing field through measures such as the elimination of prejudices and processes that lead to discriminatory outcomes, and through compensation of unfair disadvantages by means of positive action. Equality of opportunity cannot be measured with great precision: in theory it could be measured by means of comparing outcomes between groups that have corresponding abilities and values (e.g. equal levels of achievement orientedness), but in practice the latter variables are difficult to control. Therefore, the methods used to measure formal equality and equality of results are often used as proxy measures for equality of opportunity.¹¹

The different notions of equality reflect different conceptions of justice, and the adoption of a particular approach in a given society is in practice related to the prevailing cultural, political and social value climate.¹² While different countries have pursued different models at different times, they have been able to agree on a common approach for the prohibition of discrimination for the purposes of international law.

1.2.2. | Equal treatment law

There are three primary sources of equal treatment law in Europe: international and European human rights law, EU law, and national law.

International and European human rights law

The right to equality before the law and protection against discrimination for all persons constitutes a universal right recognised by a wide range of internationally agreed human rights instruments, such as the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the International Convention on the Elimination of all forms of Racial Discrimination (CERD)

¹⁰ Those who favour the equality of results approach are critical of the formal equality approach, because identical treatment is seen in practice to perpetuate existing inequalities that result from past or present discrimination or some other type of disadvantage.

¹¹ For more on the different conceptions of equality, see e.g. Fredman, Sandra, *Discrimination Law* (Oxford: Oxford University Press, 2002), pp. 1-26, and MacEwen, Martin, *Tackling Racism in Europe: An Examination of Anti-Discrimination Law in Practice* (Oxford: Berg, 1995), pp. 22-25. There are also other ways of theorising about equality. For instance, McCrudden has distinguished between four partly overlapping models of equality: individual justice model, group justice model, equality as recognition of identity, and equality as participation. See McCrudden, Christopher 'Thinking about the discrimination Directives' *European Anti-Discrimination Law Review*, Issue No 1, April 2005.

¹² See MacEwen, Martin, *Tackling Racism in Europe: An Examination of Anti-Discrimination Law in Practice* (Oxford: Berg, 1995), p. 25.

and the United Nations Covenants on Civil and Political Rights (ICCPR) and on Economic, Social and Cultural Rights (ICESCR) and by the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), to which all EU Member States are signatories.¹³ Most EU Member States have signed and some have also ratified protocol No 12 (on non-discrimination) to the European Convention. Non-discrimination is both a right of its own and a constitutive element of all human rights in that the enjoyment of all rights must be guaranteed on a non-discriminatory basis.¹⁴ Some of the documents, such as the UN Convention on the Protection of Civil and Political Rights, provide for a generally applicable prohibition of discrimination that covers several grounds of discrimination, while some others, such as the UN Convention on the Elimination of All Forms of Racial Discrimination and the UN Convention on the Rights of the Child, focus on a single ground.

Many of these conventions, including the ECHR, ICCPR and CERD, place an obligation on states parties not just to refrain from discrimination, but also to take positive steps to give effect to the right not to be discriminated against. States are required to take effective measures to secure compliance with the principle of non-discrimination also by private actors, *inter alia* in the areas of employment, education and the provision of services.¹⁵ Under the well-established jurisprudence of the European Court of Human Rights, states parties are obliged to thoroughly and effectively investigate allegations of discrimination.¹⁶ Effective investigation of discrimination may, depending on the circumstances of the case, require data collection.¹⁷ An investigation must furthermore be carried out with due diligence and expedition.¹⁸

EU equal treatment Directives

The level of protection from discrimination was significantly raised throughout the EU by the adoption in 2000 of two Directives on equal treatment. The purpose of these Directives, as expressed in Article 1 of the respective documents, is to lay down a general framework for combating discrimination, with a view to putting into effect in the Member States the principle of **equal treatment**. Equal

treatment is defined in the Directives as absence of direct and indirect discrimination. Also harassment and an instruction to discriminate constitute acts of discrimination.

The key to understanding the Directives is to understand the concepts of direct and indirect discrimination as they are defined in the Directives. Direct discrimination is defined as follows:

Direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation.

The prohibition of direct discrimination, in the way it is defined in the Directives, places emphasis on consistency of treatment, and is based on a comparative logic.¹⁹ As long as everyone, irrespective of ethnic origin or disability, for example, is treated as favourably as everyone else is, has been, or would be treated, the requirements of the law have been satisfied. For an example, if a company needs to cut down the number of its employees, and it does this by firing all employees who have reached 55 years, this is likely to constitute direct discrimination on the basis of age.

Indirect discrimination is defined in the Directives as follows:

Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin, or those having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation, at a particular disadvantage compared with other persons, unless:

- i that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving this aim are appropriate and necessary, or
- ii as regards persons with a particular disability, the employer or any person or organisation is obliged to take appropriate measures to provide reasona-

¹³ Recital (3) of the Racial Equality Directive.

¹⁴ Scheinin, Martin – Catarina Krause 'The Right not to be Discriminated Against: The Case of Social Security' in Orlin, Ted – Martin Scheinin, *The Jurisprudence of Human Rights Law: A Comparative Approach* (Jyväskylä: Gummerus, 2000).

¹⁵ See Makkonen, Timo, *The Principle of Non-Discrimination in International Human Rights Law and EU Law*. Revised and updated on August 2005 by Juhani Kortteinen. International Organisation for Migration. Available at: http://iom.fi/elearning/files/international_law/essential_reading/Principle_of_Non_Discrimination.pdf (visited 1 August 2006). Nowak, Manfred, *UN Covenant on Civil and Political Rights, CCPR Commentary* (Kehl: N.P. Engel 1993), p. 478.

¹⁶ See e.g. ECtHR, *Bekos and Koutropoulos v. Greece*, Application no 15250/02 (Judgement 13 December 2005) and ECtHR, *Nachova and others v. Bulgaria*, Applications nos 43577/98 and 43579/98 (Judgement 6 July 2005).

¹⁷ See e.g. European Committee on Social Rights, *ERRC v Greece*, Complaint No 15/2003, decision on merits on 8.12.2004.

¹⁸ See the following decisions of the UN CERD Committee: *L.K. v. The Netherlands*, Communication No 4/1991; *Ms. M.B v Denmark*, Communication No 20/2000 (15/03/2002); and *Ziad Ben Ahmed Habassi v. Denmark*, Communication No 10/1997.

¹⁹ Fredman, Sandra, *Discrimination Law* (Oxford: Oxford University Press, 2002), p. 92 ff.

ble accommodation in order to eliminate disadvantages entailed by such provision, criterion or practice.

The concept of indirect discrimination is also based on a comparative logic, although this time the comparison takes place predominantly on group level instead of individual level. Indirect discrimination is not so much about formal consistency of treatment as it is about substantive outcomes.²⁰ Indeed, the concept recognises that consistent application of neutral-looking criteria may sometimes have discriminatory effects. Consider the following example:

Many firms hire through word-of-mouth recommendations from their existing employees rather than through external advertising or labour agencies. While such a practice appears to be neutral, it reinforces and perpetuates existing imbalances within the workforce, and can therefore constitute discrimination also in terms of the law.

Employers and service providers need therefore to be proactive and alert, and review and monitor all their policies and practices in order to identify possibly discriminatory processes. It is therefore not possible to think that one is keeping the equality laws simply by refraining from intentionally discriminating against anyone: unreflective continuing of customary business practices, no matter how well-established they are, may lead to discrimination and would thus need to be discontinued.

The Directives recognise that in some circumstances it is justified to allow exceptions to the above rules. Differential treatment may therefore be justified where a particular characteristic, e.g. age or ethnic origin, constitutes a genuine and determining occupational requirement. For example, age could constitute a legitimate occupational requirement where a man over 60 years is needed to play the part of a grandfather in a TV-series. A difference of treatment on the grounds of age may not constitute discrimination either if the difference is justified by some other legitimate aim, such as employment policy, provided that the means of achieving that aim are appropriate and necessary.²¹

The implementation of positive action measures, the objective of which is to promote full equality in practice, may also sometimes call for distinctions to be made.²² For these purposes, the Directives allow, but do not require, Member States to maintain or adopt specific

measures to prevent or compensate for disadvantages linked to the equality grounds covered by the two Directives. Member States are therefore at liberty to choose a model of social justice that places more emphasis on the attainment of equality in fact, as long as this is done within the limits laid down by the jurisprudence of the European Court of Justice.

To guarantee equality of opportunity to people with disabilities, the Employment Equality Directive requires employers to provide measures of reasonable accommodation where necessary.²³

The two Directives cover the following areas of life:

Discrimination on the grounds of racial or ethnic origin, religion or belief, disability, age and sexual orientation, is prohibited with regard to:

- a conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
- b access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
- c employment and working conditions, including dismissals and pay;
- d membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

In addition, discrimination on the grounds of racial or ethnic origin is prohibited with regard to:

- e social protection, including social security and healthcare;
- f social advantages;
- g education; and
- h access to and supply of goods and services which are available to the public, including housing.

²⁰ See e.g. Fredman, Sandra, *Discrimination Law* (Oxford: Oxford University Press, 2002), p. 106 ff.

²¹ Article 6 of the Employment Equality Directive.

²² Article 5 of the Racial Equality Directive; Article 7 of the Employment Equality Directive.

²³ Article 5 of the Employment Equality Directive.

A significant property of the two Directives is that they are geared towards ensuring that individuals who consider themselves discriminated against enjoy an effective access to justice. With a view on this, the Directives seek to remove many of the obstacles previously associated with bringing legal action in cases of discrimination. They do this, *inter alia*, by:

- **Sharing the burden of proof.** This means that after a complainant has been able to establish facts from which it may be presumed that there has been discrimination, it is for the respondent to prove that the law has not been breached. The sharing of the burden of proof does not apply to criminal procedures.²⁴
- **Recognising the role of statistics as evidence.** The Directives expressly allow – but do not require – the Member States to maintain or introduce rules that allow discrimination to be established by ‘any means including on the basis of statistical evidence.’²⁵
- **Recognising the need to provide an effective level of legal protection.** With a view on this, the Directives require that associations or legal entities should be empowered to engage in legal proceedings either on behalf or in support of any victim, as the Member States so determine.²⁶
- **Requiring the Member States to set up specialised bodies** the competences of which shall include the provision of independent assistance to victims of racial or ethnic discrimination.²⁷

National anti-discrimination law

All EU countries have had to transpose the EU Directives into their legal systems and their laws must fulfil the obligations arising from international law too. Indeed, the international and EU instruments have had a major impact on their domestic laws. The international and European standards however define only the **minimum** level of protection against discrimination, and many countries have gone beyond the requirements set forth by them by extending the protection to such grounds of

discrimination and/or such areas of life that are not covered by these instruments.²⁸ The scope of the domestic legislation should therefore be taken into account when planning collection of equality data. When doing this it should be taken into account that domestic anti-discrimination provisions may be found in several types of law, including Constitutional law, civil law (particularly employment law) and criminal law.²⁹

1.2.3. | A social science perspective

Much of the discussion on discrimination assumes that discrimination is something that occurs at a specific point in time within a particular field of life, and typically involves a limited number of individuals, i.e. the victim(s) and the perpetrator(s). This view, which could be characterised as ‘the episodic view of discrimination’, is related to and probably derives from the field of law, where – for the purposes of determining liability – the identification of a specific legally meaningful event is crucial, as is the identification of particular complainants and respondents. But discrimination, and its impact on the lives of the individuals concerned and on the society at large, cannot be properly understood unless discrimination is viewed in its broader context and as a dynamic process that functions over time in several, often unexpected, ways.

Discrimination in one field of life can have an impact on other fields of life, and its effects may be passed on from one generation to the next. For example:³⁰

Discrimination in access to employment, or discrimination in the conditions of work (such as the payment of a lower salary), may lead to a situation where the person discriminated against has to relocate, with his/her family, to a less expensive neighbourhood. This neighbourhood probably has greater concentrations of people who face various degrees of deprivation, providing for a potentially hostile environment. The services in the area, including health services, are likely to be inferior to those provided in the better-off neighbourhoods. The children of the family are likely to attend a lower-quality school that has fewer teachers and material resources

²⁴ Article 8 of Racial Equality Directive; Article 10 of Employment Equality Directive.

²⁵ See the identical recitals (15) of Employment Equality Directive and Racial Equality Directive.

²⁶ Article 7(2) of the Racial Equality Directive; Article 9 of Employment Equality Directive.

²⁷ Article 13 of the Racial Equality Directive.

²⁸ Cormack, Janet – Mark Bell, *Developing Anti-Discrimination Law in Europe. The 25 EU Member States compared*. European Network of Independent Experts in the non-discrimination field. September 2005. Available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/stud/05compan_en.pdf

²⁹ For the situation in the different EU countries, see the country reports produced by members of the Network of Independent Legal Experts at http://ec.europa.eu/employment_social/fundamental_rights/public/pubst_en.htm (visited 1.9.2006).

³⁰ Example inspired by National Research Council, *Measuring Racial Discrimination*. Panel on Methods for Assessing Discrimination (Washington DC: National Academies Press, 2004) and Bovenkerk, Frank, *A Manual for International Comparative Research on Discrimination on the Grounds of ‘Race’ and Ethnic Origin* (Geneva: International Labour Office, 1992).

and where the general climate poses low expectations in terms of educational achievement. This is likely to impact their success in the school, and later on limit their employment opportunities.

The above-described chain of events illustrates how discrimination at one point in time can have repercussions across several fields of life and across multiple generations. Many aspects of these processes may be difficult or impossible to challenge in terms of the law, but it is exactly these kinds of processes that should be – and can be – studied by means of social sciences and captured by means of equality data.

Just as it must be acknowledged that discrimination can have far-reaching effects, it must equally be acknowledged that this does not mean that discrimination couldn't take on very subtle forms. Indeed, as unequal treatment has increasingly become socially unacceptable and subject to more stringent anti-discrimination laws and other interventions, discrimination has begun to take more covert and subtle forms than before. There is considerable amount of evidence that supports this observation.³¹

In effect, the investigation of discrimination is often challenging. As argued by Wrench and Modood in the context of racial discrimination:³²

Even when racism and discrimination are conscious and intentional, they are usually difficult to identify, often subtle and hidden. Some aspects are only discovered through specific investigations. Other types of discrimination are unintended, indirect, or institutional, and these often need relatively complex investigation and theorising in order to identify the processes that lead to exclusion or disadvantage for some groups.

Yet, it is exactly because of this complex and often elusive nature of discrimination that it must be studied by means of compiling statistical and other data. Data is about what happens in real life, it renders visible processes and events that would otherwise remain out of sight and without due attention and remedy.³³

The causes of discrimination

To understand the causes of discrimination it is essential to look at two things:

- How **prejudices** and **stereotypes** relate to discriminatory behaviour; and
- How **practices and other actions** that are **not** motivated by prejudices can **generate** discrimination.

Prejudice refers to unfairly or unreasonably formed negative opinions, assumptions and/or feelings towards a group of people. These assumptions, opinions and emotions typically represent faulty or incorrect generalisations or rigid and inflexible attitudes. One way to understand prejudices is to break the concept down into three constitutive components. These are:³⁴

- **Negative stereotypes** (cognitive component). Stereotypes are standardised mental pictures held in common by members of a group about another group or phenomenon. Stereotypes represent typically oversimplified or overgeneralised opinion: the perceived group characteristics are assumed to apply to each member of the group. Stereotypes can originate from the culture in which people are socialised, from real inter-group differences (e.g. cultural and socio-economic differences) and also from a cognitive bias resulting from the very process of categorical differentiation between groups of people.
- **Negative feelings** (affective component). Negative feelings may result from, inter alia, negative evaluation of the stereotypes that a person attaches to a particular group.
- **Behavioural patterns**, such as keeping of social distance (behavioural component). The notion of social distance refers to the absence of, in particular, voluntary contact between the prejudiced person and members of the group against which he/she is prejudiced.³⁵ Contemporary social psychology has found that prejudices are reduced by voluntary inter-group

³¹ See e.g. Deitch, Elizabeth et al, 'Subtle yet significant. The existence and impact of everyday racial discrimination in the workplace' *Human Relations*, Vol. 56(11) 2003.

³² Wrench, John – Tariq Modood, *The Effectiveness of Employment Equality policies in Relation to Immigrants and Ethnic Minorities in the UK*. International Migration Papers 38 (Geneva: ILO, 2000).

³³ For a fuller discussion of different types of discrimination from a social science point of view, see Wrench, John, *Diversity Management and Discrimination. Immigrants and ethnic minorities in the EU* (Ashgate, in press).

³⁴ See e.g. Duckitt, John, *The Social Psychology of Prejudice* (London: Greenwood, 1994) and Berry, John W. et al, *Cross-cultural psychology: Research and applications*, 2nd ed. (Cambridge: Cambridge University Press, 2002), p. 371 ff.

³⁵ Social distance can be defined as a reflection of the preferred degree of closeness in interpersonal contact and relationships with members of other group. Idem (Duckitt).

contacts, especially if the contacts are of sufficient frequency, duration and closeness and take place between people of equal status.³⁶ Particularly inter-group friendships have been found to be important.³⁷

These three components typically reinforce each other, forming a prejudiced attitude, but the relevance of each of these factors probably varies from person to person and situation to situation. In general, however, negative feelings lead to social distance (avoidance of contact), which on its turn creates the necessary space for the maintenance of negative stereotypes, which then again serve to reinforce negative feelings.

The relationship between attitudes (such as prejudices) and behaviour (such as discrimination) is a complex one. The starting point is that there is a **causal connection** between prejudices and discrimination: prejudices arguably determine the overall tendency of a person to discriminate, but cannot predict specific single acts with much accuracy.³⁸ A prejudiced person does not necessarily act in accordance with the prejudices:

- A prejudiced person may be barred from discriminating in an environment where discrimination is generally deemed unacceptable and where other people might come to know about it. In another environment, e.g. in a group of like-minded individuals, or where there is no 'social surveillance', the person is more likely to engage in discrimination.
- A prejudiced person may have mixed motives, in which case the motive to discriminate is just one among many. A person who is strongly motivated to observe the law, and who knows that discrimination is illegal, may be thus precluded from taking discriminatory action.

On the other hand, a person whose intentions are good and who does not knowingly harbour prejudices may engage in discrimination. This is because the **socially-learned biased cognitive categories and associations may persist** and be engaged automatically, in the matter of milliseconds, shaping the behavioural responses of even well-intentioned persons.³⁹ Yet in other cases peo-

ple may more knowingly exploit stereotypes, that is, use overall beliefs about a group to make decisions about an individual from that group. This is one example of *statistical discrimination or profiling*, which can sometimes also be based upon knowledge of actual distributions of characteristics within different groups, not just beliefs about such distributions. But whatever the basis of the action, the use of group characteristics to make decisions about individuals, for instance in the context of employment, is usually not justified and often infringes equal treatment laws.

Given the impact of the social **attitude climate** as a factor that **conditions behaviour** and as a source of socially-shared stereotypes it is of essence to study the climate, even if attitudes and behaviour do not always correlate at an individual level.

It must be emphasised that not all discrimination, or perhaps even most of it, can be attributed to prejudices or internalised subtle stereotypes. Discrimination, even in legal terms, does not need to be based on an intention to discriminate, whether open or concealed. As was discussed in the previous Chapter, indirect discrimination may take place where a practice or criterion that *appears to be neutral* has an adverse effect on the members of an equality group. Indirect discrimination, in particular, is often a matter of **negligence** or **ignorance**, not of prejudices. It may for instance be part of a formal or informal organisational culture, and can in some cases be very difficult to notice.

The effects of discrimination

Discrimination has a range of effects: it prejudices the rights and opportunities of its victims and can have a significant negative impact on their social and economic status, well-being and health. Experiences of discrimination have been found to be associated, on an individual level, with symptoms related to stress and depression.⁴⁰ Discrimination is not just a menace to its victims but also to the society at large, as it is dysfunctional to the economy, can distort competition between businesses and undermines social cohesion.

³⁶ See e.g. Pettigrew, T. F., & Tropp, L. R., 'Does intergroup contact reduce prejudice? Recent meta-analytic findings' in S. Oskamp (Ed.), *Reducing Prejudice and Discrimination* (pp. 93-114) (Hillsdale, NJ: Lawrence Erlbaum, 2000). The effect of contact on reduction of prejudices has been found to be the highest for ethnic minorities and sexual minorities and lowest for the elderly (idem). It should however be noted that contact can also have negative effects: even a single experience with prejudice can have a considerable, negative impact on how group members feel in inter-group contexts, and on their expectations for future cross-group interactions. Tropp, Linda R., 'The Psychological Impact of Prejudice: Implications for Intergroup Contact' *Group Processes & Intergroup Relations*, 2003 Vol. 6 (2), pp. 131-149.

³⁷ See e.g. the special issue on inter-group contact of the journal *Group Processes & Intergroup Relations*, 2003 Vol. 6(1).

³⁸ Duckitt, John, *The Social Psychology of Prejudice* (London: Greenwood, 1994), p. 41.

³⁹ See National Research Council, *Measuring Racial Discrimination*. Panel on Methods for Assessing Discrimination. (Washington DC: National Academies Press, 2004), and the references mentioned therein; Lieberman, Matthew D et al. An fMRI investigation of race-related amygdala activity in African-American and Caucasian-American individuals. *Nature Neuroscience*, Vol. 8 No 6 June 2005.

⁴⁰ For a review of 138 empirical quantitative studies of self-reported racism and health, see Paradies, Yin, 'A systematic review of empirical research on self-reported racism and health' *International Journal of Epidemiology* 2006 35(4), pp. 888-901.

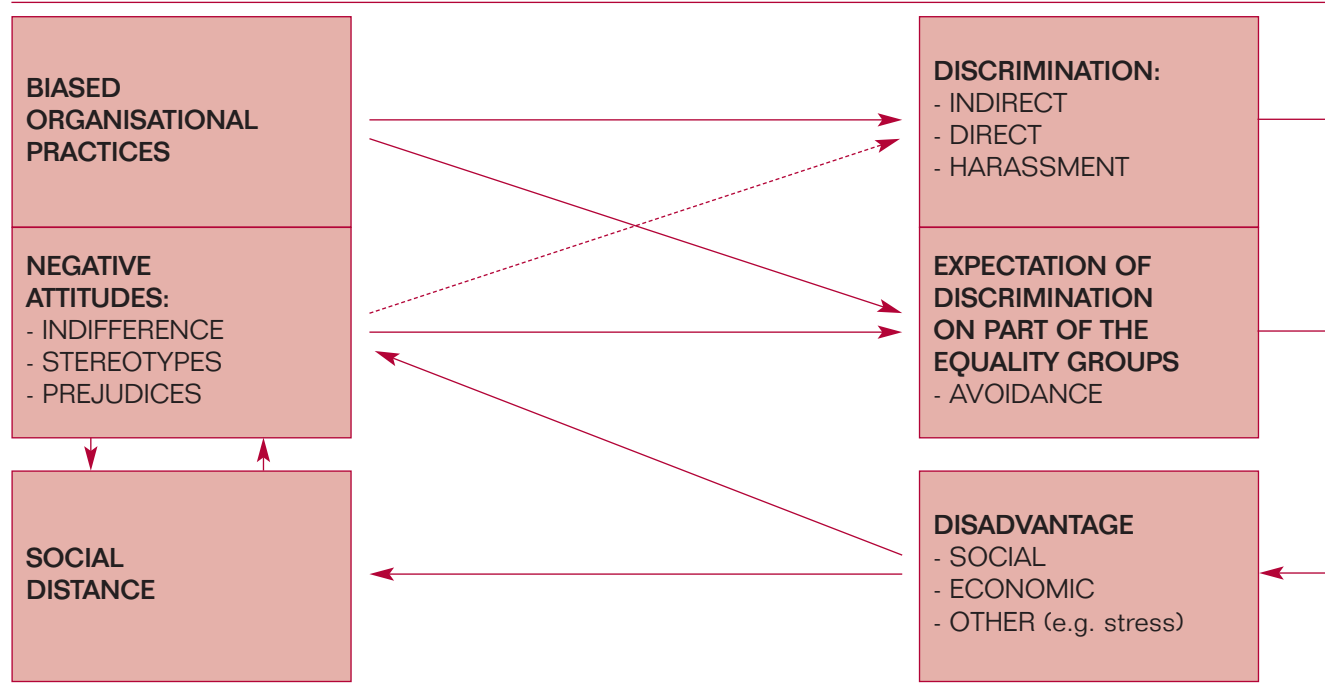
People who experience discrimination cope with it in various ways. For many discrimination is a humiliating experience that they do not want to deal with in public. Yet for others discrimination may be such a frequently recurring event that it has become an everyday experience. Some may explain their experiences in terms other than discrimination, and may even blame themselves for what happened. What is common for these groups is that they are not likely to take action, such as to file a complaint. Indeed, only a minority of those who have experienced discrimination take legal action.⁴¹

The fact that victims of discrimination may not take legal action does not mean that their experiences would not affect their behaviour. One typical behavioural response is to engage in a so-called **strategy of avoidance**, by which the person concerned seeks to – knowingly or not – avoid situations in which the likelihood of ending up discriminated against is particularly high. For an example, a person engaging in avoidance strategies may seek only jobs for which there is less competition – typically the less well-paid jobs – where it is thus less likely that an employer can ‘afford’ to discriminate. These self-imposed restrictions may be ‘effective’ in decreasing the likelihood

of being discriminated against, but they also severely limit the opportunities of the persons concerned and are dysfunctional from the point of view of the society. In addition, also people who have not themselves experienced discrimination, but who are aware of the existence of widespread discrimination against members of their group, may also engage in avoidance strategies. It may for instance be assumed that people who anticipate lower future returns to skills are less likely to invest in acquiring those skills.⁴² Already experienced prejudice negatively affects how people feel in inter-group situations and what they expect from such situations.⁴³

In effect, these processes limit opportunities, perpetuate prejudices and sustain social and economic disparities, thus multiplying the effect of individual events of discrimination. In the worst-case scenario, on the societal level, widespread discrimination triggers a vicious circle where the different forms of discrimination lead to accumulation of material disadvantages on part of the equality groups, which increases social distance (lack of voluntary contact) and reinforces stereotypes and negative attitudes, which then again increases the likelihood of discrimination, and so on, *ad infinitum*.

Figure 1. | Vicious circle of discrimination



⁴¹ One study, conducted by the EUMC and covering 12 European countries, found that, on average, only 14% of those who reported having experienced ethnic discrimination had reported the incidents to the competent authorities. Significant differences between countries in the propensity to report were found, being as ‘high’ as 37% in the UK and as low as 1% in Spain. EUMC, *Migrants’ Experiences of Racism and Xenophobia in 12 EU Member States. Pilot Study*, May 2006. Available at: <http://eumc.europa.eu>

⁴² See National Research Council, *Measuring Racial Discrimination*. Panel on Methods for Assessing Discrimination. (Washington DC National Academies Press, 2004), and the references mentioned therein.

⁴³ Tropp, Linda R. ‘The Psychological Impact of Prejudice: Implications for Intergroup Contact’ *Group Processes & Intergroup Relations*, 2003 Vol. 6 (2), pp. 131-149.

Yet it must be realised that not all discrimination leads to material disadvantages. This would categorically be the case with some types of discrimination, such as denial of access to a restaurant, which is unlikely to have a socio-economic effect. It is also true for many individuals that they increase their efforts when they experience or expect to experience obstacles. A persistent job-seeker may be repeatedly discriminated against in access to employment, except for once, and thus in the end be able to obtain a position that matches his or her qualifications. Therefore even repeated events of discrimination may not always lead to tangible differences in outcomes.

Discrimination is just one of the processes that contribute to the often disadvantaged position of the equality groups, making it challenging to positively establish the portion to which the disadvantaged position of a group, as shown for instance by outcome statistics, is the result of discrimination. While it may safely be assumed that discriminated-against groups are worse off than they would be if they were not discriminated against, it is very difficult to tell the effect of the different factors from each other. Some researchers have used **regression analyses** in an attempt to control the other relevant variables, such as average level of education, in an effort to estimate the extent to which disparities in e.g. income or employment level result from discrimination.⁴⁴ The ability to effectively carry out regression and other multivariate analyses poses further demands on data collection, as it requires the availability of a wide range of data across equality grounds on e.g. educational achievements. Such data is presently often not available.

At any rate, however, it is already in itself highly important from the point of view of other policy goals to establish if there are observable differences in socio-economic statuses of the different groups, even if the extent to which the disparities result from discrimination cannot always be positively established. The existence of **disparities** calls for closer **investigation** of the matter and invites the adoption of appropriate positive action measures. This is especially the case where the statistics disclose disparities in outcomes across several areas of life, such as employment, housing and health. Moreover, outcome statistics are of even more direct relevance for those countries that wish to place emphasis on the achievement of equal outcomes.

1.3. | The data needs

Equality statistics can serve a wide range of purposes that are absolutely essential in the fight against discrimination. The governments themselves have on several occasions recognised the need to compile such statistics.⁴⁵

First, data is needed for the purposes of **policy development and implementation** both at the national and European levels. Decisions can only be as good as the information on which they are based, which means that decision-makers need as much information as they can get in order to arrive at the right decisions. Equality considerations are relevant for all policy areas, including employment, education, health care and provision of services and goods. Data is indispensable for identifying and overcoming inequalities in these fields of life, and can help to identify the best course of action to take, which can range from the adoption and amendment of laws to the launching of information campaigns to local law enforcement interventions. It will be hard to arrive at the right decisions if they have to be made in the dark or be arrived at through trial and error. Making the right analyses and decisions right at the start helps to better secure the rights of the individuals and groups concerned, being in addition cost-effective.

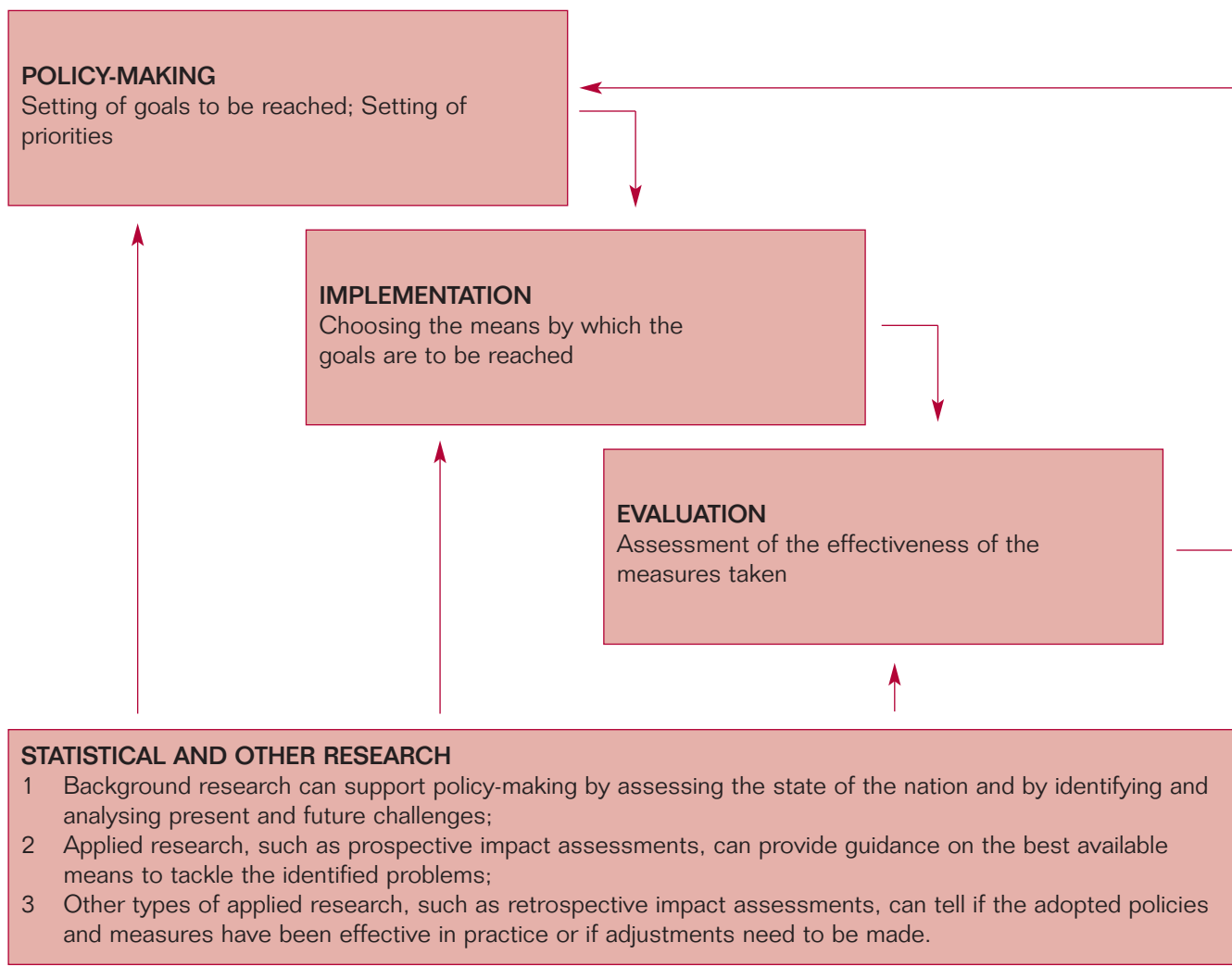
Ideally, in a **knowledge-based society**, information emanating from statistical and other research feeds into every stage of the decision-making process (see Figure 2, page 22).

Second, statistical data is needed in the **judicial assessment** of whether discrimination has taken place. **Empirical evidence** can play a decisive role in the proof of both direct and indirect discrimination. It is not just complainants who need statistical evidence but respondents as well, as statistics can be used both to establish and rebut a *prima facie* case of discrimination and to challenge the evidence presented by the other party. Sometimes general statistical data, such as data emanating from the census or from labour force surveys, provides the necessary evidence, yet in other times the data needs to be tailored to the specifics of the case and be derived from workplace monitoring data or be specifically collected, for instance by means of discrimination testing. In some countries statutory equality bodies have been given powers to conduct formal investigations,

⁴⁴ Under a multivariate analysis, discrimination is found through the unexplainable residual gap that remains between two groups even after all the variables that can be reasonably assumed to have factored in have been taken into account and controlled for. Regression analysis in particular is used to model relationships between variables and to determine the magnitude of the relationships between variables. It must however be underlined that the explanatory factors (such as differences in educational attainment as an explanation for success in the labour market) can in themselves reflect discrimination, and therefore multivariate analyses may only reveal a portion of all discrimination.

⁴⁵ See for instance the following documents: Copenhagen Declaration on Social Development and Programme of Action of the World Summit for Social Development of 19 April 1995, A/CONF.166/9. Durban Declaration and Plan of Action. Vienna Declaration and Programme of Action of 12 July 1993, A/CONF.157/23. World Programme of Action concerning Disabled Persons. Standard Rules on the Equalization of Opportunities for Persons with Disabilities.

Figure 2. | The role of data in decision-making



which may involve on-site fact-finding and collection of data, into situations that possibly involve discrimination.

Third, national **specialised bodies**, such as ombudsmen and equality bodies, and international monitoring bodies, such as the UN treaty bodies and the Council of Europe's European Commission Against Racism and Intolerance (ECRI), need quantitative and qualitative information in order to perform their **monitoring** func-

tions. As appears from the box below, these bodies have frequently asked the States parties to furnish them with the necessary equality data. It should be kept in mind that all EU Member States are parties to the main human rights conventions, and are thus under a direct legal obligation to produce periodic country reports on the human rights situation in their countries and to include in these reports quantitative and qualitative information, also in relation to discrimination.⁴⁶

⁴⁶ Human Rights Committee, *Consolidated guidelines for state reports*. CCPR/C/66/GUI/Rev.2 (26.02.2001), paragraph C.6. Committee on the Economic, Social and Cultural Rights, *General Comment No 1*. HRI/GEN/1/Rev.7 (12.05.2004). UN CERD Committee, *General Recommendation IV*. HRI/GEN/1/Rev.7 (12.05.2004). CERD Committee, *General recommendation XXVII on discrimination against Roma*. HRI/GEN/1/Rev.7 (12.05.2004). CERD Committee, *General recommendation XXIX, on Article 1, paragraph 1 of the Convention*. HRI/GEN/1/Rev.7 (12.05.2004). Advisory Committee on the Framework Convention for the Protection of National Minorities, *Outline for reports to be submitted pursuant to Article 25 paragraph 1 of the Framework Convention for the protection of national minorities*. Adopted by the Committee of Ministers on 30.09.1998 at the 642nd meeting of the Ministers' Deputies.

