



## **NATIONAL ACTIVITY REPORT GERMANY ANTI-DISCRIMINATION AND DIVERSITY TRAINING**

**DGB Bildungswerk, Bereich Migration & Qualifizierung (Anti-discrimination seminars)  
synetz – die Unternehmensberater GbR (Diversity Management seminar)**

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The training manuals used in the anti-discrimination seminars and the diversity management seminar can be downloaded from the European Commission website:

[http://ec.europa.eu/employment\\_social/fundamental\\_rights/public/pubst\\_en.htm#train](http://ec.europa.eu/employment_social/fundamental_rights/public/pubst_en.htm#train)

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The national activities were carried out by:

- DGB Bildungswerk, Bereich Migration & Qualifizierung ([www.migration-online.de](http://www.migration-online.de))
- synetz – die Unternehmensberater ([www.synetz.de](http://www.synetz.de))

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## **II. Introduction**

### *Anti-discrimination seminars*

In 2008, the European directives against discrimination were implemented to a large extent through the law on equal treatment (AGG) in Germany. The AGG plays an important part in the protection against discrimination. Nonetheless, the principle of equal treatment was in part already regulated by law before the AGG came into effect. The Works Council Constitution Act is of special importance for trade union's work within companies. It constitutes that any form of discrimination of persons on grounds of their race, their ethnic origin, their descent or other origin, their nationality, their religion or ideology, their handicap, their age, their political or trade unionist activity or engagement, or due to their gender or sexual identity is prohibited. One duty of works councils and executives is to see to equal treatment.

Laws and directives can however not guarantee a comprehensive protection against discrimination. For many people in Germany, discrimination and unequal treatment are part of everyday life. They experience discrimination when looking for an apprenticeship training position or a job, for an apartment, when visiting agencies or restaurants. Time and again, job advertisements state, "looking for someone to reinforce our young team" or "n.f." (no foreigners). Thereby, it is not always a case of direct discrimination of a single person; instead discrimination results from general reservations or selection mechanisms.

For this reason, apart from the legal situation, it is important to contribute to a sensitization within the working environment and to sustainably prize open discriminating structures. Public climate has to take care that prejudice and discrimination are not tolerated. Discrimination may not constitute a taboo and instruments for its extinction may not be perceived as limiting individual freedom. Therefore, this project not only served to convey information on the law and its regulations; participants were also invited to develop strategies against discrimination for their field of work.

As part of the project, two seminars titled "Developing strategies against discrimination. Further education for NGOs and trade unions" were held.

Seminars targeted participants from NGOs (e.g. anti-discrimination agencies, self-organizing institutions, etc.) and trade unions (works councils, etc.). Seminars were intended for 40 participants and six trainers. Due to the special duties of works councils in Germany, these were included in the project. Within working environments, they assume the important function of multiplying information, and within an operational chain, they are often the first to be asked for advice in a case of discrimination.

In sum, participants received well-grounded information on EU and national anti-discrimination politics and legislation during seminars. At the same time, strategies were developed on how NGOs and trade unions could contribute to the implementation of EU and national directives and laws for fighting discrimination. Participants developed practically oriented options for their work.

### *Diversity Management seminar*

The mapping results for Germany stated an increasing interest in the topic Diversity Management due to three main factors:

- the introduction of the Anti-Discrimination law in 2006, followed by the specific issue "migration/migrational background" which has been identified as a major topic. A nation wide campaign on this issue has been started; ending end of 2008. A "Charta for Diversity" was established and signed by around 300 companies so far.
- The awareness for the aging society in Germany is constantly rising according the dramatic changes for the society, business and social systems, widely discussed in public.

- The effect of missing qualified talents and discussions on migration is therefore actual. The percentage of people with a migration background is already high (youth below 14 years up to 40 % percent). Future talent of companies will be diverse and needs to be included into workforces on every level. Also consumer market demographics regarding migrational background will change accordingly.

As 2007 having been the initial phase of the German wide campaign, positioning of the EU Diversity Management workshop might be seen twosided. On the one hand the awareness regarding Diversity Management has increased indeed in Germany. This was helpful for the EU initiative and the organizers. On the other hand several workshops took place, addressing always the same target group, mostly big companies. As having been a Federal Government initiative, sponsored with a hugh amount of money, polititians and well known business speakers presented and attracted participants. The EU - German Diversity Management Seminar took place on the 30th of November 2007 in Cologne. It was the first of all the European Diversity Management workshops. The learnings were shared with all the other organizers in a written form. 47 participants attended the German workshop.

### **III. Anti-discrimination seminars**

#### **a) National activities anti-discrimination seminars**

##### **Design of the training**

The seminar proceeded as follows:

At the beginning of the first day, participants introduced themselves in detail. In doing so, it was emphasized that participants present their previous experiences in handling discrimination. Afterwards, seminar proceedings were presented.

To begin with, participants' awareness was raised for their own points of view via the 'Barometer Game', which had been introduced during international training. On the basis of prepared statements they had to range their personal position as regards content. Some statements were formulated provocatively in order to further discussion (e.g. "A successful integration calls for foreigners to assimilate as far as possible, that is, conform to German culture."; "It is easier being a homosexual when living in large cities than in small villages."; "Companies should preferably employ older people since their professional experience can contribute a lot to a company's success."; "It is legitimate for an entrepreneur to employ visually attractive persons for the customer service section."; "Religion is a private matter and does not belong in the company."). By means of a fictive scale, participants were asked to take a stand regarding these statements (pro/contra). Some participants were asked to comment their positions. Afterwards, participants were given the opportunity to take a new position. The objective of the game was to raise participants' awareness for their personal point of view regarding anti-discrimination. They were supposed to question themselves: What is my point of view regarding certain statements? Where do I agree, where not?

Next, the game „Albatros“ was conducted, which was also part of the international training. Using role play, participants were introduced to a fictitious situation of living on an island. Afterwards they were asked to judge their impressions of this world. This unit's objective was the realization and challenge of personal prejudices and thinking patterns. It became clear that a foreign culture is always judged on the basis of personal cultural comprehension.

Following this unit, legal procedures against discrimination were introduced. For that purpose, the EU-directives were presented initially as a starting point. Following this, implementation of EU-directives within national legislation was reviewed. The following points were discussed:

- Objective of this law
- Who is protected by this law?
- What is meant by discrimination (immediate discrimination; indirect discrimination) and harassment?
- Matters of discrimination ("race", ethnic origin, gender, handicap, age, religion or ideology, sexual identity)
- When is discrimination legitimate?
- Employees' duties
- Employer's duties
- Employees' rights
- Burden of proof
- Rights of works councils and trade unions as well as anti-discrimination organizations
- Federal anti-discrimination agency
- Deadlines
- Prohibition of discrimination under civil law

The presentation contained examples and case studies for clarification. Furthermore, participants were included consistently.

In order to practice the theory introduced in the presentation, participants were subsequently divided into working groups. They received a worksheet describing cases from discrimination work. Within their groups, they had to discuss whether each was indeed a matter of discrimination and whether it was a matter of discrimination according to the law on equal treatment. (Options: 1. “No discrimination”/“Discrimination”/“I’m not sure, whether this is discrimination”; 2. “This behaviour is prohibited / not prohibited according to the law on equal treatment.”). The worksheet contained seven case studies, which had to be completed by every participant. Afterwards, each group presented one case study. Objective of this element was the identification of matters of discrimination according to the law on equal treatment. It also served to clarify that discrimination is not always covered by this law’s regulations.

At the end of the first day, present results were reviewed and the contents which were to be dealt with on the second day of seminar were presented.

The second day of seminar began with a loosening-up game and clarification of further enquiries regarding the previous day. Further, the EU-campaign film "for diversity against discrimination" was presented and discussed. Afterwards, newly assembled working groups compiled an everyday case of discrimination. Participants had to present a fictitious discrimination via role play. After presentation, all participants reflected on ways to deal with the discrimination presented (e.g. by means of the law on equal treatment; with the aid of counselling; talking about the discrimination; etc.). Using a flipchart, results were recorded for everyone to see.

Subsequently, participants assembled in tendency groups. Their assignment was to work out action strategies for their own situation. For works council members this could for example mean preparing a labour-management contract, a reasoning aid, a network strategy, etc. Participants were free to choose what strategy they wished to prepare. The strategies developed were presented and discussed afterwards.

The final element was participants’ feedback regarding the seminar. Furthermore, participants received numerous seminar materials (power point presentation, law text, worksheets, photos of the seminar, assistance from different areas regarding implementation of the law on equal treatment, etc.)

### **Preparation of the seminar**

This training concept was developed on the basis of an international training, involving trainers from different EU-countries (in this case Germany, Austria and Italy). During the international training, different methods for working on this subject were presented. Furthermore, seminar contents that were to be dealt with were discussed. A part of these methods was adopted into the national anti-discrimination seminar.

Six people were educated as trainers in the international training. During trainer selection, it was seen that trainers represented different fields. Some came from the field of NGOs, others were attached to trade unions. Based on professional expertise, the group of trainers represented all areas mentioned in the EU-directives on anti-discrimination (ethnic origin, age, handicap, religion or ideology and sexual orientation). Some of the trainers specialized in certain areas (e.g. ethnic origin), others covered all areas. During trainer selection, attention was also paid to equal gender distribution (three women, three men). Further, migrational background was considered (three trainers with migrational background, three without). An additional selection criterion was legal education (three with legal education, three without).

Trainings were each attended to by a team consisting of three trainers. Here too, an equal distribution of the above mentioned attributes was considered (areas of professional expertise, gender, migrational background, legal education).

Project execution and responsible for the content in Germany and thereby supervision of seminars was organized by the nationwide education department of the German Confederation of Trade Unions. For project implementation, the DGB's education department was able to rely on extensive expertise regarding seminar organization. The Competence Centre Equal Treatment, which is part of the Migration & Qualification Section, was responsible for project implementation. Since 2001, the Migration & Qualification Section is conducting events on the subject of migration and integration, but also on discrimination and intercultural opening. The DGB's education department is certified according to DIN EN ISO 9001:2000.

The seminar's target group were participants from non-governmental organizations and trade unions. These were advertised to the seminar via far reaching advertisements (homepage, numerous newsletters of the DGB's education department, distribution via trade unions, and distribution via anti-discrimination agencies).

### **Carrying out the seminars**

#### *Participants*

The first seminar took place from 1. to 2. October 2007, at the conference centre of the German Confederation of Trade Unions' (DGB) education department in Hattingen (Ruhr area). 17 people participated in this seminar (5 men, 12 women; 5 of which reported having been born in Germany, 3 not in Germany, 9 did not provide this information). The second seminar was held from 21. to 22. February in the same location. 31 people participated in this seminar (16 men, 15 women; 21 reported having been born in Germany, 8 not in Germany, 2 did not provide any information).

#### *Process during the day – observations*

During both seminars, participants were highly committed and very much interested in an exchange. Within working groups, discussions often lasted well into the breaks. Seminars were each organized by a trio of trainers.

The first seminar was conducted with 17 participants. This small group size led to intense exchange among participants. A lot of time could be invested in discussions and exchange. Both participants and trainers rated the small group size very positively. The participants' diverse professional background supported exchange. Participants were able to report as experts from their professional background and thereby contribute to discussions.

The second seminar was held with 31 participants. Prior, the concept had been adjusted and working group sizes changed accordingly. Within this seminar as well, exchange among participants was very intense.

The participants' level of expertise differed greatly. Some had already worked for some time in the area of anti-discrimination and possessed comprehensive knowledge regarding implementation of EU-directives against discrimination, the law on equal treatment and counselling in cases of discrimination. They were mostly interested in an exchange of experiences on available strategies against discrimination and in networking. Others had hardly any experiences regarding implementation of EU-directives. They needed information on implementation strategies.

The first seminar was held in the fall of 2007. Afterwards, trainers adapted the existing concept according to the experiences made. During the first seminar, a worksheet containing case studies from current judgements on implementation of the law on equal treatment was dealt with.



This was cancelled in order to make more time available for the development of strategies. During the second seminar, which was held in the spring of 2008, this approach proved very sensible.

In the evaluation sheets, participants rated case studies as being particularly helpful for the implementation of the law on equal treatment. Also, exchange of experience among participants was received positively. At the end of both seminars, almost all participants stated, wanting to remain in touch with each other.

During the seminar and in the evaluation sheets, participants rated the information gained as very useful for their everyday work. Intentions were to pass on this information to colleagues, for example. A couple of participants expressed their desire for a follow-up seminar where a mutual action strategy could be devised, based on the results compiled.

Trainers were positively surprised in face of participants' extraordinary commitment. Participants brought a lot of expert knowledge into role plays. This made an intense exchange possible.

During the second seminar, group size was criticized. In both seminars, usefulness of longer seminar duration (3-4 days) was stressed.

Seminars were held at the conference centre of the DGB's education department in Hattingen. This location offered very good facilities and materials for seminar organization (sufficient room for working groups; flipcharts; pin boards; flowcharts; presentation cases and materials; beamer; video; etc.). Furthermore, accommodation within a conference hotel made it possible to establish a good seminar atmosphere. In the evenings, participants were present and therefore they had the possibility for personal exchange. The conference hotel is situated in the Ruhr area and is therefore easily accessible from all parts of Germany.

In sum, seminars were useful in providing participants from NGOs and trade unions with well-founded knowledge on anti-discrimination politics and legislation at EU and national level. Thereby, the NGO's and trade union's role in the implementation of EU-legal provisions and national legal provisions for fighting discrimination was presented. Geared to practical experience, participants developed possible courses of action, which they can use in their work.

