



NATIONAL ACTIVITY REPORT THE NETHERLANDS ANTI-DISCRIMINATION AND DIVERSITY TRAINING

Art.1, Association against discrimination

May 2008



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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

The Anti-discrimination and Diversity training project was managed by Human European Consultancy (humanconsultancy.com) in consortium with the Migration Policy Group (www.migpolgroup.com) and the International Society for Diversity Management – idm (www.idm-diversity.org).

The national activities were carried out by Art.1 (www.art1.nl).

I. Table of contents

I. Table of contents 3

II. Introduction 4

III. Anti-discrimination seminars 5

 a) National activities anti-discrimination seminars 5

 b) Mapping exercise: NGOs/Trade Unions working to combat discrimination 8

 c) National legislation in the field of anti-discrimination..... 19

 d) Funding opportunities in the field of anti-discrimination..... 31

IV. Diversity Management seminar 35

Annexes 38

The role of trade unions combating discrimination..... 38

II. Introduction

The training seminars on anti discrimination and on diversity in the Netherlands were held on 3 April and on 19 March 2008, respectively. The seminar on anti discrimination attracted 18 participants; the diversity seminar had 82 participants.

The seminar on diversity proved to be very successful. Where the organisers had planned to receive 60 participants, the number of persons registering turned out to be more than 100. Due to the capacity of the venue, which could host not more than 100 participants, the registration had to be closed and a number of possible participants had to be disappointed.

The day was organised in Amersfoort in a former monastery, turned into a conference hall.

The seminar was attended by 82 persons who were a mix of HRM staff from large companies, SME companies and independent HRM advisors.

Due to a lack of interest from both NGOs and trade unions, the first of the two planned seminars on anti discrimination, could not be held. The second seminar also attracted very little interest among these target groups, but it was decided to carry it out for the 20 persons who had registered. The seminar was held in a conference centre in Utrecht, as a one-day event. The participants were a mix of trade union and NGO staff members.

III. Anti-discrimination seminars

a) National activities anti-discrimination seminars

Design of the training

The organisation of the seminars was carried out by Art.1, the Dutch association against discrimination. Art.1 is the successor of the National Bureau against Racial Discrimination (LBR). The association, established in April 2007, consists of a national bureau in Rotterdam and around 30 associated members. These members are the local anti discrimination agencies. The scope of work of the Association includes the non-discrimination grounds as mentioned in the Dutch equal treatment legislation. These include the grounds mentioned in the Racial Equality Directive 2000/43/EC and the Framework Directive 2000/78/EC.

The trainers that were contracted to design the training programme and to carry out the seminars were Najat Bochhah and Sigrun Scheve of Art.1, Judith Schuyf (Movisie – lesbian and gay emancipation), El Batoul Zembib (E-Quality, Knowledge centre for gender, family and diversity issues) and Desirée Hilkens (LEEFtijd, expertise centre on age and life course issues). Dick Houtzager of Art.1 acted as the project leader. The trainers were selected on the basis of their training experience and their knowledge of Dutch and EU legislation in the field. The team consisted of a mix of lawyers (mrs. Bochhah and mr. Houtzager) and non-lawyers, supplementing each other's experience and knowledge.

During the train-the-trainers seminar in June 2007 in London, the trainers came to the conclusion that two seminars targeting a general audience of NGOs and trade unions would not meet the specific situation in the Netherlands.

The NGOs which, according to the instructions in the Service Contract, were the key target group for the training were already within the network of the participating training organisations. As described in the Mapping Report for the Netherlands that preceded the seminars, the most important non-discrimination NGOs in the Netherlands were actually involved in giving the training. These therefore did not need additional training as described in the Service Contract. The local and other partners, such as the anti discrimination agencies, are yearly offered a comprehensive training course at beginners and intermediate level by Art.1. These courses include the material that was offered in the European funded training seminars. Therefore, among this specific target group, the proposed seminars did not offer any surplus value.

As far as trade unions are concerned, it has proven to be very difficult to generate interest in non-discrimination among Dutch trade unions in general. A previous assessment, carried out among trade unions by the predecessor of Art.1, LBR, indicated that trade union staff hardly ever 'translate' an employment conflict in terms of equal treatment, but rather follow the known path of labour laws and the local courts. There have been hardly any cases submitted to the Dutch Equal Treatment Commission initiated by a trade union. If any, they concerned gender.