- The UN Human Rights Committee, in its guidelines for state reports, reminds the contracting states ('states parties') that their reports should include 'sufficient data and statistics' in order to enable the Committee to assess progress in the implementation of human rights by states parties.
- The UN Committee on the Economic, Social and Cultural Rights, in its respective a General comment on reporting by states parties, refers to monitoring and gathering of information, and underlines that 'the essential first step towards promoting the realization of economic, social and cultural rights is diagnosis and knowledge of the existing situation.'
- The UN Committee on the Elimination of All Forms of Racial Discrimination, in its General Recommendation concerning reporting by states parties, 'invites States parties to endeavour to include in their reports ... relevant information on the demographic composition of the population' protected by the Convention. In its General Recommendation on Roma, the Committee asks states parties to 'include in their periodic reports, in an appropriate form, data about the Roma communities within their jurisdiction, including statistical data about Roma participation in political life and about their economic, social and cultural situation, including from a gender perspective.'
- The Advisory Committee on the Framework Convention for the Protection of National Minorities, in its outline for country reports, also calls for the collection of necessary data. According to the outline, states should provide 'factual information...such as statistics and the results of surveys.' The document also points out that 'where complete statistics are not available, governments may supply data or estimates based on ad hoc studies, specialized or sample surveys, or other scientifically valid methods, whenever they consider the information so collected to be useful.'

It should also be kept in mind that the national bodies for the promotion of equality, which all EU Member States are required under Article 13 of the Racial Equality Directive to have, are to 'conduct independent surveys concerning discrimination' for the purposes of analysing the problems involved and studying possible solutions.⁴⁷

Fourth, data is needed by **organisations**, such as business enterprises and government agencies, that want to ensure that their firing, hiring and other policies and practices com-

ply with the equal treatment laws. They can do this by **monitoring** the composition of their workforce by the equality grounds. In an ideal situation the resulting aggregate internal data can be compared with external benchmark data showing the composition of the general population in order to detect any under-representation. In a similar vein, an organisation that provides services to the public may want to monitor its service delivery to ensure that it does so on a non-discriminatory basis. For instance, a housing agency may want to monitor its service delivery to ensure that it provides equal housing on equal terms for all groups. For all this to be possible, the organisations in question need to collect the necessary internal data, in addition to which they would benefit from the existence of suitable external benchmark data, such as census data.

Fifth, qualitative and quantitative data can be a major asset for **sensitising** and **awareness-raising** activities. Scientific evidence on the extent and nature of discrimination can serve as a compelling, factual baseline for national discussion on discrimination, benefiting governments and NGOs alike as they use this information for the purposes of advocacy, awareness-raising and education. Indeed, there is evidence suggesting that that this kind of information is frequently used for these purposes and is perceived to be an effective tool in this respect.⁴⁸

Sixth, equality data is needed because it is an indispensable resource for researchers seeking to improve our understanding of discrimination as a phenomenon. **Research**, again, is a prerequisite for developing and implementing more effective policies to fight discrimination. Discrimination is a complex and often subtle social phenomenon that can be rendered visible only by means of rigorous research efforts. In many ways, researchers and statisticians are the eyes and the ears of the society.

In addition to these rather practical functions, the compilation of equality statistics can be seen to have more symbolical functions. Already the mere existence of a data collection system **sends a message** to the actual and potential perpetrators, actual and potential victims, and the general society, signalling that the society disapproves of discrimination, takes it seriously, and is willing to take the steps necessary to fight it. This can have a **preventive effect**.

It should also be noted that the fight against discrimination requires broad-based action, and this is facilitated by data collection, as data **renders discrimination visible** and helps to make inequality a societal concern instead of being a concern just to its victims.

⁴⁷ Article 13 and recital 24 of the Racial Equality Directive.

⁴⁸ Reuter, Niklas – Timo Makkonen – Olli Oosi, *Study on Data Collection to measure the extent and impact of discrimination in Europe*. Final Report 7.12.2004. Available at: http://europa.eu.int/comm/employment_social/fundamental_rights/pdf/pubst/compstud04fin.pdf (visited 1.9.2006).

The following table provides a summary of the different uses of data:

Type of Action	Body	Typical data needs
Policy-making	Political and administrative bodies at the national, European and international levels	- Baseline data, such as demographic data and socio-economic data (census, register or survey data); - Data on material and experienced inequalities (e.g. census or register data, data from official surveys, data from victim and self-report surveys); - Data that allows assessment of present policies;⁴⁹
Human rights monitoring	Bodies such as UN CERD Committee, UN Human Rights Committee, EUMC, ECRI and national specialised bodies	- Data on discrimination experiences (e.g. victim survey data; data from discrimination testing; qualitative data); - Baseline data, such as demographic data and socio-economic data (census or register data, data from official surveys);
Judicial proceedings	Complainants, respondents, courts	- Context-specific data, such as data on hiring and firing practices of a specific organisation (internal data; data from discrimination testing experiments; qualitative data); - Baseline data broken down by the equality grounds (census or register data, data from official surveys);
Workplace and service delivery monitoring	Private and public organisations	- Monitoring data on the composition of workforce or recipients of services (internal data; qualitative data); - Benchmark data (census or register data, data from major surveys, data from comparable organisations)
Awareness-raising and sensitising activities	National and international public and private bodies, NGOs	- Easily understandable and accessible, compelling information (e.g. victim surveys; discrimination testing; self-report surveys)
Research	The scientific community	- The data needs are tremendous, as basically any set of data can be useful in this context; there is a need for both qualitative and quantitative information.

⁴⁹ Equality Impact Assessment is a particularly valuable tool in this respect. It is a way of systematically and thoroughly assessing the effects that a proposed policy is likely to have (prospective impact assessment) or that an already implemented policy has had (retrospective impact assessment), upon members of an equality group.

1.4. | Common concerns

In the same way that it must be acknowledged that there is widespread demand for data, it must also be acknowledged that some people have reservations about the issue of collecting and otherwise processing data, especially of sensitive data.⁵⁰ The most common concerns are discussed below.

'Data collection is against the laws on the right to privacy and data protection'

This is a fairly common misconception. According to another fairly common misconception, the right to privacy and the data protection laws pose no obstacles whatsoever to the collection of data. These conceptions are equally false.

All EU countries are parties to the major human rights conventions that provide for the right to privacy and the protection of personal data, including Council of Europe Convention No 108 on protection of personal data. They are also subject to the EU data protection regime. An analysis of these international and European instruments reveals that they do not preclude the collection and other processing of sensitive data, but simply lay down the legal framework within which this can be done.⁵¹ This legal framework consists of strict conditions under which sensitive data can be processed and of principles that have to be taken into account in such processing. These conditions and principles will be discussed in detail in Chapter 2.3. of this Handbook.

All EU countries have adopted domestic legislation that closely follows the substance of the international and European instruments. These instruments however allow them to provide, to some extent, a higher level of protection of personal data than what is provided by the international instruments as such. It does not however appear to be the case that many EU Member States have gone beyond the international instruments by introducing stricter laws in this respect.⁵²

Furthermore it should be noted that there are many forms of data collection that do not involve processing of

personal data and which are, therefore, not as a rule concerned by the data protection laws to begin with.

'The data can be misused against the groups concerned'

Modern societies, often referred to as information or knowledge-based societies, depend on the availability and processing of huge amounts of information. Yet the collection and other processing of data may sometimes carry risks with it. Theoretically speaking, just like data can be used for purposes that are legitimate and beneficial, so can it be used for purposes that are illegitimate. Knowledge is power and power can be abused.

History shows that various data sets, population data systems in particular, have on several occasions been used, or attempted or planned to be used, to target vulnerable groups within the population.⁵³ Abuses of data systems have taken place also in Europe, particularly during the Second World War. There are also modern-day examples of situations where misuse of personal data has been suspected.⁵⁴ These experiences have understandably made many members of the equality groups sensitive to the idea of gathering personal data that reveals ethnic origin, religion, sexual orientation and/or disability.

It should however be noted that most forms of data collection do not lead to the maintenance of the kind of integrated large-scale data sets that could be abused for illegitimate purposes. This is particularly the case with most kinds of research and workplace monitoring. In addition, it must be underlined that it is not the information itself that poses the risk – it is the context of its use that may raise concerns, and therefore emphasis should be placed on **prevention of misuse** of data rather than on prevention of data collection. All European countries have set up legislative and institutional safeguards with a view to preventing and prohibiting actions that could endanger the safety or the rights of any population group. The human rights machinery in its entirety was established in order to prevent gross human rights abuses from ever again taking place. All EU countries have furthermore enacted data protection laws and set up data protection authorities with a

⁵⁰ These concerns and objections are discussed also in Goldston, James 'Race and Ethnic Data: A Missing Resource in the Fight Against Discrimination' in Andrea Krizsán (ed), *Ethnic Monitoring and Data Protection – The European Context* (Budapest: Central European University Press, 2000) p. 20 ff, and Petrova, Dimitrina 'Statistics to Promote Equality' in Simo Mannila (ed), *Data to Promote Equality: Proceedings of the European Conference* (Helsinki: Edita, 2005) p. 139 ff.

⁵¹ See Chapter 2.3. of this Handbook and Makkonen, Timo, *Measuring Discrimination: Data Collection and EU Equality Law*. Network of Independent Experts in the non-discrimination field (Luxembourg: Office for Official Publications of the European Communities, 2007).

⁵² Idem.

⁵³ See Selzer, William 'On the use of Population Data Systems to Target Vulnerable Population Subgroups for Human Rights Abuses' *Coyuntura Social* No 30, 2005.

⁵⁴ Makkonen, Timo, *Measuring Discrimination: Data Collection and EU Equality Law*. Network of Independent Experts in the non-discrimination field (Luxembourg: Office for Official Publications of the European Communities, 2007).

duty to oversee the implementation of these laws. These laws strictly prohibit the use of data that has been collected solely for statistical purposes for any other purposes, such as making decisions or taking measures with respect to particular individuals. Technological solutions have been developed to protect the security of the data and the rights of the data subjects. In addition, it is a generally accepted principle of statistical sciences that the possibility of misuse of statistical information is not in itself a convincing argument against the collection and dissemination of data, although action should be taken to guard against predictable misuse of data.⁵⁵

At the end of the day, the minimisation of the threat of abuse of data must be a priority, and has to be taken into account in all data collection, including by means of closely observing the pertinent privacy and data protection laws and principles. Europe must not however let past abuses stop it from fighting present ones.

'Our differences should not matter. Data collection reinforces differences and stereotypes'

One of the commonly expressed concerns is one of principle: if we are striving for a society in which people are to be judged on the basis of their individual merits and not their ethnic origin, religion or some other such trait, shouldn't we oppose all practices that make use of, and thus reinforce, differences? Shouldn't we be opposed to the processing of sensitive personal data instead of endorsing it?

This line of thinking is usually justified by reference to the same objective by which data collection is justified: equality and the fight against discrimination. This thinking has its origins, again, in the past negative experiences where differential treatment almost always meant adverse treatment. Consequently the eradication of all forms of differential treatment was seen as the primary objective. This conception of equality is however outdated. Modern anti-discrimination law, as embodied also in the EU equal treatment Directives, goes beyond such thinking and acknowledges that **human differences must sometimes be recognised** and taken into account. The concept of indirect discrimination, the duty to take reasonable accommodation measures with respect to persons with disabilities, and the taking of positive action with respect to particular groups that suffer from current and past disadvantages, are the most obvious examples of situations where equal treatment does not mean iden-

tical treatment but requires action that takes the human differences into account. Furthermore, it does not make sense to treat all people as if they did not differ from each other in terms of ethnic origin, age, religion, sexual orientation or disability, because they do, and are often subjected to adverse treatment on those grounds. Investigation of discrimination, and the subsequent taking of effective counter-measures require the making of the necessary distinctions. This has been argued by legal philosopher Ronald Dworkin in the context of racial discrimination:⁵⁶

We are all rightly suspicious of racial classifications. They have been used to deny, rather than to respect, the right of equality, and we are all conscious of the consequent injustice. But if we misunderstand the nature of that injustice because we do not make the simple distinctions that are necessary to understand it, then we are in danger of more injustice still.

It is sometimes claimed that data collection serves to reinforce stereotypes. Actually the opposite is true. Statistical data can help to dispel prejudices and deep-seated stereotypes, myths and unfounded beliefs about the groups concerned, particularly when the making of unnecessary generalisations is avoided in the course of reporting the results of data collection. If the necessary data is not there these issues will be open to controversy, a situation which is taken advantage of by individuals that take the opportunity to spread prejudices and false beliefs.

'Data collection poses undue financial burdens'

Although the implementation of individual data collection measures does not necessarily have to be costly, the development and running of an *effective and comprehensive* data collection system may require substantial funding. However, there are costs, both material and immaterial, involved also in not collecting the data. Data is crucial for the prevention, proof and remedying of discrimination. The persistence of discriminatory practices is costly not just to the individuals concerned, who will be materially disadvantaged and may have to engage in potentially costly legal proceedings, but also for the society at large. Discrimination undermines the objective of achieving cohesive and secure societies, leads to the wasting of human resources and eventually also to increased social welfare expenditure. For instance in the UK it has been estimated that the lower level of employment among older workers, resulting both from structur-

⁵⁵ See the Declaration of Professional Ethics adopted by the International Statistical Institute in August 1985, the first principle in particular.

⁵⁶ Dworkin, Ronald, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1978), p. 238.

al factors and from outright age discrimination, **costs the country's economy £19-£31 billion every year** in lost output and taxes and increased welfare payments.⁵⁷

Given the tendency of information to drive action it is highly likely that the production of equality statistics generates economic benefits – not to mention other benefits – that far exceed the implementation costs.

1.5. | Sources of data: overview and assessment

There are different types of data sources, based on different data collection mechanisms, that can be used to compile equality statistics. A distinction must be made between the **sources** of data and the **methods** by which the data can be analysed. A single data set can be analysed by means of a number of methods. For example, justice system data can be a source for both quantitative yearly statistics on reported crime as well as a source for qualitative analysis of such crime. A study can either rely on pre-existing data (in which case so-called *secondary data collection* is engaged in) or on data that has been specifically collected for that particular study (*primary data collection*).

There are three main types of processes by which data is collected:

- **Surveys.** Survey data can be collected by means of questionnaires and interviews for the purposes of compiling statistics and/or for conducting qualitative and quantitative research. Censuses, household surveys and victim surveys are examples of types of surveys.
- **Administrative processes.** Data is collected in the course of many of the functions carried out by the administration. Whenever a person for instance applies for social benefits, registers in an employment office, enrolls in an educational institution, notifies the authorities of a change in address, or files a crime report with the police, the related data is usually collected and stored in the files kept by the authority concerned. These files can be analysed by means of statistical methods to reveal irregularities that are possibly due to discrimination.

- **Observation.** Observation can, in theory, provide data that is of high validity, but such data is often difficult to obtain in practice. Discrimination is a widespread but often subtle phenomenon that is usually not practiced openly, which makes its direct observation an impracticable method for gathering data about it, except in two situations:

- Discrimination can be observed through controlled experiments, such as discrimination testing.
- Enforcement agencies or researchers, for example, can conduct on-site investigations to observe for instance the ethnic composition of a workplace or a school, in order to reveal possible over- or underrepresentation.⁵⁸

The usefulness, for the purposes of contributing to the building of a national knowledge base on discrimination, of the different ways (different sources, different methods of analysis) in which equality data can be produced can be assessed across four factors:

- **Reliability.** A measure of discrimination is reliable to the extent to which the measuring procedure yields the same results on repeated trials. No measure is absolutely reliable; reliability is therefore always a matter of degree.
- **Validity.** A measure of discrimination is valid to the extent it really measures discrimination and nothing else. There are no perfectly valid measures, but some measures are more valid than others.
- **Scope.** Some procedures are of wider applicability than others, with respect to: measuring various types of discrimination (direct and indirect discrimination; harassment); discrimination in various areas of life; and across the different grounds of discrimination.
- **Cost-effectiveness.** A useful procedure must in practice be viable also in terms of its financial implications.

The main sources of equality data are **introduced** and **assessed** below, in part in the light of the above-mentioned criteria. Chapters 2-6 of the Handbook will elaborate upon the **practical** aspects involved in the collection of data through these mechanisms.

⁵⁷ National Audit Office, *Welfare to Work: Tackling the Barriers to the Employment of Older People*. September 2004. Available at: http://www.nao.org.uk/publications/nao_reports/03-04/03041026.pdf

⁵⁸ For some examples of this see Makkonen, Timo, *Measuring Discrimination: Data Collection and EU Equality Law*. Network of Independent Experts in the non-discrimination field (Luxembourg: Office for Official Publications of the European Communities, 2007).

1.5.1. | Official statistics

Official statistics are, by definition, produced by government agencies, and form an integral part of society's infrastructure.⁵⁹ These statistics typically provide population-wide information in relation to such core areas of interest as employment, education, income, standard of living, health and wealth. There are three main sources of official statistics:

- **Population census** (henceforth referred to as census),⁶⁰
- **Administrative registers**,⁶¹ (for instance employment exchange service data that can be used to compile employment statistics), and
- **Official surveys**, usually sample surveys.

A series of equality statistics can be compiled on the basis of these official data sources insofar as the pertinent personal data relating to the equality grounds is collected alongside the other data. Currently the collection and/or use of such data is not very common in Europe. Integrating equality concerns into official statistical programmes would have many benefits. As the data is collected, processed and published by a government agency, many problems, such as the otherwise ever-present need to secure sufficient funding, are solved. The use of periodically repeated data collection instruments allows for the steady development of longitudinal data, enabling trend analysis. Moreover, the fact that equality data is collected and released by a government agency can enhance public's confidence in the results so obtained, and in general help to convey the message that inequality amounts to a major social concern.

Statistics based on official data sources tend to be, when they are released, of **descriptive** rather than analytical nature. These kinds of socio-economic statistics can function as **indicators**: they pinpoint differences in outcomes but do not explain them. As such they don't directly measure discrimination. To make the most out of these data sources they need to be subjected to more

robust statistical analyses, something that may often not be possible in the course of the day-to-day operations carried out in national statistical agencies. A range of methods is available for analysing the data. These include in particular various types of multivariate analyses that seek to measure the impact of discrimination by controlling a range of variables that can be assumed to affect the outcomes. For instance, numerous studies based on wage regression analyses have made important findings in relation to wage inequalities.⁶² It is therefore important that official data sets can be used for studies employing scientifically ambitious **research methods** in the context of specialised studies carried out by the national statistical agency or some other institution or researcher. To facilitate this mechanisms should be in place by which members of the scientific community can **gain access** to raw data gathered by national statistical agencies.

1.5.2. | Complaints data

Another type of baseline data on discrimination is provided for by what may be called 'complaints data'. Complaints data is generated as a by-product of the work carried out by those bodies that, in one way or another, handle discrimination complaints. Complaints data typically includes information on the numbers and types of complaints filed with a particular body within a particular time-frame, typically a year. Also other data may be available, such as aggregate profiles of offenders/respondents and complainants, broken down by variables such as age and gender.

The primary source of complaints data is the **justice system**.⁶³ Such sources of data include tribunals, regular and specialised courts, and **specialised bodies** such as equality commissions and ombudsmen. In those countries where discrimination is a criminal offence, complaints data can be compiled also on the basis of police crime report registers and prosecution registers. Data may also be available on offences that have a discriminatory motive that constitutes an aggravating factor.

⁵⁹ Official statistics could be defined as 'all statistics compiled by state authorities for public use'. They are 'public goods': their production is the responsibility of the public sector and they are funded by tax revenues.

⁶⁰ The concept of 'census' is used in this Handbook in its original meaning, i.e. as referring to a particular type of data collection. Population censuses are as a rule conducted together with housing censuses, but the latter are not dealt with in this Handbook.

⁶¹ For the purposes of this Handbook the following terminology has been adopted: 'administrative records' refer to any data collected by the public authorities primarily for some other purpose than production of statistics; 'administrative registers' refer to that subset of administrative records that contains personal data.

⁶² See e.g. Baldwin, Marjorie L. and William G. Johnson 'The Employment Effects of Wage Discrimination against Black Men' *Industrial and Labor Relations Review*, Vol. 49, No 2 (January 1996), p. 302-316; Steen, Todd P. 'Religion and earnings: evidence from the NLS Youth Cohort' *International Journal of Social Economics*, Vol. 23 No 1 (1996), pp 47-58; Black, Dan A. et al, 'The Earnings Effect of Sexual Orientation' *Industrial & Labor Relations Review*, Vol. 56(3) (2003), pp. 449-469.

⁶³ Justice system files are another form of administrative register data. As complaints data however in its content differs from the other types of official data, and as under the present classification system some of the complaints data emanate from the activities other than public bodies, it was felt justified to have a separate class for 'complaints data' and not integrate it to 'official data'.

Data on complaints, in the broad sense of the notion, may be available also through the work of other than public authorities. Many, typically non-profit **non-governmental organisations** provide direct services to victims of discrimination. Some organisations have set up telephone hotlines or other means by which they provide advice and assistance to victims of discrimination. These organisations usually keep records of the cases that have been reported to them and of the course of action taken. The advantage of such organisations is that they are often locally-based and are easily accessible, meaning that there is a low threshold for contacting them.

As useful as statistics on complaints are for some purposes, particularly for highlighting the nature of reported discrimination, they constitute **poor indicators of actual levels** of discrimination. Cases that are reported to the police or taken to the courts constitute but a small fraction of all discrimination – exactly how small is difficult to estimate unless some other data is available, such as victim survey data.⁶⁴ It is also sometimes falsely believed that a low number of complaints indicates low levels of discrimination. Experience suggests that low number of cases may as well be associated with the existence of obstacles in access to justice, reflecting e.g. difficulties in obtaining necessary evidence or a belief on part of the victims that the justice system does not provide for a meaningful remedy.

1.5.3. | Research

Several types of research methods are available for the purposes of studying inequalities. These include the following.

Victim surveys. Victim surveys⁶⁵ refer to studies, the purpose of which is, as the name suggests, gathering information on the experiences of people at a particular risk of discrimination. Victim surveys provide a **good overview of the extent, nature and effects of discrimination**, as experienced by the people concerned. Surveys can provide detailed information, such as information relating to the experienced obstacles in access to justice, and the effects, psychological and other, of discrimination. While victim surveys can be instrumental in

assessing the **dark figure** of discrimination, it should be underlined that victim surveys can measure only the **subjective** experiences of the respondents: the actual prevalence of discrimination may be higher than indicated by the responses, as the respondents may not always be aware of having been discriminated against; on the other hand, the prevalence of discrimination may be lower than indicated by the responses, as individuals may sometimes erroneously attribute a negative event to discrimination even if discrimination played no part in it. In any case, results from victim surveys can provide highly important insights into the operation of discrimination.

Self-report surveys.⁶⁶ Self-report surveys focus on the attitudes, opinions and/or behaviour of respondents. These surveys are usually directed at the general public, or a specific group, such as employers. **Attitude surveys** in the context of anti-discrimination work are used to map out the prevalence and type of prejudices and stereotypes within a specific population. These surveys can target the population at large at a local or national level, or a more specific group, such as a specific occupational group. Attitude surveys, when conducted at regular intervals, give information on changes in attitudes, and can thus function as an early warning system. While there is no straightforward correspondence between negative attitudes and discriminatory behaviour at an individual level, increased social acceptability of prejudices signals a danger of increasing levels of discrimination in the society in general, which provides for a sufficient rationale for conducting such surveys. Surveys can also set out to inquire about **behaviour and practices** that are questionable from the point of view of equal treatment. While people may be reluctant to report such behaviours (the same applies to negative attitudes), they are more likely to do so if their responses remain fully confidential, which can be achieved by means of using appropriate modes of data collection.

Discrimination testing. Testing is a form of social experiment in a real-life situation. In discrimination testing, two or more individuals are matched for all relevant characteristics other than the one that is expected to lead to discrimination, e.g. disability or ethnic origin.⁶⁷ The testers apply for instance for a job or an apartment, usu-

⁶⁴ One study, which was conducted by the EUMC and covered 12 European countries, found that, on the average, only 14 % of those who reported having experienced ethnic discrimination had reported the incidents to the competent authorities. Significant differences between countries in the propensity to report was found, being as 'high' as 37% in the UK and as low as 1% in Spain. EUMC, *Migrants' Experiences of Racism and Xenophobia in 12 EU Member States*. Pilot Study, May 2006. Available at: <http://eumc.europa.eu>

⁶⁵ The notion of 'survey' refers to studies that gather information on the experiences, habits, opinions, attitudes and/or social and economic situation of a group of people. Victim surveys and self-report surveys constitute perhaps the most important survey types from the point of view of collecting data in relation to discrimination.

⁶⁶ Sometimes these surveys are called 'self-report offending surveys', 'self-report perpetrator surveys' or 'self-report delinquency surveys' because also victim surveys are, in a sense, self-report surveys. The kind of self-report surveys described here do however not only deal with criminal behaviour, which is why the more general label of 'self-report surveys' has been preferred in this Handbook.

⁶⁷ Fix, Michael and Margery Turner 'Testing for Discrimination: The Case for a National Report Card' *Civil Rights Journal*, Fall 1999.

ally on numerous different occasions, and the outcomes and the treatment they receive are closely monitored.⁶⁸ The method was originally developed as a tool for checking compliance with the law, and may be used as a means of evaluating the effectiveness of anti-discrimination legislation.⁶⁹

Discrimination testing method has been applied in many different contexts, such as access to employment, housing and other kinds of services and goods. Despite its **robust nature in exposing discrimination**, it does have its limitations: it has some inherent limitations such as that it cannot be used to study discrimination beyond a certain stage – for example, it can be used to study the first stages in access to employment but not necessarily the subsequent stages, and it cannot at all be used to study differences in wages, progression or redundancy. There has also been some debate over the ethical acceptability of the method, but the conclusion appears warranted that there are no major problems in that respect, especially insofar as minimal inconvenience is caused to those involved in the study.⁷⁰

Other types of research. A considerable number of other research methods are available for the purposes of studying inequalities. These include several **qualitative research** strategies, such as in-depth interviews, theme interviews and case studies. Qualitative analyses can provide important insights and unique perspectives on the victims, perpetrators and circumstances of discriminatory events, the historical and social contexts of these events and more particularly on the motives and other reasons behind the events. Qualitative research is an essential companion to quantitative research; it brings the analysis from the macro-level to the micro-level and helps to see the **people behind the numbers**. Qualitative research methods are an essential part of any research programme that aims to study discrimination, but they are even more important in studying such types and forms of discrimination that are difficult to study by means of more quantitatively oriented research.

Overall, the different forms of research constitute indispensable tools for examining the causes, extent and effects of discrimination with any precision. They have all been used for several decades, meaning that the related methodologies are already well-developed and refined, and they have been applied with respect to all grounds of discrimination focused upon in this Handbook, and have been used to study discrimination in many areas of life. Victim surveys and discrimination testing in particular have been found to constitute effective means for

measuring the prevalence of discrimination, whereas qualitative research methods have proved to provide important insights about the causes, nature and effects of discrimination. However, research projects are all too often ‘one-off’ exercises, meaning that the use of these methods needs to be systematised in order to obtain information that is up-to-date and capable of showing trends.

1.5.4. | Diversity monitoring

Diversity monitoring refers to the process by which an organisation observes the impact of its policies and practices upon the equality groups. A distinction can be made between quantitative and qualitative monitoring. Quantitative monitoring refers to situations where an organisation collects data on the make-up of its workforce e.g. in terms of age and/or ethnic origin in order to track down any imbalances in the composition of the workforce, whereas qualitative monitoring refers to less systematic forms of feedback. Workforce monitoring, especially if required by law (so that the data is systematically collected) and insofar as the resultant aggregate data are transmitted to a competent body (such as an enforcement agency), can provide data that tells not just about existing imbalances within individual workplaces but also about inequalities within the society in general.

1.5.5. | Data sources and the equality grounds

Many, if not all, of the above-described data sources can, at least in theory, be used for the purposes of compiling equality statistics with respect to all of the equality grounds considered in this Handbook, namely racial and ethnic origin, religion and belief, age, disability and sexual orientation. For example, attitude surveys targeting the general population can pose questions that are useful for analysing attitudes and opinions towards all equality groups. It is also possible to conduct discrimination testing to observe discrimination against the members of any of these groups, and no difficulties should be involved in obtaining at least some complaints data with respect to all groups.

The situation is however much more complicated with respect to those data sources the use of which – for the purposes of equality statistics – requires the individuals concerned to disclose information about their ethnic or racial origin, religion or belief, disability and/or sexual orientation. This is the case especially with census data,

⁶⁸ Fix, Michael and Margery Turner ‘Testing for Discrimination: The Case for a National Report Card’ *Civil Rights Journal*, Fall 1999.

⁶⁹ Colectivo IOE, *Labour market discrimination against migrant workers in Spain*, International Migration Papers 9. (Geneva: International Labour Office, 1995).

⁷⁰ Riach, P.A. & J. Rich ‘Deceptive Field Experiments of Discrimination: Are they Ethical?’ *Kyklos*, Vol. 57, 2004, pp. 457-470.

administrative data and monitoring data. The carrying out of victim surveys based on random sampling, while not generally requiring respondents to disclose sensitive data, is in practice dependent on the existence of some data file (so-called sampling frame) that contains contact details for persons belonging to these groups, meaning that the data must have been collected at some earlier point in time.⁷¹

It must be pointed out that under international human rights law no one can, as a matter of principle, be obliged to disclose sensitive information. Most data collection operations must therefore be based on voluntary cooperation of the individuals concerned, which together with the fact that many people feel uncomfortable about disclosing sensitive information means that sometimes it may not be possible to obtain a fully representative set of data even if a data collection operation is embarked on. It should however not be presumed that people would in general be unfavourably disposed towards disclosure of sensitive data, especially where this is linked with the purpose of securing equality of treatment. Considerably many of those EU countries that conduct censuses already collect at least some data on ethnic or national origin.⁷² A majority collects data on religion and disability.⁷³ Many countries collect data on the equality groups through registers and/or surveys. Equality data is collected also in other contexts, such as workplace monitoring: information on the employees' religion is collected in the Northern Ireland, and many workplaces in the UK collect data in relation to ethnic origin, age and increasingly also disability. In these countries these practices are generally accepted. Practical experience from many countries has also shown that while many people may initially hold reservations about the collection of sensitive data, the acceptance tends to grow as time goes by and people start to realise the benefits involved.

Much depends on the national sensitivities, and national sensitivities change. As the sensitivities involved are bound to be different in different countries, this Handbook has not tried to pre-empt the choices that need to

be made at the national level, by 'ruling out' in advance the applicability of any one of the methods with respect to any of the discrimination grounds. However, it is realised that solutions adopted in the different Member States are going to be different, with some states going further than the others. The use of various kinds of qualitative research approaches is recommended where quantitative data based on sensitive information cannot be obtained. It is also acknowledged that pioneering work still needs to be carried out to adapt some of the methods of data collection and analysis, as discussed in this Handbook, so as to be better suited to the studying of discrimination on the basis of particular grounds.

1.5.6. | Assessment

Discrimination is a complex social phenomenon, which means that it is a tricky subject to study and analyse. In consequence, there are two challenges that need to be overcome:

- The different measures vary in terms of their validity and reliability, and there are no measures that would have absolute validity and/or reliability;⁷⁴
- A single data source usually throws light into one aspect of discrimination (typically either its causes, nature, extent or effects) from a single point of view (the victims, society's, or perpetrator's) and cannot therefore meet the core data needs identified in Chapters 1.2. and 1.3. of this Handbook.

Both of these challenges can be tackled with the same solution. These challenges mean that it is essential to adopt a **multi-source** and a **multi-method** approach to the investigation of discrimination. It is only when a mutually consistent pattern of results across different analyses emerges that a reasonably valid picture of discrimination can be achieved.⁷⁵ The use of multiple sources and methods of analysis also ensures that the picture is comprehensive enough to meet the essential data needs.

⁷¹ In the absence of a proper sampling frame other than random sampling techniques can be used, although this means that the results may not be representative of the whole target group.

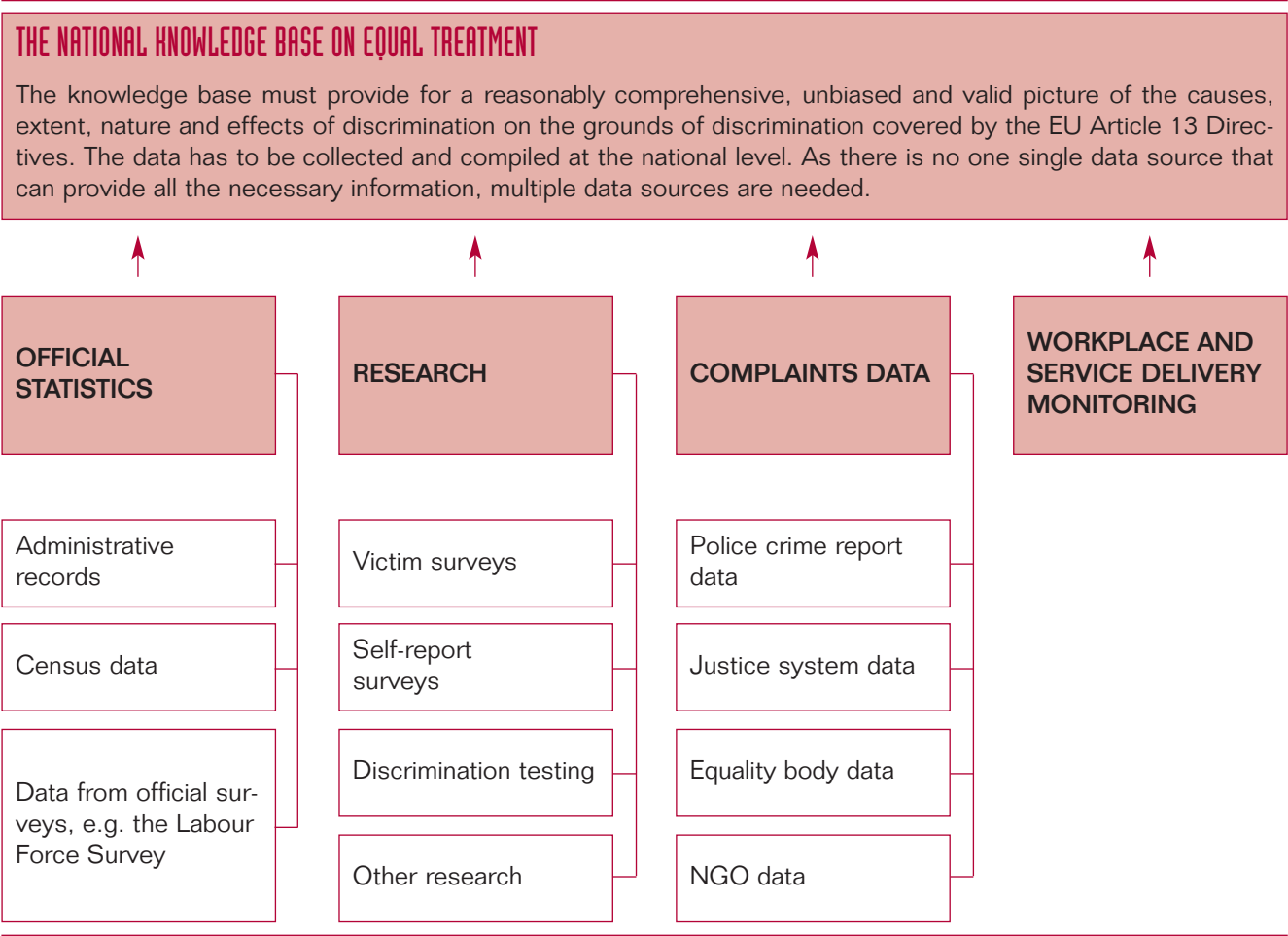
⁷² Makkonen, Timo, *Measuring Discrimination: Data Collection and EU Equality Law*. Network of Independent Experts in the non-discrimination field (Luxembourg: Office for Official Publications of the European Communities, 2007).