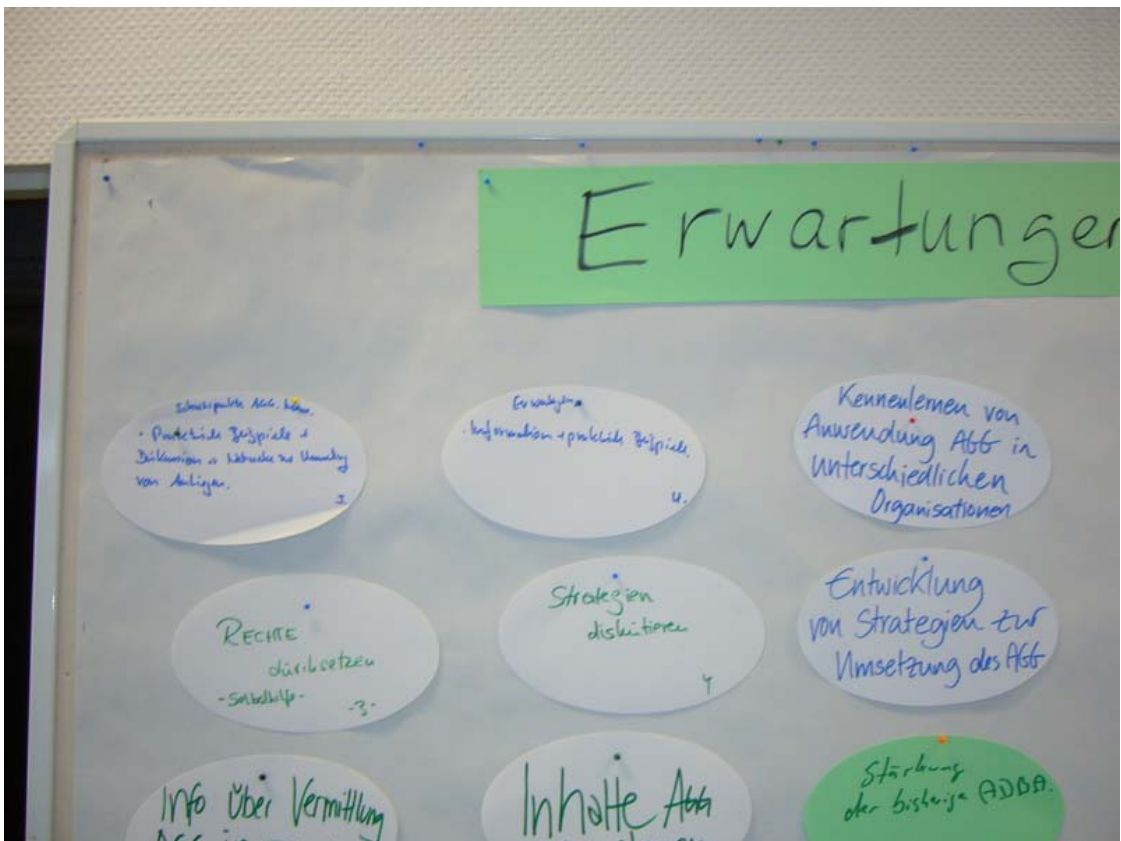
Regarding content, implementation was based on the training manual, which had been developed within the assignment "Developing action competencies of civil society in the area of fighting against discrimination". Also, methods presented during the train-the-trainer seminars could be implemented well.

### **Main lessons learned seminars**

During this seminar, participants learned about possibilities regarding anti-discrimination work, which the law on equal treatment opens up.

First of all the seminar raised awareness among the participants. They learned to reflect on their own position. After this the participants received an overview of the AGG. Since knowledge of the legal paragraphs leads not automatically to an understanding of antidiscrimination policies, they used this knowledge to elaborate strategies for education, lobbying, empowerment and also fighting discrimination in companies.







## **b) Mapping exercise: NGOs/Trade Unions working to combat discrimination**

### **I Profile of NGOs/trade unions working to combat discrimination**

#### **1. What types of NGOs/trade unions working on anti-discrimination exist on the national level?**

NGOs working on anti-discrimination differ considerably from each other in size, structure, area of action etc. They range from small local organisations based exclusively on volunteer work to professional associations with regional branches, a turnover in relation to the number of employees and its influence. They all have a role to play according to their mandates and vocation. Most of these NGOs have been founded as a 'Verband' (association of people and groups with a common political or social interest) or have the legal form of a 'gemeinnütziger eingetragener Verein' (registered non-profit association). They are independent but most of them cooperate in one way or another with municipal, regional or state authorities and get financial support for part of their work.

In Germany unions have joined together with the DGB (Deutscher Gewerkschaftsbund, German Confederation of Trade Unions) as an umbrella organisation. They are based on a similar structure with an executive board and numerous branches and institutions in other federal states, towns and districts. Local offices broaden the union presence countrywide. Trade unions employ full-time staff but most people are also active on a volunteer basis based in society and workplace (work councils).

#### **2. What ground(s) of discrimination, scope or sector are they concerned with (if they are concerned with a specific ground or a specific sector such as for example education)?**

For each of the five grounds of discrimination fixed in the EU guidelines a large number of NGOs in Germany can be named. Most of them concentrate on a specific mandate or field of action (social work care, education, counselling, campaigning, representation of interests). Therefore there is little interaction between 'interest organisations' of particular groups (disabled persons, gay and lesbians, ethnic minorities, religious groups, organisations for the elderly etc.). Whereas Integration representatives on the national and the federal and local level are supposed to give advice on all grounds of discrimination there are only few NGOs that cover all grounds (there are a few exceptions though like the German Institute For Human Rights).

Trade unions, however, have a wider ranging agenda. Within most German trade unions there is either a kind of network or so called 'person group' (e.g. 'Schwule und Lesben in ver.di' (gays and lesbians in the united services union) or 'IG Metall Senioren' (seniors in the metalworkers union)) or a departments like a 'department for migrant workers' or the 'DGB Bildungswerk, Bereich Migration & Qualifizierung' (DGB educational centre, department migration & qualification).

On the surface it seems as if antidiscrimination is linked first hand to anti-racist, intercultural and inter-religious work (concerning the number of groups which are in the public eye) but organisations for the disabled represent for instance far more members and existed a lot longer.

#### **3. Is anti-discrimination their main area of work or only a small part of what they do? Do they work on anti-discrimination?**

Welfare associations like the 'Caritas' (under the trusteeship of the Catholic Church) or the 'Arbeiterwohlfahrt' (workers' welfare association) offer nursing and other similar services but also play an important role in the field of anti-discrimination. The same applies to the Jugendverbände (Youth organisations): The 'Deutsche Sportjugend' (German Sport Youth) for example represents the interest of German sport clubs and initiates projects promoting diversity at the same time. But for most NGOs working in the field of anti-discrimination, combating discrimination and promoting equality remains their main focus.

The primary role of the trade unions is negotiating between employers and their organisations, dealing with the government authorities at federal state and national level, the political parties, and other groups within society. But trade unions set their own initiatives in motion too and are involved in promoting equality in the workplace.

**4. Are these NGOs/trade unions registered on the national level? Is it easy or problematic to register as an NGO/trade union?**

A lot of NGOs are registered as a Verein (association) and are amenable to the German Vereinsrecht (German association law). Generally speaking it is rather easy to be registered as a Verein. It is more difficult to be registered as a party (e.g. 'Die Grauen Panther, the party for the elderly) or as a foundation (e.g. Aktion Mensch, an organisation that supports people with disadvantages).

According to the Basic Law for the Federal Republic of Germany everybody has the right to found a trade union. But it has to be accepted as a 'Tarifpartner' (social partner) otherwise this organisation wouldn't be capable of acting. Trade unions that are not joined together with the German Confederation of Trade Unions (e.g. same Christian trade unions) do not have any societal or political weight.

**5. Generally how large are these NGOs/trade unions? (Please mention the size of membership for the main trade unions)**

The size of these NGOs ranges from small local organisations with only few members (seven members are needed according to German law for association) like the 'Duesseldorfer Appell' to organisations like 'Pro Asyl' with 10.000 members and a few regular member of staff. Only few organisations like the 'Red cross' have thousands of members and employees. Sometimes the size of an NGO is rather small since the members are representatives of other organisation (e.g. the 13 members of the association 'Mach meinen Kumpel nicht an!, Don't touch my friend!' represent the eight member unions of the DGB).

The IG Metall (trade union for metal workers) and ver.di (United services union) each have around 2 million members, the IG Bergbau, Chemie, Energie (mining, chemicals, energy) approximately 740.000, IG Bauen-Agrar-Umwelt (construction, agriculture, environment) 390.000, transnet (railway workers) 260.000, GEW (education and science) 250.000, NGG (food, beverages and catering) 215.000 and GDP (police) 175.000 members. Trade unions within the DGB represent more than 6 million men and women.

**6. Are they part of larger national networks? Or are they working on their own?**

Most of the NGOs are part of larger networks. Be it a communal 'round table for integration', an institution which exists in a lot of a cities in Germany, be it a local 'Alliance against racism' or other similar groups. With IDA (information and documentation for anti-racist work) all relevant youth organisations have joined together to fight xenophobia and discrimination. The 'Interkulturelle Rat' (Intercultural council) is a platform for NGOs as well as churches and trade unions.

The 'Deutsche Behindertenrat' (German council for disabled people) for instance is a confederation of all the large associations (like the social association VDK with 1,4 Mio. members) that concentrate on work for the elderly and disabled people. NGOs cooperate with national institutions like 'Antidiskriminierungsstelle des Bundes' but there is no network that covers all organisations dealing with anti-discrimination.

**7. Are they mainly based in the Capital or spread out in the country?**

NGOs in Germany working to combat discrimination are definitely spread throughout the country. Trade unions, youth and welfare associations have branches even in smaller towns. It is because of the federal structure of Germany that the difference between capital and country is not as big as it is in other 'centralist countries'. The difference is rather between city in general and countryside.

**8. Are NGOs/trade unions from the capital and the rest of the country doing the same type of work?**

Generally speaking: Yes. For obvious reasons NGOs in the capital (or a board of the NGO that is based in the capital or a regional capital) is more involved in campaigning and lobbying whereas an organisation in a small town or village is more involved in practical work (social work, counselling etc.). For gay and lesbian organisation it is easier to work in big cities than in the countryside. Therefore there are only few local branches of the LSVD (gay and lesbian association in Germany) but there are branches in all the German Bundeslaender (federal states).

**9. What is the political or societal weight of these NGOs/trade unions on the national level? (Towards, the general public, the civil society, the companies/employers, the government)**

The voice of NGOs in Germany is heard whenever it comes to discrimination. They also have some political weight with the government (at a local, regional and national level). NGOs as well as trade unions participate for instance in developing laws by collaborating with commissions and institutions alike. They also advise the government as experts. Their experience and expertise has some influence on important legal provisions (e.g. Gesetz zur Gleichstellung behinderter Menschen (Disability Discrimination Act), Allgemeines Gleichbehandlungsgesetz (The General Equal Treatment Act) and Zuwanderungsgesetz (immigration law)). The political weight is also indicated by events like the integration summit or the islam summit organized by the government.

But the political influence is sometimes limited. Demands of NGOs and trade unions concerning the right of residence for refugees have not been successful.

By means of the so called 'Mitbestimmung' (co-determination) trade unions have a significant political and social weight in companies and public administration. But they are suffering from a loss of public influence in comparison to former times.

**10. Are NGOs/trade unions working in the field cooperating together: (NGOs with other NGOs, trade unions with other trade unions and also NGOs together with trade unions)**

NGOs as well as trade unions cooperate very closely. This is the case within informal or formal networks like 'Netz gegen Rassismus' (network against racism) and of course within the scope of umbrella and parent organisations.

**a. For what purpose(s)**

Trade unions and NGOs cooperate to 'speak with one voice' when it comes to legal provisions at national level (e.g. immigration law, General Equal Treatment Act) and to promote synergy effects. There is collaboration on campaigns (e.g. European campaigns like 'For Diversity – Against Discrimination', 'All Different – all equal' etc.), on organising public events like protest marches, joint conferences and the exchange of expertise.

***b. Is there greater collaboration in relation to certain grounds of discrimination?***

Alliances in the field of combating racism and right wing extremism, intercultural and inter-religious work etc. and also in homosexual politics (e.g. for the pride marches) are more visible to the public but there is also cooperation in areas like discrimination of the elderly, disabled people and gays and lesbians (within the scope of associations like the ‘gay network north-rhine westfalia’ as one of many examples).

**11. How are these NGOs funded?**

***a. Do they receive state funding?***

A lot of the ‘professional NGOs’ receive public funding from the national or regional government for part of their permanent work. Other organisations receive financial support for projects that last for a limited time (1-4 years). For most of the NGOs public funding doesn’t cover more than one third of their cost.

***b. What are the conditions in order to receive public funding?***

To be entitled to state funding for their ‘day to day work’ (organizing seminars etc.) an NGO has to fulfil certain conditions like being registered as non-profit association or as ‘registered youth organisation’. They have to prove that they have been performing successful work for years.

Normally it is usual to get money for permanent staff from the state. Most times they initiate and develop ‘pilot schemes’ to get public funding.

Beyond from that an NGO has to comply with conditions such as the commitment not to support political extremism and to show transparency in their use of funds.

***c. Do they also receive/apply for private funding?***

Since the application for state funding is connected to a lot of difficulties NGOs also apply for private funding – from foundations, companies and other donors (see also question above).