In the opinion of the trainers' team, the added value of the proposed seminars lied in the possibility to offer organisations involved in two specific sectors the opportunity to follow an anti-discrimination training. The extra value lied in the fact that people in the same area of work could exchange experiences, build networks and alliances and receive information tailored for their needs. There would be a great opportunity to create awareness among those organisations that do not apply anti discrimination in their daily work.

On the basis of an internal assessment, the trainers' team decided to target the *education* and *health care* sectors for the planned training seminars. On the basis of the type of discrimination complaints and based on experiences of the participating organisations, NGOs and trade unions involved in both sectors could be assisted by following the planned training. The proposal was discussed with the project organisers who accepted the set up.

Preparation of the seminar

After having attended the train-the-trainers meeting in June 2007 in London, the trainers team met a number of times to discuss the organisation of the seminars and the content of the training.

It was decided to arrange the first seminar around education and the second around health care. The dates were set at 15 and 16 November 2007 and 7 and 8 February 2008.

The project leader looked for a venue for the seminars which could accommodate participants with an overnight stay. However, the available budget proved only just enough to cover the costs for the meeting venue and lunch for two days. It was decided not to provide for hotel accommodation.

The programme for the two days consisted on day 1 of plenary sessions aimed at getting to know each other, getting to know the subject and the transfer of knowledge. In the afternoon, in a series of round table sessions, each of the non-discrimination grounds would be discussed by mixed groups of 8 participants.

On day 2, the round tables would be continued. These sessions would be followed by a discussion in outbreak groups on prioritising issues in the participants' area of work and initialising follow-up strategies.

The announcement of the first seminar was published on the websites of the participating organisations and it was sent to a targeted list of addresses. The selection of addressees was made with a view to obtain a sufficient number of potential participants working in the field of education.

The two trade unions of educational workers were invited, both at the head office and the regional offices. The Inspectorate of Education was also invited, as a representative of the government. NGOs that were invited included the anti discrimination agencies, local and national interest organisations of persons with disabilities as well as gay and lesbian interest organisations at local and national level.

At the time of closing the registration, two weeks before the dates of the seminar, only 9 participants had registered for the training.

After presenting this list of participants, the project organisers decided that the number of participants was too low to carry on with the seminar.

This decision was communicated to the participants.

After the decision to cancel the first training, the trainers' team contacted some of the invitees to find out why they had not registered.

The comments varied. Some mentioned that a two day seminar cost them too much time, others explained that the content of the seminar did not relate to their daily work.

With the experience of the first organisational set up and in consultation with the project organisers, the project leader decided to shift the focus of the second training to a general audience of NGOs and trade unions.

The second training was planned for 7/8 February. The content of the training was changed for a different, broad audience, focussing on discrimination in an employment context. The issues to be discussed were more general, including discrimination in recruitment and selection, the work floor, labour conditions and outflow/dismissal.

Due to organisational issues this date needed to be changed to 3/4 April 2008.

In February, the announcement for the seminar was sent to more than 100 organisations, including national and local NGOs for ethnic minorities, migrants, people with disabilities, gay and lesbian organisations and to all trade unions. The trainers' organisations put the announcement on their website and a magazine aimed at multiculturalism put the seminar in the monthly agenda.

Art.1 appointed an intern to personally contact key persons in these organisations to emphasise the opportunity for gaining knowledge and networking with others.

Despite these efforts, two weeks before the dates of the seminar, only 20 people had registered, well below the target number of 40 participants.

However, in order to accommodate the registered participants and to put the many hours of preparation into effect, the trainers' team then proposed the project organisers to change the set up of the seminar and to continue with the 20 participants. After an agreement, the seminar was held as a one day event.

Carrying out the seminar

The participants came from various backgrounds. Of the 18 participants, there were four from trade unions, eight with an NGO background, one from the Equal Treatment Commission and five other interested persons with various backgrounds on equal treatment issues.

In the morning a plenary session was held with an awareness raising game and knowledge transfer of the key legal issues of the Dutch and EU equal treatment provisions.