⁷³ Idem.

⁷⁴ See Wrench, John 'The measurement of discrimination: Problems of comparability and the role of research' in Simo Mannila (ed), *Data to Promote Equality. Proceedings of the European Conference* (Helsinki: Edita, 2005).

⁷⁵ National Research Council, *Measuring Racial Discrimination*. Panel on Methods for Assessing Discrimination. (Washington DC: National Academies Press, 2004).

Figure 3. | The different data sources for the compilation of equality data



1.6. | Recommendations

Recommendation No 1: the scope of action

All EU Member States should take action to monitor the state of the nation in terms of the realisation of equal treatment in practice. In view of this, they should compile statistics, commission research and encourage other activities the results of which will build to a national knowledge base on equality and discrimination. The scope and nature of this action should take the following into account:

1. **The wide demand for equality data.** It should be acknowledged that equality data is needed by a wide range of actors and for a wide range of purposes.
2. **The scope of domestic, EU and international law.** These sources of law define discrimination, the areas of life in which discrimination is prohibited and the grounds on which discrimination is prohibited. It is recommended that the collection of equality data takes these parameters into account, although it may be necessary to go beyond the grounds of discrimination and the areas of life covered by law, for instance in order to assess whether further legal regulation is needed.
3. **The social context.** It must be recognised that discrimination is a complex social phenomenon, the operation of which cannot be easily captured. It is therefore necessary to launch an array of in-depth investigations into the (i) **causes**, (ii) **forms**, (iii) **extent** and (iv) **effects** of discrimination.

Recommendation No 2: the need to use multiple approaches

It should be recognised that no single approach to data collection is able to meet all data needs. It is therefore strongly recommended that all EU Member States work towards building up a national knowledge base on equality and discrimination by taking advantage of **multiple data sources and multiple methods of analysis**.

Financial support should also be directed at innovative research that can lead to further methodological advances in the field of measuring discrimination.

Further reading

General

- Krizsán, Andrea (ed), *Ethnic Monitoring and Data Protection: The European Context* (Budapest: Central European University Press, 2001).
- Mannila, Simo (ed.), *Data to Promote Equality: Proceedings of the European Conference* (Helsinki: Edita, 2005).
- National Research Council, *Measuring Racial Discrimination*, Panel on Methods for Assessing Discrimination (Washington DC: National Academies Press, 2001).

Anti-Discrimination Law

- Fredman, Sandra, *Discrimination Law* (Oxford: Oxford University Press, 2002).
- Loenen, Titia & Rodriques, Peter (eds.), *Non-Discrimination Law: Comparative Perspectives* (The Hague: Kluwer, 1999).

Prejudices, Discrimination and Social Science

- Brown, Rupert, *Prejudice: Its Social Psychology* (Mass.: Blackwell, 1995).
- Duckitt, John, *The Social Psychology of Prejudice* (New York: Praeger, 1994).
- Oskamp, Stuart (ed), *Reducing Prejudice and Discrimination* (Hillsdale, NJ: Lawrence Erlbaum, 2000).

Methods for Compiling Equality Data

- Bovenkerk, Frank, 'The Research Methodology' in Roger Zegers de Beijl (ed.), *Documenting discrimination against migrant workers in the labour market: A comparative study of four European countries* (Geneva: International Labour Office, 2000).
 - Wrench, John, 'The Measurement of Discrimination: Problems of Comparability and the Role of Research' in Simo Mannila (ed), *Data to Promote Equality: Proceedings of the European Conference* (Helsinki: Edita, 2005).
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2 | Data collection and data protection

2.1. | Introduction

Whereas Chapter 1 of this Handbook focused particularly on the **need** to collect equality data, and sought to make the case for the need to generate data by taking advantage of multiple data sources and multiple methods of analysis, Chapters 3, 4, 5 and 6 discuss in more detail and in light of examples of good practices **how** the data can be produced. The present Chapter will address some key issues involved in all or most forms of data collection, and will seek to establish some ground rules in this respect. The following issues will be addressed:

- **The general methodological and practical aspects involved in collecting data through surveys.** This issue needs to be specifically addressed as (i) it is a cross-cutting theme for all surveys, such as censuses, household surveys and victim surveys, and as (ii) the use of survey methods presents a range of specific challenges. Methodological aspects relating to other forms of data collection (observation and administrative processes) will be dealt with under those Chapters that address those forms of data collection.
- **Definitions, classifications and categorisations.** Experience has shown that these themes are relevant for all forms of data collection and are often among the hardest issues that need to be addressed in the course of such activities, and need therefore also be specifically addressed in this Handbook.
- **Data protection and right to privacy.** The legal and ethical aspects involved in data collection need to be closely observed in all data collection operations, and therefore it is necessary to address the issue of how the legal and ethical framework impacts the collection and processing of data.

2.2. | Collection of data through surveys

Collection of data in relation to discrimination is beset with the methodological problems of surveys in general as well

as particular problems associated with measuring a phenomenon that can be both subtle and complex and constitutes socially-unapproved behaviour. These problems include sampling problems, lack of generally accepted and applied definitions, difficulties associated with asking sensitive questions, and possible over- and underreporting.⁷⁶ Advances made in statistical sciences over the years have helped to overcome or minimise the effect of many of these challenges, although more work on the methodological front is still needed.

This Chapter provides an overview of some of the most important aspects involved in collecting data through surveys in particular. Its purpose is to give, for those who are not specialists in the area of statistics, the information needed to follow through the subsequent Chapters. A number of comprehensive textbooks on statistics and data collection are available, providing for a fuller account of these issues, and readers should turn to them for more in-depth advice if necessary.

Sampling

Because of the costs involved most surveys cannot cover each and every member of the target population (i.e. the group under study), but are based on surveys of samples instead. Broadly put, the purpose of sample surveys is to achieve, in a cost-effective way, end results that apply, through generalisation, to the whole target population. The generalisability of the results requires the use of a correct **sampling frame** in data collection, the notion of 'sampling frame' referring to those members of the target population that can be reached. After the construction of the sampling frame a number of techniques can be applied to select those individuals or households, represented in the sampling frame, that will be surveyed.⁷⁷

General sample-based population surveys, even large-scale ones, tend to be too small for the results to be representative of particular subpopulations, such as the equality groups. In some cases so-called **boosters** may be added to the sample in order to increase the number of individuals that belong to the specific target group. Members of the equality groups – particular ethnic groups, religious groups, people with disabilities, LGB

⁷⁶ Cf. Pepper, John V. and Carol V. Petrie 'Overview' in National Research Council, *Measurement Issues in Criminal Justice Research: Workshop Summary*. J.V. Pepper and C.V. Petrie. Committee on Law and Justice and Committee on National Statistics, Division of Behavioral and Social Sciences and Education (Washington, DC: The National Academies Press, 2003). See also Bulmer, Martin (ed.), *Censuses, Surveys, and Privacy* (London: McMillan, 1979).

⁷⁷ These methods include random sampling, cluster sampling, stratified sampling, systematic random sampling and probabilities proportional to size-sampling. Statistics Finland: *Quality Guidelines for Official Statistics*. Available at http://www.stat.fi/tk/tt/laatuatilaistoissa/cont_en.html (visited 1.9.2006).

groups⁷⁸ – are however often hard to identify for the purposes of booster samples or surveys that are targeted specifically at them, as there often are no comprehensive files with their contact information that could be used as the sampling frame.⁷⁹ **Other methods** of selecting members of the equality groups for surveys may therefore need to be devised. Oft-used methods include reaching people through associations or other organisations that represent or provide services to them.⁸⁰ While the use of these methods necessarily has a negative effect on the generalisability of the results, this is the price that sometimes must be paid because optimal research protocols cannot be used.

Data collection methods

There are a wide range of different types of surveys and ways in which they can be classified. First of all we can distinguish between **specialised surveys** and **multi-subject surveys**. Specialised surveys focus on a single subject area, allowing for a deeper probing of that area, whereas multi-subject surveys cover several subject areas in a single survey and can therefore be cost-effective. Some surveys are one-off whereas others are repeated, and hence surveys can be:

- **Cross-sectional surveys;** this concept refers to studies where data is collected only once.
- **Longitudinal surveys;** these collect data from the same target group over a period of time and can therefore measure changes in the sample population.

- **Panel surveys** are a special case of longitudinal surveys. In panel surveys the same individuals – the panel – are followed over a specific period of time.

- **Multi-phase surveys;** these entail collecting statistical information in succeeding phases with one phase serving as a precursor to the next. The initial phase can be used to screen respondents with particular characteristics, such as people with disabilities, who are then surveyed in the subsequent phases.⁸¹

Surveys also differ in terms of the way they are implemented. There are two factors that are particularly important in this context:

- 1 **The mode of administration of data collections.** There are two basic administration modes:

- a **Interviewer-administration**, where interviewers read out the questions and mark down the responses. These surveys can be
 - i **telephone surveys**, or
 - ii **face-to-face surveys**.
- b **Self-administration**, where respondents answer by themselves. An example of this would be **postal surveys**.

- 2 **The technology applied in data acquisition.** There are two basic alternatives for this: either the responses are marked on paper questionnaires or on electronic media.⁸²

The following table illustrates these survey types:

Table | Survey types by mode of administration and data capture instrument [Statistics Finland]⁸³

Mode of administration	Data capture instrument	
	Paper questionnaire	Electronic questionnaire
Self-completion	Self-administered questionnaire (e.g. postal questionnaires), diaries	Internet questionnaire, Computer Assisted Self Interview (CASI)
Interview	Interviewer-administered questionnaire	Computer Assisted Personal Interview (CAPI), Computer Assisted Telephone Interview (CATI)

⁷⁸ The term 'LGB groups' is shorthand for Lesbian, Gay and Bisexual groups.

⁷⁹ Pepper, John V. and Carol V. Petrie 'Overview' in National Research Council, *Measurement Issues in Criminal Justice Research: Workshop Summary*. J.V. Pepper and C.V. Petrie. Committee on Law and Justice and Committee on National Statistics, Division of Behavioral and Social Sciences and Education (Washington, DC: The National Academies Press, 2003).

⁸⁰ For numerous examples on methods that researchers have used to identify respondents belonging to ethnic minorities, see the country reports in Krizán, Andrea (ed.), *Ethnic Monitoring and Data Protection: The European Context*, (Budapest, CPS books, 2001). For example, the contribution of Zoon and Wagon discusses the methods used to reach Roma respondents in Spain.

⁸¹ United Nations, *Designing Household Survey Samples: Practical Guidelines* (New York, 2005). Also available at: <http://unstats.un.org/unsd/demographic/sources/surveys/Handbook23June05.pdf>, pp. 1-2, and Statistics Finland, *Quality Guidelines for Official Statistics*. Available at: http://www.stat.fi/tk/tt/laatuatilastoissa/cont_en.html (visited 1.9.2006).

⁸² Ibid. (Statistics Finland).

⁸³ Ibid.

The selection of the method has an impact on the costs involved, the time it takes to obtain the data, response rates and the reliability of the responses in general. On average, interviewer-administered surveys tend to yield higher response rates than postal surveys, but also tend to be more expensive to carry out.

Sources of error

Errors in surveys are conventionally divided into sampling and non-sampling errors. Non-sampling errors can be subdivided into

- **Errors arising from difficulties in the execution of the sample**, for example, by failure to get interviews with all members of the selected sample, and
- **Errors caused by other factors**, such as respondents misinterpreting a question or deliberately lying.⁸⁴

A crucial factor in achieving reasonable response rates is that the survey design takes into account the specific needs and characteristics of the target population. In the case of ethnic minorities this may require, for example, having the questionnaires in several languages and/or using interviewers who speak the language of the respondents. If the target groups include substantial numbers of people who do not own telephones or who are challenged in terms of literacy, it may be preferable to use face-to-face interviews instead of telephone interviews or postal surveys. Surveys that target people with diverse disabilities may need to use a combination of data collection techniques.

Discrimination belongs to that class of issues which people may be reluctant to admit having engaged in, even in surveys. This is particularly the case where interviewers are used and where the responses will therefore not remain fully secret. Traditionally administered face-to-face interviews may hence not be an ideal option for collecting data on prejudices or discriminatory behaviour. This 'interviewer effect' may however be alleviated by the use of electronic questionnaires (CAPI, CATI) where the respondents themselves type in the answers. There

is strong evidence that self-administration produces fuller reporting of sensitive behaviours.⁸⁵ **Computerised self-administration surveys** in particular can be very effective, as they combine the privacy of self-administration with the power of computer administration, and have greatly expanded the situations in which self-administration can be used.⁸⁶

People may also face difficulties in reporting their experiences of discrimination. For instance, they may not be aware that they have been discriminated against, they may suspect it but nevertheless be uncertain about it, they may falsely attribute an event to discrimination even though discrimination played no part in it, they may have forgotten about discrimination they have experienced and they may not be certain what exactly is meant by discrimination in the first place. It is therefore very important to be aware of the factors that may affect the way respondents interpret and answer the questions. Some of the factors that are relevant in this respect are the following:

- **Context of the survey.** The 'packaging' of the survey, i.e. the apparent topic of the survey, the survey's sponsorship, the organisation responsible for collecting the data, the letterhead used on advance letters, and similar details may affect how individuals perceive the intent of the survey and the information that is being looked after, and potentially affects the way respondents interpret the questions.⁸⁷
- **Questionnaire design.** The accuracy and validity of the data depend on the questions and the way they are posed, including:
 - **Question order and format.** The context provided by the earlier questions poses, in part, the context in which the respondents interpret the questions. This means that the order of the questions has to be carefully considered.⁸⁸
 - **Framing of question items.** Wording of the question and the nature of the answer categories can affect responses.⁸⁹

Because these and many other aspects involved in designing surveys can have a major impact on the quali-

⁸⁴ Bradburn, Norman M. 'Response effects' in Rossi et al (eds), *Handbook of Survey Research* (New York: Academic Press, 1983) pp. 289 ff.

⁸⁵ National Research Council, *Measurement Issues in Criminal Justice Research: Workshop Summary*. J.V. Pepper and C.V. Petrie. Committee on Law and Justice and Committee on National Statistics, Division of Behavioral and Social Sciences and Education (Washington, DC: The National Academies Press, 2003). Kuran, Timur – Edvard J. McCaffery 'Expanding Discrimination Research: Beyond Ethnicity and to the Web' *Social Science Quarterly*, Vol. 85, No 3, September 2004.

⁸⁶ Tourangeau, Roger – Madeline E. McNeeley 'Measuring Crime and Crime Victimization: Methodological Issues' in National Research Council, *Measurement Issues in Criminal Justice Research: Workshop Summary*. J.V. Pepper and C.V. Petrie. Committee on Law and Justice and Committee on National Statistics, Division of Behavioral and Social Sciences and Education (Washington, DC: The National Academies Press, 2003).

⁸⁷ Idem.

⁸⁸ Idem.

⁸⁹ Sheatsley, Paul B, 'Questionnaire Construction and Item Writing' in Peter Rossi et al (eds), *Handbook of Survey Research* (New York: Academic Press, 1983).

ty of the results, it is advisable to run pre-tests before engaging in actual data collection.

2.3. | Definitions, classifications and categorisation

The human race is characterised by deep and wide diversity. Human beings differ from each other across a range of attributes such as age, sex, ethnic origin, culture, language, religion, sexual orientation, health and disability. People use these attributes as a basis of social organisation and to categorise themselves and others into groups. The resulting groups are internally heterogeneous, divided as they necessarily are across the other attributes. Human diversity is not just deep and wide but multidimensional as well.

Because groups are results of social processes that can take different routes in different societies and at different times, the resulting groups are not necessarily based on the same organising principles. This is particularly true with respect to ethnic and religious groups. Not all religions are based on a belief in a Supreme Being, nor are all ethnic groups distinguishable from others on the basis of a particular characteristic, such as common language. The crucial role of social construction is perhaps most clearly visible in the case of so-called racial groups: while it is fair to conclude that contemporary science has demonstrated that there are **no distinct human races** in any biologically significant sense – a fact also recognised by the Racial Equality Directive⁹⁰ – the use of racial language and racial categories is commonplace in some societies, even to the extent that some people characterise themselves and others primarily in racial terms. In such societies racial thinking and racial terminology have acquired **social significance**.⁹¹ Yet it must be recognised that the use of racial terminology is not common in all societies: its use is culturally bound.

Not only is group-formation the result of social processes, but so is the use of the terms in which these groups are characterised. Concepts, such as ‘ethnicity’ or ‘disability’, while referring to real-world phenomena, are

social constructs and therefore do not have a single, essential and universally valid content. While these concepts are used in everyday speech in a taken-for-granted manner, their exact meanings are seldom elaborated let alone spelled out. Are people with mental disorders covered by the term ‘people with disabilities’? Is ‘religion’ about adherence to certain beliefs, or is it more about participation in certain practices, or is it about formal membership to a religious community? What does it take to be ‘gay’ – is it a matter of affection, behaviour or both? At exactly what number of years does a person turn ‘old’? Is ‘ethnicity’ a matter of biological descent, or does one have to carry on the group’s cultural traditions to be considered a member of an ethnic group? These are all questions on which people regularly disagree.

All of this can undermine any collection of data around these issues. If people understand the key concepts differently and use different criteria by which they categorise themselves and others into groups, then this will have a direct impact on the reliability and validity of the data. For example, it has been found that people belonging to ethnic minorities often do not want to identify themselves as such in surveys; this is known as the problem of ‘false negatives’. For example, in some censuses conducted in Central and Eastern Europe, it appears that possibly as few as one in ten Roma identified themselves as such.⁹² Also the opposite phenomenon, the problem of false positives, is known to exist. There is evidence for instance that in some general population sample surveys people have identified themselves as disabled even when they have not met the applicable definition of a disabled person.⁹³ Both the existence of false positives and false negatives can substantially distort the results of a data collection operation.⁹⁴

It is therefore necessary to examine three issues:

- **Definitions.** What is meant by the terms ‘racial origin’, ‘ethnic origin’, ‘religion’, ‘belief’, ‘disability’, ‘age’ and ‘sexual orientation’?
- **Classifications.** How to group data so that the compiled statistics produce a structured and understandable picture of reality? Of which subgroups is a single category, such as ‘people with disabilities’, composed?

⁹⁰ Recital 6 of the Directive reads: ‘The European Union rejects all theories which attempt to determine the existence of separate human races. The use of the term racial origin in this Directive does not imply an acceptance of such theories.’

⁹¹ On the concept of ‘race’ and the collection of data on ‘race’, see American Sociological Association, *The Importance of Collecting Data and Doing Social Scientific Research on Race* (Washington DC: ASA, 2003). Available at: www2.asanet.org/media/asa_race_statement.pdf (visited 1.9.2006).

⁹² For an example, in the 1991 Czechoslovak census only some 33 000 people declared themselves as Roma, whereas most unofficial estimates show a Roma population of between 250 000 – 300 000. Bukovska, Barbora ‘Ethnic Statistics and Data Protection: The Czech Case’ in Krizsán, Andrea (ed.), *Ethnic Monitoring and Data Protection* (Budapest: CPS Books, 2001).

⁹³ National Research Council, *Measurement Issues in Criminal Justice Research: Workshop Summary*. J.V. Pepper and C.V. Petrie. Committee on Law and Justice and Committee on National Statistics, Division of Behavioral and Social Sciences and Education (Washington, DC: The National Academies Press, 2003).

⁹⁴ For a discussion of some of the difficulties involved in collecting ethnic data in the light of the situation in France, see Simon, Patrick – Martin Clément ‘How should the diverse origins of people living in France be described?’ in *Population and Societies*, No 425, July 2006.

- **Categorisation.** By what criteria should a person be assigned into one of the available categories? Should this take place on the basis of the self-identification by the person concerned, on the basis of some objective criteria, or on the basis of e.g. recognition by the other members of the group?

Definitions

To begin with it should be pointed out it is in theory fully possible to develop a definition of a particular concept, such as 'ethnicity' or 'disability', and indeed, definitions are often developed for the purposes of administration or law. The resulting concepts are conventions, results of a process of negotiation, and there can be multiple – equally valid – definitions of a single concept that apply in different circumstances.

The EU Directives do not define 'racial origin', 'ethnic origin', 'disability', 'religion', 'belief', 'age' or 'sexual orientation'. There are no generally accepted definitions of these concepts in the field of international law either. Some countries have adopted domestically applicable definitions of some of these concepts, for instance for the purposes for determining eligibility in certain administrative programmes or for the purposes of determining the scope of people who are protected by anti-discrimination laws. These definitions, especially when they are applicable in the field of anti-discrimination law, should be taken into account in any data collection.

There are some interrelated principles that apply to the adoption of definitions. First of all, definitions should be based upon the recognition of factual diversity within the population, meaning that the states' freedom of appreciation is limited in this respect and that a definition cannot hinge on political considerations. This principle was embodied already in a 1935 decision of the Permanent Court of International Justice, where the Court famously stated that the existence of ethnic minorities is a matter of fact, not of law.⁹⁵ The same principle has been reiterated by the UN Human Rights Committee, which has asserted that '[t]he existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by *objective criteria*.'⁹⁶ Second, the terms involved are not to be narrowly construed. This has been explicitly pointed out by the UN Human Rights Committee in relation to religion and culture (culture being closely associated with

ethnicity), but the underlying logic arguably applies to the other grounds as well and is supported by the general principles of interpretation of international human rights law.⁹⁷ Third, the definition must not be such that it excludes certain groups without an acceptable justification, as this may lead to unlawful discrimination.⁹⁸

Classifications

While there are no general, internationally accepted definitions of the key concepts, some **classification standards** have been worked out at the international level, mainly because this is necessary for the purposes of enhancing international **comparability** of statistics. These classification standards are recommendations in nature and as such not legally binding upon states, but they should be used whenever possible. They are results of a negotiation process, reflect social and political circumstances, and are subject to change over time. The standards endorsed by the Conference of European Statisticians (CES), which carry considerable amount of authority in Europe, are discussed in Section 3.2. of this Handbook.

The following ground principles should guide the development and use of classifications:

- **The same, or mutually compatible, classifications should be employed across different data collection exercises** to facilitate cross-referencing and comparability between different data sources. For example, categories used in victim surveys or in workplace monitoring should be the same as the categories used in the national population census, as this ensures that census data can be used as a benchmark against which the results of the other data collection activities can be compared.
- **Categories should be kept stable** from one data collection exercise to the next, if only possible, to facilitate the development of a time-series; any modifications that are made to an existing classification system should take into account the need to keep the categories 'backwards compatible' if possible.
- **Categories should reflect people's self-perceptions**, as this often is a precondition for securing cooperation of the individuals concerned. It is advisable to conduct pilot tests to assess the acceptability and usefulness of the proposed categorisations.

⁹⁵ *Minority Schools in Albania* (1935), Permanent Court of International Justice, Ser. A/B, No 64, 17.

⁹⁶ Human Rights Committee: General Comment 23, HRI/GEN/1/Rev.7 (12 May 2004) paragraph 5.2., emphasis added.

⁹⁷ UN Human Rights Committee, *General Recommendation on Article 18*. While the exact content of the general principles of interpretation of international human rights law is subject to some debate, it is rather generally accepted that as a matter of principle rights are to be construed broadly and exceptions thereto narrowly, meaning also that the terms in which a right has been construed shall in general be interpreted broadly rather than narrowly.

⁹⁸ Cf. CERD Committee, Fifty-fifth session (1999). *General recommendation XXIV concerning Article 1 of the Convention*, paragraphs 2 and 3.

- **The available categories should be clear, well-defined and mutually exclusive**, so as not to be susceptible to misunderstandings or divergent interpretations.
- **Detailed classification systems should be used**, as the more detailed the classification system, the more detailed the information that can be derived, as smaller divisions can then be taken into account. The use of broad categories hides internal diversity, which means that it is not advisable simply to compare people with disabilities with those without, or ethnic minorities as a single group against the ethnic majority. In addition, all data should be disaggregated at least by gender and age in order to take into account **multiple discrimination** or 'confounding variables'. Those developing categorisation systems should however be cognizant of the possible existence of a trade-off between having an easily manageable number of variables, which may be a desirable option both time- and cost-wise, and with having a greater number of variables that enables more robust and refined analysis.

Categorisation

There are a number of practices that are used in order to place people in the most appropriate category:

- **Self-categorisation** (self-identification) by the person concerned. Under this approach, the person concerned identifies his/her ethnic origin, religion, possible disabilities, age and/or sexual orientation.
- **Third-party categorisation.** Under this approach another person, such as a representative of the employer, a police officer or some other authority, does the categorisation
 - On the basis of a visual inspection of the person concerned (applicable mainly with respect to racial or ethnic origin);
 - On the basis of some other cue that is related to the apparent status of the person concerned (such as name or place of birth for ethnic origin);
 - On the basis of knowledge in possession of the other person. This applies mainly in the context of census or some other official survey where a fam-

ily member provides information on behalf of a person who is not available at that time.

- **Mutual recognition** by the members of the group. This approach is sometimes used to identify members of distinct ethnic groups, such as members of indigenous peoples.

Third-party categorisation has in the past been used in some circumstances, particularly in police work and workforce monitoring, where the posing of questions about sensitive issues has not been deemed appropriate or practical. The use of the self-categorisation method has gained popularity over the years, and appears by now to be by far the most common basis for categorisation. It is also better in line with the relevant principles of international human rights law:

- It arguably is well in line with the **underlying values of human rights**, the first of which is human dignity, and the requirement of right to respect for information relating to private life.
- It meets well the requirements posed by the **data protection principles** requiring that all data collection must be fair and the collected data accurate and relevant.
- **The UN CERD Committee** has explicitly opined in the context of ethnicity that 'identification shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned.'⁹⁹ The same principle has also been endorsed by the European Commission Against Racism and Intolerance (ECRI)¹⁰⁰ and the Conference of European Statisticians, and has explicitly been embraced by some national jurisdictions.¹⁰¹

Even though there thus are good reasons to endorse the use of self-categorisation, and even though it is in principle preferable to use the same categorisation method across the different data collection activities (considering that census data and survey data are usually based on self-categorisation), it should be pointed out that there may be situations where it is appropriate to use some other method *in addition to* self-categorisation. This is particularly the case where the use of self-categorisation approach leads to incomplete or inaccurate data.¹⁰²

⁹⁹ UN CERD Committee; *General recommendation VIII*. HRI/GEN/1/Rev.7 12.05.2004.

¹⁰⁰ Gachet, Isil 'The Issue of Ethnic Data Collection From the Perspective of Some Council of Europe Activities' in Andrea Krizsan –Iván Székely (eds), *Ethnic Monitoring and Data Protection: The European Context* (Budapest: Central European University Press, 2001), p. 54.

¹⁰¹ This is the case e.g. in Hungary. Krizsán, Andrea 'Ethnic Monitoring and Data Protection: The Case of Hungary' in Andrea Krizsán (ed), *Ethnic Monitoring and Data Protection* (Budapest: CPS Books, 2001), p. 159.

¹⁰² In some situations, for instance in the context of employment or the justice system, many individuals may be reluctant to disclose e.g. their ethnic origin, and choose to identify themselves as members of the majority instead or choose the 'would rather not say' option. This results in the data being incomplete and/or inaccurate, which is why the use of other methods may need to be considered. It should also be noted that intentional discrimination is based not on how the person concerned sees him- or herself (self-identification), but on how others perceive him or her. This is another reason why the use of third-party classification, in the case of ethnic origin, may be effective in identifying individuals who are at a particular risk of being discriminated against, which is why the use of this method should not be completely ruled out.

Another factor that should be taken into account is that under international law no one can, as a rule, be obliged to disclose his/her religion or ethnic origin. The Framework Convention for the Protection of National Minorities recognises in Article 3(1) that '[e]very person belonging to a national minority shall have the right to choose to be treated or not to be treated as such'.¹⁰³ This has been interpreted as implying that each person shall be entitled to request to not be treated as belonging to a minority,¹⁰⁴ and that no one may be obliged to disclose his/her affiliation with a minority.¹⁰⁵ The UN Human Rights Committee on its behalf has confirmed that no one can be compelled to reveal his/her thoughts or adherence to a religion or belief.¹⁰⁶ It is likely that the same principle applies also with respect to other sensitive information, those that relate to sexual orientation in particular.

Article 8 of the European Convention provides for the protection of privacy:

Article 8 – Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

2.4. | Legal and ethical framework

Collection of sensitive data brings up important issues in relation to data protection in particular. Insofar as the EU Member States develop their data collection practices, this is likely to bring new players into the field. While national statistical agencies can be expected to have a comprehensive understanding of data protection issues, this is not necessarily the case with other organisations, especially private sector actors that are often also subject to less stringent control mechanisms. Because of these reasons it is of essence to review how the international and EU privacy laws and data protection laws impact the collection and other processing of personal data. Whereas there are a number of both binding and non-binding documents that regulate matters in this area, it has been necessary – because of constraints of space – to focus primarily upon those documents that are most important in the European context, the European Convention on Human Rights and the EU Data Protection Directive in particular.

2.4.1. | Right to privacy

All Member States of the European Union have ratified the European Convention on Human Rights (ECHR).

The right to respect for private life encompasses the *right to respect for information relating to private life*.¹⁰⁷ Therefore the processing of personal data, including sensitive data, falls within the ambit of Article 8. Article 8 provides protection from infringements of privacy irrespective of whether they emanate from actions of public or private organisations.

Collection or other processing of personal data without the knowledge or consent of the data subject, especially if the data is capable of being used in ways that are harmful to the data subject, may amount to an interference with the rights provided in Article 8. Also subsequent use or disclosure of voluntarily submitted personal data may engage Article 8 if the data is used for purposes other than those that the data subject was informed of, or if the data is disclosed to unauthorised third parties or stored in a way that fails to guarantee security of the data.

The right to respect for private life is **not absolute**: interference thereof may be justified under Article 8(2) of the ECHR. If it is not to contravene Article 8, an interference must (i) have been in accordance with the law, (ii) pursue a legitimate aim, and (iii) be necessary in a democratic society in order to achieve that aim. These requirements are to be interpreted narrowly.¹⁰⁸ While the first two requirements should not be difficult to meet in the con-

¹⁰³ The OSCE Copenhagen document of 1990 provides for a related right in Article 32: 'To belong to a national minority is a matter of a person's individual choice and no disadvantage may arise from the exercise of such choice.'

¹⁰⁴ See Opinion of the Advisory Committee on the Framework Convention on Cyprus, 06.04.2001, ACFC/OP/II(2002)004, paragraph 18.

¹⁰⁵ See Opinion of the Advisory Committee on the Framework Convention on Azerbaijan, 22.05.2003, ACFC/OP/II(2004)001, paragraph 21 and Opinion on Ukraine, 01.03.2002, ACFC/OP/II(2002)010, paragraph 22.

¹⁰⁶ Human Rights Committee, *General Comment* 22, paragraph 3.

¹⁰⁷ European Commission on Human Rights, *X v. UK* 30 DR 239 1982. European Court of Human Rights (ECtHR), *Amann v Switzerland* (16.02.2000); ECtHR, *MS v. Sweden* (27.08.1997).

¹⁰⁸ See e.g. ECtHR, *Rotaru v Romania* (04.05.2000), paragraph 47.

text of compiling equality statistics, the third requirement, i.e. whether the activity can be considered 'necessary in a democratic society', is critical. Under the case-law of the European Court of Human Rights, for the answer to be in the affirmative, there should be a **pressing social need** justifying the interference, in addition to which the interference must be proportionate to the aim pursued.¹⁰⁹ Article 8 therefore requires strict balancing in determining which data collection operations are 'necessary', one element of which is the **principle of proportionality** that requires that one should always employ those data collection methods that pose the least threat to privacy.

Also other international treaties, and the International Covenant on Civil and Political Rights (ICCPR) in particular, provide for the right to privacy. Article 17 of the ICCPR prohibits 'arbitrary and unlawful interferences' of privacy. In that context the UN Human Rights Committee, the supervisory organ for the Convention, has opined that 'the competent public authorities should only be able to call for such information relating to an individual's private life the knowledge of which is essential in the interests of society as understood under the Covenant.'¹¹⁰ While it should be uncontroversial that the collection of personal data for the purposes of guaranteeing equal treatment is 'in the interests of the society as understood under the Covenant' – given for instance the fact that the very same Committee has called for the contracting states to collect the data – it is clear that each data collection operation must also meet the test of being essential for those interests.

The principles mentioned concern only personal information, that is information concerning an identified or identifiable individual, and therefore these Articles are not engaged by data that has been rendered anonymous.

2.4.2. | Data protection

The EU Data Protection Directive,¹¹¹ adopted in 1995, has been very influential in shaping the national data protection laws within the EU. It followed the 1981 Council of Europe ETS Convention No 108 on personal data¹¹² and elaborated upon the principles laid down therein.

The Directive regulates the processing of *personal data*. Under the Directive, 'personal data' is defined as *any information* relating to an identified or identifiable natural person ('data subject').¹¹³ Personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning health or sex life, are considered sensitive data, or, in the language of the Directive, '**special categories of data**'. 'Processing' is defined widely, and means any operation or set of operations that is performed upon personal data, starting from the collection of the data and ending at its destruction.

The Data Protection Directive sets out a number of requirements that must be met when personal data is processed. Article 6, which lays down five qualitative data protection principles, is of fundamental importance, and has to be paid close attention in the planning and carrying out of any data collection. The five principles are the following:

- I **Personal data must be processed fairly and lawfully.**

First of all, all data processing operations must be **lawful**. The conditions for legitimacy of data processing are set out in the same Directive, namely in Article 7 for other than sensitive data and in Article 8 for sensitive data. Secondly, all personal data must be processed **fairly**. Fairness requires that the interests and reasonable expectations of the data subjects must be taken into account in all data processing.¹¹⁴ The notion of fairness brings with it requirements of balance and proportionality: the collection and further processing of data must be carried out in a manner that does not in the circumstances intrude unreasonably upon the data subject's privacy nor interfere unreasonably with his/her autonomy and integrity.

- II **Personal data must be collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes. Further processing of data for historical, statistical or scientific purposes shall not be considered as incompatible provided that Member States provide appropriate safeguards.**

¹⁰⁹ ECtHR, *Smith and Grady v. United Kingdom* (2000), 29 E.H.R.R. 493; *Chassagnou v. France* (2000), 29 E.H.R.R. 615

¹¹⁰ UN Human Rights Committee, *General Comment 16*. HRI/GEN/1/rev.1 (1994).

¹¹¹ European Parliament and Council Directive 95/46/EC of 24.10.1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, Official Journal L 281 of 23.11.1995.

¹¹² The Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS Convention No 108).

¹¹³ Article 2 of the Directive. According to recital 26 of the Directive, 'to determine whether a person is identifiable, account should be taken of all the means likely reasonably to be used either by the controller or by any other person to identify the said person.'

¹¹⁴ Lee A. Bygrave, *Data Protection Law: Approaching its Rationale, Logic and Limits* (The Hague: Kluwer, 2002), p. 58.

This requirement, often called the **purpose-specification principle**, is really a cluster of four principles:

- The purposes for which data are collected shall be specified;
- These purposes must be explicit, i.e. fully and clearly expressed;
- The purposes must be legitimate; and
- The purposes for which data are further processed shall not be incompatible with the purposes for which the data were first collected.

Further processing of data for statistical and scientific purposes is explicitly allowed, provided that **appropriate safeguards** are in place and that the data processing operation meets the conditions set in Article 7 or 8, as applicable. Importantly, this means that it is generally possible to statistically analyse data that has been gathered for other, such as administrative, purposes. The opposite is not allowed: it is prohibited to use data that has been gathered solely for statistical purposes for decisions or measures in respect of particular individual(s). Such data, e.g. individual-level census data or survey data, cannot therefore be used for administrative, judicial, fiscal or any other such purposes.

- III **Personal data must be adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed.**

The third principle is the principle of **proportionality**, which specifies that *only those personal data may be collected that are necessary* to achieve the purposes of the data collection operation. In so far as doing so does not put the objectives of a particular operation in jeopardy, the person or organisation in charge of the operation should opt for secondary rather than primary data collection, anonymous rather than nominal surveys, sampling rather than full-scale surveys, and for voluntary rather than compulsory surveys.¹¹⁵

- IV **Personal data must be accurate and, where necessary, kept up-to-date; every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified.**

All reasonable steps should be taken to ensure that the data is **not factually misleading**. This is particularly so

where the data is used to make decisions with respect to specific individuals. While it is difficult to give guidelines as to when the data can be assumed to be accurate, it can be said that data that has been obtained directly from the data subject can in general be assumed to be accurate.