***d. Do private funders impose any restrictions or conditions?***

Private funders impose similar conditions to official authorities. Organisations that apply for funds have to work on a non-profit basis and have to be in accordance with the foundations aims.

**12. How are these trade unions funded?**

***a. Do they receive state funding?***

Trade unions do not normally receive state funding however they may receive funds from the state for projects of public interest. Trade unions are financed by the members.

***b. Are they funded by a political party? If so, do they have to adhere and respect the party’s line?***

The DGB’s member unions are independent unified trade unions and have no allegiance to political parties (or religious denominations) and are not funded by them either. The trade unions’ boards represent members of all political parties (the 5 members of the current DGB’s boards for instance are members of the social democrats, the conservatives and the green party). Although within trade unions one comes across more social democrats than members of other parties. None of the German trade unions adhere strictly to a specific party line.



**c. Do they function only/also with their members' fees?**

Trade unions in Germany only function with their members' fees, on average 1% of the employees gross wage.

**d. Are they able to receive private funding and/or participate in project funded by European/international institutions?**

Trade unions may not receive any form of financial backing by employers and their organisations. Private funding is also restricted. But of course they are able to raise funds from European and international institutions and participate in corresponding projects. Trade unions' institutions like the competence centre 'migration & qualification' of DGB Bildungswerk have experience in participating in European projects.

**13. Is the lack of funding a significant factor in the size of NGOs/trade unions or in restricting the scope or scale of their activities?**

Lack of funding is a significant factor. But the size of NGO or trade union rather depends on the success of such an organisation in campaigning for their members and other persons affected. As a matter of course budget busting always means the possibility of expanding activities. There is a clear interrelation between the initiation of projects funding possibilities (e.g. through EU or national programs).

**14. Do they work (or are in contact) with similar NGOs/trade unions in other countries?**

NGOs as well as trade unions are in close contact with organisations in other countries and collaborate (sometimes to a very high degree) in different fields of work.

**a. Neighbouring countries?**

Trade unions have a long tradition of international cooperation. Delegations from other countries have come to see German trade unions and vice versa. The DGB and its member unions have maintained international departments for a long time. The DGB is also a member of the European trade union federation.

Examples of project cooperation can be found within the framework of the EU-initiative 'Equal' or the 'European Migration Dialogue' or publications such as 'A Guide to Good Practice for a non-discriminatory access to services'. The latter was created by French, German and Belgian members of 'SOLIDAR', an independent international alliance of non-governmental organisations.

NGOs also work with similar NGOs in neighbouring countries. The project "GET in - Guide to equal treatment in the private sector" for example was established by the German NGOs Anti-Racist Information Centre Duisburg, the German Caritas Association Freiburg and the Diocesan Caritas Association for the Archdiocese of Cologne with partners from the Netherlands (National Office Against Racial Discrimination, Rotterdam) and Poland (Caritas Poland, Warsaw).

**b. Other new EU Member States?**

There exist several collaborations with organisations from new EU member states. One example is the Europäische Wanderarbeiterverein (European Migrant Workers Union) or the European trade union confederation. The DGB Bildungswerk (DGB training center) has established several projects abroad (SCR.projects). Within the frame of The 'European Network Against Racism' (ENAR) and 'UNITED' German NGOS have also developed projects in the new EU members.

*c. Others?*

Cooperation with trade unions and NGOs in other countries does not only take place within the framework of networks like the World Social Forum (to name the most known) or the International Confederation of Free Trade Unions (ICFTU), there are also many projects at an international level.

**15. Do they work on the international level (campaigning, case work, other)?**

At an international level the work of NGOs and trade unions is normally restricted to campaigning than to case work. International trade union work is also related to European works councils (they exist in companies with more than 1000 employees, including at least 150 in two or more Member States).

Projects like 'Social dialogue – Corporate Social Responsibility' do not concentrate on case work but raise the public awareness of innovative policies and practices across Europe which can support disabled people - either as workers or as employers. The North-South-Network, the development agency of [DGB Bildungswerk](#) has implemented a lot of projects on labour standards and the right for non-discrimination world-wide. They are further examples of international cooperation of different NGOs and trade unions.

**16. Can they work in English?**

Since English is compulsory in every single German school most employees in both NGOs and trade unions are able to work in English. It is a prerequisite for projects on an international level.

**17. For countries where this is the case, where trade unions are linked to political parties, does the involvement or non-involvement of the political party have an impact on the trade union's ability to work on anti-discrimination?**

For trade unions being independent means more freedom in expressing demands on anti-discrimination issues. They can still exert influence on governmental decisions (e.g. The General Equal Treatment Act).

**18. Can specific regional branches of a trade union work on anti-discrimination even if headquarters does not?**

As long as the regional branch is carrying on their 'core business' working on anti-discrimination is also possible. But all headquarters of trade unions do promote equality within the world of employment (as fixed in their programs) and therefore appreciate all efforts in fighting discrimination.

**II. Expertise of NGOs/trade unions working to combat discrimination**

**19. What kind of work do they do?**

NGOs working to combat discrimination have complete different kind of tasks and cover a wide range of work: They are involved in social work, nursing the elderly and the handicapped, they campaign for the rights of gay and lesbians and for migrants, promote equal treatment in training and workplace and in public life in general, they advise potential victims of discrimination in matters of applicable law, social rights, health, residence and general living, they inform the public, promote the participation of civil society and are engaged in lobbying and advocacy at national, EU and international levels. Trade unions do this kind of work in companies as well. In contrast to other NGOs they have access to the world of employment.

## **20. Do they take up complaints of discrimination?**

Institutions like the ‚Antidiskriminierungsbüros‘ (anti-discrimination-offices) that exist in some German cities take up complaints and try to offer assistance to victims. NGOs and trade unions can undertake action to stop discrimination. They also take legal action if necessary.

On [www.diskriminierung-melden.de](http://www.diskriminierung-melden.de) for instance complaints can be made online. The website [www.altersdiskriminierung.de](http://www.altersdiskriminierung.de) gives legal and social advice on discrimination on the grounds of age and presents different cases of discrimination. Such cases are often presented in a shadow-report.

## **21. Do they focus on their own community?**

For the most part NGOs do concentrate on ‘their own community’. This is seen as sensible because the different forms of discrimination require different advice and ways of campaigning. But there are a lot of examples of NGOs who focus beyond their own community. Within the ‘Lesben- und Schwulenverband in Deutschland’ (lesbian and gay association in Germany) a lot of homosexual people from different cultural and ethnic origin are involved and work together. The association explicitly supports the rights of migrants and the handicapped.

Trade unions deal with all forms of discrimination but most often there is one group or one person responsible for the respective group.

## **22. Do they work with victims directly?**

Direct work with the victims usually applies to counselling (see above). The ‘Opferberatung’ cares for the needs of victims of racist violence, gay and lesbian organisations help their community in problematic situation and support people with AIDS for instance. Associations for the disabled do the same kind of work. Members of works council support workers who are discriminated at work.

But NGOs and trade unions don’t see themselves as representatives of victims or potential victims alone (‘Stellvertreterpolitik’). Often the persons affected organize themselves as well and are part of a network in Germany, for example the so called ‘Krüppelinitiativen (crippled initiatives)’ which have a history that goes back to the 60s and 70s of the 20<sup>th</sup> century.

## **23. Within the company, can trade unions represent only their members or any worker?**

Trade unions can represent any worker within a company. Wage agreements for a region or special agreements for a company apply to all workers and not only trade union members. Agreements on anti-discrimination are concluded between the works councils and the management.

## **24. Do they do ‘case work’?**

Welfare associations do case work which can include queries with regards to daily life (nursing, shopping, negotiation with the authorities etc.). Other NGOs don’t do ‘case work’ that goes beyond the ordinary social work whereas trade unions very rarely do this form of work.

## **25. Are they able to access state funding for casework?**

As long as a registered organisation (see question above) is involved they are able to receive state funding. But public means for case work have been reduced by a lot of communities in the last years.

**26. Does this include legal representation?**

NGOs and trade unions can act as legal representative of a victim. At court they can only appear as 'Beistand' (assistance comparable to a solicitor) which means their opinion can be heard (they have 'the right to speak') but they cannot act as a lawyer.

**27. Is it possible for NGOs/trade unions to engage on behalf or in support of victims of discrimination in judicial or administrative procedures?**

The new General Equal Treatment Act gives trade unions, work councils and 'associations that campaign for discriminated people on a non profit basis' the right to engage in judicial procedures on behalf of the victim. The victim doesn't have to mandate the organisation (for example if he or she is afraid to do so). They can obtain a judgment to stop the discrimination (in the company, administration, housing etc.). They are not allowed to claim for damages at court – unless the affected person leaves his or her demands to the organisation.

**28. Are NGOs/trade unions able to pursue class actions if the latter is allowed on the national level?**

For trade unions pursuing a class action is difficult. It is possible though for some NGOs. For example organisations for the handicapped are able to take legal measure if a website is not barrier-free although it was developed with the support of public funding.

**29. Do they do other practical work? (e.g. assistance to victims or potential victims, social assistance, etc)**

NGOs as well as trade unions are involved in practical work as described above.

**30. Do they advocate changes in legislation and policies?**

NGOs and trade unions advocate changes in legislation and politics. They can assert a claim through the participation of their members in commissions and expert groups. The General Equal Treatment Act and the immigration are a recent example. The provision that obliges companies to employ disabled is owed to NGOs like the VDK and the 'Allgemeiner Behindertenverband in Deutschland' (General federation of handicapped in Germany).

**31. What are their relations with the central government?**

At presented NGOs and trade unions can interpose their authority on the government. Relations with the central government are shaped differently. The establishment of an anti-discrimination office by the Federal Government in 2006 (which has processed 900 cases of discrimination on the ground of age, disability, gender and ethnic origin so far) can be seen as a success.

Another example is the 'Forum gegen Rassismus' (panel against racism) which was founded in the European Year against Racism' in 1997 to serve as a discussion forum between the Federal Government and non-governmental organisations. With the participation of scientists and researchers, the 'Forum gegen Rassismus' was given the function of a National Round. At the moment, the forum has 75 members, of which 50 are non-governmental organisations. The administrative office is integrated in the Federal Ministry for the Interior.

**32. With regional governments or municipalities?**

Generalisations can not be made in describing the relations between NGOs/trade unions and the regional governments. It depends on the organisation. Usually a direct contact to the official agents in the administration (e.g. the agent for disabled people, the 'integration agent' and so on) is involved.

**33. For the trade unions, with the employers organisations?**

Germany has a long tradition of co-determination which characterizes the relation between trade unions and employers. In the field of anti-discrimination unions and employers organisation often cooperate closely. This collaboration is manifested in internal agreements for fair behaviour in the workplace (listed on [www.migration-online.de](http://www.migration-online.de) ).

**34. Do they have relations with the specialised bodies/ombudsman?**

Since an ombudsman is not very common in Germany such relations are insignificant. The national body for the promotion of equal treatment has not started its work yet.

**35. What are the qualifications of the staff?**

Most of the staff have finished school with Abitur (higher education entrance qualification) and a university degree (only a few member of the staff have a degree in law. Most of them have finished their studies in other sciences, e.g. politics, economics or pedagogy). Staff in NGOs and trade unions also participate in further education and training.

**36. What training has the staff had in relation to anti-discrimination work?**

Anti-discrimination is not a course of study in university or university of applied science but part of other studies (social science, social work etc.). Apart from that staff members also receive training such as diversity training, gender training, social justice training, intercultural training etc.. On the other hand practical experience is regarded as more important than theory.

**37. Are they trained in writing funding proposals and reporting?**

A lot of NGOs and some trade unions offer seminars on fundraising. Since public funding has become more difficult writing proposal has become more and more important. Still fundraising does not yet have the significance as it has in other countries. Only few organisations employ a professional fundraiser.

**38. How do they evaluate their ‘success’ and the quality of their anti-discrimination work?**

Evaluation has become very important and is rated highly in most NGOs. For projects with public funding evaluation is compulsory. Big organisations assign specialised agencies or universities to pass an expert opinion on their work (e.g. with the aid of interviews of employees, participants and so on). Some organisation like the DGB Bildungswerk are certified by the TÜV and are audited each year. Such certifications that guarantee a certain quality of work are sometimes a prerequisite for state funding.

Other organisation conduct self evaluation, which means they set out their goals in writing, develop indicators and check their work with the help of questionnaires.

### **III. Needs and problems of NGOs/trade unions working to combat discrimination**

#### **39. What is the main problem faced by NGOs/trade unions involved in anti-discrimination work?**

Problems NGOs and trade unions are confronted with are related to:

- a) Short-term work in projects: It is difficult to employ experienced staff on a permanent basis.
- b) Precarious networks: Other NGOs face the same problems and do not dispose of enough permanent staff. It is therefore difficult to establish networks for exchange of expertise, organize joint events.
- c) Lack of political support: Some projects have to overcome extreme difficulties (e.g. the organisation in rural areas which focus on counselling of victims). Sometimes they are neglected the support of local politicians necessary since they point out problems and allegedly destroy a regions good reputation.
- d) Local acceptance: NGOs as well as trade union that work on local level do need the acceptance of the public. Otherwise they will neither be successful in campaigning nor in case work or anything alike.
- e) Communication between NGO and administration: Although relations are
- f) data ascertainment: NGOs are often confronted with the question if a single case of discrimination is exemplarily.

#### **40. Is the lack of staff/funding/expertise one of the main problems faced by NGOs/trade unions involved in anti-discrimination work?**

The funding of work to combat anti-discrimination is dependant on the popularity of such issues in the public opinion. Public funding is most often only possible for short term projects. With the conclusion of a project experienced staff are forced to leave the organisation. More permanent staff members would improve the possibilities of fundraising.

