

Contents

FOREWORD	3
ABBREVIATIONS	9
HOW TO USE THIS HANDBOOK	11
1 INTRODUCTION TO EUROPEAN NON-DISCRIMINATION LAW: CONTEXT, EVOLUTION AND KEY PRINCIPLES	15
1.1. Context and background to European non-discrimination law	16
Key points	16
1.1.1. Council of Europe: development of non-discrimination law	18
Key point	18
1.1.2. European Union: development of non-discrimination law	20
Key points	20
1.1.3. European non-discrimination law and UN human rights treaties	24
Key points	24
1.2. Who receives protection under European non-discrimination law?	27
Key points	27
1.3. Scope of the ECHR: Article 14 and Protocol No. 12	28
Key points	28
1.3.1. Rights covered by the ECHR	29
1.3.2. Scope of ECHR rights	30
1.3.3. Protocol No. 12 to the ECHR	32
1.4. Scope of EU non-discrimination law	34
Key points	34
2 DISCRIMINATION CATEGORIES	39
Key point	42
2.1. Direct discrimination	43
Key points	43
2.1.1. Less favourable treatment	44
2.1.2. A comparator	44
2.1.3. Causation	49
2.1.4. Discrimination by association	51

2.2. Indirect discrimination	53
Key points	53
2.2.1. A neutral rule, criterion or practice	54
2.2.2. Significantly more negative in its effects on a protected group ...	56
2.2.3. A comparator	57
2.3. Multiple and intersectional discrimination	59
Key points	59
2.4. Harassment and instruction to discriminate	64
2.4.1. Harassment and instruction to discriminate under the EU non-discrimination directives	64
Key point	64
2.4.2. Harassment and instruction to discriminate under the ECHR and ESC	67
2.5. Special or specific measures	69
Key points	69
2.6. Hate crime	81
Key point	81
2.7. Hate speech	86
Key point	86
3 JUSTIFICATION FOR LESS FAVOURABLE TREATMENT UNDER EUROPEAN NON-DISCRIMINATION LAW	91
3.1. Application of objective justification under ECHR	92
Key points	92
3.2. Application of the objective justification under EU law	94
Key point	94
3.3. Specific grounds of justification under EU law	96
Key points	96
3.3.1. Genuine occupational requirement	97
3.3.2. Religious institutions	102
3.3.3. Exceptions on the basis of age	103
4 SELECTED AREAS OF PROTECTION	109
Key point	112
4.1. Employment	113
4.2. Access to welfare and social security	122
4.3. Education	129

4.4. Access to supply of goods and services, including housing	133
4.5. Access to justice	139
4.6. The 'personal' sphere: private and family life, adoption, home and marriage	141
4.7. Political participation: freedom of expression, assembly and association, and free elections	148
4.8. Criminal law matters	151
5 PROTECTED GROUNDS	155
Key points	160
5.1. Sex	162
5.2. Gender identity	171
Key points	171
5.3. Sexual orientation	176
5.4. Disability	182
5.5. Age	190
5.6. Race, ethnicity, colour and membership of a national minority	196
5.7. Nationality or national origin	202
Key points	202
5.8. Religion or belief	210
5.9. Social origin, birth and property	216
5.10. Language	218
5.11. Political or other opinion	222
5.12. 'Other status'	224
6 PROCEDURAL ISSUES IN NON-DISCRIMINATION LAW	229
Key points	230
6.1. Shifting the burden of proof	231
6.2. Circumstances irrelevant for the finding of discrimination	239
6.3. Role of statistics and other data	242
6.4. Enforcement of non-discrimination law	248
Key points	248
CASE LAW	253
INDEX	275
LIST OF LEGAL TEXTS	293
NOTE ON CITATION	295