- V **Personal data must be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed. Member States shall lay down appropriate safeguards for personal data stored for longer periods for historical, statistical or scientific use.**

The fifth principle is a logical corollary to the third. Both are directed at ensuring **minimality of personal data processing**, the latter covering the stage of data collection and the former the subsequent stages. Personal data are to be erased or rendered anonymous once they are no longer required for the purposes for which they have been kept. Where the design of a scientific or statistical project so requires, the necessary identification data may be retained, provided that specific, 'appropriate' domestic safeguards are in place.

As laid down in the first principle of Article 6, all data processing must be **lawful**. In the context of the Directive, this means that the conditions set out in Article 7, or Article 8 in the case of sensitive data, must be met. Article 7 provides that personal data may be processed only in specified circumstances, such as

- Where the data subject has unambiguously given his consent;
- Where processing is necessary for compliance with a legal obligation to which the controller is subject;
- Where the processing is necessary for the performance of a task carried out in the public interest; or
- Where the processing is necessary for the purposes of the legitimate interests pursued by the controller or by the third party or parties to whom the data are disclosed, except where such interests are overridden by the interests for fundamental rights and freedoms of the data subject.

At least **one** of these conditions must be met when an operation involves the processing of personal data. If the operation however involves also the processing of sensitive data, as is often the case with the production of equal-

¹¹⁵ See also Council of Europe *Recommendation No R(97) 18 on the protection of personal data collected and processed for statistical purposes* and the explanatory memorandum, p. 62.

ity statistics, the more stringent conditions laid down in Article 8 must be met instead. Article 8 has been formulated in such a way that the first paragraph contains an in-principle prohibition to process sensitive data, broad exceptions to which are then enumerated in the second paragraph:

Article 8

1. Member States shall prohibit the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning health or sex life.
2. Paragraph 1 shall not apply where:
 - a the data subject has given his explicit consent to the processing of those data, except where the laws of the Member State provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject's giving his consent; or
 - b processing is necessary for the purposes of carrying out the obligations and specific rights of the controller in the field of employment law in so far as it is authorized by national law providing for adequate safeguards; or
 - c processing is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving his consent; or
 - d processing is carried out in the course of its legitimate activities with appropriate guarantees by a foundation, association or any other non-profit-seeking body with a political, philosophical, religious or trade-union aim and on condition that the processing relates solely to the members of the body or to persons who have regular contact with it in connection with its purposes and that the data are not disclosed to a third party without the consent of the data subjects; or
 - e the processing relates to data which are manifestly made public by the data subject or is necessary for the establishment, exercise or defence of legal claims.

It is sufficient for a data processing operation to satisfy **one** of the conditions enumerated in paragraph 2. Sub-

paragraphs (b) and (e) on the processing of sensitive data in the contexts of employment law and legal proceedings are likely to be particularly important for the compiling and using of equality data. It is however subparagraph (a) on the **consent of the data subject** that is likely the most frequently used basis for processing sensitive data.

The consent must be freely given, meaning that the individual from whom information is sought must not be subject to any kind of duress, influence or pressure, whether direct or indirect.¹¹⁶ The consent must be specifically and explicitly given, meaning that the consent must be clearly and fully expressed, although it need not necessarily be given in writing. The consent must be an informed one, meaning that it must be clear to the data subject what exactly he or she is consenting to.¹¹⁷ The party requesting sensitive data must make it clear that disclosure of sensitive information is not obligatory, and must inform the data subject of the purposes of the data collection operation and of what happens to the data.

The Directive leaves it to the each Member State to decide whether it considers that the giving of consent constitutes a sufficient condition for justifying the processing of sensitive data. This is important, as opinions in the EU countries are mixed in this respect.¹¹⁸

The list of justification grounds enumerated in Article 8 is not exhaustive. Article 8(3) permits health professionals to process sensitive information as part of their everyday business, subject to certain conditions. In addition, Article 8(4) of the Directive provides that

Subject to the provision of suitable safeguards, Member States may, for reasons of substantial public interest, lay down exemptions in addition to those laid down in paragraph 2 either by national law or by decision of the supervisory authority.

It should go without saying that guaranteeing and promoting equal treatment qualifies as a 'substantial public interest'. Member States are therefore at a liberty to introduce, either through national law or by decision of the national supervisory authority, further exceptions that allow processing of sensitive data in the context of producing equality data. One of the objectives of Article 8(4) is to facilitate scientific research and government statistics, making it legitimate to process and store sensitive data in central population registers, tax registers,

¹¹⁶ See Article 2(h) of the Directive and the Council of Europe *Recommendation No R(97) 18 on the protection of personal data collected and processed for statistical purposes and the explanatory memorandum*, p. 69.

¹¹⁷ *Idem*.

¹¹⁸ See Korff, Douwe, *EC Study on Implementation of Data Protection Directive. Comparative Summary of National Laws*, September 2002, available at: http://ec.europa.eu/justice_home/fsj/privacy/docs/lawreport/consultation/univessex-comparativestudy_en.pdf (visited 1.05.2006).

census registers and the like for these purposes. Suitable safeguards must be in place to protect the rights and freedoms of individuals. This requires the taking of appropriate technical and organisational measures, particularly in order to maintain security of data and thereby to prevent any unauthorised transmission or access to data.¹¹⁹

The Data Protection Directive lays down a number of other important rules as well, e.g. in relation to data subject's right of access to data (Article 12) and on information to be given to the data subject by the controller of data (Articles 10 and 11). Article 28 requires each Member State to provide that one or more public authorities are responsible for monitoring the application within its territory of the provisions adopted pursuant to the Directive. In effect, there are data protection commissioners or other authorities in all 25 Member States of the European Union.¹²⁰

Further guidance on data protection issues is provided for instance by the Council of Europe Recommendation No R(97) 18 concerning the protection of personal data collected and processed for statistical purposes.

2.4.3. | Statistical ethics

Statisticians have obligations to the data subjects, customers, funders and society at large. These stakeholders often have diverging or even conflicting interests. Statistical agencies operate in a very challenging environment as many of the topics on which they produce information are highly politicised and different groups have vested interests in the outcomes of their work. Increased demand for information and the availability of easy-to-use information technology have attracted new players to the information industry. While competition may increase cost efficiency this may come at a cost to the reliability of the information, the appropriateness of data collection methods, the security of data and in extreme cases also impartiality of the work carried out. While the law regulates many of these aspects, the applicable legal standards tend to be generally formulated with little or no case law that would offer help in clarifying their exact meaning in practice. These background factors underline the significance of ethical guidelines in the area of statistics. Ethical guidelines complement legal standards, clarify their meaning in practice, and help statisticians and researchers to maintain high standards of scientific integrity and quality.

Several guidelines with a set of principles that aim at securing the quality of statistics have been promulgated

at the international level. The International Statistical Institute (ISI) adopted the Declaration on Professional Ethics in 1985. The Declaration covers three subject areas:

- **Obligations to society, such as: objectivity and professional integrity; wide communication of the findings.**
- **Obligations to funders and employers, such as: impartial assessment of alternative methodologies; guarding of privileged information; non-acceptance of contractual conditions that are contingent upon a particular outcome.**
- **Obligations to data subjects, such as: avoidance of undue intrusion; obtaining, as a rule, of informed consent; maintenance of confidentiality of records.**

The UN Statistical Commission adopted in 1994 a set of ten fundamental principles of official statistics. These principles had initially been adopted by the Conference of European Statisticians and its parent body the Economic Commission for Europe. These principles provide, inter alia, that:

- **To retain trust in official statistics, the statistical agencies need to decide according to strictly professional considerations, including scientific principles and professional ethics, on the methods and procedures for the collection, processing, storage and presentation of statistical data.**
- **Data for statistical purposes may be drawn from all types of sources, be they statistical surveys or administrative records. Statistical agencies are to choose the source with regard to quality, timeliness, costs and the burden on respondents.**
- **Individual data collected by statistical agencies for statistical compilation, whether they refer to natural or legal persons, are to be strictly confidential and used exclusively for statistical purposes.**
- **The use by statistical agencies in each country of international concepts, classifications and methods promotes the consistency and efficiency of statistical systems at all official levels.**

A range of standards regulates the production of so-called Community statistics within the EU. These include Article 285 of the Treaty establishing the European Community, Council Regulation (EC) No 322/97 on Community

¹¹⁹ See recitals 34 and 46 of the Directive.

¹²⁰ For a list of these authorities, see http://europa.eu.int/comm/justice_home/fsj/privacy/nationalcomm/index_en.htm

Statistics, and the Code of Practice concerning the independence, integrity and accountability of the national and Community statistical authorities. The Code of Practice, adopted by the Statistical Programme Committee and promulgated by the Commission of the European Communities in 2005, is directed at the National Statistical Institutes and the Eurostat, and lays down 15 principles. These 15 principles deal with, inter alia, the following core areas: professional independence; quality commitment; statistical confidentiality; impartiality and objectivity;

sound methodology; appropriate statistical procedures; non-excessive burden on respondents; cost effectiveness; relevance; accuracy and reliability; timeliness and punctuality; coherence and comparability; accessibility and clarity.

It should also be noted that a wide range of other ethical guidelines have been formulated. They usually have a bit more limited scope of application, in that they are applicable in a particular branch of science.

2.5. | Recommendations

Recommendation No 3: the need for groundwork

Those commissioning and carrying out data collection operations should be prepared to address a number of fundamental issues that have a major impact on data collection. These issues include the following:

- In survey research, the impact of choices made with respect to such issues as data collection mode and the framing of the survey questions should be assessed before engaging in data collection.
- Particular attention should be paid to definitions, classifications and categorisation principles used. These should, as a rule, follow common domestic and international practices.
- Those in charge of operations that involve processing of personal or sensitive data must ensure that the applicable data protection and privacy laws are fully complied with. The use of state-of-the-art Privacy Enhancing Technologies (PETs) is recommended, particularly whenever the processing of sensitive data is involved.
- Governments should review domestic data protection and privacy laws in order to
 - ensure that the safeguards required by the European and international law are in place, and
 - to ensure that the domestic law does not pose any unnecessary obstacles (limitations not required by the European and international laws) for the collection of equality data.

Key principles and guidelines on data protection and privacy

Legally binding instruments

- Convention for the Protection of Human Rights and Fundamental Freedoms (Council of Europe ETS No 005), especially Article 8
- International Covenant on Civil and Political Rights (UN), especially Article 17
- Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Council of Europe ETS Convention No 108)
- EC Directive on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data

Other instruments

- Charter of Fundamental Rights of the European Union, especially Articles 7 and 8
 - The Council of Europe Committee of Ministers recommendation No R(97) 18 concerning the Protection of personal data collected and processed for statistical purposes 30 September 1997. <http://cm.coe.int/ta/rec/1997/97r18.html>
 - International Statistical Institute, *Declaration on Professional Ethics*. Adopted at the ISI General Assembly in Amsterdam on 21 August 1985. <http://isi.cbs.nl>
 - *Fundamental Principles of Official Statistics*. Adopted by the United Nations Statistical Commission in April 1994. (E/CN.3/1994/18)
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3 | Official statistics

3.1. | Introduction

All EU countries collect the necessary data in order to obtain vital demographic and socio-economic information on their populations. There are three principal sources of information that can be used for the compilation of official statistics: census, administrative registers and sample surveys. This Chapter looks at the ways in which these information sources can be put to use in the collection of equality data.

For the time being most of the EU countries have taken insufficient, or not at all, advantage of the opportunity to compile equality statistics in the course of the production of official statistics. Furthermore, while there have been several international initiatives that have aimed at providing guidelines and methodological advice on what kind of equality data should be collected and how, there are, as of yet, few internationally-agreed principles in this regard.

Equality data collected in the course of official statistics can potentially serve the following five primary functions:

- The data can provide the necessary **contextual data on the equality groups**. Demographic data relating to such characteristics as size, gender structure and geographical distribution provides the basic background data that is needed in the course of various activities such as policy planning, research and workplace monitoring.
- The data can be used to construct **equality indicators**. All socio-economic statistics can be broken down by the equality grounds provided that data is also collected on the variables of age, disability, ethnic origin, religion and/or sexual orientation.
- The data can provide the kind of comprehensive data source needed in order to investigate inequalities by means of regression analyses and other **research methods**.
- The data can **directly measure discrimination experiences** among members of the equality

groups. This is possible where a particular data collection mechanism, such as a large-scale national survey, contains an equality module that directly addresses people's experiences in this regard.

- Data from censuses and administrative records can be used to provide the **sampling frame** for the purposes of specialised surveys.

As each country is unique in terms of its data collection infrastructure, it is up to each country to consider whether and how best to mainstream equality considerations into its data collection programmes.

3.1.1. | Equality indicators

The data collected in the course of production of official statistics is regularly of such nature that it reflects nation-wide processes and particularly outcomes of these processes. As such, they can be used to develop a set of **indicators** that measure the state of the nation. Perhaps the internationally best-known indicator is the GDP (Gross Domestic Product), which is used to measure the economic status of a country. Indicators can usually measure the target phenomena only indirectly, making the development of good indicators that much more challenging.

A considerable amount of effort has lately been put into developing **equality indicators**, especially concerning disability and ethnic origin – and outside the scope of this Handbook: gender – particularly within the confines of the UN and the Council of Europe.¹²¹ The development of common measures is important, as it allows the making of international comparisons and is likely to enhance further international cooperation in this area. As of yet the international efforts have not led to the adoption of recommendations suggesting a set of specific indicators for other discrimination grounds than gender, and it is therefore of essence, given the existing domestic data needs, to develop domestic approaches to these important issues until any such time that an agreement on an international or European level is reached.

¹²¹ For gender equality indicators, see e.g. the website of the United Nations Economic Commission for Europe gender statistics website at <http://www.unecce.org/stats/gender/welcome1.htm> (visited 15.8.2006) and the UN's WomenWatch website at <http://www.un.org/womenwatch/> (visited 15.8.2006). For ethnic equality indicators, see Council of Europe 2003, *Identifying and Developing Policy and Legal Responses to Discrimination*. The European Commission has also supported the development of equality indicators, particularly through the setting up the Working Group on Data Collection.

To understand the relevance of these outcome indicators, called 'equality indicators' in this Handbook, one has to distinguish between two points of view:

- **The juridical point of view.** Given the prevailing European legal conception of equal treatment, which emphasises equality of opportunity more than equality of results, these indicators – such as those that measure the employment rate of the various equality groups – provide only for **indirect evidence** of the operation of discrimination in a society: it would be wrong to assume that differences in outcomes would be direct results of discrimination alone. Outcome statistics reflect, in a sense, the sum total of a multitude of economic, social and cultural factors, only one of which is discrimination. It can however reasonably be assumed that discriminated-against groups are economically and socially worse-off than they would be if they would be treated equally; *ergo*, a decline in the levels of discrimination should lead, in the long run, to relative improvement of the situation of the group. It should however be noted that some indicators are likely to suffer from a **time lag**: even if the present generation is treated equally, the discrimination experienced by previous generations may still continue to have an impact on an indicator.
- **The political point of view.** The legal framework leaves governments some room for manoeuvre, as they allow the adoption of positive action measures to remedy disadvantages experienced by the equality groups. Governments are therefore at liberty to pursue a model of social justice that places more emphasis on the achievement of equality of results than what is required by the international and European legal framework alone. In such a political environment outcome indicators are obviously more directly relevant.

The indicators that can be used to assess the state of equality can basically belong to two classes:

- **Indicators that measure the situation of a particular equality group** in a particular field of life (such as education or employment); or
- **Indicators that compare the situation of a particular equality group** to that of the other groups in a particular field of life.

It might be argued that the first type of indicators have an advantage in being able to measure progress without the need to make comparisons between different

groups, as the comparative approach could be seen to reflect a presumption that everyone shares the same values and wants exactly the same things, whereas people belonging to particular age groups or particular ethnic or religious groups may on the average have particular needs or values that influence also the choices they make about employment and other important aspects of their lives. Yet, without the comparative element it is difficult to know whether a change in the situation of a particular group is due to a change in the levels of discrimination or change in other circumstances. Comparative indicators are therefore highly useful and also more consistent with the definition of discrimination adopted in the EU Directives. In addition, the line of thought according to which comparative indicators necessarily imply an expectation of identical outcomes is not fully correct, as a **difference in outcomes** should not be taken as a proof of discrimination but as an **invitation to investigate the underlying reasons** in more detail: this investigation may reveal that other factors, such as cultural values or differences in available resources, have caused the difference. The key to the development of equality indicators is therefore to have data that allows for comparisons to be made, for instance between the situation of people with disabilities against that of those without. This approach is endorsed by the UN guidelines for the development of disability statistics:¹²²

In most studies, comparisons between persons with and without disabilities have been based on traditional socio-economic characteristics such as education and employment. An indicator to measure the equalization of educational opportunity, for example, could be produced from the 'level of education' variable. Similarly, an indicator of employment equalization could be produced from the 'employment status' variable. In more specific terms, the level of education and the employment status variables should be tabulated by disability status (persons with disabilities and persons without disabilities) and, within disability status, by age group, gender and geographical location. The resulting tabulation would then be reviewed to determine if there are any significant differences in education level or employment status between the population with disabilities and persons without disabilities within each age group, gender and geographical location.

Many countries have developed domestic equality indicators along these lines. For an example the Scottish Executive, in its 2003 report on Social Justice, used inter alia the following indicators to measure progress made in the implementation of the policy goal to increase the

¹²² UN Department of Economic and Social Affairs, *Guidelines and Principles for the Development of Disability Statistics*. ST/ESA/STAT/SER.Y/10

employment rates of groups that are relatively disadvantaged in the labour market:¹²³

Indicator 1. Employment rates by ethnic group, disaggregated by gender.

Indicator 2. Economic activity rates by ethnic group, disaggregated by gender.

Indicator 3. Percentage of working age people in employment from relatively disadvantaged groups in the labour market (lone parents, ethnic minorities, people aged 50+, people with a disability; compared with 'all people').

The UK Department for Work and Pensions has adopted the following approach for measuring age discrimination in the field of employment:¹²⁴

Indicator 1: Employment rate of those aged 50-SPA [state pension age] compared to rest of population. Definition: Those in employment as a percentage of the population (source Labour Force Survey, LFS).

Indicator 2: Proportion of those aged 50+ who are inactive (because they believe that no work is available) compared to the rest of the population. Definition: Those who would like to work but are inactive because they believe that there is no work available as a percentage of those who would like to work but are inactive. Economic inactivity refers to those who are neither employed or ILO unemployed (source: LFS).

Indicator 3: Older people in work related education/training (trends compared to rest of population). Definition: 'In the 3 months since beginning [date] have you taken part in any education or any training connected with your job, or a job that you might be able to do in the future?'

Equality indicators can be constructed along similar lines also in the other countries, i.e. by means of breaking down the core socio-economic data by the applicable equality ground(s). Some countries may choose to go beyond the core areas of employment and education, and compile statistics more generally on the well-being of the groups concerned. Multiple indicators should be used to measure the situation in each sphere of life that is being studied.

These can be used to form indicator packets or high-level composite indicators. In the area of working life, indicators should cover such issues as labour force participation, unemployment and long-term unemployment, occupation and proportion in part-time work. One example of a useful indicator would be employment rates by ethnic group, controlled by sex and highest level of education.

It is recommended that the EU countries engage, jointly and individually, in the development of equality indicators. The following principles should be taken into account in that process:

- Development of indicators should be conducted in a **participatory fashion**, with input from all stakeholders;
- Indicators should allow **inter-group comparisons**;
- Each indicator should also allow **intra-group comparisons**. It is therefore essential
 - to break down the data by **age** and **sex**, and
 - to be able to distinguish between various **subgroups** (such as people with particular types of disabilities or with particular ethnic origins);
- Indicators should be based on **reliable data**;
- Indicators should be based on data that is gathered on a **regular basis**, so as to allow the development of a time-series that allows trend analysis;
- At a minimum, the set of indicators should cover the same **areas of life** that are covered by the two EU Directives (see Section 1.2. of this Handbook);
- Indicators should rely on **internationally agreed definitions and classifications**, such as those relating to the Core Social Variables,¹²⁵ whenever possible,
- Indicators require, because of changing needs of the society, **constant assessment**, monitoring and adjustments.

The work carried out in the contexts of gender indicators¹²⁶ and Eurostat's Structural Indicators on poverty, exclusion and social cohesion provide useful models of the way in which indicators can be developed.¹²⁷

¹²³ Scottish Executive, *Social Justice...A Scotland where everyone matters: Indicators of Progress 2003*. Scottish Executive, Social Inclusion Division. Edinburgh 2003, available at: <http://www.scotland.gov.uk/Resource/Doc/47043/0025548.pdf> (visited 1.09.2006)

¹²⁴ http://www.dwp.gov.uk/opportunity_age/indicators/fairness.asp

¹²⁵ At the time of the writing of the Handbook, a Task Force created by the Directors of Social Statistics is preparing a proposal for a set of core harmonised variables to be introduced to each social survey (or data gathering through registers) involving transmission of microdata to Eurostat. The proposal is to include a list of core social variables with attendant definitions. For updated information, please visit the Eurostat website: <http://epp.eurostat.ec.europa.eu>

¹²⁶ See e.g. Federal/Provincial/Territorial Ministers responsible for the Status of Women (Canada), *Economic Gender Equality Indicators*, 1997. Available at: <http://dsp-psd.communication.gc.ca/Collection/SW21-17-1997E.pdf> (visited 1.09.2006); Breitenbach, Esther – Yvonne Galligan, *Gender Equality Indicators for Northern Ireland: A Discussion Document*, January 2004. Available at: <http://www.research.ofmdfmi.gov.uk/>

¹²⁷ Please visit the Eurostat website for further information: <http://epp.eurostat.ec.europa.eu>

3.2. | Population census

The UN guide on population censuses defines a population census as ‘the total process of collecting, compiling, evaluating, analysing and publishing or otherwise disseminating demographic, economic and social data pertaining, at a specified time, to all persons in a country or in a well-delimited part of a country.’¹²⁸ Several countries, including many EU countries, no longer take traditional censuses understood as a process of universal enumeration based on field operations carried out at a specific moment, but use administrative registers and/or surveys instead of, or in addition to, the traditional method in order to compile census-like statistics.¹²⁹ In effect, censuses are nowadays sometimes defined more in terms of outcomes rather than a particular type of process. For the sake of clarity and practicality, the concept of ‘census’ is used in this Handbook in the latter, ‘original’, sense.

The essential features of a population census are individual enumeration, universality, simultaneity, defined periodicity and small-area data.¹³⁰ The UN recommends that censuses be taken at least every ten years;¹³¹ some countries prefer to take censuses on a more frequent

basis, for instance every five years, in order to keep track of rapid changes in the population.¹³² Censuses, due to their universal coverage, are unique in providing data that is (i) comprehensive and thereby unaffected by sampling error, and (ii) geographically detailed. For the majority of the world’s countries, census is still the main source of baseline social and demographic statistics.

A census ordinarily provides information on size, composition and spatial distribution of the population in addition to socio-economic and demographic characteristics. The scope of information that a census yields is, quite obviously, determined by the scope of **topics** covered in it.¹³³ The number of topics that can be included in a census is in practice somewhat limited because the use of long questionnaires has financial implications and increases the response burden. While the determination of the census topics is largely a matter for the national authorities, the UN Statistics Division has provided internationally influential guidelines and recommendations (the ‘World Census Recommendations’) in this respect, and there has also been coordination at the European level, mainly through the work of the UN Economic Commission for Europe (ECE) and the Statistical office of the European Communities (EUROSTAT), who have jointly prepared the census guidelines adopted by the Confer-

CORE TOPICS (examples)	NON-CORE TOPICS (examples)
• Place of usual residence • Place of birth • Sex • Age • Marital status • Educational attainment • Current activity status • Occupation • Status in employment • Industry (branch of economic activity) • Country/place of birth • Country of citizenship	• Religion • Language • Ethnicity • Income • Country of birth of parents • Same-sex partnerships (derived topic) • Disability status

¹²⁸ United Nations, *Principles and Recommendations for Population and Housing Censuses*. Revision 1. Statistical Papers Series M No 67/Rev.1 (New York, 1997). Also available at: http://unstats.un.org/unsd/publication/SeriesM/SeriesM_67rev1E.pdf, p. 3. A definition that emphasises outcomes rather than the process has lately been endorsed by the ECE. According to this definition, the population census is defined as the operation that produces at regular intervals the official counting (or benchmark) of the population in the territory of a country and in its smallest geographical sub-territories together with information on a selected number of demographic and social characteristics of the total population. This operation includes the process of collecting (through enumeration or register-based information) and aggregating individual information and the evaluation, dissemination and analysis of demographic, economic and social data. Conference on European Statisticians, *Recommendations for the 2010 Censuses of Population And Housing*, paragraph 17.

¹²⁹ It is expected that the census methodology used by the 43 countries of the ECE region for the 2010 round of censuses will be as follows: traditional census 53%, register-based census 16%, register-based + full enumeration 7%, register-based + surveys 19%, traditional census + yearly updates 2% and rolling census 2%.

¹³⁰ Conference on European Statisticians, *Recommendations for the 2010 Censuses of Population And Housing*, Paragraph 22. The UN definition does not include a reference to small-area data.

¹³¹ United Nations, *Principles and Recommendations for Population and Housing Censuses*. Revision 1. Statistical Papers Series M No 67/Rev.1 (New York, 1997), p. 3. Also available at: http://unstats.un.org/unsd/publication/SeriesM/SeriesM_67rev1E.pdf

¹³² During the 2000 census round, more than 190 countries and areas conducted censuses.

¹³³ A ‘topic’ refers to the subjects regarding which information is to be sought for each individual.

ence of European Statistics (the '**CES recommendations**'). The UN and CES recommendations are largely mutually consistent, with the CES recommendations reflecting some issues that are particularly topical in Europe. The two sets of recommendations have been given mainly for the purposes of facilitating coordination and international comparability of data. The CES recommendations will be used as the general framework for the European Union census program for the 2011 Population and Housing censuses, and will form the primary basis of the present discussion.

The CES recommendations provide essential guidance for European countries in determining which topics to include in the census. The suggested topics are divided into two classes: '**core topics**', the inclusion of which is 'highly recommended', and '**non-core topics**', which are optional (see page 52).

While the CES recommendation treats the equality grounds, with the exception of age, as non-core topics, each country should carefully consider their inclusion, given the data needs discussed in this Handbook. Indeed, the majority of the EU countries already collect at least some data in relation to the equality grounds, with the exception of sexual orientation. During the 2000 round of censuses, carried out between 1995 and 2004, 84% of EU countries conducted a traditional census, and of these all collected data about age. In addition, the majority also collected data in relation to ethnic origin, religion and disability. None collected data about sexual orientation.¹³⁴

Insofar as a country considers introducing a new question in relation to an equality ground, or to modify an existing question, the **planning process** should be based on the guidance provided in the CES recommendations and on a meaningful **dialogue** between the statistical agency concerned and the following two key stakeholder groups:

- **Users of the data.** The census needs to be responsive to the needs of the users of equality data: the question formulation, the definitions used and the planned tabulations should meet their needs as fully as possible. For example, if the national anti-discrimination law provides definitions of the equality

grounds (ethnic origin, religion, disability, sexual orientation) it should be considered what impact these should have on the definitions used in the census.

- **Equality groups.** Insofar as sensitive topics are included in the census, it is of paramount importance that the pertinent questions, instructions, answer categories and tabulations are acceptable to those belonging to the groups concerned. To begin with, the very inclusion of a topic itself must be agreeable to these groups: if there is widespread resistance to the inclusion of a specific topic, it should be rejected. In addition, the questions must be carefully formulated so as to be agreeable to these groups and they must not be ambiguous or offensive.¹³⁵

Experience shows that question formulation should be thoroughly **tested**. As we are dealing with issues that often involve subjective appreciation to a great degree, even subtle differences in for instance the question formulation can have a major impact on results.¹³⁶

Age

Age, together with sex, is one of the most important variables collected in a census. It is also rather straightforward to measure by means of collecting information on date of birth. Collecting information on the date of birth allows the tabulation of data in two ways: by year of birth and by completed years of age. From the point of view of the EU equal treatment Directives, it is important to focus on the situation of different age groups, particularly the young and the elderly. Tabulations concerning topics such as educational attainment and economic activity status should thus whenever feasible be broken down by age and sex.

Ethnic origin

Roughly two thirds of those countries in the world that conduct censuses ask one or more questions about ethnicity (broadly conceived).¹³⁷ Countries have a number of reasons for collecting such data, as the data is relevant for such purposes as understanding the ethnic composition of the population, management of inter-ethnic relations, promotion of equal opportunities and development

¹³⁴ Makkonen, Timo, *Measuring Discrimination: Data Collection and EU Equality Law*. Network of Independent Experts in the non-discrimination field (Luxembourg: Office for Official Publications of the European Communities, 2007).

¹³⁵ The requirement that census questions must be inoffensive and free of ambiguity applies naturally with respect to the whole census questionnaire. Representatives of the equality groups should therefore have the opportunity to preview the whole questionnaire.

¹³⁶ Simon, Patrick, *Comparative Study on the collection of data to measure the extent and impact of discrimination within the United States, Canada, Australia, Great Britain and the Netherlands*. Medis Project. Available at http://europa.eu.int/comm/employment_social/fundamental_rights/pdf/pubst/compstud04_en.pdf (visited 1.1.2006).

¹³⁷ Ann Morning, *Ethnic Classification in Global Perspective: A cross-national survey of the 2000 census round*. 10.08.2005. Available at: <http://unstats.un.org/unsd/demographic/sconcerns/popchar/Morning.pdf> (visited 1.9.2006); see also the website of the UN Statistics Division on 'Ethnocultural characteristics', at <http://unstats.un.org/unsd/demographic/sconcerns/popchar/> (visited 1.9.2006).

of minority rights policies that seek to ensure that ethnic minorities enjoy an effective right to maintain and develop their cultural, linguistic and religious identities.

This diversity of purposes is accompanied by a diversity of ways in which the ethnicity questions are posed. Some of the bases upon which ethnic groups are identified include ethnicity, race, ancestry, descent and ethnic nationality (in other words, the country or area of origin, not formal citizenship). Some countries that do not pose a direct ethnicity question seek to obtain basically the same kind of information through the inclusion of such closely related topics as religion and language, and/or place of birth. Also, the answer categories reflect similar conceptual diversity: it is not infrequently that the answer categories to an ethnicity question are based on a racial classification. There is also variety in the response formats: some countries use response formats that give only a fixed set of response options, whereas some use a format that simply allows the respondent to write in the answer and yet others provide a list of examples together with an 'other – please write-in' option. More than two thirds of those European countries that pose an ethnicity question favour the latter approach.¹³⁸

Countries that wish to collect data on ethnicity in order to monitor the realisation of equal opportunities should consider the following guidelines:

- The ethnicity question should preferably be posed in terms of '**ethnic origin**'. This concept is in line with the terminology used in the pertinent EU Directive, and – due to its reference to past – is likely to be a more objective and stable concept than 'ethnicity' or 'ethnic identity'. General use of the concept of 'race' is not recommended, as the use of this term in the context of official statistics may be taken as an indication of official recognition of racial theories, even if no such acceptance is intended.¹³⁹ Likewise, the use of the term 'nationality' in place of ethnicity should be avoided, as also recommended in the CES guidelines.¹⁴⁰ Separate questions on religion and language can be asked so as to provide the necessary addi-

tional information in order to plan and carry out minority rights policies.

- Given the subjective nature of the assessment, it is recommended that information on ethnic origin be based on **free self-declaration** of the person concerned.¹⁴¹ The CES recommendations point out that the answer format should be **open-ended** and that respondents should be free to indicate more than one ethnic origin or a combination of origins.¹⁴² Respondents should also be allowed to indicate 'none' or 'not declared' when asked about their ethnic origin.¹⁴³ Cooperation should however be encouraged by informing them of the fact that the data is collected to support programs that promote equality of opportunity.

As there is substantial variation between countries in their ethnic composition, the CES recommendations do not include a recommendation for an internationally comparable ethnic classification.¹⁴⁴

Religion

As with ethnic origin, countries seek different types of information in relation to religion.¹⁴⁵ This is reflected in the associated questions which may ask about:

- a Formal membership to a church or a religious community;
- b Identification with a certain religion, religious community or denomination;
- c Religious belief;
- d Religion in which a person was brought up; or
- e Religious attendance.

The preferable approach depends in particular on the information needs of the country in question. However, in order to be of maximum utility for the purposes of

¹³⁸ Ann Morning, *Ethnic Classification in Global Perspective: A cross-national survey of the 2000 census round*, 10.08.2005. Available at: <http://unstats.un.org/unsd/demographic/sconcerns/popchar/Morning.pdf> (visited 1.9.2006); see also the website of the UN Statistics Division on 'Ethnocultural characteristics', at <http://unstats.un.org/unsd/demographic/sconcerns/popchar/> (visited 1.9.2006).

¹³⁹ It should however be recognised that 'race' and 'ethnicity' are not synonyms, as some people classify themselves in terms of racial but not ethnic origin (and vice versa), and as people may be discriminated against on the basis of their skin colour or some other attribute commonly associated with a particular 'race' but not necessarily with any ethnic group. Therefore it must be recognised that racial discrimination exists and is to some extent separate from ethnic discrimination. It is however not recommended that racial categories be used in census questions as the basis of identification, as racial questions are likely to reinforce unscientific and potentially divisive racial thinking that can be counter-productive from the point of view of fighting discrimination. The situation is however different in those societies where racial classifications already are commonplace and where racial identities have therefore acquired significance through social practices.

¹⁴⁰ Conference on European Statisticians, *Recommendations for the 2010 Censuses of Population And Housing*, paragraph 424.

¹⁴¹ Ibid., paragraph 425.

¹⁴² CES recommendations, paragraphs 425 and 426. From the point of view of facilitating analysis, one feasible solution is to introduce categories that in themselves recognise multiple ('mixed') origins.

¹⁴³ Ibid., paragraph 427.

¹⁴⁴ Ibid., paragraph 429.

assessing equality of opportunity, the most appropriate approach would be the one that is inclusive and free from ambiguity and able to produce stable results over time.

Irrespective of the approach used, the data should be based on **free self-declaration** of the person.¹⁴⁶ The respondents should be allowed to declare 'none', in addition to which it should be considered whether responding should be made voluntary.¹⁴⁷

The CES recommendations point out that classifications should be **comprehensive**.¹⁴⁸ For the purposes of facilitating consistency and comparability of the data, the CES recommendations endorse the following high-level classification:¹⁴⁹

- 1.0 Christianity
 - 1.1 Catholic
 - 1.2 Orthodox
 - 1.3 Protestant (including Anglican, Baptist, Brethren, Calvinist, Evangelical, Lutheran, Methodist, Pentecostal, Pietist, Presbyterian, Reformed, and other Protestant groups)
 - 1.4 Jehovah's Witnesses
 - 1.5 Oriental Christian
 - 1.6 Other Christian
- 2.0 Islam
 - 2.1 Alawit (Nusayris)
 - 2.2 Ismaili (Seveners)
 - 2.3 Ithna'ashari (Twelvers)
 - 2.4 Shia
 - 2.5 Sufi
 - 2.6 Sunni
 - 2.7 Zaydi (Fivers)
- 3.0 Judaism
- 4.0 Buddhism
- 5.0 Hinduism
- 6.0 Sikhism
- 7.0 Other religious groups
- 8.0 No religion

Disability

An increasing number of countries are including a disability question in their censuses. Just as is the case with ethnicity, countries have multiple reasons for collecting such information: (i) the data can be used to provide services and develop programs, such as those that address needs for housing, transportation, assistive technology, vocational or educational rehabilitation and so on; (ii) the data can be used to estimate prevalence rates and trends; (iii) the data can be used to assess the realisation of equality of opportunity.