#### **42. Is the fact that staff lack necessary knowledge and/or skills one of the main problems faced by NGOs involved in anti-discrimination work?**

Staff working in NGOs often have basic knowledge of anti-discrimination work. Sometimes knowledge of certain issues such as culture and religion has to be deepened. But practice is considered more important than theory.

#### **43. What training is needed by the NGOs/trade unions in order to perform their work the way they would wish to?**

The practical implementation of different approaches with regards to anti-discrimination work have to be learned. This should be taken in account when training for NGOs is designed. Leading questions could be: How can equal treatment in companies be improved? Is empowerment of the target group possible through intercultural training or other forms? Which current regulations can people working to combat discrimination refer to? What kind of strategies in fighting discrimination and promoting equality exist? How can they be used for my work? How can victims of discrimination be integrated in the labour market?

#### **44. Is their staff sufficiently trained in relation to national anti-discrimination legislation?**

There are several national laws concerning anti-discrimination. The latest and one of the most important is the The General Equal Treatment Act which came into effect before August 2006. The main features of the new regulations are known. What needs to be done is to make the juristic language comprehensible for not-lawyers and to discuss the effects of the labelled Equal Treatment Act on the tedium work. This also applies to legislation on social policy.

**Is their staff sufficiently trained in relation to European anti-discrimination legislation?**

The knowledge of the staff on this matter varies considerably. The adequate European union directives on equal treatment are known – but not in full detail. Training concerning other EU directives or measures only is only partly offered by NGO and trade unions.

**45. Is their staff trained in relation to advising government: formulating policy proposals? Legislative proposals?**

Anti-discrimination is not part of the qualification at university or university of applied science or an apprenticeship. Therefore there is no official training in formulating policy proposals and legislative proposals. But of course NGOs and trade unions are active in this field (see questions above). There are skilled employees in a lot of the ‘big’ organisations who have experience in politics and can advise government. Welfare organisations, trade unions and others also employ lawyers who are able to formulate legislative proposals.

**46. Do they need to do more to promote their anti-discrimination role?**

It again depends on the organisation. There are differences between small and big ones. Generally, as has been said before, NGOs and trade unions have a political weight in Germany and play an important role when it comes to anti-discrimination-politics. Still staff participates in further education to promote the anti-discrimination role of their organisation.

**47. Do they need to ‘do more’ with victims, clients or potential clients, members or potential members?**

NGOs and trade unions do do a lot of work with victims and clients (social work, nursing, counselling and so on). But equally important are preventive measures (e.g. education) in school and companies. This shouldn’t only be a task for the state but also one for the NGOs and trade unions.

**48. Do they need to ‘do more’ with government – to increase their credibility and status?**

As said before NGOs and trade unions cooperate with the government. They are interested in slipping their needs and demands in political and legislative procedures. On the other hand these organisations are needed by the government. Not only to have civil society play its part but also to adopt important social functions and responsibilities.

**49. For the trade unions, do they need to ‘do more’ with the companies/employers organisations?**

In the field of anti-discrimination such cooperations have always been important for trade unions. There is sometimes several ideas on certain issues (e.g. the General Equal Treatment Act caused hot debate). But there are a lot of other examples: factory agreements on equal treatment, joint events and collaboration in a local or regional alliance for integration. But nevertheless – we all have to do more.

**50. Would they need to ‘do more’ with public opinion and awareness raising?**

Recent studies show that people in Germany seemed to be biased against ‘minorities’ like foreigners, jews, handicapped, gays and lesbians. Preventive measures and the cooperation of different groups of society (including the NGOs and the trade unions of course) need to be taken.

**51. What would they need to develop?**

To combat discrimination a gradualist policy seems to be demanded. A first step to achieve this common target is to expand the possibility of greater interexchange between the different organisation.



## c) National legislation in the field of anti-discrimination

### 1. The transposition of the Directives into national law

After many years of considerable political controversy and a great deal of delay, the Allgemeine Gleichbehandlungsgesetz (AGG) or General Equal Treatment Act finally entered into force on 18 August 2006. A decision had been urgently needed, as Germany was threatened with action by the European Court in the form of penalty fine proceedings for failure to implement the corresponding EU-Directives. The Act was signed by the President after the Parliament had taken its decision on 29 June and the Federal Council on 7 July 2006. Compared to the previous jurisdiction, the act provides better protection for the persons concerned, which makes them better equipped to take measures against discrimination in the future. By providing a stronger legal position for individuals faced by discrimination, the Act strengthens basic rights and democracy in Germany. Essentially, the Act transposes all the regulations of the two EU Directives 2000/43 and 2000/78 into national law. The instructions of the Directives have been adopted almost completely. Only in very few aspects, the Act has a narrower definition, for example § 2(4) regarding dismissals. The General Equal Treatment Act is very comprehensive, it regulates aspects related to work as well as those related to Civil Law. Its' intention is to circumvent or to eliminate discrimination on the ground of race, ethnic origin, gender, religion, belief, age, disability and sexual orientation. The act adopts the concept of discrimination as prescribed in the EU directive 2000/43. Direct discrimination occurs where one person is treated less favourably than another is, has been or would be treated in a comparable situation. Indirect discrimination occurs where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

For example a community of religion is not under obligation to employ a sermonizer who is member of another community. The caretaker of a Catholic kindergarten, however, can't be sacked because he is a homosexual (even if homosexuality is not in accordance with Catholic principles).

The concept of discrimination also includes harassment which is defined as an unwanted conduct related to racial or ethnic origin, age, disability etc. with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. The German Act also lists sexual harassment (violating the dignity of a person by sexual acts, requests, touch or display of pornography).

The scope of the General Equal Treatment Act refers to different fields (§ 2, 1). Discrimination is prohibited in relation to:

- 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;
- employment and working conditions, including dismissals and pay, individual and collective agreements;
- access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
- 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;
- social protection, including social security and healthcare;
- social advantages;
- education;
- access to and supply of goods and services which are available to the public, including housing.

It also regulates compensation and the establishment of a national body for the promotion of equal treatment (as prescribed in article 13 of Council Directive 2000/43/EC). The key function of this body (address see below) is to act as a focal point for complaints. It should also contribute to protection against discrimination by means of publications and scientific research. Those affected by discrimination also receive support in claiming their rights by associations, local anti-discrimination bodies, trade unions and NGOs.

The pre-existing Article 3 of the German Basic Law prescribed equal treatment, but the new prohibition of discrimination now also encompasses the areas of employment and Civil Law. Within employment, the General Equal Treatment Act broadens §75 Industrial Constitution Law, which only covered the employees of a company. Now, discrimination is outlawed even for those

- who apply for a job or an apprenticeship
- who work from home
- who work on subcontracts
- who appear to be self-employed, but work for the same company on a regular basis

The Act improves the conditions for the integration of all people within society and increases the prospects for participation in socially relevant markets (such as housing, employment, goods and services). The establishment of hierarchies between different kinds of discrimination is explicitly avoided. Aspects that are not covered by the Act include discrimination by official authorities, such as administrative bodies or courts. Administration and police are completely left out of the regulations. To name an example, current anti-discrimination legislation does not explicitly prohibit singling out certain persons because of their physical appearance (e.g. skin colour) at police controls, known in the US as 'racial profiling'. Furthermore, all civil law agreements are excluded from the general prohibition of discrimination on grounds of belief. There has also been criticism that essential aspects of discrimination, such as discrimination on grounds of social or economic status or because of having many children, are not dealt with by the General Equal Treatment Act.

The General Equal Treatment Act has been criticised harshly by the employers' associations, the liberal party FDP and parts of the conservative party CDU. Criticism was mainly aimed at:

- restrictions of private autonomy for suppliers of goods and services, implying a diminution of freedom in the market economy
- extended bureaucratic efforts
- difficult demarcations between legal and illegal unequal treatment
- greater workload for the justice system due to a growing number of law suits
- a bias towards the protection of certain groups while failing to address discrimination against other groups, such as families with children

Support for the General Equal Treatment Act comes mainly from associations of persons with disabilities, women's associations, the Lesbian and Gay Federation in Germany, the Confederation of German Trade Unions, the Left Party, the Green Party and parts of the Social Democrats. It is critically observed, though, that several changes made in the last minute lowered the level of protection considerably and made it much more difficult for affected persons to claim their rights. These debates also found their way into the media. The Act was very controversially received within the general public and there was no clear majority for it. For the German government, currently formed by a coalition between the Conservatives (CDU) and the Social Democrats (SPD), the Act was the result of a compromise. Neither the Act itself nor the exact regulations implemented in it were part of any larger public relations effort or attempts to stress its positive sides.

In public discussion discrimination is usually perceived as a problem connected to right-wing extremism. Different phenomena are mixed together in the discussion and discrimination is not seen as a problem of the majority of society.

However, associations and trade unions tackle the issue from a different perspective: They focus on the positive effects of the new legislation and spread information about them via newspapers, brochures, the internet and in lectures and seminars.

Since the new legislation has only been in effect for a short period of time, no evaluations have been made so far. This applies to the national anti-discrimination body as well. It is planned that the 2007 European Year of Equal Opportunities for All be used for advancing a more positive image of the new legislation, thereby aiding its widespread implementation and acceptance. These planned measures include:

- developing effective means of implementation of the legislation
- defining the mission and the operation of an effective national anti-discrimination body
- tightening the links between all German bodies, institutions and associations that are active in the field of anti-discrimination

## **2. Procedures – administrative and legal channels appropriate for challenging violations of anti-discrimination legislation**

### **2.A Employment and occupation related - all grounds**

The most important German legislation for fighting discrimination is the General Equal Treatment Act – even if it is difficult at this stage to assess its actual implications in the workplace. This also depends on the fact that there is no culture of equal treatment as can be found in the U.K. or the U.S. The scope of application of the Act, related to employment and occupation, encompasses (as described above) the conditions for access to jobs, (including selection criteria and employment requirements), the employment and working conditions (including wages and conditions of dismissal), the access to all forms and levels of vocational education and training and the membership and participation in trade unions or employers' association. Possible examples for the application of the General Equal Treatment Act would be:

- an employee is denied promotion because of her disability with the explanation that she is not able to cope with a heavy workload
- a youth with Arabic background is not being employed by an airport operator with the explanation that this would not be appropriate after 9/11
- a superior denies an employee the possibility to take part in vocational training with the explanation that he thinks he is homosexual
- a company explicitly looks for a young female employee in a job advertisement
- an applicant is asked about his sexual orientation during a job interview

There are a number of disputed cases. For example, a Muslim teacher who wears a headscarf can be suspended from her job. The court in question reasoned that the 'objective' effect of cultural disintegration associated with wearing a headscarf is not compatible with state neutrality regarding issues of faith.

The General Equal Treatment Act is not the only German legislation that outlaws discrimination. The Betriebsverfassungsgesetz (Industrial Constitution Law), the Bundesbeamtengesetz (National Civil Servants Law) and the Bundespersonalvertretungsgesetz für Beschäftigte im öffentlichen Dienst (National Staff Committee Law for the Public Service) include similar regulations. The 'Gesetz über die Gleichbehandlung der Soldatinnen und Soldaten' (Act for Equal Treatment among Soldiers) aims at "preventing or eliminating discrimination on grounds of race, ethnic origin, religion, belief or sexual identity within the armed forces."

All of these aspects of discrimination are now also regulated for the area of job placement through the Federal Employment Agency: The Agency must not consider any limitations made by the employer regarding prospective job applicants if these limitations violate the General Equal Treatment Act (for example if women, men, persons over 50 years of age or persons with migration background are excluded).

In some larger German companies (e.g. Opel, Ford or ThyssenKrupp) there are agreements between works council and management, obliging the companies to take action against any violation of the agreed principles (all agreements existing are accessible via [www.migration-online.de/betriebsvereinbarungen](http://www.migration-online.de/betriebsvereinbarungen)). In cases of workplace bullying, harassment or unequal treatment by superiors, internal measures like warnings as well as measures relating to industrial law, such as transfers, written warnings or even dismissal, can be taken. Those affected by discrimination can thus appeal to a binding agreement and demand help (for example via the works council).

The ‘Agreement for Equal Opportunities’ of the city of Munich uses an even broader approach. It not only prohibits discrimination against certain applicants for an apprenticeship, but also explicitly prescribes the support of people with disabilities and migrants as well as training measures against homophobia.

On a national level, there is no Equality Commission that could be compared to similar bodies in the U.K. or Ireland. The newly set up national anti-discrimination body (see above) is supposed to take on this task. There are also integration representatives on the national and the federal level who give advice and support to the government in drafting and implementing integration policy. Furthermore many cities have their own anti-discrimination body or office. Their main task is to:

- inform the public
- offer advice and practical help to affected persons (for example by finding an appropriate lawyer)
- raising the employees’ awareness (if it is an internal anti-discrimination body within the public administration)

Ombudspersons, where people can turn with complaints, exist only in a few of the federal states. It is possible, though, to turn to the European Ombudsman with complaints about institutions of the European Union.

Repeatedly, employers, trade unions and NGOs pass resolutions that condemn discrimination and xenophobia or call for broader action for integration. However, these resolutions rarely contain any binding obligations or genuinely consequential formulations. One such example is the ‘Charter for Diversity’ which has been signed by a number of larger corporations. It commits them to “accept and value diversity” and is meant to create a work environment that is free from prejudices. The Charter is based on a broad notion of diversity, which encompasses gender, race, nationality, ethnic origin, religion or belief as well as disability, age and sexual orientation.