In the afternoon, round table sessions were held with each table discussing employment aspects of each of the grounds mentioned in the Racial Equality and Framework Directives. Each of the trainers hosted a table and shared information with groups of four participants on discrimination issues related to a non-discrimination ground. The experiences of the participants as well as cases, prepared in advance by the participants, were discussed and solutions for typical situations were debated. Each group attended a table, allowing for transfer of knowledge and in-depth discussion.

Main lessons learned seminar

The fact that the seminars did not attract the required minimum number of participants may have several causes. The reactions from the conversations by telephone as well as discussions with the participants pointed to a number of issues.

- The target NGOs already receive training in legal and related issues. Attending a general training on all grounds did not give staff members an extra value.
- A training of 2 days put too much stress on the organisations and the potential trainees.
- Both NGOs, not specifically working in the field of non-discrimination as well as trade unions, do not consider non-discrimination as an area they should develop expertise in. This may have to do with the well-developed NGO movement and with the existence of the Equal Treatment Commission in the Netherlands. There is a form of division of labour between various NGOs and other actors, resulting in a certain lack of willingness or need to act in other fields than their own.

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:

In the Netherlands, there are a number of NGOs active at the national level in the field of non-discrimination. Some NGOs are subsidised by the government, others receive membership fees. They work on different grounds of discrimination: race/ethnicity, gender, sexual orientation, disability, age. Organisations working in the area of religion are most often not dealing with the issue of non-discrimination. As far as antisemitism is concerned, the Centre for information and documentation of Israel (CIDI) reports on antisemitic incidents. The Association against Discrimination collects information on religious discrimination, notably in the area of anti-islamic discrimination.

Trade Unions:

There are no trade unions working solely on anti-discrimination issues. The two largest trade unions, FNV and CNV, have departments concerned with the position of ethnic minorities, women, senior workers and young workers.

- i. FNV (Federation of Dutch trade unions). There are 16 associated member unions, active in different economic sectors.
- ii. CNV (National federation of Christian trade unions). The CNV has 11 associated member unions. Total membership of 340,000.
- iii. MHP (federation for professional and managerial staff). MHP has 4 associated members.
- iv. AVV (Alternatief voor Vakbond: Alternative for Labour Union). Newly established labour union (2005) in the Netherlands. It promotes the interests of young workers, independent workers (freelancers) and European workers in the Netherlands.

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)?

- a) Vereniging tegen Discriminatie (Association against Discrimination), deals with all discrimination grounds. In April 2007, the new name of the Association (“Art.1”)¹ has been made public. Members are the local and regional anti-discrimination agencies who handle individual complaints. The Association is active in the area of advocacy, policy development, training, provision of information.
- b) E-Quality, expertise centre on emancipation, family and diversity.
- c) CG-raad (chronically ill and disability council).
- d) COC (association for LGBT people). Local associations in most towns.
- e) MOVISIE (expertise centre for social development. Promotes the participation and independence of citizens). Movisie has a department for participation of LGBT people.
- f) LEEFtijd (expertise centre on age and life course issues).
- g) TIYE international (umbrella NGO of 21 national organisations of black, migrant and refugee (BMR) women in the Netherlands).
- h) EARN (European anti-racism network). A working group of black and migrant trade unionists. The members are active trade unionists of the various trade unions of the FNV Federation.

¹ Art.1 refers to the first Article of the Dutch Constitution. The article reads; ‘All persons in the Netherlands shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race or sex or on other grounds whatsoever shall not be permitted.’

Apart from the NGOs mentioned in this overview, there are many NGOs active as interest organisations. In the area of ethnic minorities organisations, larger and smaller NGOs are active as well as in other areas, (gender, persons with disabilities, the elderly). None of these, however, are specifically working on non-discrimination issues.

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

Anti-discrimination is the main focus for Vereniging tegen Discriminatie (Association against Discrimination). For E-Quality, CG-raad, COC, LEEFtijd and EARN, anti discrimination is an important issue. As mentioned, other NGOs are not active in the field of non-discrimination.

Trade unions are active in the area of employment and labour relations. Although non-discrimination in employment belongs to their mandate, preventing and combatinbg discrimination has no priority.