A variety of approaches for framing the disability question in censuses have been used. This is because disability is a complex social phenomenon and varies in terms of intensity and time.¹⁵⁰ Two general models for understanding and conceptualising disability can be distinguished:

- **The medical model**, which focuses on the individual-based functional limitations and explains the difficulties faced by disabled people as arising from these limitations, and
- **The social model**, which views disability as arising from the interaction of an individual (with his/her specific physical or psychological qualities) and the surrounding environment, and which emphasises that people with disabilities are primarily challenged by the barriers in society which do not take into account their specific individual needs.¹⁵¹

In many contemporary jurisdictions the approach to disability recognises both models: disability is often defined in law by using the medical model, but for instance the requirement to take reasonable accommodation measures at workplaces, as required by the EU Employment Equality Directive, reflects an acknowledgment of the social model.

The CES recommendations proposes the adoption of a particular type of approach based on the International Classification of Functioning Disability and Health (ICF) issued by the World Health Organisation (WHO). The CES approach is based on the concept of '**disability status**', whereby persons with disabilities are defined as those persons who are at greater risk than the general

¹⁴⁵ It should be noted that the EU Employment Equality Directive prohibits discrimination not just on the grounds of 'religion' but also on the grounds of 'belief'. The exact scope of the latter term is currently somewhat unclear, inter alia because the European Court of Justice has not yet had a chance to elaborate upon it through its case law, but it is likely that the term covers, for example, deeply held philosophical beliefs.

¹⁴⁶ CES recommendations, paragraph 441.

¹⁴⁷ Ibid., paragraph 440.

¹⁴⁸ Ibid., paragraphs 440 and 443.

¹⁴⁹ Paragraph 444.

¹⁵⁰ Mbogoni, M. – A. Me, *Revising the United Nations Census Recommendations on Disability*. Paper prepared for the first meeting of the Washington Group on Disability Statistics. Washington, 18-20.02.2002.

¹⁵¹ See e.g. Disability Rights Commission, *The Disability Equality Duty: Guidance on Gathering and Analysing Evidence to Inform Action*. Available at: http://www.drc-gb.org/PDF/Evidence_Gathering_Guidance.pdf (visited 1.9.2006).

population for experiencing restrictions in performing specific tasks or participating in role activities.¹⁵² This group includes persons who experience limitations in basic activity functioning, such as walking, seeing, hearing or cognition, even if such limitations were ameliorated by the use of assistive devices, a supportive environment or plentiful resources. While this way of conceptualising disability may not be seen as fully embracing the social model of disability, the CES recommendations make the case that it best serves the purpose of assessing equality of opportunity.¹⁵³ The recommendation to use this approach for measurement purposes should not be taken as an endorsement of the medical approach more generally.

Sexual orientation

While data on sexual orientation has traditionally not been collected through censuses, the situation may be about to change, mainly because in an increasing number of countries same-sex couples can register their relationship or be legally married. Censuses ordinarily inquire about marital status and the relationships between household members, and the pertinent questions can rather effortlessly be rephrased so as to take into account same-sex couples. While a question that would directly address the respondent's sexual orientation would yield data that would be more representative of the target group and thus that much more useful, it does not appear likely that many countries are ready to include such a topic in any near future.

The CES recommendations propose that the following response categories be used, where the countries so desire, to collect information on marital and nonmarital partners:

- 1.0 Husband or wife
- 2.0 Same-sex registered (marital) couple
- 3.0 Opposite-sex cohabiting partner
- 4.0 Same-sex cohabiting partner.¹⁵⁴

The CES recommendations also suggest ways in which same-sex couples can be taken into account when

designing questions about relationships between household members.

3.3. | Household surveys

A census can serve many useful purposes but it is not feasible for investigating a wide range of subjects with appreciable detail.¹⁵⁵ In effect, all countries conduct more specific surveys that allow the covering of particular subject matters in greater detail than censuses. Household surveys provide for a flexible method of data collection, and have become a key source of data on social phenomena in the last 60-70 years.¹⁵⁶

Household surveys can be one-off or periodic as part of a regular survey programme. These surveys are usually **sample surveys**, i.e. surveys where part of the population is selected from which data are collected and then inferences are made to the whole population. There are three broad options for collecting equality data through surveys:

- The identification part of a general survey such as the Labour Force Survey poses questions that allow the **identification of individuals who belong to the equality groups**. This allows the breaking down and analysis of the survey results by each group. The usefulness of this approach is limited by the fact that most surveys target the general population and are based on respondent numbers that are too small to provide a representative sample of the members of equality groups. This limitation may in some circumstances be overcome by including a booster sample targeted at one or more equality groups.
- **A special module on equality** issues can be attached onto a household survey focused on another topic. Some countries have, for instance, included a special module on disability in an ongoing survey, often a health survey. Again, the same challenges relating to the representativeness of the data may be encountered.
- **Specialised surveys** targeting a specific equality group can be conducted. A case in point is a large-scale survey on the employment situation of Roma in Spain, conducted by Fundación Secretariado Gitano (FSG).

¹⁵² Conference on European Statisticians, *Recommendations for the 2010 Censuses of Population And Housing*, paragraph 446. Available at: <http://unece.org/stats/documents/ece/ces/ge.41/2006/zip.1.e.pdf> (visited 1.9.2006).

¹⁵³ Ibid., paragraph 455.

¹⁵⁴ Ibid., paragraph 503.

¹⁵⁵ United Nations, *Designing Household Survey Samples: Practical Guidelines* (New York, 2005), pp. 4-5.

¹⁵⁶ Ibid., p. 1.

The study managed to survey a representative sample of Roma, a group that is invisible in the official statistics, and to compare their employment and occupational characteristics to those of the general population.¹⁵⁷

The category of 'specialised surveys targeted at an equality group' (that can set out to inquire e.g. about the social and economic situation of the group) is broader than that of the victim surveys, but the two share many common challenges and will therefore be discussed in Chapter 5 of this Handbook under the heading 'victim surveys'. The focus will therefore here be on discussing how equality issues can be mainstreamed into more general household surveys.

Each country runs a survey programme that is specific to it. Surveys cover many different and often specialised topics such as health, welfare, labour force, agriculture and other socio-economic issues. The majority of surveys are household-based; however, in studying the equality groups, such as people with disabilities, it is also important to include the institutional population. Some surveys, such as the European Labour Force Survey (LFS) and the Community statistics on income and living conditions (EU SILC), are based on the Community legislation and have led to a situation where comparable data is collected in every EU country. In this context it should also be noted that there are initiatives that aim at harmonising the core variables used in surveys that have a Community dimension.¹⁵⁸

In the following Section the Labour Force Survey will be discussed with a view to illustrating the way in which

equality considerations can be mainstreamed into a regular survey.

European Labour Force Survey (EU LFS) is the main source for employment and unemployment statistics within the EU. The LFS is a quarterly household sample survey that is intended to cover basically the whole resident population of a country. While it is based on the EU regulations, it is the Member States that are responsible for the fieldwork. The relevant Community legislation defines the so-called **EU list of variables** that the Member States are to collect.¹⁵⁹ This list includes such variables as sex, year of birth, marital status, nationality, years of residence in the Member State, country of birth, labour status (during the reference week), occupation, hours worked, methods used to find work, and highest level of education and income. Special **EU modules** with questions regarding a particular area of interest may also be attached to particular LFS rounds. For example, the planned LFS module for 2008 deals with the labour market situation of migrants and their immediate descendants. The purpose of this module is to obtain data that allows for comparison of labour market outcomes between migrants and other groups, and an analysis of the factors that affect integration in and adaptation to the labour market.¹⁶⁰ The LFS questionnaires, which are designed at the national level, may also contain additional questions not related to the EU list of variables. This opens up the opportunity to take advantage of this important data collection method for the purposes of compiling equality statistics. The following two examples, from the United Kingdom and Ireland respectively, illustrate how equality data can be collected by means of the LFS.

EXAMPLES

1: United Kingdom¹⁶¹

Method

The LFS in the United Kingdom is a multi-phase survey based on a systematic random sample design which makes it representative of the whole of Great Britain. Each quarter 60 000 households are targeted by face-to-face or telephone surveys. One of the variables used is 'ethnic group', which has enabled the compilation of a range of statistics on the situation of ethnic groups. The resulting tabulations include the following:

- **Labour market data** for local areas by ethnicity;
- **Employment rates** by ethnic group, sex and highest qualification;

¹⁵⁷ Fundación Secretariado Gitano, *Roma Population and Employment. A comparative study*. Madrid 2005. Available at: <http://www.gitanos.org/publicaciones/estudioempleo/EstudioempleoUK.pdf> (visited 1.9.2006).

¹⁵⁸ See especially the work done on the Core Social Variables, <http://epp.eurostat.ec.europa.eu>

¹⁵⁹ E.g. Council Regulation (EEC) No 577/98.

¹⁶⁰ Note: Preparation of a Commission Regulation adopting the specifications of the 2008 ad hoc module were in the pipeline at the time of the writing, but had not yet been adopted.

¹⁶¹ <http://www.statistics.gov.uk>

- **Self-employment** by ethnic group;
- **Unemployment rates** by ethnic group, age and sex.

Results

The available data has allowed not just the tabulation of the core statistics by ethnic groups but also the conducting of more specific descriptive analyses. One of these analyses dealt with the ethnic differences in women's demographic and family characteristics and economic activity profiles. The study made important findings, as patterns of women's economic activity revealed major differences between ethnic groups, as well as significant changes over time. Black women tended to remain in full-time employment throughout family formation whereas White and Indian women were more likely to be in part-time employment. In contrast, levels of economic activity amongst Pakistani and Bangladeshi women fell substantially once they had a partner and fell again when they had children.¹⁶²

2: Ireland¹⁶³

Method

In Ireland, the Quarterly National Household Survey, the main purpose of which is to collect the LFS data, is also used to collect data on a variety of social topics through the inclusion of special survey modules. These modules have dealt with, for instance, disability and crime and victimisation. The Quarter 4/2004 module on equality surveyed the respondents' experiences of discrimination. The respondents were asked whether they had experienced discrimination, during the past two years, in the following situations: 'In the workplace', 'Looking for work', 'In places like shops, pubs or restaurants', 'Using services of banks, insurance companies or financial institutions', 'Education', 'Obtaining housing or accommodation', 'Accessing health services', 'Using transport services', and 'Accessing public services'. If the respondent answered in the affirmative with respect to a particular context, he/she was asked whether he/she thought that this was because of his/her gender, marital status, family status (e.g. pregnant or with children), age, disability, race/skin colour/ethnic group/nationality, sexual orientation, religious belief, membership of the Traveller community, or other reason (multiple responses allowed). These respondents were also asked about the frequency of experienced discrimination (once/on a few occasions/more regularly), how serious the effect of discrimination in his/her life was (little or no effect/some effect/serious effect/very serious effect), and what action, if any, the person had taken in reaction to discrimination. All respondents were asked whether they know their rights under Irish equality law. The respondents were also asked to indicate their possible disabilities, ethnic group and religion.

Results

The survey found, inter alia, that

- 12.5% (numbering 382 000 individuals) of persons aged 18 or over felt they had experienced discrimination in the two year period prior to the survey. Persons from other than White ethnic backgrounds reported the highest rate of discrimination with over 31% stating that they had been discriminated against in the past two years. Unemployed persons (28.8%), non-nationals (24.4%), religious minorities i.e. non-Catholics (21.6%), persons with a disability (19.6%) and young people aged 18-24 (17.6%) also reported higher than average rates. The majority of persons who felt discriminated against in the last two years stated that they had experienced discrimination more than once.

¹⁶² Dale, Angela – S. Dex – JK Lindley 'Ethnic differences in women's demographic, family characteristics and economic activity profiles, 1992 to 2002' *Labour Market Trends*, April 2004, pp.153-165. Also available at: http://www.statistics.gov.uk/articles/labour_market_trends/ethnic_differences.pdf

¹⁶³ http://www.cso.ie/releasespublications/documents/labour_market/current/equality.pdf

EXAMPLES

- The four most common contexts where discrimination was experienced were (i) in using services of banks, insurance companies or financial institutions, (ii) in the workplace, (iii) in places like shops, pubs or restaurants and (iv) in looking for work. A considerable number reported having experienced discrimination also in obtaining housing or accommodation and accessing health services.
- Of those people who felt discriminated against in the last two years, almost 48% reported that the discrimination they experienced had 'Some effect' on their lives, while just under 27% reported 'Little or no effect'. The remaining 25% reported that the discrimination they experienced had a 'Serious effect' on their lives.
- Nearly 60% of the people who felt they had been discriminated against did not take any action regarding the discrimination they had experienced. Verbal action was taken by almost 30%, just over 9% made an official complaint or took legal action and 7% took written action.
- Almost 20% of all respondents stated that they had no understanding of their rights under Irish equality law, over half (52.7%) stated that they understood a little while a further 27.6% stated that they understood a lot. The number of persons from other than White ethnic backgrounds (42.1%) and persons with a disability (32.1%) reporting that they had no understanding of their rights under Irish equality law was significantly higher than the average.

3.4. | Administrative registers

Administrative records are a potentially highly important source of information for compiling equality data. All countries maintain administrative records, but there is great variation between countries in terms of quantity and quality of the records. Examples of fairly typical administrative records include registers that deal with education, employment and taxes. Countries with well-developed register systems have reliable register information on, for instance, school attendance, educational attainment, labour market participation, income, wealth, housing, social security, and social benefits and services. The most important administrative source of data is usually the population register, where such exists.¹⁶⁴ For instance, the Finnish Population Register contains individual-level information on names, address, municipality of domicile, mother tongue, age, gender, marital status, country of birth, nationality, religion, and occupation.¹⁶⁵ Countries with well-developed register systems can compile some or all census data on the basis of registers and therefore need not conduct censuses in the traditional sense.

Administrative data is by definition personal data, as it is used to make decisions with respect to individuals. While their primary purposes are therefore not statistical, and while the maintenance of these records is often decentralised, they can usually be accessed by national statistical agencies for the purposes of compiling statistics. Use of such data has many potential **benefits**:

- Where the records are based on continuous processes, as they usually are, they have the benefit of providing **accurate and up-to-date information**, and provide for a time-series that allows for trend analysis.
- Registers provide data that is **comprehensive** in coverage, which has three imminent benefits: (i) there is no need to generalise; (ii) it is possible to produce statistics for small areas and sub-populations; (iii) registers can be used to select people for surveys.
- Registers provide for a **low-cost** source of data.
- In some countries data from the different registers can be linked on an individual level, which allows the formation of a **rich information source** that can be subjected to robust analyses. Linking is possible in countries that have assigned every individual a unique Personal Identity Number (PIN-code), as the PIN code is attached to every individual record.

As useful as administrative registers can potentially be for the compilation of equality statistics, they tend to have one major limitation: registers often have only such information that are necessary for the purposes for which they are kept. These purposes are primarily of legal and administrative, not statistical nature. As such, they may not have the information necessary to identify individuals who belong to the equality groups, with the exception of age. This is particularly the case

¹⁶⁴ European countries which have developed such systems include Denmark, Finland, Germany, the Netherlands, Norway and Sweden.

¹⁶⁵ <http://www.vaestorekisterikeskus.fi>

with ethnic origin, as such information is seldom needed to make decisions in respect of particular individuals. Also, data on religion tends to be inexistent or limited to formal membership of a church or other religious community – as this information may be needed for the purposes of collecting church taxes – which means that the information is not comprehensive in scope. While data on disabilities tends to be more generally available, this data usually comes from registers

that deal with particular services or benefits available for people with disabilities, and therefore the data is likely to deal only with the more severe forms of disability. To remedy these shortcomings it should be investigated whether the necessary variables could, in the future, be added to the list of information collected, or whether it is possible to use proxy indicators – such as parents' place of birth for ethnicity – for compiling equality statistics.

EXAMPLE

'Towards common measures for discrimination' project

Method

One pioneering work in this area has been the project 'Towards common measures for discrimination', led by the Centre for Combating Ethnic Discrimination in Norway. The purpose of the project was to develop methodological models for the investigation of ethnic discrimination by means of utilising data obtained by linking several administrative registers together and analysing this data in the light of other data sources, such as survey data and complaints data. Because of practical constraints posed by the absence of ethnic data in the registers, the project investigated the possibility to use proxy indicators for ethnicity. The project looked at the possibility to conduct such analyses in Czech Republic, Denmark, Norway, the Netherlands and Portugal.¹⁶⁶

3.5. | Recommendations

Recommendation No 4: the need to develop official statistics

The collection and compilation of official statistics presents a unique opportunity to collect data in relation to the equality grounds. It is recommended that each EU country conduct a mapping exercise in order to investigate:

- i What information is currently collected by means of population census, administrative registers, and surveys (as applicable in the national circumstances), and
- ii Whether the group of variables surveyed through these mechanisms could be expanded so as to cover one or more equality grounds, insofar as the results would still be representative of the group concerned and be based on reliable data.

In effect, to make full use of these important information resources in the future, governments should seek ways in which they can improve the present data collection designs so as to obtain the data needed to compile equality statistics.

¹⁶⁶ Olli, Eero and Birgitte Kofod Olsen (eds.), *Towards Common Measures for Discrimination. Exploring possibilities for combining existing data for measuring ethnic discrimination*, Centre for Combating Ethnic Discrimination and Danish Institute of Human Rights, Interim Report 25.11.2005.

Guidelines

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 - *Manual for the Development of Statistical Information for Disability Programmes and Policies*. Statistics on Special Population Groups, No 8 (United Nations publication, Sales No E.96.XVII.4 and Corr.1).
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 - Simon, Patrick, *Comparative Study on the collection of data to measure the extent and impact of discrimination within the United States, Canada, Australia, Great-Britain and the Netherlands*. Medis Project. Available at: http://europa.eu.int/comm/employment_social/fundamental_rights/pdf/pubst/compstud04_en.pdf (visited on 1 January 2006).
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4 | Complaints data

4.1. | Introduction

Complaints data is another form of baseline data on discrimination. The concept of complaints data is used in a broad sense in this Handbook, in reference to (i) **formal complaints** filed with the police, courts of law, tribunals and other bodies with competence to investigate claims of discrimination, and (ii) **informal complaints** filed for instance with specialist non-governmental organisations.

Complaints data represent the ‘**tip of the iceberg**’ level of information. As such they describe the volume and nature of that portion of discrimination where the discriminated-against individuals have crossed the threshold for reporting their experiences. The reasons why the reporting threshold is high for many individuals has in some countries been investigated by means of victim surveys, with the following reasons often being put forth: victims might be uncertain whether discrimination actually took place; they may fear they don’t have enough evidence to successfully pursue their cases; they may think that the legal system does not provide for a meaningful remedy; they may not want to be involved in complex and potentially costly legal proceedings which they are in addition unfamiliar with and cannot fully control; they may not want to make the mistreatment they have experienced public; or they may fear being branded a ‘trouble-maker’. It is likely that there are variations between countries and grounds of discrimination in terms of the reasons for the reluctance to take action.

While the statistics based on complaints data should therefore not be taken at a face value, they do provide for a valuable source of baseline information that can be very useful. Complaints data can for instance **provide a point of comparison** to the results of victim surveys, and can form a rich **source for qualitative research**.

4.2. | Justice system data

Courts, tribunals and other judicial bodies are important sources of complaints data. This is particularly the case

with bodies such as **ombudsmen** and **equality bodies** that have been specifically set up for the purposes of handling complaints on discrimination. Data on the number and types of discrimination claims processed during a particular time period such as a calendar year, information on outcomes (how many cases were declared inadmissible, accepted or rejected, with breakdown by the type of discrimination) together with aggregate information on complainants and respondents, are among the kinds of statistical information regularly compiled on the basis of judicial processes. Data on the number of pending complaints and the average number of days taken to reach a decision allows measurement of performance in handling complaints.

Legal case materials are a valuable source of well-substantiated evidence on discrimination, making them an ideal target for qualitative research that can reveal important aspects about the contexts in which discrimination takes place, and the motives, reasons and arguments put forth by the parties.¹⁶⁷ Study of the case materials can also provide important insights into the functioning of the legal system, for instance in relation to what kind of evidence the courts tend to find persuasive.¹⁶⁸

In some EU countries discrimination is an offence under the national criminal law.¹⁶⁹ It is recommended that in these countries the numbers and nature of discriminatory offences known to the police be reported on a regular basis. Also aggregated information on the suspects (e.g. age and gender profiles) and other details of the reported incidents should be made available. The publication of a **yearly thematic report** on discrimination would help in effective dissemination of the information, and would help to alert the public to emergent problems. The **interlinking** of source data from police, prosecutor and court files can provide a major advantage, as this allows the tracking down of the number of crime reports on discrimination that are handled at the different stages of the judicial process – information thereby occasioned shows charging practices, conviction rates and sentencing patterns for these offences and may give hints as to what obstacles there may be when discrimination cases are processed at the different stages of the justice system.

¹⁶⁷ See e.g. Wooten, Lynn Perry and Erika Hayes James ‘Challenges of Organizational Learning: Perpetuation of Discrimination Against Employees with Disabilities’ *Behavioral Sciences and the Law* 23:123-141 (2005), where the authors analysed 53 lawsuits filed under the Americans with Disabilities Act.

¹⁶⁸ For an example of such a method, see National Research Council, *Measuring Racial Discrimination*. Panel on Methods for Assessing Discrimination (Washington DC: National Academies Press, 2004), p. 120.

¹⁶⁹ Cormack, Janet – Mark Bell, *Developing Anti-Discrimination Law in Europe*. European Network of Independent Experts in the non-discrimination field. human european consultancy & Migration Policy Group, 2005. Available at: <http://www.migpolgroup.com/documents/3080.html> (visited 1.9.2006).

It should however be noted that sometimes police data may suffer not just from **underreporting** – the fact that victims may not report the events to the police – but from **underrecording** as well, meaning that sometimes a police officer may refuse to record a complaint of discrimination or fails to do so in an appropriate manner. This obviously decreases the reliability of the resulting statistics, emphasising the need for standardised recording procedures and their strict observance by all police officers.

Statistics on the numbers and kinds of crime reports filed with the police can nevertheless provide an important and rather solid – depending indeed on the quality of the recording practices – point of comparison for data obtained from other sources, such as victim surveys. Take the following example:

The victim survey data indicates a decline in the numbers of discrimination, whereas police data shows an increase in the numbers of reported discrimination. These two trends, while contradictory at face value, are however reconcilable, and simply suggest improved access to justice, increased knowledge on their rights and/or an increased confidence in the justice system on part on the members of the equality group concerned.

Police data can also form a basis for checking the reliability of victim surveys, as the latter regularly ask the respondents to indicate whether they have reported the discrimination they have experienced to the police.¹⁷⁰

EXAMPLES

The French High Commission

Method

The Independent High Commission for Equality and Against Discrimination (*La Haute autorité lutte contre les discriminations et pour l'égalité*, HALDE) is an independent administrative authority established by law. It has a wide mandate: it can, inter alia, examine individual complaints; conduct an investigation, for instance by means of discrimination testing; issue recommendations; transmit a complaint to a criminal court; and initiate mediation proceedings. A Council composed of 11 members determines the course of action taken by the HALDE. Its competence is wide both in terms of the material areas and grounds of discrimination covered: its competence covers all areas of life covered by the anti-discrimination law and a wide variety of discrimination grounds, including age, sex, sexual orientation, ethnic or racial origin (actual or assumed), disability, religion and belief. The HALDE submits an Annual Report to the President of the Republic, the Parliament and the Prime Minister.

Results

During the first year of its operation (March 2005-February 2006) HALDE recorded, according to its Annual Report, 1,822 claims. Of these

- 40% involved discrimination on the grounds of origin, 14% on the grounds of health/disability, 6% on the grounds of sex, and another 6% on the grounds of age;
- 45% concerned discrimination in employment, 18% concerned discrimination in provision of public services, 8% concerned discrimination in the provision of private goods and services, and 7% discrimination in laws and regulations;
- Only one third were submitted by women;
- Over one third of all claims were processed that year, the average processing time being 91 days. Of the processed claims:
 - 185 were redirected
 - 178 were deemed inadmissible or rejected on other grounds
 - 163 were considered by the Council
 - 100 resulted in amicable settlement.

¹⁷⁰ This is provided so that both the crime register and the survey in question are based on the same definitions of discrimination, and that both data sets provide for reliable data.

- The Annual Report provides detailed accounts of a high number of claims filed and the recommendations issued by the Council.¹⁷¹

The UK Section 95 Report

Method

Since 1992 the UK Home Office has published statistical information, the aim of which is to help those involved in the administration of justice to avoid discrimination on the grounds of race. The production of this information is a requirement under Section 95 of the 1991 Criminal Justice Act. These statistics and the so-called Section 95 reports that are based on them report on the representation of Black and Minority Ethnic Groups as (i) victims, (ii) suspects and offenders, and (iii) employees within the Criminal Justice System (CJS). Data is collected by the police, the prisons, the Probation Service and the Youth Justice Board, with courts and the Crown Prosecution Service relying mainly on the ethnicity data collected by the police. Ethnic monitoring in criminal justice agencies has relied on a variety of recording methods and classification systems. In 2003 a standard system of recording was introduced into all agencies based on self-classification into one of 16 categories used in the 2001 Census. This approach allows direct comparisons to be made between criminal justice data and census data, making it possible to detect under- or overrepresentation of particular groups in the statistics. The change to the self-classification system proved somewhat difficult for the police in practice, and the previous practice of using visual assessments of ethnicity based on broad categories (Asian, Black, White and Other) was still relied on by some forces for some time.

The Section 95 reports regularly compare the CJS data to data obtained from the British Crime Survey (BCS). This is made possible by the fact that since 1988 the BCS has included a question on the ethnicity of respondents, in addition to which the BCS has used ethnic boosts to increase the accuracy of findings for Black and Minority Ethnic groups.

Results

Some of the main findings of the Section 95 report for the year 2005 were:

- The number of racially motivated incidents reported to the police rose by 7% to 57,902 incidents in comparison to the previous year. At the same time, the British Crime Survey estimated that there were around 179,000 such incidents, effectively representing a drop of 14% in comparison to the previous year.
- The statistics on stop and search showed that Black people were six times more likely, and Asian people two times more likely, to be stopped and searched than White people.
- A greater proportion of White defendants (75%) were found guilty in the Crown Court in 2004 than Black (68%) or Asian (66%) defendants.
- In June 2005, Black and Ethnic Minority groups accounted for about 24% of the male prison population and about 28% of the female prison population.
- In most criminal justice agencies there have been increases in the employment of Black and Ethnic Minority Groups, with some agencies already meeting or exceeding their representation targets.¹⁷²

¹⁷¹ Haute autorité de lutte contre les discriminations et pour l'égalité, *Annual Report 2005*. August 2006. Available at: <http://www.halde.fr/>

¹⁷² Criminal Justice System Race Unit, *Race and the Criminal Justice System: An overview to the complete statistics 2003-2004*. February 2005. <http://www.homeoffice.gov.uk/rds/pdfs05/s95overview.pdf> (visited 1.8.2006).

Home Office, *Statistics on Race and the Criminal Justice System 2005*. <http://www.homeoffice.gov.uk/rds/pdfs06/s95race05.pdf> (visited 1.8.2006).

4.3. | Other complaints data

Complaints data may be generated also in the course of the work carried out by organisations or bodies that are not part of the formal justice system but provide advice and/or other support to victims of discrimination. These organisations can be for instance community-based associations, human rights NGOs or anti-discrimination organisations specifically set up for the purposes of monitoring discrimination and providing assistance to its victims. Complaints on workplace discrimination may also be filed with trade unions or employers.

The data generated by these organisations can be an important source of data, and may be vital in the absence of official justice system data. Even where systematic official complaints data is available these statistics provide important complementary information. The threshold for contacting these organisations is often lower than the threshold for contacting the authorities. Community-based voluntary organisations, or organisations that otherwise have direct links with equality groups, are often the first to become aware of changes in patterns of discrimination and of new problems affecting particular groups or areas. Organisations also regularly come to know of such events where an individual suspects that discrimination has taken place, but where the individual, for one reason or another, is not willing to take the matter to a court or report it to the authorities.

In interpreting this kind of data it must be kept in mind that the data reflects subjective experiences, and does not as such paint a fully reliable picture of the extent and nature of discrimination. Yet, this information is usually reliable enough to be helpful for instance in alerting the

public to new kinds of discrimination or changes in the patterns of discrimination. When collected over time with consistent procedures and definitions, it also gives some indications of trends in the levels of experienced discrimination.

The information regularly recorded by these organisations include the following data:

- **Particulars of the victimised person** (e.g. age, gender);
- **Type of discrimination**
 - area of life where discrimination took place
 - ground of discrimination
 - the nature of discriminatory event (direct or indirect, harassment);
- **Mode of contact** (telephone, mail, email, visit);
- **Course of action advised and/or course of action taken.**

The range of information collected obviously affects the scope of statistics that it is possible to compile on the basis of the data. As data collection is often not the primary purpose of these organisations, they may not be fully familiar with privacy and data protection laws, which is why these organisations, just like all other organisations, should get to know the relevant laws before engaging in data collection. It would also be helpful for these organisations to issue guidelines for their frontline staff in relation to confidentiality and other data protection issues. The use of a standardised reporting form, whether paper or electronic, can enhance reliability, comparability and often also security of the data.

EXAMPLE

The anti-discrimination agencies in the Netherlands

There are more than thirty local and regional anti-discrimination agencies in the Netherlands. These agencies are spread across the country and are mostly funded by the local government. These agencies differ from each other in terms of size, structure and to some extent also the functions carried out. The primary function of all agencies is to register and handle discrimination complaints. While the agencies originally dealt only with ethnic discrimination, most agencies nowadays deal also with discrimination on the grounds of religion, political conviction, age, disability and sexual orientation. When appropriate an agency guides the victim through the legal process, and may even help to gather evidence by means of conducting discrimination testing. Agencies may also conduct mediation, or generate discussion by making problems more visible to the general public. Many agencies conduct research, participate in policy discussions and disseminate information. The agencies cooperate intensively with the police, the Public Prosecutor's Office and the Equal Treatment Commission, which allows them to follow through on specific discrimination complaints. The agencies maintain regular contacts with local and national interest groups and communities in order to stay abreast of what is happening in the different communities.

Most of these anti-discrimination agencies are affiliated with the National Federation of Anti-discrimination Agencies (LVADB). The primary task of this umbrella organisation is to encourage cooperation between the regional

EXAMPLE agencies and to provide a platform for exchange of experiences and know-how. The Federation compiles and publishes an annual report on the basis of the data gathered by the member agencies.¹⁷³ In the past, lack of standardised registration practices has hampered the comparability of the data. Uniform registration programme accompanied with detailed registration guidelines has been introduced to remedy this shortcoming.¹⁷⁴

4.4. | Recommendations

Recommendation No 5: the need to develop complaint statistics

Organisations that receive reports of discrimination should develop systematic recording procedures and practices that allow them to ensure the completeness, reliability and usefulness of the data for both administrative and statistical purposes. Especially non-governmental organisations would benefit from the availability of specialised software for recording complaints submitted to them, and they should consider for instance pooling their resources together for the development of such software. All organisations should establish mechanisms for analysing and distributing in statistical form the information submitted to them, and should seek ways to allow researchers to use these data for analysing discrimination where appropriate.

Further reading

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¹⁷³ See e.g. Coenders, Marcel et al, *Kerncijfers 2003*. LVADB July 2004. Available in Dutch at <http://www.lvadb.nl/kerncijfers2003.pdf> (visited 1.8.2006).

¹⁷⁴ Information based mostly on Schriemer, Rita, *The Nationwide Network of Local and Regional Anti-Discrimination Agencies in the Netherlands*. Case Study for the EUMC. October 2002. Available at: http://www.lbr.nl/internationaal/DUMC/publicatie/case_study_adbs2001.pdf (visited 1.8.2006).

5 | Research

5.1. | Introduction

Official statistical data and complaints data, irrespective of the quality of the data, leave **major gaps** in the knowledge base regarding inequalities. It is particularly difficult to assess the actual extent and nature of discrimination through these means. Several **research methods** are available that can help to fill in the knowledge gaps and paint a considerably more **comprehensive** and **reliable** picture of discrimination.

Two widely-used research methods in this respect are **victim surveys** and **self-report surveys**. These techniques use questionnaires or interviews with samples of individuals who answer questions concerning whether they have experienced discrimination or whether they have themselves engaged in discriminatory behaviour. The distinction between these two types of surveys is not entirely razor-sharp, as large-scale self-report surveys sometimes also enquire about experiences of discrimination. Other types of research methods are also available. Experiments, discrimination testing in particular, approach these issues from a different angle, and set out to observe whether people discriminate in various real-life situations. Qualitative research methods on their part focus on a smaller number of specific events or experiences in order to obtain a richer understanding of the processes involved. Yet a number of other research techniques exist that can substantially contribute to our knowledge of discrimination.

All of these methods are well-established and are used across the world, and have been substantially refined over the course of the latest decades. These methods are illustrated here by introducing a number of particular research studies. Hundreds of studies on discrimination have been conducted worldwide, which means that the studies included here represent only a selective sample of all studies. Studies were chosen so as to achieve a reasonable balance between different research traditions, different grounds of discrimination, different countries where research is carried out and large-scale and small-scale research. Recent research efforts were preferred, as it is customary for research reports to review prior research, making them a good starting point for anyone interested in learning more about a particular type of research.

5.2. | Victim surveys

The victim survey has emerged over the last decades as an important vehicle for collecting information on citizens' direct contact with crime and the criminal justice system.¹⁷⁵ Victim surveys are studies that ask people about their experiences with crime or some other adverse treatment. These surveys can target the whole population, as is the case with national crime surveys, or a subset of the population, such as members of an equality group. Victim surveys can be focused on crime in general or some particular type of crime, such as discrimination.

Victim surveys typically employ **sample survey** methodology. Surveys that are targeted at the general population, even if based on very large samples, tend to be too small to enable reliable tabulation of the results by subsets of the population. Sometimes this problem may be overcome by the use of **booster samples** for these subsets, but in the case of equality groups it may in practice be impossible to do, as the necessary sampling frames may not be available. The unavailability of a proper sampling frame – which is caused by the lack of appropriate large-scale data sets – makes it necessary to devise alternative means by which members of the equality groups can be reached for the purposes of general or specialised surveys.

There are two kinds of information that are regularly collected in victim surveys. First, respondents are asked to give basic **demographic and social information** about themselves, such as age, sex, occupation and place of residence. As data is collected on both those members of the group that have experienced discrimination and those that have not, the researchers are able to analyse who are, within the group concerned, at the greatest risk of discrimination. Second, respondents are asked to provide information about their possible **discrimination experiences**, and often also of the effects of such experiences, as well as about their knowledge of and trust in the justice system. The following topics are often included in the latter part of the survey (the list is exemplary and by no means exhaustive):

- **Has the respondent experienced discrimination** over a specific period of time? (e.g. a year or two, or

¹⁷⁵ UN Statistics Division, *Manual for the Development of A System of Criminal Justice Statistics* (New York: United Nations, 2003) p. 36.

a longer period with respect to situations that cannot be expected to occur frequently);

- If yes, how many times?

- **Circumstances where discrimination** was experienced
 - The field of life involved (workplace, educational institution, grocery store etc)
 - The ground of discrimination (age, ethnic origin, multiple grounds, etc)
 - Nature of discrimination (e.g. harassment)
 - Relationship to the perpetrator (previously unknown person, colleague, customer, neighbour etc)
- **Effects of discrimination**, both economic and non-pecuniary (e.g. health-related). This information is often collected without explicitly connecting it to experiences of discrimination, i.e. by posing general questions about health (such as indicators associated with stress). This allows subsequent comparison of the data between those respondents that have experienced discrimination and those that have not.
- **Action taken if any.** Were the events taken to a court or other judicial body, reported to the police or some other competent body?
 - If action was not taken, the reason why.
- **Knowledge of rights.** Is the respondent aware of the fact that there are laws against discrimination, and does he/she know where to turn to in order to file a complaint of discrimination?
- **Trust in the justice system**, and

- **Fear of victimisation.**

Victim survey questionnaires can be, and have been, designed in countless ways. Surveys that are directed at a particular group often include questions that are specific for that group. For an example, many surveys directed at LGB people have asked about whether the respondents are 'out' about their sexual orientation, as concealment can be seen as a means of protection from discrimination,¹⁷⁶ and as this information enables investigation of the question whether being open affects the rate of victimisation.