## **2.B Non-employment or occupation related - race and ethnic origin**

The General Equal Treatment Act regulates aspects related to work as well as those related to Civil Law. As stated in Council Directive 2000/43/EC, discrimination in relation to access to and supply of goods and services that are available to the public, including housing, is outlawed. Projects such as ‘GET in’ (Guide to equal treatment in the private sector) have shown that most experiences of discrimination have been made in the area of housing. Often applicants are rejected because of their physical appearance, or even when speaking on the phone due to their name or their accent.

The scope of the General Treatment Act also compasses social security. An especially important aspect of the Act is that it involves changes in the Sozialgesetzbuch (Social Security Statutes), prohibiting discrimination when persons claim their social rights (receipt of welfare or unemployment benefit). It outlaws any discrimination “on grounds of race, ethnic origin or disability”. The same applies to social advantages within the frame of the so called “Leistungsverwaltung” (management of benefits). People who claim for child allowance or parents money may not be treated in a discriminatory way). Still refugees without a permanent status are not entitled to receive parents money.

Education is also mentioned in the General Equal Treatment Act but there no further implementations concerning formal education. Education is not regulated by the Federal Government but by the federal states. The right for education is, however, part of the UNIVERSAL DECLARATION OF HUMAN RIGHTS which has been ratified by Germany. The link of the right to education with the prohibition of discrimination can be found in other legally binding conventions as well (e.g. the The Convention On The Rights Of The Child).

Direct discrimination is easily to prohibit and occurs very seldomly in this field. Indirect discrimination is of greater importance. For example there are far more migrants in the Sonder- and Hauptschule than in the Realschule and Gymnasium. Germany has been criticed for its’ educational system that discriminates underprivileged children. Different measures like language courses have been established. But it is still intensely discussed how the system as such can be improved.

In the service sector, the discrimination offences taken up in the Act include discriminative treatment in sales talks, in the drafting of contracts or within customer service via so-called ‘redlining’ (rejecting contracts or services for people from areas with a high proportion of migrants) as well as unjustified controls by police or security personnel. Many people with migrant background feel criminalised when singled out for selective ticket checks in public transportation or random bag checks in stores and supermarkets. Also everyday activities, like shopping at the bakery or bank errands, often entail experiences of discrimination.

Measures that can be taken to counter these forms of discrimination include direct (written) complaints to superiors about the discriminating behaviour of an employee. It is also possible to call for the intervention of an advisory body. Just as in cases relating to labour market legislation (see 2.A), the person concerned can require the elimination of the discrimination without affecting other claims of his/hers. If the discrimination continues, the person can apply for a restrictive injunction as well as sue the discriminating person or institution for compensation. This process is described in more detail under 2.D.

Together with the General Equal Treatment Act there have been changes in the Code of Civil Procedure. These allow the federal states to prescribe an extrajudicial settlement for claims relating to Section 3 of the General Equal Treatment Act. Many federal states have already prescribed such settlements for minor cases and they will probably be adopted for claims relating to Section 3 of the General Equal Treatment Act as well. For those federal states that have adopted the system, this implies that a lawsuit is outlawed until such an attempt at extrajudicial settlement has been made. Many federal states (for example Hessen) have established so-called ‘Ortsgerichte’ (local courts or arbitral tribunals) for these purposes.

Although the General Equal Treatment Act is very comprehensive, other legislation also relates to forms of discrimination (see also 2.A). Libel does, for example, constitute a criminal offence in itself. Someone who harasses or even injures another person because of his or her skin colour or origin will therefore continue to be prosecuted according to Criminal Law and not according to the General Equal Treatment Act.

Blanket clauses in the German Civil Code (§§ 138, 242, 307 BGB) in relation to Art. 3 II, III GG Basic Law also relate to forms of discrimination that are part of the General Equal Treatment Act. However, the Basic Law only refers to the relation between the individual and the state and not, like the General Equal Treatment Act, to inter-personal relations.

Other regulations that can be utilised to fight discrimination include resolutions of irreconcilableness: Many organisations like trade unions can use this measure to expel members who make racist remarks or behave in a discriminatory fashion.

## **2.C What avenue for an employment or non-employment complaint**

The General Equal Treatment Act forces employers to implement preventive measures against discrimination in order to counter any forms of disadvantage from the outset. If discrimination occurs, there rarely are any formal regulations for how to issue complaints (for exceptions like agreements between works council and management, see 2.A). This is different for the legal avenues.

Many anti-racist NGOs have not traditionally engaged in legal processes, often this is for the simple reason that there was little legislation for them to refer to. However, the adoption of the EU Directives and the development of national law mean that now more than ever litigation has the potential to lead to real change for those who face racism and discrimination.

The situation is different for trade unions, since they often have many years of experience with conflicts relating to labour market legislation. By appealing to the Industrial Constitution Law they were able to take legal steps in order to fight discrimination even before the implementation of the General Equal Treatment Act. Complaints always have several aspects:

- should the reason for discrimination be removed (for example a certain regulation)
- should damages be paid
- should awareness for direct and indirect discrimination be raised for the persons involved and
- should there be measures to raise awareness in the general public

Depending on the case in question, different emphases will be set. Since the General Equal Treatment Act has only been implemented fairly recently and some details are still have to be reconsidered, very few experiences have been made with concrete court cases.

Since anti-discrimination is a relatively new field of law, NGOs and trade unions have a role to play in raising awareness about its potential. Consequently, the strategic litigation has come to the fore as a useful advocacy technique; NGOs can both directly engage in strategic litigation and support others to do so by gathering data, assessing victims and engaging in advocacy.

Strategic or impact litigation uses the court system to attempt to create broad social change. The primary focus of strategic litigation is law or policy change rather than redress for an individual, though these two objectives are not mutually exclusive. Strategic litigation intends to reach beyond an individual case or victim, to create a context of enhanced protection for everyone who is vulnerable to discrimination. By changing law or setting precedents an individual case can have a ripple effect leading to change on a much broader level.

The concept of strategic litigation encompasses the selection of cases, case planning and management, as well as ensuring that favourable outcomes are implemented. Not every NGO has the mandate or skills to engage in litigation, nor will litigation necessarily be the right strategy in many cases. Nonetheless, it is essential for all actors to recognise the importance of strategic litigation as a tool for generating change.

There is, however, a considerable lack of experiences regarding these issues. As mentioned above, a conclusive evaluation cannot be made at this stage. In terms of litigation the Maßregelungsverbot (prohibition of reprimands; § 16(1)) is an important part of the General Equal Treatment Act. It implies that the employer is not allowed to put someone at a disadvantage because the person claimed his or her rights. The same applies to persons who support the employee in his/her claim. For example, if a works council supports a colleague who is discriminated against by calling the trade union, which, in turn, initiates litigation, this must not have any negative consequences for the two parties involved. But legislation alone is not enough to achieve lasting and effective protection from ostracism and discrimination. Therefore NGOs and Trade unions continue to campaign against xenophobia and other forms of discrimination using conceptual and practice-based measures. This is intended as a contribution to awareness-raising and openness in society: People of different backgrounds should no longer be reduced to their strangeness and differences but should be appreciated for the people we are convinced they are: an important part of German society who give society its identity and enrich it (see 3)

## **2.D Technical procedural requirements of each available remedy**

According to the General Equal Treatment Act, claims for damages and compensation relating to Civil Law, as well as claims for removal and injunction can only be made within very restricted time frames:

Claims relating to infringements of labour market legislation have to be disclosed to the opponent (in this case the employer) in writing within two months. This period starts when becoming aware of the infringement, for example in case of an application or a promotion, when the rejection is delivered (§ 15(4) General Equal Treatment Act). Legal action on grounds of such claims against the employer relating to labour market legislation has to be taken within three months after the claim has been made in writing.

Claims for damages, compensation and injunctions on grounds of discrimination relating to Civil Law, however, have to be made within two months after becoming aware of the discrimination (§ 21(5) General Equal Treatment Act). This means that the person who has acted in a discriminatory way has to be informed of the demand to cease with the behaviour or pay damages and/or compensation to the affected person. There are different views regarding which form – verbal, written or even legal action – this has to take. NGOs and trade unions recommend making such claims in writing in order to be able to prove the timely submission.

EU requirements insist that those involved only have to establish the probable validity of a claim of discrimination, but do not have to prove it, in order to bring an action. The alleged offender must then prove that they did not discriminate. The type of reversal of the burden of proof was also originally provided for in the Equal Treatment Act in Germany. However, following an amendment, the requirement to establish the probable validity of a claim was removed from the Act. Instead, the alleged victim now has to "prove indications" that "lead to the assumption" of discrimination. This means that sworn statements are not adequate – witnesses, written documents, photos or similar evidence is required. 'Soft evidence' like statistics is not regarded as sufficient evidence by a court.

If there have been serious infringements of unequal treatment by the employer, the works council and the trade unions in the company have the right, according to § 17(2) General Equal Treatment Act, to apply for a restrictive injunction. This requires, however, that Industrial Constitution Law is applicable, which means that the company employs at least 5 persons who are entitled to vote. Cases of serious infringement involve the continued, grave discrimination against a person or group, for example if the employer issues instructions that no migrants be employed or if he/she refuses to meet his/her duties in terms of training and information. Claims for damages cannot be made in connection with this type of legal action. The employees have to pursue these claims themselves.

As for all legal matters, discrimination that entitles to claims can only be determined for the individual case. Regarding new legislation, it is also important to consider the gaps and contradictions it might contain in some parts. It might also employ legal terms, which still have to be defined through further legislation. Additionally, regarding the General Equal Treatment Act, since some of its regulations do not comply with the EU Directives that have to be transposed into national law, any claims should also be based on the directive itself. Such conditions can only be met by experienced anti-discrimination associations or lawyers. Therefore, it is strongly advised that those affected by discrimination should apply for counselling through an anti-discrimination association (see addresses in the appendix) as soon as an infringement of anti-discrimination legislation can be suspected.

§23 General Equal Treatment Act explicitly encourages support by anti-discrimination associations: It refers to them as “groupings, which work neither profit-orientated nor only temporarily and, according to their statutes, protect the special interests of persons or groups who are discriminated against”. They are not allowed to take legal action on behalf of another person (so-called ‘Verbandsklage’), but within the boundaries of their statutes (for example fighting discrimination on grounds of race or age) they are authorised to act as legal councils during litigation. However, this only refers to cases where legal representation by a lawyer is not required by law (§ 23(2) General Equal Treatment Act). Such representation is required whenever a case has to be dealt with by a higher instance. Some rights of action are exempted from these regulations. It is, for example, possible for an association for people with disabilities, to take concerted legal action in order to demand accessible facilities or barrier-free web sites. This relates to public authorities and institutions that receive public funding. Accessible facilities and other kind of relief for the handicapped is not regulated by the General Equal Treatment Act or but by the Behindertengleichstellungsgesetz (Equal Treatment Of Disabled People Act). Furthermore companies are under obligation to employ disabled people.

Concerning the General Equal Treatment Act NGOs and trade unions emphasise that it would have been more sensible to have introduced into the Act the right for legal action to be taken by an association (‘Verbandsklage’). This would allow larger organisations to proceed with discrimination actions instead of individuals. They have access to greater resources and are less easily put off or intimidated. Unfortunately, the right for legal action to be taken by an association is not a ruling in the General Equal Treatment Act. Support from anti-discrimination agencies for those affected is no substitute for the right for legal action to be taken by an association. Agencies can do little more than provide advice and representation. Others express the opposite viewpoint, claiming that the right for legal action to be taken by an association would result in a flood of legal action. It is argued that some associations might take legal action for political reasons rather than to actually help the victim.

## **2.E Existing support and obstacles at national level**

The national anti-discrimination body is primarily designed to act as a focal point for complaints. NGOs therefore worry that it might offer only limited assistance. Its mandate covers public relations and the prevention of discrimination. However, in specific cases, it can at best offer advice or bring the parties together to reach an amicable agreement. But since the body has only recently become operative, no definite statements can be made about its concrete workings or its publications.

Obstacles for accessing different procedures are based not so much in structures or infrastructure, since there are many accessible institutions that offer assistance. Courts are required to provide accessibility for people with disabilities and to involve a translator whenever language problems occur. Also, procedures of legal action are prescribed and are implemented accordingly. A more significant problem is that

- Germany has no culture of equal treatment that could be compared to the UK or the U.S.
- often personnel is hardly familiar with the General Equal Treatment Act and its implications in the workplace. Since its regulations are often hard to grasp for laypersons there is a substantial demand for training in this area.



The eventual costs involved might cause many victims to refrain from legal action. A possibility to help victims of discrimination is the existence of the so-called Legal-Aid Funds, which can be applied for by the victims in order to ensure that their legal rights are taken care of. Until now there has not been any additional state funding. However, victims can receive support from foundations (e.g. Amadeu-Antonio-Stiftung, [www.amadeu-antonio-stiftung.de](http://www.amadeu-antonio-stiftung.de) ) or so-called ‘Opferberatungen’ (counselling bodies for crime victims, e.g. Mobile Beratung für Opfer rechtsextremer Gewalt in Sachsen-Anhalt, [www.mobile-opferberatung.de](http://www.mobile-opferberatung.de) ). NGOs and anti-discrimination associations support victims in legal actions (see above). They usually cooperate with or employ lawyers. The legal departments of the trade unions fulfil a similar function.