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

There is no compulsory registration for NGOs or trade unions. Only if an organisation is an association (Dutch: vereniging) or a foundation (Dutch: stichting), they need to be registered in the Register of associations and foundations. The registration is a mere formality. The annual fee depends on the number of employees. For a small organisation, the fee will be around €100.

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

The NGOs differ in size. Because most are foundations, they have no membership. Exceptions are COC (8000 members) and CG-Raad (110 member organisations and 38 associated organisations). This accounts for most NGOs.

Estimated membership of the trade unions:

FNV: 1.1 million

CNV: 340,000

MHP: 160,000

AVV: 3,000

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

The NGOs are working on their own, although they often collaborate in various projects. The trade unions work on their own.

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

Trade unions are not necessarily based in Amsterdam. The trade unions have a head office and local branches from which members' interests are taken care of.

NGOs are neither based in the capital. The following list serves as an example.

E-Quality: Den Haag

CG-raad: Utrecht

COC: Amsterdam

LEEFtijd: Utrecht

EARN: Earn is a network of trade union members and does not have an office.

Vereniging tegen Discriminatie: Rotterdam

Movisie: Utrecht

TIYE international: Utrecht

FNV: Amsterdam. The member unions are based in different places.
CNV: Utrecht.

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

In general, the trade unions' head offices are involved in policy work, negotiating with employers and the government about wages, employment conditions etc. The local and regional branch offices deal with individual members' issues, both related to employment and other issues, such as social security, housing, consumer rights. Most of the NGOs covered in this survey do not have branch offices. Their office location does not imply any regional activities. An exception is the Vereniging tegen Discriminatie. The national bureau generally works on national policy issues, training and the supply of information. The members of this association, which are local anti-discrimination bureaus, support victims of discrimination and do policy and advocacy work at the local level.

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)

NGOs: Some of the work of these NGOs is well-known; sometimes the NGOs can put issues on the political agenda. Depending on the issue, some NGOs have political and societal weight.

Trade unions: the trade unions are the collective bargainers for workers in the country. Collective agreements are valid for the sectors where they are made up.

Despite falling numbers of membership, trade unions have a say in societal issues. They are able to influence the political agenda. In the traditional Dutch corporate set up of society, trade unions and employers' organisations work together on the macro-economic and social agenda in several consultative bodies, such as the Labour Foundation (Stichting van de Arbeid) and the Social and Economic Council (Sociaal-Economische Raad – SER).

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)

a. For what purpose(s) (e.g. exchange of expertise, collaboration on case work or campaigns, organising events jointly)

NGOs are working together on related issues with the aim of exchanging expertise; sometimes in projects (project 'Discriminatie ? Niet met mij'), sometimes on a structural issue (e.g. 'Platform Article 13' on EU-issues concerning non-discrimination). A common website (www.discriminatie.nl) was created by Vereniging tegen Discriminatie (Association against Discrimination), E-Quality, CG-raad, LEEFtijd and Movisie.

Often, trade unions work together in negotiations about collective labour agreements with employers and specific issues related to the government (such as collective pension schemes).

NGOs and trade unions sometimes work together. For example, in 2006 the union for public servants and the welfare sector (Abvakabo FNV) organised a non-discrimination training for its staff and other workers and hired trainers from the Association against Discrimination. Apart from this, NGOs and trade unions often exchange information on non-discrimination issues.

Trade unions and NGOs are regularly invited by the Ministry of Social Affairs to participate in working groups and advisory panels, e.g. regarding the national programme for the EU Year of Equal Opportunities.

b. *Is there greater collaboration in relation to certain grounds of discrimination? If so, which?*

No.

11. How are these NGOs funded?

a. *Do they receive state funding?*

State funding is not easily accessible. The government generally is reluctant to make long-term commitments for new activities or new NGOs. Where project funding is concerned, it depends on the availability of funds for new activities.

E-Quality: yes

CG-raad: yes

COC: No. COC is an association and receives membership fees. For projects, COC receives project funding from the government.

LEEFtijd: yes, but until 2008.

EARN: no

Vereniging tegen Discriminatie (Association against Discrimination): yes

Movisie: yes

TIYE international: no.