One option that is worth considering when designing specialised victim surveys is the possibility to utilise **questions from a general Crime Survey**, as this opens up the possibility of making comparisons between the equality group and the general population, insofar as the methodology used is comparable enough and the results are representative for both groups. Also, questions from other types of major surveys may provide a useful point of comparison. If socio-economic data for a group cannot be derived from general surveys such as the LFS, a targeted survey may be deployed in order to collect this data from the group, after which comparisons can be made. Another option that is worth examining is the use of **some open-ended questions** in victim surveys, as this combines some of the benefits of in-depth qualitative surveys in regard to the detail of information obtained and the generalisability of quantitative surveys.¹⁷⁷

Victim surveys are most useful when they are **conducted on a regular basis**, as this enables the generation of a time-series of data, allowing for a trend analysis.

Age discrimination in employment

Method

Duncan and Loretto¹⁷⁸ examined workers' experiences of age discrimination within a UK financial services enterprise employing 9000 members of staff. They also wanted to examine whether there were any gender differences in these experiences. During 2000, they distributed mail questionnaires to 2000 randomly selected employees. Altogether 1128 responses were received, forming a response rate of 56%. A comparison of the profile of respondents to the overall employee profile revealed that the two groups were closely matched in terms of gender and basis of employment. Age profiles could however not be compared.

¹⁷⁶ Loudes, Christine, *Meeting the challenge of accession. Surveys on sexual orientation discrimination in countries joining the European Union*. ILGA-EUROPE Policy paper, April 2004.

¹⁷⁷ Another useful technique would be to select a portion of respondents for an interview. Asking the selected respondents to elaborate upon their answers can have multiple benefits: it can yield qualitative insights and can be used as a means of evaluating the reliability and validity of the results of the initial survey.

¹⁷⁸ Duncan, Colin and Wendy Loretto 'Never the Right Age? Gender and Age-Based Discrimination in Employment' *Gender, Work and Organization*, Vol. 11 No 1 January 2004.

Results

35% of the women and 22% of the men aged 45 or more reported having been less favourably treated because of their age. In the age category 16-24 the figures were 26% (women) and 23% (men), the overall victimisation rate across the whole workforce being 18%. The questionnaire allowed the respondents to provide details of their experiences. This qualitative information was consistent with the quantitative findings in that a clear experience pattern of negative treatment both because of youth and old age emerged. Two common themes in old age discrimination were denial of opportunities to promotion and training. The pertinent area of discrimination for the under 40s centred around unequal treatment in terms of pay and benefits, and in the case of women also negative attitudes from older colleagues.

Migrants' experiences in 12 EU countries — a pilot study

Method

A pilot study on migrants' experiences of racism and xenophobia was commissioned by the European Monitoring Centre on Racism and Xenophobia (EUMC) to explore some of the available methods for studying racism and discrimination across the Europe. The pilot study was based on twelve country studies that were conducted between 2002 and 2005 in Austria, Belgium, Germany, Greece, France, Ireland, Italy, Luxembourg, The Netherlands, Portugal, Spain and the UK. From three to six immigrant groups, reflecting diverse origins, were surveyed in each country. The questionnaires were designed along a model that was developed originally in Sweden and applied subsequently in Denmark and Finland.¹⁷⁹ The questionnaires, which were not fully identical in each country, could consist of four sets of questions relating to: (i) respondents' characteristics, (ii) experiences of discrimination in different areas of life, (iii) reporting of discrimination to the authorities, and (iv) aspects relating to integration. Different sampling methods were applied in different countries, depending on the availability of an appropriate sampling frame. Random samples could only be used in Italy, Luxembourg and the Netherlands, and a system of quota sampling was used in the rest of the countries. On average, 850 persons were surveyed in each country. The response rates for the three countries where random samples were used were rather low, ranging from 9.5% to 27.1%. Because of differences in questionnaire formulation, selection of target groups and sampling techniques, the results for the different countries are not entirely comparable.

Results

The study found great variation between countries and different migrant populations within countries as regards subjectively experienced discrimination.

- On average, 30% of the respondents reported having experienced discrimination in the domain of employment.
 - The highest rate was found in Greece (46%), the lowest in Luxembourg (16%).
- 29% reported having experienced discrimination in the context of commercial transactions.
 - The highest rates were found in Greece and Spain (50%), the lowest in Luxembourg and the Netherlands (8-9%).
- 25% reported having experienced discrimination in the domain of private life and public arenas.
 - The highest rate was found in the UK (60%), the lowest in Luxembourg (8%).
- 16% reported having experienced discrimination in access to shops, restaurants and discotheques.
 - The highest rate was found in the UK (44%), the lowest in Greece, Luxembourg, and Portugal (4-6%).
- On average, only 14% of those who had experienced discrimination said they had reported it to the authorities.
 - The highest rate was found in the UK (37%) and the lowest in Spain and Greece (1-2%).

Overall the study points to a need to further develop methodologies in this area.¹⁸⁰

¹⁷⁹ Lange, Anders, *Migrants on Discrimination II*, (Edsbruk 1997). Møller, Birgit – Lise Tøgeby, *Oplevet Diskrimination: En undersøgelse af etniske minoriteter* (København: Nævnet for Etnisk Ligestilling, 1999). Jasinskaja-Lahti, Inga – Karmela Liebkind – Tiina Vesala, *Rasismi ja syrjintä Suomessa: Maahanmuuttajien kokemuksia* (Helsinki: Gaudeamus, 2002).

¹⁸⁰ European Monitoring Centre on Racism and Xenophobia, *Migrants' Experiences of Racism and Xenophobia in 12 EU Member States. Pilot Study*. May 2006. Available at: <http://eumc.europa.eu>

Sexual orientation discrimination in ten European countries

Method

Ten member organisations of ILGA-Europe, the European branch of the International Lesbian and Gay Association, participated in conducting a survey on the experiences of LGB people. The countries covered were the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia. The member organisations translated the standard questionnaire drafted by ILGA-Europe, conducted the interviews and reported on the findings. As random sampling was not possible, the people interviewed were principally accessed through LGB organisations in each country. This meant, inter alia, that the results were probably not fully representative of the target group, and e.g. included a higher than average portion of individuals who were already open about their sexual orientation. The questionnaire included questions on:

- Whether the respondents had experienced discrimination in different fields of life, such as employment, provision of services, military service, religious activities and family life.
- Experiences of violence and harassment.
- Whether the experienced discrimination or violence was reported to the police, and if yes, how the police reacted.
- Level of openness about sexual orientation to parents, siblings, friends and third parties.
- Background information such as age, sex and sexual orientation (whether gay, lesbian or bisexual).

Results

Of the respondents in each country, 7-13% reported having been denied a job, 4.6%-28.5% reported having been denied promotion, and 14-39.5% reported having been harassed at the workplace because of their sexual orientation. In addition:

- The number of respondents who had been physically attacked varied between 10% and 30% and most had been attacked more than once. Only a small proportion of these incidents were reported to the police, and where they were reported, the police had reacted with hostility in more than one third of the cases in some countries;
- 70-90% of the respondents felt it necessary to avoid public displays of affection;
- In most countries the majority of respondents felt more comfortable with telling their friends than their family or third parties about their sexual orientation.¹⁸¹

¹⁸¹ Loudes, Christine, *Meeting the challenge of accession. Surveys on sexual orientation discrimination in countries joining the European Union*. ILGA-Europe Policy Paper, April 2004.

5.3. | Self-report surveys

Self-report surveys use the same methodology as victim surveys, and usually involve interviewing a sample of respondents. The major difference between the two lies in the **subject of inquiry**: self-report surveys focus on the respondent's behaviour or attitudes, not on what has happened to him or her. Surveys can also set out to inquire about both of these issues.

A broad distinction can be made between two types of self-report surveys:

- Surveys that focus on **attitudes**, stereotypes and/or opinions, and
- Surveys that focus on **behaviour**, such as workplace practices, intergroup contact, social distance and discrimination.

Some studies focus only on one of these aspects, whereas others contain elements pertaining to both areas of interest. The category of self-report surveys is very heterogeneous, and it is important to notice that they are not restricted to probing about behaviours or

attitudes that are clearly and intentionally unfavourable towards particular groups, as they can set out to examine more subtle practices or attitudes.

Self-report surveys can be focused on particular groups, such as employers, occupational groups or decision-makers, or the general public. Often so-called **gatekeeper groups** are targeted. For instance, Pitkänen surveyed and compared the experiences and views of border guards, police officers, judicial authorities (judges, prosecutors, trial counsels), employment agency personnel, teachers, social workers, physicians and nurses on their work with people of foreign origin and their attitudes towards immigrants and immigration in general.¹⁸²

The reliability and validity of statistics based on self-reports depend in general to a great extent on the willingness of respondents to report that they have engaged in particular type of behaviour and on their ability to recall events. As discussed in Chapter 2 of this Handbook, the willingness to report can be significantly fostered, inter alia by the choice of the data collection instrument. The amount of socially-desirable, untruthful responses to a survey can also be diminished by including in it filler items on irrelevant themes that help to disguise the actual purpose of the survey, or to detect a tendency to 'fake good'.¹⁸³

EXAMPLES

Survey of employers' policies, practices and preferences relating to age

Method

Metcalf and Meadows¹⁸⁴ set out to study, prior to the implementation of age equality regulations in Britain, the extent to which employment policies and practices accorded with equal opportunity with respect to age. The study was based on a representative sample of employment establishments in Britain that had at least five employees. The sample was a random stratified sample taken from the Inter-Departmental Business Register (IDBR). Altogether 6,899 workplaces were selected for interview; 2,087 workplaces were interviewed, some 700 could not be contacted, making a response rate of 34%. Fieldwork was based on CATI (Computer Assisted Telephone Interview). The study sought to cover elements of a wide range of age-related policies and practices to identify the extent of their use. These included: recruitment and selection practices which entail age; age-related practices in training; the availability of flexible working practices by age; retirement practices, including early and formal flexible retirement; redundancy policies and practices which entail age; pay and other benefit policies and practices which have an age dimension; the use and nature of appraisal systems. In addition, the study examined the extent and knowledge about the forthcoming age equality legislation, and employers' attitudes to age and age-related issues.

¹⁸² Pitkänen, Pirkko, *Etninen ja kulttuurinen monimuotoisuus viranomaistyössä* (Helsinki: Edita, 2006).

¹⁸³ National Research Council, *Measuring Racial Discrimination*. Panel on Methods for Assessing Discrimination (Washington DC: National Academies Press, 2004).

¹⁸⁴ Metcalf, Hilary with Pamela Meadows, *Survey of employers' policies, practices and preferences relating to age*. Department for Work and Pensions, Research Report No 325, 2006.

Results

The survey showed, inter alia, that

- 56% of the workplaces had an Equal Opportunities policy that addressed age; 19% of establishments provided Equal Opportunities training covering age; approximately every third employer monitored their workforce, recruitment and pay in respect to age;
- 36% of the establishments used incremental pay scales that are potentially hazardous from the point of view of equal treatment law; 14 % of the establishments used directly age-related pay criteria for their largest occupational group;
- In 44% of the establishments annual leave entitlement was based on length of service;
- 37% of the establishments had a compulsory retirement age for at least some staff;
- 49% of establishments had a maximum recruitment age; 14% targeted older or younger people in their recruitment;
- 21% of the employers believed that some jobs were more suitable for certain ages than others;
- 26% knew when new age equality legislation was to be implemented; 31% claimed to have changed policies in anticipation of the legislation.

Muslims in Europe (a survey that combines elements from both self-report and victim surveys)

Method

The Pew Global Attitudes Project was conducted from March – May 2006 in 13 countries, including Great Britain, France, Germany and Spain. The surveys were based mostly on national probability samples and were either telephone or face-to-face surveys. In each participating European country at least 900 individuals were surveyed, with significant Muslim oversamples. The respondents were asked, inter alia, if they thought it's a good thing or a bad thing that people from the Middle East and North Africa come to live and work in their country; whether they thought that Europeans are hostile towards Muslims; whether they thought that Muslim immigrants want to integrate or want to be distinct from the larger society; and whether there are reasons to be worried about the future of Muslims. Muslim respondents were in addition asked if they had personally had a bad experience because of their race, ethnicity or religion.

Results

Results of the survey found that

- Muslims in Great Britain, France, Germany and Spain were more worried about unemployment (46%-56% very worried) than Islamic extremism (22-44% very worried), decline of religion (18%-45% very worried) or Muslim women taking on modern roles in society (9%-22% very worried).
- Immigration from the Middle East and North Africa was mostly seen as a 'good thing' in Spain (62%), France (58%) and Great Britain (57%) but not in Germany (34%).
- Many respondents thought that 'most' or 'many' Europeans are hostile towards Muslims. In the UK 40% of the general population and 42% of Muslims thought so, in France the numbers were 56% and 39%, in Germany 63% and 51%, and in Spain 60% and 31%.

- 37% of the Muslims in France, 28% in Great Britain, 25% in Spain, and 19% in Germany had personally had a bad experience due to his/her race, ethnicity or religion, in the last two years.
- In comparison to the general population, Muslims themselves were considerably more often of the view that most Muslim immigrants want to adopt to the customs and ways of life of the receiving country instead of remaining distinct from the larger society.¹⁸⁵

Teachers, sexual orientation and homophobia

Method

Sahlström¹⁸⁶ set out to investigate whether teachers were in general prepared to deal with issues relating to sexual orientation and homophobia. An email survey was sent to 4,000 teachers registered with two main teachers' associations in Sweden, but for approximately 700 a valid email could not be found. Approximately 1,400 teachers responded, representing a response rate of 42%. They were asked e.g. about the grades they were teaching and if they know about a law prohibiting sexual orientation discrimination. Then they were asked whether they felt they had the competence to deal with these issues, whether they actually had dealt with these issues in classroom, whether they had come across offensive speech or behaviour in the school (on multiple grounds), and whether they know people from the school environment that had been discriminated against on the basis of sexual orientation.

Results

The results of the survey showed that

- 8% of the respondents felt that their education had provided them the skills necessary to deal with issues relating to sexual orientation and homophobia;
- 92% of the respondents knew that there is a law against discrimination on the basis of sexual orientation;
- 5% of the respondents had experienced discrimination on the basis of sexual orientation, or had a colleague who had so been treated; 8% reported knowing a student who had been so treated;
- 50% had 'often' or 'sometimes' witnessed offensive speech or behaviour relating to sexual orientation; 50% in relation to sex; 49% in relation to ethnic orientation; 31% in relation to religion; and 24% in relation to disability;
- 64% were interested in receiving teaching materials that could help to bring up issues in relation to sexual orientation and homophobia in the classroom.

¹⁸⁵ The Pew Global Attitudes Project, *Muslims in Europe: Economic worries top concerns about religious and cultural identity*, July 2006. <http://pewglobal.org/reports/pdf/254.pdf>

¹⁸⁶ Sahlström, Jenny, *En utmaning för heteronormen – lärares kunskapsbehov och ansvar inom områdena sexuell läggning och homofobi*. Under ytan. Rentryck AB, Juni 2006. The report and other material (mostly in Swedish) available at: www.ytan.se

5.4. | Discrimination testing

Discrimination testing is a form of social experiment in a real-life situation. The method was originally developed as a tool for checking compliance with the law, and constitutes an unequivocal procedure for charting the effectiveness of equal opportunity legislation.¹⁸⁷ The method is already very well-developed and has been used since the late 1960s.¹⁸⁸

In discrimination testing, two or more individuals are matched for all relevant characteristics other than the one that is expected to lead to discrimination, e.g. disability or ethnic origin.¹⁸⁹ The testers apply for a job, an apartment or some other good or service, usually on a high number of occasions, and the outcomes and the treatment they receive are closely monitored.¹⁹⁰ This kind of paired testing allows for good control over different causal variables, diminishing the possibility that differences in treatment are caused by variables that the researcher cannot observe:¹⁹¹ the direct and unequivocal measurement leaves no room for other explanations.¹⁹² Testers may or may not be aware of the purpose of the research setting.¹⁹³ Some research designs allow the use of fictitious testers. Situation testing has been used to study discrimination in access to employment, renter- and owner-occupied housing, homeowner's insurance, mortgage lending, car sales, access to hotels, access to banks, access to service establishments, access to taxi-cab service, access to health club membership, access to bars and access to discos.¹⁹⁴ It has been applied in order to study discrimination on the basis of sex, ethnic origin, disability, sexual orientation and age.¹⁹⁵ In Europe the method has been used at least in Belgium, Denmark,

England, France, Germany, Italy, Spain, Switzerland and the Netherlands. Several institutional players, such as the International Labour Organisation (ILO) and the U.S. Department of Housing and Urban Development (HUD) have endorsed it. It is not, however, entirely clear whether the use of discrimination testing methodology is allowed in all countries in some particular situations (e.g. when the study deals with financial institutions or insurance companies), and it is therefore recommended that legal advice is sought if any doubts arise in this respect.

Situation testing is a valuable tool because it can be used to expose well-concealed covert discrimination which is hard to detect by any other means. Results of these kinds of field experiments are also often generalisable, i.e. one can draw conclusions on the basis of such experiments about the existence of discrimination in society.¹⁹⁶

Discrimination testing may serve three distinct purposes:

- **Litigation.** Testing can provide objective and definitive evidence of discrimination, otherwise often unavailable.¹⁹⁷ Such evidence is accepted in courts in many European jurisdictions.¹⁹⁸ Litigation-oriented testing focuses specifically on the actions of one or more particular organisations, and those involved in such testing may either be
 - Gathering evidence that may corroborate the experiences of a prospective complainant. Tests that are conducted in response to a particular set of information provided by a specific complainant will likely be specifically tailored to those circumstances.¹⁹⁹

¹⁸⁷ Colectivo IOE, *Labour market discrimination against migrant workers in Spain*, International Migration Papers 9. Geneva: International Labour Office, 1995). Riach & Rich 'Deceptive Field Experiments of Discrimination: Are they Ethical?' *Kyklos*, Vol. 57, 2004, pp. 457-470.

¹⁸⁸ Riach, P.A. – J. Rich 'Field Experiments of Discrimination in the Market Place' *The Economic Journal* 112, November 2002, p. F515. Bovenkerk, Frank, *Testing discrimination in Natural Experiments: A Manual for International Comparative Research on Discrimination on the Grounds of "Race" and Ethnic Origin* (Geneva: International Labour Organisation, 1992).

¹⁸⁹ Fix, Michael and Margery Turner 'Testing for Discrimination. The Case for a National Report Card' *Civil Rights Journal*, Fall 1999.

¹⁹⁰ Idem.

¹⁹¹ Idem.

¹⁹² Bovenkerk, Frank 'The Research Methodology' in de Beijl, Roger Zegers (ed), *Documenting discrimination against migrant workers in the labour market; A comparative study of four European countries* (Geneva: International Labour Office, 2000), p. 17.

¹⁹³ See Riach & Rich 'Deceptive Field Experiments of Discrimination: Are they Ethical?' *Kyklos*, Vol. 57, 2004, pp. 457-470, for a discussion of the benefits of each of these modes.

¹⁹⁴ Foster, Angela Williams et al, *Measuring Housing Discrimination in a National Study: Report of a Workshop* (Washington DC: National Academy Press, 2002), p. 9; P.A. Riach. – J. Rich 'Field Experiments of Discrimination in the Market Place' *The Economic Journal* 112, November 2002, p. F515; Fix, Michael and Margery Turner 'Testing for Discrimination. The Case for a National Report Card' *Civil Rights Journal*, Fall 1999; Bovenkerk, Frank, *Testing discrimination in Natural Experiments: A Manual for International Comparative Research on Discrimination on the Grounds of "Race" and Ethnic Origin* (Geneva: International Labour Organisation, 1992), p. 13; Fibbi, R., Kaya, B. and Pigué, E. *Le Passeport ou le Diplôme?* (Neuchâtel: Swiss Forum for Migration and Population Studies, 2003).

¹⁹⁵ See the examples mentioned in this Handbook, and Riach & Rich 'Field Experiments of Discrimination in the Market Place' *The Economic Journal* 112, November 2002, pp. 484, 485, 505 ff, 515.

¹⁹⁶ National Research Council, *Measuring Racial Discrimination*. Panel on Methods for Assessing Discrimination (Washington DC: National Academies press, 2004), p.72.

¹⁹⁷ Riach & Rich 'Deceptive Field Experiments of Discrimination: Are they Ethical?' *Kyklos*, Vol. 57, 2004, p. 458.

¹⁹⁸ See Makkonen, Timo, *Measuring Discrimination: Data Collection and EU Equality Law*. Network of Independent Experts in the non-discrimination field (Luxembourg: Office for Official Publications of the European Communities, 2007).

¹⁹⁹ Pratt, Sara, *Discrimination Against Persons with Disabilities. Testing Guidance for Practitioners*. Office of policy Development and Research. U.S. Department of Housing and Urban Development. July 2005, p 39.

- Gathering evidence in order to bring a complaint if evidence of discrimination is found.
- **Research.** Research-oriented testing usually focuses on the actions of a larger number of organisations, possibly even a representative sample, and does not necessarily lead to legal action. When conducted for research purposes and in order to yield reliable measures of differential treatment, paired testing must adhere to high research standards.
- **Awareness raising.** Discrimination testing can provide dramatic evidence of the existence of discrimination, and the results of studies using testing as a methodology can attract considerable public attention.

EXAMPLES

Labour market discrimination against migrants²⁰⁰

Method

The International Labour Organisation (ILO) has since the early 1990s sponsored discrimination testing studies in several countries, including Belgium, Germany, Italy, the Netherlands and Spain, in order to study discrimination faced by immigrants in access to employment. These country studies have been based on the methodological framework developed by Bovenkerk²⁰¹, which however allowed national variations in implementation, meaning that the results are not strictly speaking comparable. The test group representing the immigrant testers were youngish Moroccan men in the case of Belgium, Italy, the Netherlands and Spain, and youngish Turkish men in the case of Germany. These groups were chosen because they constituted sizable immigrant-origin groups in these countries and because there was evidence suggesting discrimination against them. The majority and minority testers were closely matched in terms of human capital, and the treatment they received during the entire span of the recruitment and selection procedure (application by phone/possible personal interview/outcome of the selection) was documented across a high number of test situations in order to rule out the possibility that differences were due to sheer chance. For instance in Italy altogether 633 valid tests were performed. The studies focused on semiskilled occupations, in which it could be presumed that competition was high and where the employers were therefore more likely to be able to 'afford' to discriminate. Open vacancies were mainly found through newspaper advertisements, as the services of employment agencies could not be used since the use of these services tended to require the showing of official identity documents.

Results

The net discrimination rate was rather consistent across the countries, ranging between 33% (Belgium) and 41% (Italy).²⁰² This means that immigrant jobseekers were discriminated against in more than every third application procedure. As the testers had been matched across all employment-relevant criteria and used the same methods for gaining employment, these differences could not be explained by such factors as inadequate education or training, lack of access to networks and connections to employers, and/or inadequate command of host country's language.

Sexual orientation discrimination in hiring

Method

Weichselbaumer²⁰³ used correspondence testing to examine the hiring chances of lesbians in Austria. Lesbians were specifically focused at because several wage regression studies had established that they, in contrast to other equality groups including gay men, earned *higher* wages than their reference group, i.e. heterosexual women. The research set

²⁰⁰ Bovenkerk, Frank et al, *Discrimination against migrant workers and ethnic minorities in access to employment in the Netherlands*. International Migration Papers 4 (Geneva: International Labour Office, 1995). Colectivo IOE, *Labour market discrimination against migrant workers in Spain*. International Migration Papers 9 (Geneva: International Labour Office, 1995). Goldberg et al, *Labour Market Discrimination against foreign workers in Germany*. International Migration Papers 7 (Geneva: International Labour Office, 1996). Arriijn, Peter et al, *Discrimination in access to employment on grounds of foreign origin: the case of Belgium*. International Migration Papers 23 (Geneva: International Labour Office, 1998). E. Allasino et al, *Labour market discrimination against migrant workers in Italy*. International Migration Papers 67 (Geneva: International Labour Office, 2004).

²⁰¹ Bovenkerk, Frank, *Testing discrimination in Natural Experiments: A Manual for International Comparative Research on Discrimination on the Grounds of "Race" and Ethnic Origin* (Geneva: International Labour Organisation, 1992).

²⁰² The results from Germany are not included here, as the German testing procedure did not cover all stages of the recruitment, unlike the other country studies.

²⁰³ Weichselbaumer, Doris 'Sexual orientation discrimination in hiring' *Labour Economics* 10 (2003) 629-642.

out to examine whether this reflected absence of discrimination. The research was conducted by sending out matched letters of applications to the same job openings. Equal 'social desirability' of the applicants was confirmed by using pre-tests evaluating the candidates' CVs and photos. After this an item indicating a history of voluntary work at a LGB organisation was added to half of the applications. The study also set out to examine whether personal style affected outcomes, since some researchers had suggested that lesbians' increased masculinity (being assertive, dominant etc), which employers might have a preference for, could explain their relatively high incomes. Therefore some of the CVs reflected feminine attributes, i.e. they were drawn in a 'nice and playful way' and hobbies included items such as drawing and making of clothes, whereas 'masculine' CVs appeared rather plain and hobbies included rock-climbing and motorcycling. In effect, four applicant groups were formed: feminine straight, masculine straight, feminine lesbian and masculine lesbian. The inclusion of a variety of items in the applications was possible because long résumés are used in Austrian labour market. In total, 1226 applications were sent out in response to 613 job openings.

Results

It was found that indicating a lesbian identity reduced one's invitation rate by about 12–13 percentage points. Gender identity was not found to affect labour market outcomes. The results of wage regression studies are therefore more likely to be due to measurement errors (such as higher income individuals being more willing to disclose their orientation) or increased productivity (which may be driven by higher effort and is possible since lesbians carry less household responsibility).

Disability discrimination in housing

Method

The U.S. Department of Housing and Urban Development (HUD) contracted Urban Institute (UI) to advance the state-of-the-art in testing to measure discrimination against persons with disabilities. Because the population of persons with disabilities is diverse, and the challenges for effectively measuring disability discrimination significant, the project was conducted in two phases. In the first 'exploratory' phase the UI experimented with various alternative methods, and found that the paired testing methodology (in-person testing and/or telephone testing) was applicable with respect to studying discrimination against persons with mental illness, persons with developmental or cognitive disabilities, persons who are deaf or hard of hearing and persons using wheelchairs. In the second phase two pilot studies were conducted in the Chicago area by using research methods developed to produce statistically representative measures of discrimination for two groups: (i) deaf people who use the TTY system (text telephone)²⁰⁴, and (ii) people with physical disabilities. For both groups roughly 100 tests were conducted involving closely-matched pairs that only differed on the basis of having or not having a particular disability.

Results

In one of every four calls, housing providers refused to communicate with deaf testers, while accepting and responding to conventional telephone inquiries. When deaf testers were able to communicate with a housing provider, they received comparable information about available units, but less information about the application process than their nondisabled partners. Significant adverse treatment with respect to invitations for follow-up was also experienced. Overall, deaf testers received less favourable treatment than their nondisabled partners in six of every ten tests conducted, and were favoured in about one third. The net estimate of discrimination against deaf testers was 26.7%.

The study focusing on wheelchair users found that, to begin with, more than a third of advertised rental homes and apartments were in buildings that were inaccessible for wheelchair users. When persons using wheelchairs visited properties they were systematically told about and shown fewer units than comparable nondisabled homeseekers. They also received less information about the application process. Overall, wheelchair users experienced unfavourable treatment in almost six of ten visits to advertised rental properties (but were favoured over their nondisabled counterparts in three of ten visits). The net hierarchical estimate of discrimination against wheelchair users was 30.3%. In addition to differential treatment, almost one in six rental housing providers who indicated that they had units available for the wheelchair user refused to allow for reasonable unit modification.²⁰⁵

²⁰⁴ A TTY is a special device that lets people who are deaf, hard of hearing, or speech-impaired use the telephone to communicate, by allowing them to type messages instead of talking and listening.

²⁰⁵ Turner, Margery Austin et al, *Discrimination Against Persons with Disabilities: Barriers at Every Step*. Office of Policy Development and research, U.S. Department of Housing and Urban Development. May 2005.

5.5. | Qualitative research

In the field of social sciences a distinction is ordinarily made between quantitative and qualitative research. In broad terms, qualitative research can be seen as a vehicle for obtaining an in-depth understanding of human behaviour, the motives and reasons behind the behaviour, and of the context in which it takes place. Qualitative research often focuses on capturing the motives, actions and experiences of specific groups of people, and/or on obtaining a deeper understanding of the social processes involved. Unlike quantitative research, qualitative research places less emphasis on statistical validity and its prerequisites such as use of representative samples. Hence smaller but focused samples are often used. When applied to the field of studying inequalities, qualitative approaches are well suited to giving a voice to those discriminated against, the perpetrators, those involved in the administration of justice and also to studying the cumulative and inter-generational aspects of discrimination.

Different kinds of data can be subjected to qualitative analysis. There are two alternative ways of obtaining the data:

- **Primary data collection**, i.e. the collection of 'fresh' information, e.g. by means of
 - Structured, semistructured and unstructured interviews;
 - Focus groups; group interviews; or
 - Participant observation and
- **Secondary data collection**, i.e. the use of pre-existing materials, typically various kinds of documentary evidence, such as
 - Court and police records
 - Media sources
 - Records from political processes or
 - Annual reports released by companies and other organisations.

Likewise, a number of techniques can be used for analysing the data. These include for instance **discourse analysis** and **conversation analysis**.

Frequently-used qualitative research strategies include the following:

- **Case studies.** Case study methods involve an in-depth, longitudinal examination of a single instance or event. The quintessential characteristic of case studies is that they strive towards a comprehensive understanding of the case, and do not seek to privilege any particular point of view.
- **In-depth interviews.** In conducting in-depth interviews, a researcher engages one or more subjects in an extensive, more or less structured conversation. The advantage of such interviews is that they often elicit information that is richly detailed. In-depth interviews are based on small samples, which means that the results may not be representative of the target group.
- **Ethnography.** Noaks and Wincup define ethnography as follows: 'Ethnography is the study of groups of people in their natural setting, typically involving the researcher being present for extended periods of time in order to collect data systematically about their daily activities and the meanings they attach to them.'²⁰⁶ While ethnography is typically associated with participant observation it frequently involves also in-depth interviews and documentary analysis.²⁰⁷
- **Focus groups.** Focus groups typically have between 6 to 12 participants. The interviewer has more the role of a facilitator or a moderator that sets out the agenda of the meeting and prescribed time limits (usually one or two hours). Focus groups can also be convened on-line. Focus groups differ from group interviews in that the former allows more interaction between the members of the group.

²⁰⁶ Noaks, Lesley and Emma Wincup, *Criminological Research. Understanding Qualitative Methods* (London: Sage publications 2004) p. 93.

²⁰⁷ Ibid., p. 91.

Analysis of reported disability discrimination lawsuits

Method

Wooten and James²⁰⁸ set out to examine why organisations struggle with learning how to prevent discrimination against their employees with disabilities. To explore this issue they employed a multi-case study methodology and collected a qualitative archival data consisting of 53 lawsuits. The data sources included media accounts of lawsuits, Equal Employment Opportunity Commission (EEOC) press releases, and organisational documentation such as annual reports. They analysed these cases against the backdrop of organisational learning theories. In light of these theories, organisations learn by encoding inferences from past experiences into routines that guide behaviour. Detection of problems such as discrimination can lead to a process of learning involving knowledge acquisition, information interpretation and distribution, and a search for a strategy to resolve the problem.

Results

The researchers coded the data and identified four major learning barriers: (i) discriminatory organisational routes, such as unwillingness to provide reasonable accommodations or lack of an infrastructure to support disabled employees; (ii) organisational defence routines, such as denial of discrimination and defending of management practices that discriminate; (iii) reliance on reactive learning, such as minimal compliance with anti-discrimination laws and not addressing the underlying cause of discrimination; and (iv) window dressing, such as superficial commitment to disabled employees and focusing on impression management. Organisations were also found to have difficulties in engaging in higher-order and vicarious learning.

5.6. | Other types of research

The themes of equality and discrimination have been subject to various kinds of research within many academic disciplines, including sociology, psychology, social psychology, economics, law and political philosophy. Not all of this – in itself important – research has, especially in the latter fields of study, focused on *measuring* discrimination, which is the theme of this Handbook. It should accordingly be emphasised that this Handbook does not – and indeed could not – exhaustively describe all possible kinds of research that deserve endorsement and support.

Three more approaches into investigating various aspects of discrimination will be discussed here:

- Media and communication studies,
- Laboratory experiments, and
- Research into the justice system.

Media and communication studies. An important line of research in this context is formed by what may be called media and communication studies. Research that is conducted within this area of scholarly inquiry focuses on

the various dimensions of communication that takes place in different social arenas, such as schools, court houses or Parliaments, or in different media, such as television, newspapers, the Internet, film, radio, magazines, music or games. This genre is characterised by the use of a wide variety of theoretical approaches and techniques. Common research strategies include **content analysis** and **discourse analysis**, the former being usually more quantitatively oriented than the latter. Critical variants of these research strategies have been applied to study the role of communication in the reproduction of power, dominance and inequality.

Two relatively recent European research efforts in this area have focused on the themes of racism and ethnic diversity:

- The first one, an outcome of the project ‘Racism at the Top’, examined records of parliamentary debates in six European countries (Austria, France, Great Britain, Italy, Spain and the Netherlands) from two years (1996-1997). The central aim of the project was to investigate the role of leading politicians in the reproduction of racism and anti-racism. The analysis combined a quantitative and a qualitative dimension. In the quantitative, content-analytical dimension, hundreds of debates were systematically coded, for instance for the main topics, parties of

²⁰⁸ Wooten, Lynn Perry and Erika Hayes James ‘Challenges of Organizational Learning: Perpetuation of Discrimination Against Employees with Disabilities.’ *Behavioral Sciences and the Law*. 23:123-141 (2005).

speakers, and so on, so that it could be established about what topics parliamentarians in the different countries tend to speak and how often. The qualitative investigation of part of the data was discourse analytical, and focused in more detail on the nature of the topics being discussed, as well as on the use of argumentative and rhetorical techniques.²⁰⁹

- The second one, published by the EUMC, provided an overview of research conducted in the then 15 Member States of the EU in relation to racism and cultural diversity in the mass media. The report summarised and analysed the studies that had been published in these countries in the period 1995-2000, with a view to finding out
 - in which way general media practices affect reporting on ethnic issues,
 - what are the available findings about the representation of ethnic and cultural diversity in the media, and the reproduction of racism through media, and what actions have been launched in the Member States to promote cultural diversity and to combat racism in the media.²¹⁰

Laboratory experiments. The concept of laboratory experiments refers to a diverse group of research strategies the common denominator of which is that they take place under circumstances that are controlled by the researchers conducting the study. Experiments often set out to observe what kind of an impact is elicited in research subjects when a single variable is manipulated while other variables that might possibly intervene or confound outcomes are carefully controlled for. Two completely different types of experiments are described here as examples:

- An experimental research design might involve training several experimental confederates – who are for instance of different ethnic origins – to interact with study participants (research subjects) according to a prepared script, to dress in comparable style, and to represent comparable levels of baseline physical

attractiveness. The study participants, who are not aware of the objectives of the research, are then asked to act as personnel recruiters and to interview and assess the candidates (the confederates), in the process of which the behaviour of the research participants towards the job candidates is closely monitored. A research design could alternatively involve for instance the assessment of job applications that have the applicant's photo attached to them.²¹¹

- Another type of a research design might involve research methods developed in the branch of medical science. Researchers have for instance used functional magnetic resonance imaging (a type of brain imaging) in order to examine how subjects respond to perceptual and verbal stimuli related to different ethnic origins, and have found that stereotypes are triggered rather automatically, appear to be culturally learned and are often internalised even by the objects of these stereotypes themselves.²¹²

These studies have been highly useful for examining psychological processes and have provided powerful evidence that supports the observation that modern forms of discrimination can be subtle, covert and possibly unconscious.²¹³ While experiments often set out to study the nature and effect of prejudices and stereotypes, they may also be used to study discriminatory behaviour.

Laboratory experiments can have high internal validity, that is, they are good for establishing causation (what causes what), and they are absolutely necessary for constructing theories about the relationship between prejudiced attitudes and discriminatory behaviour.