Information about the procedures is published by trade unions and NGOs. Examples for such publications include the brochure „Allgemeines Gleichbehandlungsgesetz. Überblick über die Neuregelungen mit praktischen Erläuterungen“, published by the DGB National Committee, Section for Social and Labour Market Legislation, or „Leitfaden für Gleichbehandlung im privaten Sektor“ ([www.getin-online.de](http://www.getin-online.de) ), published by different NGOs. More information is available in the appendix.

## **2.F Referrals to the European Court of Justice**

Where there is a disputed issue of EU law and the judge is uncertain how to interpret a provision at EU law, a referral can be made by a national court to the European Court of Justice in Luxembourg under Article 234 of the Treaty. The parties to the proceedings can ask the national judge to grant a request for such a referral, or the judge can decide spontaneously to refer the case. Any court may make a referral, but only the national court of last instance is obliged to do so. This may be a highly effective procedure because:

- Requesting a referral can concentrate the mind of the presiding judge and ensure that s/he gives proper consideration to the complaint, especially to the fact that it raises issues of European rights.
- National bodies, particularly public bodies, are impressed by its high profile and may take steps to avoid the exposure of discrimination at national level to pan-European scrutiny.
- The European Court is the only body that can give a definitive interpretation of the terms used in the Directives.

However, this is a specialised procedure and expert EU lawyers familiar with its use need to be retained. In addition, it is important to note that the national case is "stayed" (put aside) until the ECJ has decided the issue before it, and this delay of sometimes two years can have serious consequences for the complainant.

The ruling of the European Court of Justice that Germany had failed to transpose the EU Directives against discrimination within the prescribed period was a major reason for the implementation of the General Equal Treatment Act. It is very likely that the European Court of Justice will deal with certain regulations within the General Equal Treatment Act again. Experts hold that especially §2(4) (regarding dismissals) is not compatible with the EU Directives.

## **2.G Petitions to the European Parliament**

The Committee on Petitions of the European Parliament can receive petitions from Citizens of the Union who wish the Committee to investigate their complaint/s that their rights under European Union law are not being properly respected.

For offences of discrimination, the European Parliament does not play a major role within the German context. Public discussion also focuses primarily on national institutions.

## **2.H Alerting the European Commission to discriminatory administrative practices**

It is also possible to write directly to the Commission, which may often be a quicker process than that outlined above under 2.G. This could be done with a view to encouraging the Commission to initiate infringement proceedings against the offending State. The Commission and the Parliament would be bound by the EU Charter of Fundamental Rights' provision on the right to good administration (Article 41) if adopted: Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union. This right includes

- the right of every person to be heard, before any individual measure, which would affect him or her adversely, is taken;
- the right of every person to have access to his or her file, while respecting the legitimate interest of confidentiality and of professional and business secrecy;
- the obligation of the administration to give reasons for its decisions.
- Every person has the right to have the Community made good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
- Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

This is also an area where

- neither trade unions nor NGOs fighting discrimination have been able to gather a lot of experiences with the procedures
- the Commission does not play an equally significant role as other national institutions

There is, however, a citizen Consultant, working as part of the European Consultant network "Eurojus", based in the European Commission Representation in Germany. She provides information and legal advice on different issues, among those discrimination and equal treatment.

The Eurojus Service is free of charge and is open to every citizen. However, it is not able to answer questions about national law or international private law. Neither can it provide legal support or advice for taking legal action. ([http://ec.europa.eu/deutschland/service/legal\\_questions/index\\_de.htm](http://ec.europa.eu/deutschland/service/legal_questions/index_de.htm) , for postal address, see appendix)

When discrimination by an EU institution occurs, there is a possibility to turn to the European Ombudsman ([www.ombudsman.europa.eu](http://www.ombudsman.europa.eu) ). The European Ombudsman examines complaints against the Community institutions and bodies. He cannot investigate complaints against national, regional or local authorities, even when the complaints are about Community law.

## **2.I Complaints to the European Court of Human Rights**

In addition, when all effective national legal remedies have been exhausted, a person may, if the case concerns issues covered by the European Convention on Human Rights, apply to the European Court of Human Rights in Strasbourg (see Key Concepts section). This can be done under Article 14 of the Convention provided another Article is also engaged or, if the country has ratified it, under Protocol 12 to the Convention. (Germany has signed but not ratified Protocol 12). Collective complaints can also be made under the Council of Europe's European Social Charter.

According to a decision by the German Federal Constitutional Court, the decisions of the European Court of Human Rights should be treated as interpretation aids by the national courts. A direct enforcement of the decisions, on the other hand, was not seen as appropriate. Many cases that have been taken up before the European Court of Human Rights have involved cases of discrimination on grounds of gender.

## **2.J Other international remedies**

Where the state is a party to the 1st Optional Protocol to the International Covenant on Civil and Political Rights, or has accepted the right of individual petition under the Convention on the Elimination of all forms of Racial Discrimination or the Convention on the Elimination of Discrimination Against Women, complaints can be brought to those Committees.

NGOs/trade unions should also ensure that they alert the Committees that examine the State's periodic reports under the ICCPR, CERD, CEDAW and the Convention on the Rights of the Child to instances of discrimination. But they should be aware that they could face a long-term process. CERD for example has issued concerns in 2001 that the State party has not adequately addressed the issue of illegal workers who are employed in the "shadow economy" and recommended strongly that the State party take the necessary legislative and administrative measures to oblige employers to respect labour legislation and to declare the persons they employ, in order to reduce the number of illegal workers who do not enjoy the minimum protection of their rights to social security and health care (see: ENAR paper 'Using International Instruments To Reinforce Integration policy'). Nothing has happened yet on this issue.

## **2.K Professionalism**

NGOs and trade unions in Germany are able to tackle discrimination in a professional way. Trade unions have especially broad competence in work-related matters, since they

1. have the appropriate contacts and knowledge
2. have the appropriate structures

In cases of discrimination, the local trade union or the works council is involved first. The trade union has a legal department that can offer counselling and concrete advice. Whenever there is a demand for further support (for example information, publication, political support) this can be arranged on a higher level, for example on district level. Every trade union has a department or networks where, for example, migrants, the elderly or homosexual people are organised. These can also provide appropriate information or support. Contact details for these organisations can be found very easily via the Internet.

Anti-discrimination offices and anti-discrimination associations (see 2.D) are also able to provide professional support and to inform both the victims and the public. In November 2006, a first preparatory meeting for the establishment of a national association of anti-discrimination offices was held. Such a national association will contribute to promote professionalisation and quality assurance in this area.

## **3. Societal issues**

A consistent concept of discrimination exists neither in academic nor in everyday discourse. There is, though, a set of dichotomic expressions, which are drawn upon to describe the dimensions of discrimination. These distinguish between motivation, action and structure. For instance:

- deliberate and unconscious discrimination
- open and covert discrimination
- everyday and structural discrimination (including political and legal inequality, the reproduction of socio-economic inequality etc.)
- individual and institutional discrimination

- direct and indirect discrimination  
(as described in several EU publications: Direct discrimination occurs when a person is treated less favourably than another in a comparable situation because of their racial or ethnic origin, religion or belief, disability, age or sexual orientation. Indirect discrimination occurs when an apparently neutral provision, criterion or practice would disadvantage people on the grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation unless the practice can be objectively justified by a legitimate aim.)

A society's 'human quality' is determined by the treatment of 'weak groups'. This can be expressed in many different ways: Economic bottom-up redistribution, 'elimination' from the public dialogue or the fact that specific groups are put under general suspicion (e.g. gypsies are labelled as thieves, Muslims as 'terrorists' etc.)

In Germany the role of migrants is discussed intensively at present. Their chances in the field of education, qualification and labour are far below the average. The government wants to develop a so-called 'National Plan for Integration' until summer 2007 to improve their situation. NGOs and trade unions have to point out every now and again that migration is not a one-way street. Assimilation by migrants can't be the only issue on the agenda. The 'absorbing society' has to change as well and has to become more open, diverse, plural and tolerant.

Another form of discrimination is the refusal to discuss the situation of weak groups, thereby excluding them from the public sphere. They are not acknowledged and therefore the improvement of their situation is not an issue any more.

Generally speaking, the discussion on discrimination is a discussion about the question on how people of different backgrounds and with different lifestyles want to live together, how they experience [acknowledgement](#) and respect or whether they have to face hostile attitudes. The disparities on this issue are noticeable: On the one hand the government does make efforts to improve equality and anti-discrimination (e.g. The General Equal Treatment Act or different projects to combat discrimination). On the other hand hostile attitudes against minorities is still a widespread phenomenon within German society. A long-term research project at Bielefeld University shows that rejection of Jews, migrants, homosexuals, persons with disabilities and Gypsies reaches up to 50 or more percent among all age and social groups in Germany society. Muslims and Gypsies meet the most disapproval. Another intensely discussed study indicates that 20 percent of trade union members have right-wing attitudes. To explain this fact the authors have developed the thesis of the 'double losers': Trade union members often are middle class. Due to the loss of appreciation at work and in society they are political losers. At the same time, due to the threat to their regular jobs as consequence of neo-liberal globalization, they are also social losers. It has to be said, however, that trade unions do make an effort to fight xenophobia within their ranks (e.g. promoting solidarity with foreign workers who (have to) accept very low wages).

Not every victim group is affected by discrimination to the same degree. Therefore general statements on vulnerable groups are difficult. A lot of people argue that such statements should be avoided completely, since they are excessively homogenising and promote the danger of victimisation. And it goes without saying that [mechanisms](#) of discrimination are [interwoven](#) in very complex ways. Victims of suppression can develop hostile attitudes towards other social or ethnic groups (e.g. widespread antisemitism among Muslims or racism among homeless). Sophisticated answers have to be found for these problems and concepts with [wide-ranging applicability](#) have to be developed. NGOs and trade unions are the ones who are able to play a prominent role in this process.

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Greifswalder Str. 4,  
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DGB-Antidiskriminierungsbüro Offenbach,  
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#### **d) Funding opportunities in the field of anti-discrimination**

### **I. EU FUNDING AT THE EUROPEAN LEVEL FOR NGOs/TRADE UNIONS OPERATING AT THE EU LEVEL**

#### **1. EU funding for NGOs/Trade Unions operating at the EU level**

##### **a) *European-level NGOs***

European-level NGOs are in a central position to influence and contribute to European employment, social and equal opportunity policies at different levels – both in its formulation and implementation – through the information and expertise supplied by their national members. This is vital in order to ensure that EU policies meet the actual needs of EU citizens, and that citizens are informed about them.

Between 2001 and 2006, the Community Action Programme to combat discrimination provided funding for a number of European umbrella NGO networks representing and defending the rights of people exposed to discrimination:

AGE (The European Older People's Platform); ILGA Europe (International Lesbian and Gay Association – Europe); ENAR (European Network Against Racism); and EDF (European Disability Forum) have been granted a total of 3 000 000 € per year towards their running costs up to the end of April 2007. A number of smaller organisations – the European Blind Union, The European Union of the Deaf, Inclusion Europe, Autisme-Europe – also received support under the Action Programme. Until the end of 2006, the European Women's Lobby received running cost support through the Gender Equality Programme with an annual amount of around 800.000 €

A number of NGOs working to tackle social exclusion (European Anti-Poverty Network, European Federation of National Organisations Working with the Homeless, European Transregional Network for Social Inclusion, Eurochild, European Social Network, Caritas-Europe) received funding from the Community Programme to Combat Social Exclusion with a total of 3.600.000 € between 2005 and 2007.

For the new 2007-2013 programming period, the European Commission decided to create a new integrated programme known as **PROGRESS** (Programme for Employment and Social Solidarity). The programme was approved by the European Parliament and Council in November 2006: [http://ec.europa.eu/employment\\_social/progress/index\\_en.html](http://ec.europa.eu/employment_social/progress/index_en.html)

PROGRESS combines the four former Community Action Programmes, including that relating to non-discrimination: Section 4 of PROGRESS, entitled 'Anti-discrimination and diversity', thus aims to support the effective implementation of the principle of non-discrimination and to promote its mainstreaming in all EU policies.

Calls for proposals and tenders under PROGRESS are published on the Calls for Tender/Calls for Proposals website of DG Employment, Social Affairs and Equal Opportunities on: [http://ec.europa.eu/employment\\_social/emplweb/tenders/index\\_en.cfm](http://ec.europa.eu/employment_social/emplweb/tenders/index_en.cfm)

A first PROGRESS call for the award of a financial contribution towards the operating costs in 2007 of European-level networks active in the field of combating discrimination, promoting gender equality and promoting the integration of disabled people in society was launched in November 2006. Grant agreements for the successful EU-level networks will run until December 2007.

## ***b) European Trade unions***

The European Trade Union Confederation (ETUC) represents workers across the industries at European level. Set up in 1973, the ETUC includes 81 national organisations from 36 European countries (among them all the EU countries) and 11 European industry federations, with some 60 million members.

The ETUC is one of the four main European social partner organisations. Numerous European social partners' projects are supported every year by the European Commission's social dialogue budget lines (04.03.03.01, 04.03.03.02 and 04.03.03.03). For more information:

[http://ec.europa.eu/employment\\_social/social\\_dialogue/grants\\_en.htm](http://ec.europa.eu/employment_social/social_dialogue/grants_en.htm)

### **2. EU funding for national NGOs/Trade Unions**

While the EU does not provide for core-funding of national NGOs or national trade unions under PROGRESS, organisations may be able to receive funding for projects through their participation in specific initiatives such as national awareness raising activities or trans-national projects. National organisations are therefore advised to regularly check the Calls for Tender/Calls for Proposals website of DG Employment, Social Affairs and Equal Opportunities and consult the guidelines published there to check whether projects from national NGOs/trade unions are eligible for funding:

[http://ec.europa.eu/employment\\_social/emplweb/tenders/index\\_en.cfm](http://ec.europa.eu/employment_social/emplweb/tenders/index_en.cfm)

The EU-level NGOs such as AGE, ILGA-Europe, EDF or ENAR are also a good source of information. It is therefore recommended to also check the information that is provided on their web page.