Research into the justice system. Concerns over allegations that racial and ethnic minorities are discriminated against in the administration of justice have sparked a number of studies that have investigated these matters, particularly in the U.S. and the UK.²¹⁴ These investigations have focused particularly on the *criminal justice*

²⁰⁹ Wodak, Ruth – Teun A. van Dijk, *Racism at the Top. Parliamentary Discourses on Ethnic Issues in Six European States* (Klagenfurt, Drava Verlag, 2000).

²¹⁰ Ter Wal, Jessika, *Racism and Cultural Diversity in the Mass Media. An overview of research and examples of good practice in the EU Member States, 1995-2000*. EUMC, Vienna, February 2002, p. 11.

²¹¹ National Research Council, *Measuring Racial Discrimination*. Panel on Methods for Assessing Discrimination (Washington DC: National Academies Press, 2004).

²¹² Lieberman, Matthew D et al. 'An fMRI investigation of race-related amygdala activity in African-American and Caucasian-American individuals' *Nature Neuroscience*, Vol. 8 No 6 June 2005.

²¹³ National Research Council: *Measuring Racial Discrimination*. Panel on Methods for Assessing Discrimination. (Washington DC: National Academies Press, 2004).

²¹⁴ See e.g. Banks, Cyndi, *Criminal Justice Ethics. Theory and Practice* (Sage 2004); Open Society Justice Initiative, *Racial Discrimination in the Administration of Justice*. Submission to the UN CERD Committee on the occasion of its 65th Session, August 2004. Available at: <http://www.soros.org/>.

See also: Commission for Racial Equality, *A Question of Judgement. Summary of Race and Sentencing: A Study in the Crown Court*, by Roger Hood (London: CRE 1992); Commission for Racial Equality, *Juvenile Cautioning and Ethnic Monitoring* (London: Commission for Racial Equality, 1989); Commission for Racial Equality, *Cautions v. prosecutions. Ethnic monitoring of juveniles by seven police forces* (London: CRE, 1992). Research in this area has been occasionally conducted also elsewhere in Europe, see e.g. Holmberg, Lars – Britta Kyvsgaard, 'Are Immigrants and their Descendants Discriminated against in the Danish Criminal Justice System?' *Journal of Scandinavian Studies in Criminology and Crime Prevention* Vol. 4, No 2 (2003) pp. 125-142.

system, covering all stages of the criminal justice process, including

- **Informal actions by the police**, such as stop-and-question and stop-and-search practices;
- **Profiling** in the investigation of crimes;
- **Treatment/mistreatment** during apprehension or custody;
- **Charging, verdicts and sentencing**.²¹⁵

Research in this area often proceeds by means of statistical comparisons. This may involve, in broad terms, either

- A comparison of the treatment different groups receive at particular stages of the justice system, or

- A comparison of the percentage share of one group at a particular stage of the justice system in respect of its percentage share at the society at large, so as to identify possible overrepresentation.

Robust and comprehensive analyses require the introduction of systematic monitoring, as has been done in the UK,²¹⁶ but in the absence of monitoring, research designs need to involve other methods of data collection, such as visual observation. The importance of involving representatives of the equality groups concerned in the planning and carrying out of any research in this area cannot be overemphasised.

EXAMPLE

The Barañí project

Method

The Barañí project carried out a quantitative and qualitative study regarding Roma women and the Spanish Criminal Justice system. The project was born from evidence pointing out an extreme over-representation of Roma women in Spanish prisons. No official figures on this were however available, and the evidence was anecdotal at the time. The research team, convinced that ethnic data gathering is a necessary tool for revealing subtle processes of inequality and discrimination, carried out a statistically valid ethnic count in the 14 largest women's prisons and interviewed 290 Roma women inmates. The team also interviewed a number of persons working for the criminal justice system. In order to alleviate the fear, expressed by some Roma spokespeople, that the results of the study could be misused against the group itself, the research team set out to carefully demonstrate the existence and workings of discriminatory processes within the criminal justice system as the major issue at stake. It was also deemed important to disseminate the findings through quality media outlets in order to avoid sensationalist reporting.

Results

The project found that around 25 % of female prison inmates in Spain are of Roma origin. This constitutes an over-representation of 20 times in comparison to their share of the general population. According to the study, these women are victims of triple discrimination – on the basis of class, ethnic origin and gender. Representatives of the criminal justice system were however found to deny the existence of discrimination, even the very possibility thereof, which could be seen as an implicit support for the belief that the only explanation for the situation is high criminality rate among Roma women. The researchers concluded that 'the over-representation of Roma women in Spanish prisons represents a serious failure on the part of our society and its institutions. Such failure is a direct reflection of deep-seated prejudices that find their outlet in discrimination and in social and economic exclusion, and a excessive use of punitive measures in the face of profound social problems that call for the implementation of serious measures for change.'²¹⁷

²¹⁵ It should be noted that an 'ethnic penalty' in charging, verdicts and/or sentencing may result not just from harsher treatment of perpetrators who belong to minority groups, but also from more lenient treatment of perpetrators who have committed a crime against a member of a minority group.

²¹⁶ See Section 4.2. of this Handbook (on the Section 95 report).

²¹⁷ For more information, see the website of the Proyecto Barañí at <http://personales.jet.es/gea21/> (visited 1.10.2006).

5.7. | Recommendations

Recommendation No 6: the need to support research

The fundamental importance of conducting research into equality and discrimination should be recognised by securing adequate funding for these purposes. There is a need

- For (i) longitudinal research that would benefit from a steady source of financing, and (ii) *ad hoc* research where the funding may come from different sources at different times;
- For quantitative and qualitative research.

Those funding and commissioning research should identify priorities in this area in cooperation with the representatives of the equality groups and the scientific community.

Further reading

- Bovenkerk, Frank, *Testing discrimination in Natural Experiments: A Manual for International Comparative Research on Discrimination on the Grounds of "Race" and Ethnic Origin* (Geneva: International Labour Organisation, 1992).
- European Commission against Racism and Intolerance, *General Policy Recommendation No 4: National Surveys on the Experience of Discrimination and Racism from the Point of View of Potential Victims* (Council of Europe, 1998).
- Krizán, Andrea (ed), *Ethnic Monitoring and Data Protection: The European Context* (Budapest: CPS books, 2001).
- Noaks, Lesley and Emma Wincup, *Criminological Research: Understanding Qualitative Methods* (London: Sage publications LTD, 2004).
- Pratt, Sara, *Discrimination Against Persons with Disabilities. Testing guidance for Practitioners*. Office of policy Development and Research. U.S. Department of Housing and Urban Development. July 2005. http://www.huduser.org/Publications/pdf/DDS_Testing_Guidance.pdf
- UN Statistics Division, *Manual for the Development of A System of Criminal Justice Statistics* (New York: United Nations, 2003).

6 | Diversity monitoring by organisations

6.1. | Introduction

Diversity monitoring, in the contexts of employment and service delivery, refers to the process by which an organisation observes the impact of its policies and practices upon the equality groups. There are two kinds of monitoring:

- **Quantitative monitoring;** this refers to numerical monitoring, a process by which an organisation collects, stores and analyses data about the composition of its workforce and/or the users of its services across the relevant equality grounds. Quantitative monitoring can be carried out by means of keeping administrative records or by means of carrying out comprehensive workforce surveys.
- **Qualitative monitoring;** this refers to other processes by which an organisation aspires to obtain feedback of the way its policies and practices impact the equality groups. Qualitative monitoring can be carried out by means of panel discussions, satisfaction surveys, random or targeted surveys, observation, and basically any other technique the primary aim of which is not to obtain quantitative but qualitative information.

The distinction between the two types of monitoring is not watertight, as quantitative monitoring often includes qualitative elements, and vice versa. These two types of monitoring should not be seen as mutually exclusive as they can, and should, be used as **complementary measures**. The choice of appropriate action depends on many factors, such as the size of an organisation. In accordance with the emphasis placed by the present Handbook on statistical data the following discussion on monitoring will focus primarily upon numerical monitoring.

Monitoring is perhaps the most effective measure an organisation can take to ensure it is in compliance with the equality laws. It is usually undertaken as part of a broader commitment to equal treatment, and may be accompanied by other measures such as the **adoption**

of **equal treatment policies**, personnel training and reviews of employment and workplace policies and procedures. Monitoring can help to

- Highlight possible inequalities;
- Investigate their underlying causes;
- Remove any unfairness or disadvantage; and
- Send a clear message to employees, applicants, customers and shareholders that the employer takes equal opportunities seriously.²¹⁸

In employment, monitoring lets employers examine the make-up of their workforce in terms of the equality categories, and compare this with benchmark data where such exist. It also lets them to analyse how their personnel practices and procedures affect different groups.²¹⁹

In service delivery, monitoring can tell which groups are using the services, and how satisfied they are with them. Organisations can then consider ways of reaching under-represented groups and make sure that the services meet the specific needs of each group, and that the services are provided fairly.²²⁰

The purpose of monitoring is to allow an organisation to obtain an overall, statistically-valid picture of the way in which its policies and practices affect the equality groups. The primary, overarching purpose is not to obtain information, or to take measures, with respect to a particular individual, but with respect to the workforce in general. This, however, cannot be achieved without collecting individual-level data, which is why such data is needed. Depending on the way in which monitoring is carried out, the information gathering process can however be adapted to serve also individual-level purposes, such as obtaining the information that is needed in order to take reasonable accommodation measures with respect to employees and customers who have disabilities. Where this is the case, the data subject must be informed of all the purposes for which the data submitted by him or her will be used.

²¹⁸ Commission for Racial Equality, *Ethnic Monitoring: A Guide for public authorities* (CRE, 2002) p. 3. Equality Commission for Northern Ireland, *Sexual orientation in Northern Ireland. The Law and Good Practice*, p. 32 ff. Available at: <http://www.equalityni.org>

²¹⁹ Idem. (CRE).

²²⁰ Idem.

6.2. | Diversity monitoring in employment

While the two EU Directives do not provide for a direct legal duty for employers to monitor the diversity of their workforce, the uniformly worded Article 11(1) of the Racial Equality Directive and Article 13(1) of the Framework Directive, put workplace monitoring first in their list of exemplary measures the adoption of which the social partners should consider. The two Directives provide that

Member States shall, in accordance with national traditions and practice, take adequate measures to promote the social dialogue between the two sides of industry with a view to fostering equal treatment, including through the monitoring of workplace practices, collective agreements, codes of conduct, research or exchange of experiences and good practices.

Many employers have been persuaded that aiming to have a diverse workforce **also makes sense business-wise**. Inclusive recruitment practices ensure that an employer has access to the widest possible pool of talent. Profiling as an equal opportunity employer is seen as socially-desirable and in accordance with the increasingly popular corporate social responsibility policies, and workplace monitoring can give such ambitions credibility and integrity.

The Guide on Ethnic Monitoring, produced by the UK Commission for Racial Equality, emphasises the essential role of monitoring for any commitment to equality:²²¹

Without ethnic monitoring, an organisation will never know whether its race equality scheme or policy is working. There is a risk that people will just see the policy as paying lip service to race equality. To have an equality policy without ethnic monitoring is like aiming for good financial management without keeping financial records.

An employer that is, and is seen to be, proactive in promoting equality of opportunity is likely to enhance its image in the eyes of its employees, clients, customers and job applicants.²²² This can bring important business benefits such as reduced staff turnover and increased interest in joining the organisation.²²³ Monitoring can also help employers to use their resources more effectively and help them to avoid potentially costly discrimination proceedings.²²⁴

6.2.1. | Workforce monitoring

Many, if not most, employers readily collect and store data about their employees, in particular information relating to their sex, address, length of service and other data as may be required to pay salaries and taxes and to manage the workforce in general. Workforce monitoring basically implies extending the scope of information that is being collected to include information relating to one or more equality grounds. Anonymous workforce surveys provide an option where the national data protection laws limit or prohibit the collection of sensitive data in the context of employment.

Workforce diversity monitoring should ideally cover all aspects relating to employment, including promotion, pay and other conditions of work and termination of employment relationships. Because so-called **glass ceilings** often limit the opportunities of people who belong to the equality groups, it is of major importance to monitor how individuals progress to the top levels of jobs.²²⁵ Sometimes opportunities are constrained also by **glass walls**, meaning that members of a particular group end up concentrated in particular professions or types of work, and therefore monitoring should also allow an assessment of whether all groups are evenly spread throughout the different departments and functions of an organisation.

Obtaining information with regard to the representation of the different equality groups within the workforce can be useful in and of itself, especially when monitoring is carried out on an on-going basis or repeated at regular intervals, as the development of longitudinal data allows the assessment of trends. However, when the internal data of an organisation can be compared with some external **benchmark data** – that is: data on the expected participation rates of these groups – the internal data becomes even more useful. There are two basic sources of such benchmark data:

- **Official statistical data** that reveals the extent to which the different equality groups are represented in the pool of qualified workforce within the catchment area, i.e. the area from which the employer in question draws its workforce.²²⁶ This kind of information can only be provided by large-scale surveys, such as the population census or the Labour Force

²²¹ Commission for Racial Equality, *Ethnic Monitoring: A Guide for public authorities* (CRE, 2002) p.3.

²²² Equality Commission for Northern Ireland, *Sexual orientation in Northern Ireland. The Law and Good Practice*. March 2004, p. 21.

²²³ See e.g. idem and Johnson, Richard W. and David Neumark, *Age discrimination, Job separations, and employment status of older workers: Evidence from self-reports*. National Bureau of Economic Research. June 1996.

²²⁴ Commission for Racial Equality, *Ethnic Monitoring: A Guide for public authorities* (CRE, 2002) p. 4.

²²⁵ Dex, Shirley and Kingsley Purdam, *Equal Opportunities and Recruitment. How Census data can help employers to assess their practices* (York: York Publishing Services, 2005) p. 21.

²²⁶ The geographical area from which the employer recruits new employees usually differs from one job to the next. Generally, the recruitment area tends to be local for entry level or low-grade jobs, and broader, even nation-wide, for higher-grade jobs.

Survey, in so far as these collect data in relation to the equality grounds. In some cases, also information from administrative registers or sample surveys can provide the necessary data.

- Where the above-mentioned data does not exist, a useful point of comparison may be provided by **data gathered by similar organisations**, especially where a group of organisations has agreed to pool their data to provide a joint benchmark against which each can assess its performance. Such data however has its limits, as the benchmark may reflect existing imbalances in the representation of one or more equality groups in a particular sector, and as the effect of geographic and demographic factors may need to be taken into account.²²⁷

For example, data on the proportion of e.g. minority teachers in a certain area, as revealed by labour market data, can be used by a school in that area as a benchmark and a target by which to assess whether its teaching staff is representative of the population at large.

Irrespective of the source of the benchmark data, it is crucial that the monitoring data and the benchmark data are based on same concepts and classification schemes, as otherwise the two sets of data are not comparable.²²⁸

Where the comparison of internal and external data reveals under-representation, in a statistically significant sense,²²⁹ then discrimination may be present and this possibility merits further investigation. While a finding of **under-representation is a strong indicator** of the existence of a problem, it does not in and of itself prove the existence of discrimination. The imbalance may have resulted from some other factor, which may or may not be legitimate in terms of the law. Therefore the employer should investigate its policies and practices in the areas of hiring, promotion and retention in order to find out why the distribution of a group fell short of what could be expected. Such employers should in particular monitor their recruitment and selection processes to examine whether applicants belonging to the underrepre-

sented group(s) are not hired, for whatever reason, or whether they are not even applying for the jobs in the first place. Positive action measures may need to be implemented in order to remedy the imbalance.

6.2.2. | Monitoring recruitment and selection

Employers who want to examine whether their recruitment and selection practices are in accordance with the equality laws need to address the following questions:

- Do qualified individuals of all groups apply for advertised posts in proportion to their presence in the population?
- Given the characteristics of those that do apply, do members of each group have the same chance of getting on the shortlist?
- Given the applicants on the shortlist, do members of each group have the same chance of getting offered the job?²³⁰

External benchmark data is required to answer the first question. Proportions of applicants from different equality groups need to be compared with their proportions in the qualified population in general. For that purpose, employers need to know the likely pools of suitably qualified applicants in the relevant spatial labour market.²³¹ Again, statistical data from censuses, labour force surveys or other comparable official sources may provide the necessary comparative figures. Where the distributions of applicants, offers or hiring outcomes by particular groups deviate from their distribution in the relevant qualified populations, then discrimination may be present and this possibility needs further investigation.²³²

Monitoring recruitment and selection does not become redundant even where suitable benchmark data is not available, or where it is of insufficient quality. This is because the monitoring data can, even by itself, reveal irregularities in the process by which applicants are shortlisted, invited to interview and

²²⁷ See e.g. Commission for Racial Equality, *Ethnic Monitoring: A Guide for public authorities* (CRE, 2002), p. 22.

²²⁸ For instance, it is clear that if the monitoring form used by an employer defines 'disability' only in terms of a physical impairment, while the relevant benchmark data (e.g. census data) is based on a more inclusive definition, the two do not provide for a common basis of comparison. Categories for collecting data about applicants and workforce should thus follow those used for census and/or other applicable official data source.

²²⁹ There are various tests that an employer may run to examine whether the differences are real or whether they may be attributable to sheer chance. These include tests of statistical significance and the so-called four-fifths rule which is widely used in the U.S. See e.g. Commission for Racial Equality, *Ethnic Monitoring: A Guide for public authorities*, (CRE, 2002) pp. 22-23.

²³⁰ See Dex, Shirley and Kingsley Purdam, *Equal Opportunities and Recruitment. How Census data can help employers to assess their practices* (York: York Publishing Services, 2005) pp. 7-8.

²³¹ Ibid., p. 1.

²³² Ibid., p. 8.

offered a job. This can be illustrated with the following fictional example:

The usefulness of monitoring the different stages of recruitment and selection process can be illustrated by a simple example that concerns a fictitious Helsinki-based Acme Legal Consultancy LTD. Acme Legal Consultancy LTD is just commencing its business and wants to hire 52 lawyers to begin with. The company aspires to be an equal opportunity employer, and asks each applicant to fill in a monitoring form, which they all do. We will assume for simplicity's sake that lawyers with a disability constitute 10 % of all the lawyers in the Helsinki area and that there are no significant differences in the qualifications between non-disabled and

	Applicants	Shortlisted	Offered a job
Non-disabled lawyers	N=1000	N= 100	N=50
Lawyers with a disability	N=100	N=8	N=2

disabled lawyers. Analysis of the recruitment process produces the following table:

From this table we can first of all take note of the fact that Acme Legal Consultancy has managed to attract applications from lawyers with disabilities almost on a par with the applicable benchmark figure (9.1% respective to 10%). Acme would do well, however, to consider its recruitment practices with a view to obtaining full parity. But it is in the selection process that Acme has more serious problems: Eight per cent of the applicants with a disability were shortlisted whereas the corresponding figure for non-disabled applicants was ten per cent. The greatest difference of treatment results however from the actual hiring decisions, as the results show that once shortlisted, disabled applicants had a mere 25% chance of being appointed, while non-disabled applicants had a 50% chance of being appointed once shortlisted. The overall difference in the success rates for non-disabled and disabled applicants was cumulative, increasing at every stage of the process. At the end of the process, the figures reveal that due to this cumulative imbalance, applicants who did not have a disability were 2.5 times as likely to obtain employment than applicants with a disability. Acme Legal Consultancy clearly does not live up to its ideal of being an equal opportunity employer, and needs to give its recruitment, and in particular selection, processes serious examination.

6.2.3. | Acting on the results

It is crucial that employers tie monitoring to concrete remedial action. The type of corrective action should directly address the source of the problem as identified by the analysis of monitoring data. Therefore, where it is established that people belonging to a particular group are not applying for open positions to the extent that their presence in the general working population would lead one to expect, then an employer should review its recruitment advertising and possibly its image within the target group. If this is of no help, the employer should consider for instance arranging specific recruitment events and campaigns targeted at the underrepresented group.²³³ It should also consider, where appropriate, offering pre-employment training to prepare potential job applicants for selection tests and interviews, and develop links to local community groups.²³⁴ Where the problem is not the disproportionate extent of applicants, but statistical imbalances in being shortlisted and getting offered the job, the employer in question should review its internal decision-making mechanisms and criteria. Adoption of positive action measures should be considered in order to remedy any existing imbalances.

6.2.4. | Technical and practical considerations

In principle, the within-organisation elements of diversity monitoring are not inherently problematic or technically challenging. There are two basic ways in which monitoring can be carried out:

- **Collection of personal data** (data related to identifiable individuals) coupled with associated record-keeping, and
- **Anonymous workforce surveys.**

Collection of personal data

Under the first approach, an employer can conduct an **equality survey**, for instance by asking each employee to fill in an equal opportunity form that inquires whether the employee concerned belongs to one or more equality groups. Any employee being asked to provide data should be given a full explanation of the reasons for collecting the data, the importance of providing a response, how the data will be used, and arrangements made for keeping the information secure and confidential. Once

²³³ See e.g. Dex, Shirley and Kingsley Purdam, *Equal Opportunities and Recruitment. How Census data can help employers to assess their practices* (York: York Publishing Services, 2005), p. 22.

²³⁴ Stavo-Debaugue, Joan – Sue Scott, *Final Report on England. Medis Project*, May 2004, p. 63.

obtained, the information can be entered into the employee database to be used in the analysis.

It is important that the employer is able to keep the records up-to-date. This can be achieved by asking all new employees to fill in the form – unless they have provided the necessary information already during the application process – and by making the necessary adjustments to the database when the employment relationship ends.²³⁵ Keeping the records up-to-date may require re-surveying, especially in relation to disability, as disability status can change.

The recruitment and selection process can be monitored by asking all applicants for vacancies to fill in the **equal opportunity form**. To alleviate any fears of misuse of the data in the selection process, the processing of this information should be separated from the processing of the applications proper and trusted to a designated person who is not involved in the selection process, with due confidentiality requirements. Once information about shortlisting, appointments, salary and promotion become available, these can be entered into the employee database. The overall statistics on applicants and the workforce, broken down by different equality grounds, can then be compared with the respective figures concerning the composition of the relevant general population.

It should be recalled that, as a rule, no one can be compelled to disclose sensitive personal information: disclosure of such information must be voluntary. Employers may also initially feel uncomfortable about asking questions about sensitive issues, and employees and job applicants may initially feel uncomfortable about answering those questions. However, missing data has a direct and harmful effect on the quality of the monitoring exercise, which is why employers need to consider ways in which they can encourage employees to submit the data. There are many ways by which participation can be promoted:

- Employers should explain clearly the purpose of monitoring (promotion of equal treatment);
- Employers should be able to guarantee the confidentiality of the data;
- Employers should act upon their findings;
- The monitoring form should be carefully designed:
 - It should be concise so as not to pose a disproportionate burden;

- The questions should be formulated in clear language; and
- The form should be tested before use.

Experience shows that confidence in the monitoring system tends to grow once the system is in place and people get accustomed to it and are educated about it.

Collection of anonymous data

Under the second approach the same kind of information may be sought, but this is done through **anonymous surveys**. Anonymous surveys can provide a snapshot in time of the diversity of the workforce, provided that the response rates are acceptable. Individuals who have reservations about collection of personal data should have no problems with cooperating in this kind of monitoring, as the data is not linked to specific individuals. Indeed, collecting sensitive information by means of carrying out anonymous surveys has been found to significantly increase response rates among the equality groups, especially among persons with disabilities and the LGB people.

Personal v. anonymous data

While monitoring based on anonymous surveys has its merits, it also has its inherent limitations. As the data is not linked to specific individuals, the data cannot be used to track progression or investigate underlying causes of identified patterns. Moreover, the data grows old as time passes by, meaning that it is not possible to maintain an up-to-date picture of the composition of the workforce. This means that these surveys need to be repeated at regular intervals to obtain trend data, and this can pose somewhat of a burden on both the employees and the employer. When considering what is the appropriate interval for such surveys, account should be taken of both the burden of being targeted for surveys and of the need to obtain up-to-date information.

Whether anonymous monitoring has any benefits over non-anonymous monitoring in terms of response rates and anonymity depends on the size of the organisation and the level of information that is being sought. In a small or even medium-sized organisation, a detailed questionnaire may lead to a situation where particular responses can nevertheless be traced back to particular individuals, a fact which compromises the very idea of anonymous monitoring and may lead to a decrease in the

²³⁵ The data could e.g. be removed from the employee register and rendered anonymous but it should not be removed altogether. This is because an employer may still need the data, e.g. in order to be able to defend itself against possible later discrimination claims and in order to run analyses on the profiles of those employees who have left the organisation, as such an analysis may also reveal possible problems within the organisation.

willingness to cooperate. The usefulness of this method has thus to be assessed on a case-by-case basis.

Overall, collection of personal data has some advantages over collection of anonymous data, and the benefits associated with anonymity may not materialise where detailed information is needed or where the size of the company or other organisation is small. Anonymous monitoring may however be the only available option where national data protection laws do not allow the use of monitoring based on personal data or where there is considerable reluctance to cooperate in non-anonymous monitoring on part of the employees. The two methods can also be used in combination: an employer may monitor the diversity of its workforce through collection of personal data, and obtain additional information, such as information on experiences of harassment or other discrimination, through anonymous surveys. It may also be deemed best to use different types of monitoring with respect to the different equality grounds.

One way to deal with the problem of incomplete data is to use other-classification in addition to self-classification. Other-classification means that some other person than the data subject, such as a representative of the employer, does the classification in respect of the person concerned. This method is used to some extent in the UK and the USA in the areas of ethnic monitoring.²³⁶ In some countries the domestic data protection laws may however limit the applicability of this method.

6.3. | Diversity monitoring in service delivery

The prohibition of discrimination under the Racial Equality Directive applies not just in relation to employment, but also in relation to, *inter alia*, education, social security, healthcare, social advantages and access to and supply of goods and services, including housing. Domestic law may go beyond the Directive, and prohibit discrimination in these areas also on the basis of other grounds of discrimination, and this should be taken into account. Entities working in these areas may thus want to monitor not just their personnel but also their service delivery to ensure that they are in compliance with the law. Monitoring has

been found to provide useful information, particularly in the domains of housing, education and health care.

Organisations that monitor their service delivery can use the information they obtain to:

- Assess their performance;
- Identify barriers to good performance and actions for improving;
- Review progress and adjust actions as appropriate;
- Set targets for improving outcomes;
- Benchmark against other comparable entities;
- Carry out effective impact assessments.²³⁷

Without monitoring it is virtually impossible for an organisation to obtain information about these aspects of its activities in a systematic way. Monitoring can be used to tell which groups are using or receiving the services and whether some group is facing particular challenges. For instance, an agency providing housing services may want to draw up profiles of service use to verify that all groups have an equal access to housing of equal quality and on equal terms. Schools may want to assess the impact of their policies on pupils, staff, and parents from different equality groups. They may also want to monitor the way their policies and operating modes work, with special emphasis on pupils' attainment levels. Further and higher education institutions may want to monitor, by equality group, student admissions and progress, and staff recruitment and career development.²³⁸

There are several methods by which information on service delivery can be collected. These include:

- **Administrative record-keeping.** Many entities (such as schools) with which individuals have an ongoing or long-standing contact, may consider adapting their data collection systems in a way that enables them to keep up-to-date registers of the recipients of their services by the equality categories.
- **Surveys.** Where the contact is one-off or otherwise of limited duration, or where the service provider does not wish to engage in record-keeping, much of

²³⁶ For instance, the CRE guide on ethnic monitoring recommends that public authorities 'top up' their data by using the other-classification method where the data is too incomplete to provide a basis for reliable analysis.

²³⁷ Disability Rights Commission, *The Disability Equality Duty: Guidance on gathering and analysing evidence to inform action*, August 2006, p. 15. Available at: http://www.drc.org.uk/pdf/DRC_Evidence_Gathering_Guidance.pdf (visited 1.10.2006).

²³⁸ Commission for Racial Equality, *Ethnic Monitoring: A Guide for public authorities* (CRE, 2002) p. 5. For more on service delivery monitoring, see *ibid.*, p. 47. See also van Dyke, Ruth and Yasmin Gunaratnam, 'Ethnic monitoring in higher education: some reflections on methodology' *Int. J. Social Research Methodology*, 2000, Vol. 3, No 4, 325-345.

the necessary information can be collected by means of

- interviews,
- panels and/or
- questionnaires, including customer satisfaction surveys.

The choice of the method should correspond the information needs of the organisation in question: interviews and panel discussions can provide in-depth information, whilst a questionnaire survey allows gathering quantitative information from a large number of people.

- **Observations;**
- **Discrimination testing;**
- **'Mystery shopping';** mystery shopping is a process of evaluating the front line service providers of a public or private organisation from the point of view of a customer or other recipient of services. It is a process through which professionals or lay people pose as customers to test the service they receive in the organisation, and has been used by a range of service providers, such as hotels, restaurants, airlines and even hospitals. It may involve observation, visits, telephone calls and so on. It is commonly used for checking the quality of service delivery in general but can also be used to assess equality of treatment.

Again, there are no 'one-size-fits-all' solutions as to how the relevant information should be collected. In practice, the best data collection method depends most of all on the type of entity in question, its information needs and data collection mechanisms, the needs and attitudes of the target groups, and the national data protection law.²³⁹ Each of the data collection methods has its inherent advantages and disadvantages. They are not mutually exclusive, meaning that a range of data collection methods may be taken advantage of by a single service provider.

The information that is obtained should be carefully analysed in order to assess whether the services are fairly and equally provided and whether the members of the equality groups have experienced particular obstacles. A difference revealed by outcome statistics signals the existence of a possible problem, but is not in itself proof of discrimination. A more detailed investigation of the

sources of difference is necessary in such a situation. An investigation should be followed by other action, such as removal of unfair barriers that have been identified in the course of monitoring; examination of decision-making policies and processes; adoption of positive action policies, including for instance outreach activities and the setting of targets to be reached. External benchmark data can be useful in the analysis of the internal data and in the planning of remedies, for example where targets are being set.

6.4. | Monitoring: an assessment

Equal opportunities for all groups, particularly in the field of working life, carries with it important benefits for the members of the equality groups, the business world and the society at large. Experiences from countries where monitoring is carried out have been predominantly very positive.²⁴⁰ Monitoring has helped organisations to identify discriminatory practices and other barriers to equal treatment and to obtain more diverse workforces. Sometimes also challenges have been experienced, for instance in relation to achieving representative data, lack of reliable benchmark data, and sometimes also reluctance to meet their duties on part of the organisations concerned.

Given that employment and service delivery are core areas from the point of view of equal treatment, and that monitoring arguably is the most effective way by which the realisation of equal treatment can be promoted in these areas, and given that there are no major technical challenges involved as monitoring is successfully being carried out in several countries, it is recommended that all EU Member States consider ways in which to introduce monitoring to workplaces.

A broad range of entities should be involved in the process of developing a national action plan on monitoring. These include, in particular, the pertinent government departments, social partners, the equality groups, national equality bodies, national statistical agencies and the national data protection authorities.

National discussion on monitoring should cover the following main topics:

²³⁹ Those entities that already have mechanisms in place by which they collect information of the recipients of their services and of the services provided, should consider whether they can adapt these mechanisms in such a way that enables the disaggregation of the data by the equality grounds. These entities typically include schools, employment agencies, and organisations responsible for health and social care.

²⁴⁰ Hepple, B., Coussey, M. and Choudhury, T., *Equality: A new framework. Report of the Independent Review of the Enforcement of UK Anti-Discrimination Legislation* (Cambridge: University of Cambridge, 2000). Commission for Racial Equality, *Ethnic Monitoring: A Guide for public authorities* (CRE, 2002). Dex, Shirley and Kingsley Purdam, *Equal Opportunities and Recruitment. How Census data can help employers to assess their practices* (York: York Publishing Services, 2005) p. 10. 2004 Monitoring Report No 15 by the NI Equality Commission <http://www.equalityni.org>

- **The scope of monitoring:**
 - Should monitoring be part of a broader duty to promote the realisation of equality, e.g. by means of requiring organisations to draw up an equality plan;
 - Which entities should the monitoring duty cover (public sector and/or private sector, whether through contract compliance or through a direct duty);
 - Which equality groups should the monitoring cover;
 - Should monitoring cover both employment and service delivery?
- **What is the way in which monitoring should be carried out** in practice (qualitative v. quantitative monitoring; anonymous v. nominal monitoring; self-categorisation v. third-party categorisation). Should the monitoring mechanisms be the same with respect to all equality groups, or would it be more feasible to introduce numerical monitoring in respect of some strands, such as gender and ethnic origin, and to have other kinds of feedback processes in respect of the other strands?
- **The legal basis for monitoring.** While businesses and other organisations increasingly agree in principle with the need to ensure that their policies and practices are in compliance with the equality laws, evidence from various countries shows that they still tend to consider monitoring to pose an extra burden and are not ready to engage in it unless prompted to do so. This means that there must be a sound legal or other basis for data collection, with the possibility to apply effective and proportionate sanctions where an organisation refuses to meet its duties. It should however be noted that it is possible for individual organisations to engage in monitoring, and thus to reap the ensuing benefits, even in the absence of legal requirements to that effect.
- **The data protection regime.** The impact of national data protection laws must be carefully analysed, as these may pose limits in terms of the kinds of monitoring that may be carried out. Amendment of laws that constitute an undue barrier may be considered in so far as this is in line with the applicable EU and international laws. The national data protection regime should be reviewed to ensure that adequate safeguards are in place to prevent any misuse or unauthorised processing of sensitive data.
- **The existence of suitable benchmark data.** Effective monitoring benefits from the existence of reliable

data against which the monitoring data can be compared. In practice, only nation-wide data sets that contain socio-economic data broken down by the relevant equality categories and different geographical areas, are useful for this purpose. This means that the relevant benchmark data needs to be gathered by means of censuses, labour force surveys or some other major surveys.

- **Standardisation of concepts and categories.** In order to facilitate the generation of comparable data series, sharing of information and measurement of performance over time, uniform concepts and categories need to be developed and used. It may also be useful to develop a standardised equality data collection form.
- **The need to promote training on diversity monitoring.**

It should be noted that the effectiveness of all monitoring depends on the degree to which the groups and individuals concerned are willing to cooperate in such action. With a view on that, it is of essential importance to be clear about the aims of monitoring and to link monitoring to a broader equal treatment strategy. Practical experience shows that the process is likely to command public confidence when the organisations involved are seen to be acting on the results of the data collection and when monitoring is part of a broader commitment to equal opportunities. Monitoring should be seen to be a means to an end, not an end in itself.

6.5. | Case studies

Case Study 1: Canada²⁴¹

The *Employment Equity Act* (the Act) and accompanying *Employment Equity Regulations*, which came into force on 24 October 1996, constitute the legislative framework for employment equity at the federal level in Canada. The Act applies to private sector employers operating in federally-regulated industries (such as banking, communications and transportation), corporations established to perform functions or duties on behalf of the Government of Canada, and companies that obtain goods and services contracts with the Government valued at \$200,000 or more, insofar as these have 100 or more employees. The Act applies also to a host of public sector employers. The Act and Regulations seek to

²⁴¹ This text provides a broad overview of the Canadian system, for comprehensive and detailed information please visit the website of the Canadian Human Rights Commission, at http://www.chrc-ccdp.ca/employment_equity/default-en.asp (visited 1.06.2006).

identify and remove employment-related barriers faced by women, Aboriginal peoples,²⁴² persons with disabilities²⁴³ and members of visible minorities²⁴⁴ (the four designated groups) and to ensure that these groups achieve a degree of employment which is, at least, equal to their representation in the workforce as defined by qualification, eligibility and geography. Each employer covered by the Act is required to take specific actions in order to implement these objectives.²⁴⁵

Each employer covered by the Act is required to collect information and conduct an analysis of its workforce in order to determine the degree of underrepresentation of persons in designated groups in each occupational group in that workforce. In practice, an employer must conduct a workforce survey by providing to each employee a workforce survey questionnaire that, among other things, asks the employee whether she/he belongs to the designated groups. Collection of data on employees takes place on the basis of self-identification, meaning that only those employees who identify themselves to an employer, or agree to be identified by an employer, as belonging to a designated group are to be counted as such. The questionnaire must indicate that responses to the questionnaire are voluntary, but that does not preclude an employer from requiring each employee to return the questionnaire. The employee must be identifiable from the questionnaire, whether by name or otherwise, as the information contained therein will be entered into the employment equity records maintained by the employer. The employer is to keep the record up-to-date by providing a workforce survey questionnaire to an employee who begins employment, and by making necessary adjustments to the records to take into account members of designated groups who have been dismissed. The information collected by the employer is confidential and shall be used only for the purpose of implementing the employer's obligations under the Act.

On the basis of the information obtained, each employer is required to conduct an analysis of its workforce in order to find out the numbers of employees that belong to designated groups, and to determine the degree of their (possible) underrepresentation by comparing the representation of each designated group in each occupational group of the employer's workforce to their representation in each occupational group in either (whichever

is the most appropriate as a basis of comparison): (i) the Canadian workforce as a whole, or (ii) those segments of the Canadian workforce that are identifiable by qualification, eligibility or geography, and from which the employer may reasonably be expected to draw employees.

Where the analysis reveals an underrepresentation, the employer in question is required to conduct a review of its employment systems, policies and practices in order to identify employment barriers against persons in designated groups.

Each employer is required to prepare an **employment equity plan** that

- Specifies the positive policies and practices that are to be instituted by the employer for the hiring, training, promotion and retention of persons in designated groups, to correct the underrepresentation of those persons as revealed by the analysis of data;
- Specifies the measures to be taken by the employer for the elimination of any employment barriers identified by its review;
- Establishes a timetable for the implementation of the aforementioned matters; and
- Establishes numerical goals for the hiring and promotion of persons in designated groups in order to increase their representation in each occupational group in the workforce in which underrepresentation has been identified and sets out measures to be taken each year to meet those goals.

Employers are required to make all reasonable efforts to implement the employment equality plan and to monitor, on a regular basis, its implementation.

Every employer is obliged, each year, to file a report indicating, inter alia,

- The number of employees, the number of those employees who are members of designated groups, the sector in which its employees are employed, the location of the employer and its employees;

²⁴² Under the Act, the term 'aboriginal peoples' means 'persons who are Indians, Inuit or Métis'.

²⁴³ Under the Act, the term 'persons with disabilities' means 'persons who have a long-term or recurring physical, mental, sensory, psychiatric or learning impairment and who (a) consider themselves to be disadvantaged in employment by reason of that impairment, or (b) believe that an employer or potential employer is likely to consider them to be disadvantaged in employment by reason of that impairment.'

²⁴⁴ Under the Act, the term 'members of visible minorities' means 'persons, other than aboriginal peoples, who are non-Caucasian in race or non-white in colour'.

²⁴⁵ Under Section 6 of the Act, an employer is not required to take a particular measure to implement employment equity where the taking of the measure would cause undue hardship to the employer. Furthermore, employers are not required to create new positions in its workforce or to hire or promote persons who do not meet the essential qualifications for the work to be performed.

- The occupational groups in which its employees are employed and the degree of representation of persons who are members of designated groups in each occupational group;
- The salary ranges of employees and the degree of representation of persons who are members of designated groups in each range and in each prescribed subdivision of the range;
- The number of its employees hired, promoted and terminated and the degree of representation in those numbers of person of designated groups.

The report shall also include a description of the measures taken by the employer during the reporting period to implement employment equity and the results achieved.

Compliance officers, designated by the Canadian Human Rights Commission, may conduct **compliance audits** of employers. They have powers to conduct on-site visits and to require the production of documents. Where the compliance officer is of the opinion that an employer is in breach of its obligations, the officer shall attempt to negotiate a written undertaking from the employer to take specified measures to remedy non-compliance. If the employer fails to provide a written undertaking that is considered sufficient, the Commission may issue a direction requiring the employer to take specific actions to remedy the non-compliance. In later stages of the process, the case may be taken to an Employment Equity Review Tribunal, and in the last stage, a monetary penalty may be applied.

The functioning of the employment equity regime requires the existence of data regarding the labour market characteristics of the designated group population. This data is derived from the population censuses, and in the case of people with disabilities, from the censuses and the Participation and Activity Limitation Surveys. The functioning of the system has also greatly benefited from the fact that operational definitions of the four designated groups have been developed for the purposes of the applicable laws.

Case Study 2: United Kingdom

Ethnic Origin

There is a general statutory duty upon most British public authorities to:

- Eliminate unlawful discrimination;
- Promote equality of opportunity; and
- Promote good relations between persons of different ethnic groups.²⁴⁶

This **general duty** was introduced by the Race Relations (Amendment) Act 2000 and has been supplemented by so-called **specific duties** in the Race Relations Act 1976 (Statutory Duties) Order 2001. The Commission for Racial Equality has published several statutory and non-statutory Codes of Practice that elaborate upon these duties with respect to racial and ethnic equality. While the Statutory Codes do not impose legal obligations as such or provide for authoritative statements of the law, they are of relevance in any proceedings brought under the RRA.²⁴⁷

There are three specific duties that are designed to help public authorities to meet the general duty: (i) duty to publish a race equality scheme; (ii) the employment duty; and (iii) the duty for schools and higher education institutions.²⁴⁸ The first specific duty requires a wide range of public authorities to prepare and publish a race equality scheme, in which they are to set out their arrangements for assessing, and consulting on, the likely impact of their proposed policies on race equality; and to set out their arrangements for monitoring their policies for any adverse impact on race equality. Public authorities bound by the first specific duty are required to monitor all their functions and policies that are relevant to the general duty. The CRE's statutory code of practice defines functions as the full range of a public authority's duties and powers, which means that they have to extend monitoring also to the main areas of their service delivery.

Most public authorities bound by the general duty are, under the 'second' specific duty, required to promote race equality as employers. This means that they have to monitor, by racial group:

- The numbers of
 - staff in post;
 - applicants for employment, training and promotion, from each racial group; and
- Where an authority employs 150 or more full-time staff, the numbers of staff from each racial group who
 - receive training;
 - benefit or suffer detriment as a result of its performance assessment procedures;

²⁴⁶ The authorities concerned include central government departments, local authorities, criminal justice authorities, educational authorities and regulatory bodies.

²⁴⁷ Courts should take the Statutory Codes into account, and therefore an employer can benefit from adherence to the relevant code if it has to defend itself before a court or a tribunal in a discrimination case.

²⁴⁸ Not every authority that is subject to the general duty is also subject to any or all of the specific duties.

- e are involved in grievance procedures;
- f are the subject of disciplinary procedures; or
- g cease employment with that authority.

Each authority bound by this duty is required to publish annually the results of its monitoring.

Educational bodies are, under the third specific duty, to monitor the ethnic composition and performance of their staff and pupils. Schools must prepare and publish a race equality policy, as well as to monitor and assess how their policies affect ethnic minority pupils, staff and parents. Further and higher education institutions (such as universities) must assess the impact of all their policies on students and staff. They must also monitor, by racial group, student admissions and progress, and staff recruitment and career development. The CRE has published a code of practice that guides how public authorities should give effect to these statutory requirements, and has also published guidance upon how to monitor effectively when carrying out these duties.

Monitoring is not a legal obligation for private entities with regard to employment discrimination. The relevant Code of Practice therefore only recommends its use. Relatively few private sector employers have so far complied with these recommendations, which has resulted in calls for some form of compulsory monitoring requirement to be imposed upon private-sector employers. One incentive for private sector monitoring arises from the fact that the duty to promote racial equality applies to public procurement.

Disability

The Disability Discrimination Act 2005 imposed a general duty upon all British public authorities to avoid unlawful disability discrimination and to promote equality of opportunity for disabled persons. The Disability Discrimination (Public Authorities) (Statutory Duties) Regulations 2005 impose a specific duty upon public authorities to prepare a **Disability Equality Scheme**, which is to set out an authority's arrangements for implementing the general duty. This scheme must also set out an authority's arrangements for monitoring the impact of its policies or practices upon disabled persons, including their employment policies. Once a year, a public authority is to report on the results of its monitoring arrangements, and every three years, the authority is to report on its progress in enhancing equality for disabled persons.

Northern Ireland

The Fair Employment and Treatment (Northern Ireland) Order 1998 (FETO), as amended, makes it unlawful to discriminate on the grounds of religious belief and/or political opinion in the fields of employment, the provision of goods, facilities and services, the sale or management of land or property, and further and higher education. The FETO was amended in 2003 to meet the requirements of the EU Employment Equality Directive.

FETO places a number of significant duties on employers. All private sector employers with more than 10 full-time employees are required to register with the Equality Commission. Specified public sector employers are automatically deemed to be registered. All registered employers must submit annually to the Equality Commission for Northern Ireland (ECNI) a monitoring return giving details of the community background, sex and occupational classification of their workforce. Community background in this context means those who are treated as belonging to either the Protestant or the Roman Catholic community in Northern Ireland. All registered employers must provide details of their employees, applicants and appointees. In addition, large private sector employers (those with more than 250 employees, full- and part-time) and all public sector employees must provide details of promotees and leavers.

Under the so-called Article 55 reviews, all registered employers must review the composition of their workforce, their recruitment, training and promotion practices at least once every three years in order to determine whether fair participation in employment is being secured by both Protestants and Roman Catholics. Where it appears to an employer in the course of a review that fair participation in employment is not being provided to members of one or other community or is not likely to continue to be provided, he is under a duty to determine the affirmative action (if any) which would be reasonable and appropriate for him to take.

The Equality Commission can investigate the employment practices of any Northern Ireland employer at any time. Where the Commission considers that affirmative action is required to ensure fair participation, it may seek an undertaking from the employer that he will take such action. If an undertaking is not given or not complied with, the Commission can issue a legally enforceable direction. Employers who are in default of the legislation through failure to register with the Commission or for not submitting monitoring returns face criminal penalties as well as economic sanctions such as the loss of government grants and exclusion from public contracts.²⁴⁹

²⁴⁹ Information on Northern Ireland based on information available at the website of the Equality Commission for Northern Ireland, www.equalityni.org

6.6. | Recommendations

Recommendation No 7: the need for workplace monitoring

All EU Member States are urged to enter into a dialogue with the social partners, the representatives of the equality groups and other stakeholders, on the need to introduce requirements for workplace and service delivery monitoring. There is also a need to arrange training on how monitoring can be conducted in practice.

Further information/Further reading:

Monitoring in the USA

- Website of the U.S. Equal Employment Opportunity Commission: <http://www.eeoc.gov/>

Monitoring in the UK

- Website of the Commission For Racial Equality: <http://www.cre.gov.uk>
- Website of the Disability Rights Commission: <http://www.drc.gov.uk/>
- Website of Stonewall: www.stonewall.org.uk
- Website of the Equality Commission for the Northern Ireland: <http://www.equalityni.org/>

Monitoring in Australia

- Website of the Director of Equal Opportunity in Public Employment (NSW): www.eeo.nsw.gov.au

Monitoring in Canada

- Website of the Canadian Human Rights Commission: <http://www.chrc-ccdp.ca/>

Reading materials:

- Dex, Shirley and Kingsley Purdam, *Equal Opportunities and Recruitment. How Census data can help employers to assess their practices* (York: York Publishing Services, 2005).
 - European Commission, *The Business Case for Diversity. Good Practices in the Workplace* (Luxembourg: Office for Official Publications of the European Communities, 2005).
 - MEDE Project, *Comparative study on the collection of data to measure the extent and impact of discrimination within the United States, Canada, Australia, Great Britain and the Netherlands*. http://ec.europa.eu/employment_social/fundamental_rights/public/pubst_en.htm
 - Wrench, John, *Diversity Management and Discrimination: Immigrants and ethnic minorities in the EU* (Ashgate, in press).
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7 | Building a national plan of action

7.1. | Introduction

One of the main shortcomings in present data collection practices is the **lack of coordination** at the national level. Only a few countries have taken a systematic approach to building a national knowledge base on discrimination, and even there the action has tended to focus only on particular grounds of discrimination and/or particular areas of life. This is regrettable, since without coordination and a systematic approach to data collection:

- **It is difficult to know what data exists and where;**
- **It is difficult to know what data could potentially be obtained** by means of developing the available data collection mechanisms;
- **It is difficult to identify the gaps in the knowledge base** and therefore the main data needs;
- **The different sets of data are likely to be based on mutually inconsistent definitions, classifications and data collection practices,** making their joint analysis ('triangulation') challenging or impossible;
- **It is difficult to avoid the danger of duplication of work,** as one organisation may not know of the action taken or planned to be taken by another;
- **It is difficult for the end users of the data to obtain a comprehensive picture of discrimination,** as the information is fragmented and often not even reported.

Because of these reasons it is essential that there is a degree of coordination between the different actors on the national level. In an ideal situation there exists such an **integrated national system** for the collection of equality data where the actions taken by the different organisations complement each other and contribute towards the building of a reasonably comprehensive national knowledge base on discrimination. This can be achieved by adopting a **national plan of action**. The following Chapters make a number of suggestions that may prove helpful in developing national cooperation in this area.

7.2. | Organisational matters

It is essential that the drafting and adoption of a national plan of action, or the taking of some other type of action more suitable in the national circumstances, is based on **wide consultation** and **participation** of the key stakeholder groups. These groups include the following:

- **The equality groups.** The successfulness of most data collection operations depend in practice on the willingness and ability to cooperate on part of the equality group(s) concerned. It is therefore of essence that representatives of these groups are involved in the planning of all actions early on.²⁵⁰ A particular type of action should not be taken if the equality group concerned is opposed to it.
- **Users of equality data.** See Section 1.3. of this Handbook for a discussion of the different uses and users of equality data.
- **Producers of the data.** These include national statistical offices, those responsible for justice system statistics, representatives of the academic world (e.g. research institutes) and relevant NGOs.
- **Experts in statistical sciences.** Statisticians know what data collection instruments already exist, what can be achieved with a particular type of instrument and how the data collection mechanisms can be improved so as to obtain equality data.
- **Experts in anti-discrimination and privacy laws.** The domestic anti-discrimination law defines discrimination, the areas of life in which discrimination is prohibited, and the grounds on which discrimination is prohibited, therefore forming a natural starting point for data collection activities. The domestic privacy and data protection laws determine the limits within which all data collection is to be carried out. These two sets of domestic laws, even though based on international and EU laws, may go beyond them and must therefore be taken into account.
- **Representatives of the two sides of industry.** Given that employment is a core area in which data collection activities need to be carried out, it is of importance to ensure cooperation of the social partners.

²⁵⁰ The level of organisation among the equality groups varies from country to country. Absence of representative organisations should not, however, be used as an excuse for not consulting and involving members of the groups concerned.

7.3. | Core elements of a plan of action

It will be necessary to conduct background research before embarking on the preparation of a national action plan. An **equality data audit** to identify the already existing mechanisms for the collection of equality data needs to be carried out. This audit should be complemented by a review of those existing data collection mechanisms that are presently not used to produce equality data but that could potentially be used for that purpose in the future. To be on the safe side, it is recommended that privacy and data protection experts be consulted in order to find out how these pieces of law impact data collection activities.

After the background research has been carried out it will be possible to assess what is the state of the nation in terms of the availability of equality data. This will enable the **assessment of present gaps** in data collection and the identification of measures that need to be taken in order to close these gaps. The plan of action should set out in detail the roles and responsibilities of the different organisations involved, and lay down an integrated plan for the collection

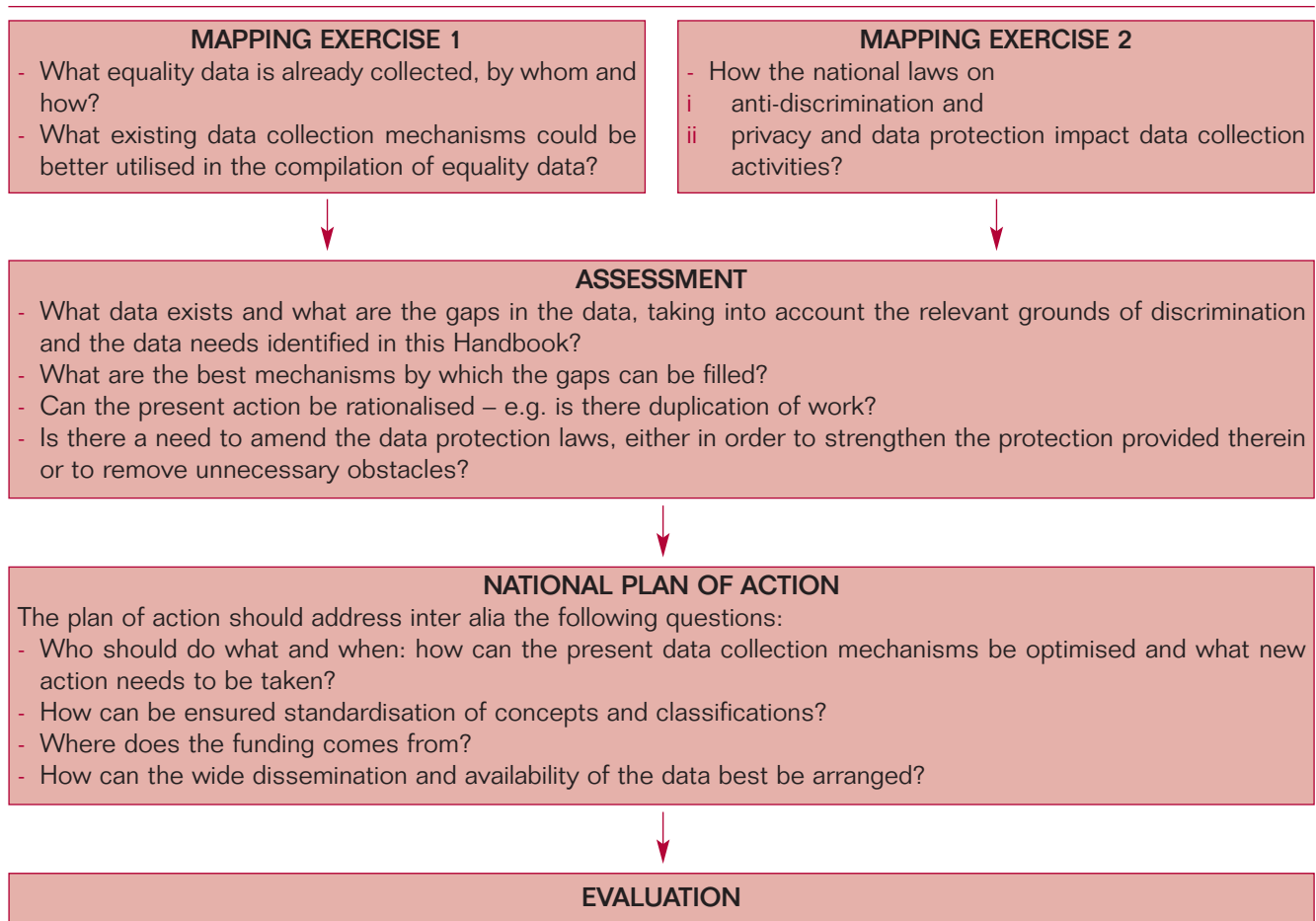
of data. **Adequate funding** for the various activities should be secured. The plan of action should also consider ways in which the development and use of common standards (concepts, classifications) across the different data collection activities could be promoted.

Last but not least, the plan of action should set out the means by which the data will be **disseminated** to the public. While it is important that the different producers of equality data publish their own individual reports, it should be considered whether for example a research institute or an equality body could be designated as the body responsible for the production of an **annual integrated report** based on the analysis of all available data. The same body could also act as an **information point** and to maintain a website with information on all available equality data resources. Yet other options are available and may better fit the national circumstances.

It is also important to **evaluate** the national data collection system at regular intervals, and to update the national action plan on the basis of the evaluation.

The following figure illustrates the key phases and aspects of this process:

Figure 4. | Development of the national plan of action



Once the national plan of action has been adopted and is being implemented, it is imperative to make full use of the data that starts to accumulate. There is therefore a need for **equality monitoring**, which refers not just to the collection of data but also to its **analysis** and **use**. The data and its implications for anti-discrimination law and policy should be carefully analysed, and any action in this area should be guided by the results of this analysis. Equality data is therefore not an end in itself, but an absolutely necessary means to an end, which is the promotion of equal treatment.

7.4. | Case study: Finland²⁵¹

Background

Finland transposed the Racial Equality Directive and the Employment Equality Directive into the national legislation mainly by means of the Non-Discrimination Act, which became effective as of 1 February 2004. Discrimination is prohibited also elsewhere in the domestic legislation, including the Constitution and the Penal Code. The overall material scope of application of the Finnish anti-discrimination legislation is somewhat wider than that of the European Directives. For example, the Penal Code prohibits discrimination in access to services and goods with respect to all grounds of discrimination, not just ethnic origin.²⁵²

The kind of Nordic welfare state policies practiced in Finland have traditionally placed a strong emphasis on egalitarian values.²⁵³ Particularly the issue of equality between women and men has been focused upon. Recognition of the need to focus also on ethnic equality started to grow in the 1990s along with the increase of immigration. In consequence the Finnish Ministry of Labour set up in 1996 an inter-departmental working group that was entrusted with the task of preparing a

proposal for a monitoring system on ethnic discrimination. The recommendations put forth by the working group were by and large implemented. The action that followed the proposal included inter alia the following:

- Several victim surveys concerning the main immigrant groups in Finland were carried out;²⁵³
- Several studies concerning the attitudes of Finns towards foreigners and ethnic minorities were conducted;²⁵⁵
- A number of studies on racism in the media were carried out;²⁵⁶
- The Finnish Academy of Sciences funded a research programme on *Social exclusion and ethnic relations (SYREENI)*, in the confines of which more than 40 research projects were funded between 2001-2003;²⁵⁶
- The police systematised its recording practices with respect to crimes that have a racist motive, and started to produce a yearly report called *Racist Crimes Reported to the Police in Finland*;
- The Finnish League for Human Rights (an NGO) started to produce a yearly report called *Racism and Ethnic Discrimination in Finland*.²⁵⁸

These measures can be considered as the beginning of systematic attention to collection of data on discrimination in Finland. However, the action taken was limited in two respects: monitoring of ethnic discrimination was not entirely comprehensive, as also noted by the ECRI in its country reports on Finland.²⁵⁹ and there were only a few – albeit important – initiatives that aimed to measure discrimination with respect to the other grounds of discrimination.²⁶⁰ These gaps in the national knowledge base became all the more apparent after new anti-discrimination legislation was adopted in pursuance of the two EU Directives. It was felt that measures needed to

²⁵¹ Written by Simo Mannila and Timo Makkonen.

²⁵² Makkonen, Timo, *Report on Measures to Combat Discrimination: Country Report Finland*. December 2004. Available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/firep05_en.pdf

²⁵³ This is reflected in e.g. large-scale research into social stratification of health and morbidity, as well as in policies that support economically depressed regions and their public services.

²⁵⁴ The most recent of these is Jasinskaja-Lahti, Inga et al, *Rasismi ja syrjintä Suomessa: Maahanmuuttajien kokemuksia* (Helsinki: Gaudeamus, 2002).

²⁵⁵ See e.g. Jaakkola, Magdalena, *Suomalaisten suhtautuminen maahanmuuttajiin vuosina 1987-2003* (Helsinki: Työministeriö, 2005).

²⁵⁶ E.g. Raittila, Pentti & Kutilainen, Tommi, *Rasismi ja etnisyyden Suomen sanomalehdissä syksyllä 1999*. Journalismin tutkimusyksikkö, Tampereen yliopisto, tiedotusopin laitos, julkaisuja C 31/2000.

²⁵⁷ www.aka.fi

²⁵⁸ www.ihmisoikeusliitto.fi

²⁵⁹ See ECRI's country reports on Finland from 1997 and 2002, at: <http://www.coe.int>

²⁶⁰ These dealt with discrimination on the basis of age, sexual orientation and disability. For some of these, see Ilmarinen J., *Towards a Longer Worklife! Ageing and the quality of worklife in the European Union* (Helsinki: Finnish Institute of Occupational Health, 2006). Lehtonen J., *Seksuaali- ja sukupuolivähemmistöt työelämässä*. Raportteja 269 (Helsinki: Stakes, 2002). Lehtonen J. & Mustola K., *"Eihän heterotkaan kerro..." Seksuaalisuuden ja sukupuolen rajankäyntiä työelämässä*, ESR tutkimuksia ja selvityksiä 2/04 (Helsinki: Työministeriö, 2004). Yfantopoulos, *Disability and Social Exclusion in the European Union: Time for Change, tools for change*. Final study report 2002. Available at: <http://www.edf-feph.org>. It must be emphasised that (outside the scope of this Handbook) the issue of gender equality has traditionally enjoyed a high priority also in the field of research.

be taken to monitor what impact the new legislation was having in practice and where the most important problems were.

Drafting of the proposal for a data collection system

It was soon realised that action needed to be taken to come to grips with the growing information needs, and that the situation was likely to be the same in the other EU countries. In recognition of this fact, Finland participated actively in the development of discrimination indicators in the EU, by chairing the *EU Data Collection Working Group to Measure the Extent and Impact of Discrimination* in 2003-05 and by organising the EU Conference *Data to Promote Equality* in 2004.²⁶¹ In 2005, the Ministry of Labour launched a new project, called *Making Equality a Reality with Adequate Data* (MERA). MERA-project had two strands. The first, the preparation of a European handbook on equality data (this Handbook), and second, the preparation of a national proposal for a data collection system. The project was funded jointly by the European Commission (through the European Community Action Programme to Combat Discrimination) and the Finnish Ministry of Labour together with the Finnish Ministry of Education.

The Ministry of Labour established a national Working Group to develop the Data Collection Proposal. The group consisted of representatives of the following bodies and organisations: the Ministry of Labour (Chair), the Ministry of Education, the Ministry of Health and Social Affairs, the Finnish Ombudsman for Minorities, the Ministry of Justice, the National Research Institute of Legal Policy, the Finnish Data Protection Ombudsman, the Finnish Ministry of Interior (Police Department and Directorate of Immigration), the Forum of Persons with Disabilities (NGO), the Advisory Board on Romani Affairs, Sexual Equality in Finland (NGO) and the Swedish Association of Pensioners in Finland. An external expert was hired to carry out background research.

The Working Group decided that a comprehensive approach to data collection should be adopted as a matter of principle: the usefulness of all potential data sources, both quantitative and qualitative, should be assessed. Development of the Proposal ran in two parallel steps: (1) composition of a so-called *Data Report* that describes all presently available data and comments upon its usefulness, showing where the gaps are, and (2) composition of the Proposal, which is based on the Data Report and sums up its key points and poses specific recommendations.

Contents of the proposal

The Proposal vests the coordination of data collection, monitoring and reporting on discrimination in the Ministry of Labour and recommends the establishment of a **Reference Group** to support this work. The Reference Group will be composed of representatives of the pertinent government departments, statistical authorities, equality bodies, NGOs and the scientific community. The to-be-established Reference Group will be entrusted with overseeing reporting, initiating research projects and securing the budget for all of this. The Reference Group will operate in the cycles of four years.

The Proposal suggests that the data collection system should consist of two parts: a '**prefixed part**' consisting of statistics, complaints data and other information from pre-defined sources, and an '**ad hoc part**' addressing the most urgent data needs as defined by the Reference Group for each four-year reporting period. The Proposal places a strong emphasis on the ad hoc part of the reporting. This is because of three main reasons:

- The target groups (with the exception of different age groups) are rather small, and cannot therefore be reached, in representative numbers, by means of sample surveys targeting the general population.
- Finland no longer conducts censuses (that could provide for a comprehensive data source), but relies on register data instead.
- The register data does not include the necessary variables that are needed in order to directly assess the situation of the equality groups (again with the exception of age).

Further on, it is proposed that the Reference Group should designate an organisation to act as a **national resource center** on discrimination. This organisation is expected to compile all available data on discrimination and to act as an information point. It is expected to maintain an up-to-date website with information about equality and discrimination across all equality grounds, and to publish a yearly report on equality and discrimination.

An official report, summing up all the data, will be published once in four years, and will be submitted by the Ministry of Labour to the Government.

The Proposal lists a number of initiatives with respect to how equality data should be compiled. Some of the proposals are of general nature and relevant to several or all

²⁶¹ Mannila, Simo (ed.), *Data to Promote Equality: Proceedings of the European Conference* (Helsinki: Edita, 2005).

equality grounds, while some of them are ground-specific. Some of the recommendations and other core elements of the Proposal are as follows:

- 1 *Conducting of research, particularly victim surveys but also living conditions surveys that tackle the issue of discrimination.* In addition to victim and living conditions surveys the proposal outlines three specific topics for future research:
 - An analysis of how complaints submitted by members of the equality groups fare within the criminal justice system;
 - A study on the living conditions of the Finnish Roma; and
 - A study on accessibility in the Finnish society.
- 2 *Funding of attitude surveys that target the general population and address all discrimination grounds.*
- 3 *Systematisation of the information gathered through national police registers.*
- 4 *Inclusion of discrimination as a theme in the research programmes of Finnish ministries responsible for anti-discrimination policy.*
- 5 *Further development of two Finnish (not coordinated by Eurostat) surveys conducted by the Statistics Finland, namely the Quality of Work Life Survey (n = over 3 000) and Working Life Barometer (n = 1 200).*
- 6 *Recommendation that certain statistical data sets are used as indirect measures of discrimination.* Recommendations include e.g. development of the collection and reporting of statistics on education and training; compilation of statistics on the situation of the elderly;²⁶² development of the database on immigrants in Finland;²⁶³ development of employment service registers in order to achieve better analyses of the situation of young and elderly job-seekers, persons with disabilities, and immigrants in the labour market; and an analysis of the situation of immigrants in social, health and housing services.²⁶⁴
- 7 *Support the adoption of workplace monitoring by means of a separate project on the basis of already existing Finnish and international experience.*²⁶⁵
- 8 *Support self-reporting of discrimination experiences, inter alia on the basis of an Internet-based form used by the Finnish League for Human Rights, with due attention to data protection.*
- 9 *The NGO sector, as well as national advisory bodies, will be integrated in the administration, implementation and monitoring of data collection.*
- 10 *The decisions, statements and yearly reports of the different parts of the justice system (Supreme Court, Supreme Administrative Court, National Discrimination Tribunal, Chancellor of Justice, Ombudsman for Minorities, Ombudsman of the Finnish Parliament) are followed and used in the reporting.*

The Proposal was approved by the national Working Group in November 2006. The proposal will be subject to a round of consultations involving all relevant government departments and other public authorities, NGOs and social partners, after which the Finnish Ministry of Labor will move the proposal forward. After this the Ministry of Labour will prepare an action plan for the implementation of the Proposal, and will launch the procedure for setting up the national Reference Group for the next four-year term.

²⁶² Cf. Myrskylä P, *Talalla ikä eletty... Ikääntyminen tilastoissa*. Elinolot 2005 (Helsinki: Tilastokeskus, 2005).

²⁶³ Presently the database, on the basis of which annual reports are compiled, contains basic information concerning immigrants' labour market status and employment, housing, some information concerning income to include additional information concerning e.g. education and training as well as social benefits.

²⁶⁴ See Gissler M, Malin M, Matveinen P, Sarvimäki M & Kangasharju, *Maahanmuuttajat ja julkiset palvelut. Terveystieteiden tutkimus 296* (Helsinki: Työministeriö, 2006).

²⁶⁵ <http://www.greatplacetowork.fi/>

7.5. | Recommendations

Recommendation No 8: the need for national cooperation

It is recommended that each EU Member State adopt a national plan of action that sets out the measures that will be taken for the development of a national knowledge base on equality and discrimination. The preparation of the action plan should be based on the participation of all stakeholder groups. The plan of action should take into account the recommendations set out in this Handbook.

Further reading

- Collins, Evelyn, 'The Role of Equality Bodies in Advancing the Case for Data', in Simo Mannila (ed.), *Data to Promote Equality: Proceedings of the European Conference* (Helsinki: Edita, 2001).
- Scottish Executive Central Research Unit, *Report of Conference for Users of Equality Statistics held at Scottish Executive, Victoria Quay on 29 January 2001*. Report compiled by Elaine Samuel on behalf of the Scottish Executive (Edinburgh: CRU, 2001).
- Yu, Patrick, 'Involving the Representatives of NGOs in the Development of Equality Monitoring System', in Simo Mannila (ed.), *Data to Promote Equality: Proceedings of the European Conference* (Helsinki: Edita, 2001).

8 | Overall recommendations

Recommendation No 1: the scope of action

All EU Member States should take action to monitor the state of the nation in terms of the realisation of equal treatment in practice. In view of this they should compile statistics, commission research and encourage other activities, the results of which will build to a national knowledge base on equality and discrimination. The scope and nature of this action should take the following into account:

- 1 **The wide demand for equality data.** It should be acknowledged that equality data is needed by a wide range of actors and for a wide range of purposes.
- 2 **The scope of domestic, EU and international law.** These sources of law define discrimination, the areas of life in which discrimination is prohibited and the grounds on which discrimination is prohibited. It is recommended that the collection of equality data takes these parameters into account, although it may be necessary to go beyond the grounds of discrimination and the areas of life covered by law, for instance in order to assess whether further legal regulation is needed.
- 3 **The social context.** It must be recognised that discrimination is a complex social phenomenon, the operation of which cannot be easily captured. It is therefore necessary to launch an array of in-depth investigations into the (i) **causes**, (ii) **forms**, (iii) **extent** and (iv) **effects** of discrimination.

Recommendation No 2: the need to use multiple approaches

It should be recognised that no single approach to data collection is able to meet all data needs. It is therefore strongly recommended that all EU Member States work towards building up a national knowledge base on equality and discrimination by taking advantage of **multiple data sources and multiple methods of analysis**.

Financial support should also be directed at innovative research that can lead to further methodological advances in the field of measuring discrimination.

Recommendation No 3: the need for groundwork

Those commissioning and carrying out data collection operations should be prepared to address a number of fundamental issues that have a major impact on data collection. These issues include the following:

- In survey research, the impact of choices made with respect to such issues as data collection mode and the framing of the survey questions should be assessed before engaging in data collection.
- Particular attention should be paid to definitions, classifications and categorisation principles used. These should, as a rule, follow common domestic and international practices.
- Those in charge of operations that involve processing of personal or sensitive data must ensure that the applicable data protection and privacy laws are fully complied with. The use of state-of-the-art Privacy Enhancing Technologies (PETs) is recommended, particularly whenever the processing of sensitive data is involved.

- Governments should review domestic data protection and privacy laws in order to
 - ensure that the safeguards required by the European and international law are in place, and
 - to ensure that the domestic law does not pose any unnecessary obstacles (limitations not required by the European and international laws) for the collection of equality data.

Recommendation No 4: the need to develop official statistics

The collection and compilation of official statistics presents a unique opportunity to collect data in relation to the equality grounds. It is recommended that each EU country conduct a mapping exercise in order to investigate:

- i What information is currently collected by means of population census, administrative registers, and surveys (as applicable in the national circumstances)?
- ii Whether the group of variables surveyed through these mechanisms could be expanded so as to cover one or more equality grounds, insofar as the results would still be representative of the group concerned and be based on reliable data.

In effect, to make full use of these important information resources in the future, governments should seek ways in which they can improve the present data collection designs so as to obtain the data needed to compile equality statistics.

Recommendation No 5: the need to develop complaint statistics

Organisations that receive reports of discrimination should develop systematic recording procedures and practices that allow them to ensure the completeness, reliability and usefulness of the data for both administrative and statistical purposes. Especially non-governmental organisations would benefit from the availability of specialised software for recording complaints submitted to them, and they should consider for instance pooling their resources together for the development of such software. All organisations should establish mechanisms for analysing and distributing in statistical form the information submitted to them, and should seek ways to allow researchers to use these data for analysing discrimination where appropriate.

Recommendation No 6: the need to support research

The fundamental importance of conducting research into equality and discrimination should be recognised by securing adequate funding for these purposes. There is a need

- For (i) longitudinal research that would benefit from a steady source of financing, and (ii) *ad hoc* research where the funding may come from different sources at different times;
- For quantitative and qualitative research.

Those funding and commissioning research should identify priorities in this area in cooperation with the representatives of the equality groups and the scientific community.

Recommendation No 7: The need for workplace monitoring

All EU Member States are urged to enter into a dialogue with the social partners, the representatives of the equality groups and other stakeholders, on the need to introduce requirements for workplace and service delivery monitoring. There is also a need to arrange training on how monitoring can be conducted in practice.

Recommendation No 8: the need for national cooperation

It is recommended that each EU Member State adopt a national plan of action that sets out the measures that will be taken for the development of a national knowledge base on equality and discrimination. The preparation of the action plan should be based on the participation of all stakeholder groups. The plan of action should take into account the recommendations set out in this Handbook.

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