In addition to PROGRESS, the European Social Fund (ESF) can be a source of project financing for national organisations. The ESF will between 2007 and 2013 focus on four key areas for action, including reinforcing social inclusion by combating discrimination and facilitating access to the labour market for disadvantaged people. More information can be obtained from:

[http://ec.europa.eu/employment\\_social/esf2000/2007-2013\\_en.html](http://ec.europa.eu/employment_social/esf2000/2007-2013_en.html)

The European Commission does not directly fund ESF projects. Member States are responsible for identifying their priorities for funding and for selecting individual projects. For further information, you should contact the relevant national/regional authority whose contacts are available on:

[http://ec.europa.eu/employment\\_social/emplweb/esf/esf\\_matrix\\_en.cfm](http://ec.europa.eu/employment_social/emplweb/esf/esf_matrix_en.cfm)

## **II. FUNDING OPPORTUNITIES FOR NGOs/TRADE UNIONS WORKING ON ANTI-DISCRIMINATION AT NATIONAL LEVEL IN AUSTRIA**

### **1. Does the European Commission delegation in your country provide for specific funding for NGOs/trade unions working on non-discrimination at national level? What form does that funding take? (project subsidy, provision of meeting room, etc). Is it easy to access such funding? What are the conditions to receive such funding?**

The EU commission delegation in Germany does not provide funding for NGOs and trade unions. Sources of funding that are tied directly to the EU include the 'Youth in Action' programme, which, through its German agency, provides funding for NGO projects as well as training for team leaders in youth organisations. This funding is divided into different subject areas and can cover both running costs and expenses for individual meetings or trainings.

Other forms of EU funding is provided by the federal ministries in Germany – in most cases the Ministry of Labour and Social Affairs or the Ministry of Family, Senior Citizens, Women and Youth (see below).

**2. Does the central government provide for specific funding for NGOs/trade unions working on anti-discrimination?**

The PROGRESS funding programme can provide direct funding for larger NGOs that are mandated by the participating country for a certain activity. It also functions as a source for indirect EU funding for smaller NGOs via the national authorities. The European Social Fund provides another indirect way of obtaining EU funding via initiatives by the central government.

The central government's funding programme for NGOs and trade unions in field of antidiscrimination work was until recently divided into three areas: 'XENOS', mainly aimed at the workplace and funded to a great extent by the European Social Fund; 'CIVITAS', focusing on regional projects in Eastern Germany and 'ENTIMON', the major source of funding for NGOs involved in anti-discrimination work. ENTIMON and CIVITAS ended 2006 and are replaced by a new programme with slightly different priorities. The main focus is still on combat discrimination because of ethnic origin, culture or religion. The government provides funding for NGOs and trade unions working on other forms of discrimination as well but not within the framework of a special program (see questions below).

Within the frame of the European Social Fund projects on anti-discrimination and equal opportunities can be initiated by NGOs and trade unions. The managing authority is the Federal Ministry of Labour, which delegates to the respective labour and social ministries in the 'Länder' (the federal states of Germany) the administration and payment tasks involved in implementing the programme.

One example for a successful project is 'Tolerance in the future workforce' by Miteinander e.v. in Sachsen-Anhalt (East Germany). Two thirds of the total cost was funded via ESF, for the rest other form of funding had to be raised – as funding works for most NGOs.

The EU Community Initiative EQUAL, which is designed to test new ways of tackling discrimination and inequality experienced by those in work and those looking for a job is another example for funding through the European Social Fund. The Ministry of Labour and Social Affairs is the national support structure and the programme managing authority and is responsible for the conceptual and financial implementation of the programme. NGOs and trade unions could apply to be participate in one of the so called development partnership. Information on follow-up projects from 2008 will be given on [www.euqual.de](http://www.euqual.de) .

Concerning ESF the Ministry of Labour and Social Affairs has presented a new German National Action Plan which will be valid from 2007 onwards. Generally speaking for small NGOs it is not easy to access such funding (project subsidy in most cases) since the proposal is complicated and a lot of time, expertise and experience is needed.

Germany has designated the Ministry of Family, Senior Citizens, Women and Youth as National Implementing Body for 'The 2007 European Year of Equal Opportunities for All' (the year is part of the commissions' effort to promote equality and non-discrimination in the EU, see: [ec.europa.eu/employment\\_social/eyeq/index.cfm?language=DE](http://ec.europa.eu/employment_social/eyeq/index.cfm?language=DE)). The ministry has transmitted the task of identifying and implementing activities to the 'Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege'(Federal joint venture of free welfare work). Information is given on [www.bagfw.de/?id=335&cid=104001000102](http://www.bagfw.de/?id=335&cid=104001000102)

Instead of project funding, preference was given to support in organising events like meetings and conferences.

**3. What form does this funding take? (core funding, project funding, facilities) Are such funding possibilities part of specific governmental programmes? (which ones and from which ministries?)**

One form of funding is the funding programme called ‘Youth for diversity, tolerance and democracy’ which has been established in January 2007. It is administered by the Ministry of Family, Senior Citizens, Women and Youth and comprises three distinct ‘pillars’. Under the first pillar, local and regional authorities, especially from the Eastern parts of Germany, are encouraged to develop local plans of action, involving NGOs and trade unions, which can be co-funded by the programme. Under the second pillar, NGOs can apply for funding directly from the ministry, similar to the earlier ENTIMON funding programme. The aim of this pillar is to support projects that develop new strategies in the field of non-discrimination youth work in their starting phase – it is explicitly stated that the programme is not designed to cover running costs. The third pillar, promoting the creation of ‘places of social communication’ on a national level, provides funding primarily for conferences and research. The Ministry of Labour and Social Affairs carry on the former XENOS programme in cooperation with the Ministry of Traffic, Building and City Development as a special programme focusing on civic engagement and integration in conjunction with city development. Local councils as well as trade unions and NGOs can apply directly for funds from this programme.

**4. Is it easy to access such funding? What are the conditions?**

To be entitled to state funding for their ‘everyday work’ (organizing seminars, counselling etc.) an NGO has to fulfil certain conditions like being registered as welfare association or as ‘registered youth organisation’. They have to provide proof of their successful work for several years back. The state is not allowed to support ‘structures’ – which means that it is not possible to receive funding for permanent staff. NGOs therefore need to initiate and develop so-called ‘pilot schemes’ in order to receive state funding. Apart from that an NGO has to comply with conditions such as the commitment not to support political extremism as well as a transparent spending policy.

**5. In case of federal countries, are there funding possibilities at the federated level?**

Funding possibilities can vary on the federal level. In Northrhine-Westfalia for example, the federal Ministry of Generations, Family, Women and Integration provides a broad funding programme, involving ‘Anti-Discrimination Offices’ in several larger cities, which in their turn provide training and networking for smaller NGOs. Advice can be given by

IDA ev. ([www.idaev.de](http://www.idaev.de))

ARIC NRW ([www.aric-nrw.de](http://www.aric-nrw.de))

Aktion Courage ([www.aktioncourage.org](http://www.aktioncourage.org))

For NGOs and trade unions it is worth to check websites on federal level (either the different Ministries of Labour and Social Affairs or the Ministries of Family and Youth) regularly.

**6. Are there other governmental funding possibilities at regional level? At municipality level?**

In some parts of Germany, urban authorities and districts are organised into Regional Councils (for example Landschaftsverband Rheinland). These Councils constitute major sources of funding for anti-discrimination work, especially in the areas of anti-racism and integration of disabled people in the workplace. They offer financial support, practical advice and individual supervision for people with disabilities and their employers. These services are in turn funded by the equalization contribution that employers have to pay to the Integration Office if they employ fewer disabled people than required by law. The funding provided to NGOs by the Regional Councils does not always have to be project based but can also cover running costs. Some cities also provide funding for NGOs at municipality level, although this is rarely done on a continual basis but rather for smaller projects such as exhibitions etc.

**7. Are there any private funding possibilities? (private foundations, private companies, headquarters of trade unions, etc.) What are they? Is it easy to access these sources of funding?**

There is a range of private funding possibilities. Very well known amongst these are the larger foundations such as Aktion Mensch, the German Committee for international Youth Work (DNK) or the Fonds Soziokultur. Aktion Mensch primarily funds projects that aim at improving conditions for youths on a local level, including anti-racist work, gender mainstreaming and training of team leaders. During 2006, the DNK provided small-scale funding for a large number of local initiatives on a project basis. Other foundations, like the Fonds Soziokultur, the Stiftung Mitarbeit or the respectABel Foundation also provide smaller funding on a project basis with several application deadlines per year. The level of formal requirements varies between these foundations.

Private companies can be an additional source of funding, but due to the great amount of requests they receive they rarely provide any direct funding. Some companies such as Volkswagen, RWE and Bosch have established foundations, which can be a source also for large-scale funding of NGO initiatives, provided the project in question meets the criteria of the foundation. Company-run foundations initiate projects often on their own. Companies like ThyssenKrupp for example are especially active in the area of anti-discrimination and organize projects for their employees.

**8. Are there any other source of funding?**

Sources of funding for minor NGOs include membership fees, the establishment of a group of sponsors or the acquisition of donations from individuals or organisations. Depending on the subject area, some NGOs are able to acquire additional funding in return for services such as research, collections of materials, online tools, etc. For those NGOs offering services in the social sector, this can provide an additional source of income as well.

## **IV. Diversity Management Seminar**

### **Design of the training**

National and international trainers worked hand-in-hand to present and facilitate during the workshop. synetz provided the facilities necessary for the seminar. The chair arrangement was in round table groups right from the beginning to allow participants to be able to communicate comfortably.

#### *Opening*

Ms Gesa Böckermann from The European Commission attended the workshop and gave a short introduction to and overview of the EU initiatives on diversity management, which was very helpful indeed. A member of Cologne City Council gave a welcome speech – integrating the topic of diversity management into the local context.

#### *Warm-up*

The participants then had the opportunity to get involved by introducing themselves and exchanging thoughts on the topic of DM in their table groups.

#### *Input on diversity management*

The national trainer gave a lively introduction to the subject of DM and an overview of the business case and possibilities for application. This was followed by a short question and answer session.

Real-life business cases by Ford GmbH, Cologne, and Allianz AG, Stuttgart, were presented. We enjoyed a real highlight in the presentation by Ford GmbH, as the presentation was authentic, to the point and very convincing. As Allianz had to leave very soon after the presentation, only Ford GmbH remained for the discussion.

#### *The caravan*

The trainer opted for an innovative format for the table groups to prepare two questions and then Ford and the international trainer went from table to table, sat down, listened to the questions and Ford gave answers, while all the other tables listened. This session became very intensive and Ford shared very openly their real-life experience, contradictions and setbacks with diversity management.

#### *World Café*

During the afternoon the large-group technique, ‘World Café’ was used, to stimulate everyone to share in newly configured table groups their personal positive experiences of DM, their experiences within their own companies and possible steps to move forward from here. Everything was written down on the paper table cloth which was later hung up on the wall – a colourful, lively piece of work in progress!

#### *Evaluation*

The trainers used a creative method for evaluation: the participants were asked to position themselves on a scale between 0 and 100: was it worthwhile spending the day here and why are you standing at point x? 80% of the participants stood at around 90%!

22 participants returned the evaluation form: 91% of them evaluated the content side of the workshop ranging from ‘satisfied’ to ‘very satisfied’. The atmosphere in the large group and the small groups was rated by 91% of the participants ranging from ‘positive’ and ‘very positive’ and they gave the



same rating for the trainers. 82% of the participants evaluated the workshop as 'positive' to 'very positive' and would recommend it to colleagues.

### **Preparation of the seminar**

During the training seminar in Cologne in June 2007 the content and possible outline of the diversity management seminar were established. The national trainer took part. The design was developed in collaboration between synetz – the management consultants (as organiser), Hans Jablonski (the national trainer) and Dr Marion Keil (the international trainer).

synetz – the management consultants used a variety of methods to market the seminar: several networks (*Vielfalt ist Gewinn* (EU-funded, including website and journal), *Vielfalt als Chance* (a government initiative) and its newsletter, women leaders' network and their own customer network), as well as journals and newsletters. The initial attempt to use the address pools of the governmental diversity initiative and those of various employee organisations failed, as they were not prepared either to share addresses or to forward invitations. In addition, we faced the challenge that in 2007 several public seminars and information events were organised by government agencies, all aimed at the same target group. Intense direct marketing activities, such as phone calls and follow-up of incoming emails, eventually enabled us to attract 60 participants to register. In the end 47 actually attended. The time investment of synetz – the management consultants was therefore very high.

60% of the participants were large company representatives (national and multinational companies) and around 40% were trainers/consultants in the field and representatives of public services.

The hotel turned out to be a suitable venue for the event.

### **Carrying out the seminar**

By and large it can be stated that the seminar was a great success. "Really great, very exciting new insights, authentic business case, very open, wonderful facilitation, good opportunity for networking, the best I've had around diversity management, wish to have another get together like this..." were some of the comments.

*What went well according to the organisers'/trainers' evaluation:*

The very intensive and professional background organisation of the workshop enabled the participants and trainers to fully concentrate on the task at hand. The distribution of the invitation to 2,500 addresses, starting about three months in advance, and a continuous follow-up during these three months were clear success factors.

The workshop design worked very well. It was developed by the international trainer, Dr Marion Keil, and the national trainer, Hans Jablonski, together with synetz. It created enough space for intensive exchange and discussion with the business case presenters as well as allowing participants to talk about their own company's issues and challenges around diversity. The World Café element proved to be an interactive and attractive way of bringing people together to share their thoughts.

The two trainers worked very closely which allowed the participants to concentrate fully on their personal points of interest.

The companies who presented a practical business case, followed by an intensive question-and-answer session, were outstanding (Ford and Allianz). Ford, in particular, shared very openly the ups and downs the company went through. The participants were deeply impressed by the courage and determination with which Ford maintained the focus on diversity management, even during difficult business periods.

The provision of further information was appreciated by the participants (idm webpage, synetz Diversity Management training offer).

Information, photo minutes and results were put on two websites (idm and synetz).

The venue proved to be excellent: sufficiently spacious, with natural light, good equipment (pin walls, flip chart stands) and food.

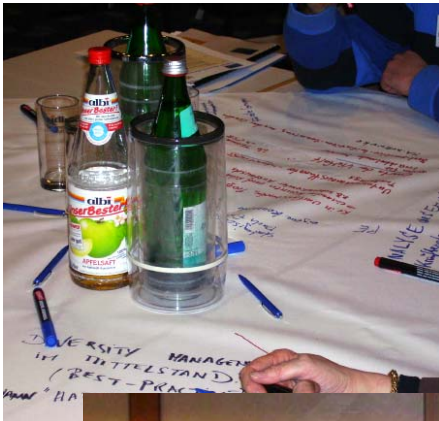
*What could have been better according to the organisers'/trainers' evaluation:*

Despite the high number of invitations sent out (2,500), of 60 registered participants, 47 showed up. We feel this was a very good number, bearing in mind the highly competitive context. Nevertheless we had hoped to be able to attract even more.

Knowing that the target group focus was more on companies and employers' organisations, about one third of the participants turned out to be consultants. However, three months later we actually see this as an advantage. We have learned that several of them have been able to win huge diversity management change projects in large companies!

As we had opted for a full-day workshop, from lunch time onwards participants tended to drop in and out.

The evaluation sheet was in English only. Unfortunately, the venue turned out not to be very suitable for disabled people, as the lift had to be shared with the kitchen. We faced two further drawbacks: the translations of the manuals arrived too late and had to be printed out by us in a hurry, resulting in a missing page, and the EU brochures were not ordered on time.



## Main lessons learned

It was a great project!

We had the impression that company representatives really appreciated obtaining insights from colleagues (business case) in an honest and authentic way which also highlighted difficulties and threats and how these were overcome. In Germany during many national and regional government or EU-funded workshops people have heard a lot about the shiny exterior of diversity management activities through beautifully designed PowerPoint slides. Now they want more real experiences. Newcomers to the field found all the information useful. It seems that the trainers and consultants had done their work well in looking for diverse experiences in the field of DM and networking.

As the local implementers of this exciting, major EU project, we would have liked to have been involved actively right from the beginning. We learned too late that there was a workshop for all the international and national trainers. We would have liked to share personally with the other organisers ideas about how to approach the market (we were the first organisers to start). Below are the lessons we learnt.

- Lesson 1: The EU initiative is very valuable.
- Lesson 2: Diversity management is slowly picking up. Interest in the topic is increasing mainly for image reasons.
- Lesson 3: The more experiences participants have in the field, the more realistic they want the business cases to be. Newcomers tend to be more easily impressed by nice presentations. Care should be taken in developing a really good design fit between the subject of diversity management and the interaction of the participants
- Lesson 4: In practice, the organisation of a seminar such as this needs a good address database and a considerable amount of time and money for the organisation is crucial. Employers' organisations were not all helpful. Marketing beforehand is crucial and needs an immense amount of time, contacts and energy. It would have been helpful to have a marketing agency/campaign which could have supported all the national organisers. There was literally no budget for marketing.
- Lesson 5: To have a good manual for diversity management
- Lesson 6: The design of the project was very ambitious. It was structurally very complex and there were many parties involved in the execution, but not in the planning. Communication channels seemed to be overloaded.
- Lesson 7: As the topic is still new to many companies, personal follow-up by the organisers prior to the event is essential – and takes a lot of time.
- Lesson 8: It seems as though the project lacks sustainability. One workshop is not enough to build a community of DM 'missionaries', neither in one country, nor in the EU as a whole. In this respect, the EU might think about further long-term projects, involving those professional actors who have already done a good job.
- Lesson 9: Financially, we were unable to cover our costs by any means. Diversity management projects should be framed in such a way as to really cover the costs and performance of the actors involved, including in the field of diversity management. Otherwise it is a topic where committed people suffer and the money flows to 'hard fact' economic activities. Is diversity management not worth the money?
- Lesson 10: An opening and a closing session with all the involved parties (EU, hec, idm, national trainers and national organisers) would have given the whole picture right from the beginning and created the opportunity to form a European diversity management community. As it was, we had the feeling that diversity management was 'only' an add-on to the anti-discrimination component of the whole project.

## Annexes

### The role of trade unions combating discrimination

#### Intended learning outcome:

- For the participants to have explored the roles trade unions can and should play in combating discrimination.

#### **1. What is a trade union?**

A trade union is an organised association of workers, whose aims are to protect, and further workers' rights and interests and represent them at a variety of levels (workplace, sector, national). Originally, unions organised workers along the lines of specific 'trades' and professions (such as hairdressers, teachers, construction workers) but increasingly common are unions with a wider remit (like: workers in commercial services or 'the public sector'). Trade unions can be organised at company level (which is quite common in several countries) or by sector (education, transport, etc.). Unions can also be organised as federations and can also be part of European or international networks.

In several countries, trade unions may have historical links with certain political groupings, ideologies or denominations (socialist, communist, liberal, Christian), and a few have close links with a political party.

However, a common and essential feature to all trade unions is that they are democratic and independent organisations. Democratic because they are membership based and representative organisations, in which every member has a vote and is part of the decision-making process. Independent, because they have to be independent from employers and public authorities to be able to play their role of representatives of workers properly, in which negotiations and compromises but also conflicts (such as strikes) are part of the game.

Trade unions are normally funded by members' subscriptions.

#### **2. What is the role of a trade union in combating discrimination?**

When considering what role trade unions can have in combating discrimination, they should take full advantage of the special roles that have been given to them under Articles 7 and 11 of Council Directive 2000/43/EC, and Articles 9 and 13 of Council Directive 2000/78/EC.

Trade unions are clearly important to the development of peaceful, democratic, well-managed, healthy and prosperous workplaces that engage with and promote equal opportunities, and through the workplace also contribute to these same goals in society at large.

Trade unions as instruments of social dialogue can combat discrimination in the following ways:

- Negotiating with employers to ensure that discrimination in the workplace is eliminated and that equal opportunities are promoted.
- Providing a means for expressing and addressing the needs of workers who are discriminated against in the workplace.
- Supporting victims of discrimination in securing a settlement with the employer (alternative dispute resolution).
- Supporting victims of discrimination in their search for access to justice.
- Promoting equality and diversity in the workplace and in the sector.
- Establishing mechanisms to influence decision-making by employers and Government.

- Mainstreaming non-discrimination and equal treatment in policies and practices.
- Challenging employers, organisations and authorities to combat discrimination.
- Monitoring, documenting and denouncing discrimination.
- Ensuring that equality is prominent on the political agenda and encouraging campaigns and action to eliminate discrimination and promote equality.

A trade union can

- Work in partnership with other trade unions to achieve shared aims.
- Work in partnership with NGOs in order to achieve shared aims.
- Cooperate with national equality bodies, for example in building up networks of equality representatives, or in organising training and expertise for workers' representatives.
- Empower groups to engage in campaigns, to be self-advocates and to assert and enforce their rights.
- Work, where appropriate, in partnership with Governments/employers to achieve common aims and objectives.
- Challenge, where appropriate, Governments/employers when they are promoting policies which are contrary to the trade union's objectives.
- Where appropriate deliver services to members efficiently and effectively where those services promote equal opportunities within the framework of Government policies and adopt and promote strategies of Trade unions and strategies negotiated between Trade unions and Government.
- Where appropriate deliver services to members efficiently and effectively where those services promote equal opportunities outside the framework of Government policies and adopt and promote trade unions' objectives and, strategies even if those are contrary to Government policies.
- Ensure the co-ordination of its own services and to engage Government/employers in discussions on the co-ordination of services between the Government and trade unions, where those services relate to equal opportunities.
- Provide properly professionally researched advice to Governments/employers on issues of concern.
- Advocate and campaign for change as a response to need.
- Guide and contribute significantly to legislative and policy making processes, by providing properly researched advice and briefings to politicians in Government and to employers and other persons of influence.
- Be vigilant "watchdogs" - pointing out where Governments/employers are actively discriminating, or failing in their obligations to combat discrimination or where they need to improve their performance, and enforcing the operation of the checks and balances that characterise democratic society. In this role trade unions must target Government and the business community by advocacy, lobbying and negotiating functions when required.
- Challenge, by appropriately selected mechanisms, acts, omissions, administrative practices or policies which are contrary to the trade unions' and the workers' objectives.
- Keep track of and ensure that advantage is taken of all new developments in combating discrimination, e.g. new legislation (national, EU and international), new policies (national, EU and international), new sources of funding, and landmark judicial decisions (at both national, EU and international level).
- Be open, transparent and accountable to members and to the public.
- Increase the strength of trade unions' participation in social dialogue by forming networks and coalitions, and promoting original initiatives and solutions. This can help to reduce prejudice within society, thus promoting equality.
- Work openly and in a spirit of collaboration with other trade unions and NGOs operating in related fields and prevent conflicts and disputes occurring between trade unions or NGOs.

- Put pressure on a state to ratify international instruments which allow for the international spotlight to be shone on Government practices relating to equal opportunities.
- Supply national and international bodies with essential and reliable information on which they can draw when examining a country's record on discrimination.

In summary, the role of trade unions should be to check, monitor and challenge the actions of employers and Governments and other organisations, in order to combat discrimination and to assist workers and groups of workers in asserting their rights.

### **3. What activities can a trade union do to combat discrimination?**

The following is a suggested list of activities and services that a trade union can carry out or provide in order to help combat discrimination on all grounds:

- Negotiating.
- Awareness-raising.
- Monitoring/Influencing the development of policy & law.
- Providing support to individual victims of discrimination, and to individuals as part of a collective complaint.
- Litigation.
- Alternative Dispute Resolution including mediation.
- Campaigning and organising.
- Advocating changes in practice (as distinct from policy or law).
  - Promoting the establishment of focal groups around a specific ground of discrimination (disability, race-ethnicity, etc.) to offer workers a place where they can share common experiences and discuss which policies to develop in their workplace and their union, and how to join forces to put their interests on the general trade union agenda
  - Adapt their recruitment campaigns to an increasingly diverse workforce, and making the diversity of the trade union movement more visible in internal and external publicity
  - Promote female members and members from a minority background in positions of decision-making and leadership.

### **4. What does a trade union need to fulfil its role?**

- Human Resources.
- Skills.
- Knowledge.
- Expertise.
- Openness.
- Transparency.
- Accountability to their members.
- Non discriminatory attitudes within its own organisation.
- Appropriate national legislation in place regarding its establishment and functioning.
- Funding. Although clearly the core functions and activities must be funded independently by members' contributions, many unions make use of project subsidies by governments and private funds for specific aims. Especially in the area of non-discrimination, a variety of possibilities for funding are available.

**5. Why are trade unions better placed than other organisations to work towards combating discrimination in the employment field?**

- Because trade unions are active in the workplace, they are often best placed to detect patterns of discrimination at work, and to take action to combat disadvantage.
- Trade unions can represent workers collectively, for instance in works councils and collective bargaining, which can often be the most effective way of achieving change and eliminating discrimination in the workplace.
- Trade unions play a crucial role in engaging with workers and employers at the local, regional, national and international level.

**6. What are the obstacles for trade unions and how might these be overcome?**

- Lack of standing in order to participate in relevant political debates. Trade unions will need to be sure that they brief an individual or organisation that does have standing.
- Lack of standing in order to bring complaints, either individually or collectively. Trade unions can support and assist those who do have standing, or seek to reform the rules.
- Perception of affiliation to Government or a political party or other group so undermining their reputation as impartial advocates of equality issues. A trade union needs to ensure to act in a way that does not conflict with members' fundamental rights to equality, and ensure that any connections with political parties or other organisations or causes do not conflict with members' rights.
- Passivity from some of their members/employees or even their leadership regarding action to be taken against discrimination.
- Conflicts between the interests of the majority of members, and the rights of minority members.
- Own prejudices.
- Lack of effective 'partnership' between Government/employers and trade unions. Lack of effective cooperation with NGOs.
- Lack of membership among the discriminated groups of workers, and therefore a lack of interest among the members and the leadership to deal with these issues. This may be a vicious circle, as clearly a trade union that does not show an interest in representing the interests of for instance women or migrant workers will not easily convince those workers that they should join a union.
- Inability to reach some parts of the workforce or senior management due to ineffective structures, poor organisation, externally imposed priorities, or cultural or language barriers. Trade unions should ensure that *their own organisations* have a diverse workforce with personnel who have received equal opportunities training and who are aware, of relevant social and political history, including the history of exclusion and discrimination of certain groups within the community and, where relevant, a range of language skills.