Trade unions receive membership fees and government funding for projects only.

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

There is no generally applicable list of conditions for reception of public funds. Requests for public funding are assessed on a case-by-case basis.

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

Most of the NGOs apply for project funding from the government. Charity based funding is not common among the NGOs.

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

N/A

12. How are these trade unions funded?

a. *Do they receive state funding? (Generally speaking do trade unions receive state funding?)*

Trade unions only receive membership fees and project funding.

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

No.

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

Trade unions rely mainly on membership fees. For specific projects, they may apply for project funds from the government.

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

Yes.

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?

The size of the budget is decisive in determining which activities can be undertaken. The Dutch government has continuously funded most mentioned NGOs, but has decided in the past about mergers. In one case (the Clara Wichmann Institute), the government withdrew its sponsorship, as a result of which the Institute had to stop functioning. In the case of LEEFtijd, the government has decided to gradually decrease the funding. Funding will stop in 2008. LEEFtijd is in the process of turning into an commercial bureau for advice on age and life course issues.

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

a. Neighbouring countries?

The Association against Discrimination has occasional contacts with non-discrimination organisations in Germany and Belgium. The researchers have no information about collaboration between other NGOs and trade unions with similar organisations in neighbouring countries.

b. Other new EU Member States?

Many NGOs are collaborating and exchanging experiences with NGOs in other EU-Members States through EU-wide organisations.

E-Quality: member of European Women's Lobby

CG-raad: member of European Disability Forum

COC: member of ILGA

LEEFtijd: member of AGE platform

EARN: member of ENAR

Vereniging tegen Discriminatie (Association against Discrimination): member of ENAR

FNV: member of European and international trade union federations.

CNV: member of European and international trade union federations.

MHP: member of European and international trade union federations.

AVV: AVV has been established only recently; we have no information about their international affiliations or collaboration.

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

Some NGOs and trade unions participate in international projects. The Association against Discrimination has acted as a partner in a Phare Twinning project aimed at institutional building of the specialized body in Romania. The COC participated in the project '*Prevention and Empowerment in the NIS: responding to HIV/AIDS amongst Sexual Minorities 2006-2010*'. '*U see LGBT?*' The project is aimed at development of LGBT-organisations in the republics in the former Joegoslavia, Albania and Moldavia.

E-Quality is currently involved in a Phare Twinning project for the establishment of an equality body in Turkey.

16. Can they work in English?

Yes. Most NGOs and trade unions have a home page in English.

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 has an impact on the trade union's ability to work on anti-discrimination?

In the Netherlands, trade unions are not affiliated to political parties.

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

Yes. As an example: the vereniging tegen Discriminatie has carried out a training on non-discrimination for and in collaboration with Abvakabo-FNV, the union for public servants.

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

19. What kind of work do they do?

Much of the work of non-discrimination NGOs involves advocacy, awareness raising, lobbying, dissemination of information and training. Most organisations at the national level do not deal with individual complaints of discrimination.

The specific activities of NGOs and trade unions are as follows:

E-Quality: E-Quality supports the process of gender mainstreaming. Its activities focus on providing information and expertise about emancipation and mainstreaming to policy makers at various levels.

CG-raad: CG-Raad's main tasks are support and promotion of interests of the member organisations. The focus is on promotion of equal treatment, income generation for the disabled, legal developments, employment, mobility, accessibility and fair portrayal.

COC: promoting the interests of LGBT people. Policy work, campaigning, information, non-discrimination work, mainly through the local COC-clusters.

LEEFtijd: Consulting organisations on age-related personnel policy and life course issues.

EARN: Information provision and campaigning for the interests of Black, Migrant and refugee workers.

Vereniging tegen Discriminatie (Association against Discrimination): prevention and combating discrimination, through processing and registration of discrimination complaints, policy and advocacy work, monitoring activities and international collaboration.

Movisie: Collects good practices on lesbian, bisexual and gay policy and projects, informs and supports (local) authorities and organisations in developing policy and projects and functions as a catalyst of policy and implementation. Movisie works together with LGBT and general organisations to find out which projects and policies are effective and why.

TIYE international: developing and participating in projects on issues relating to supporting and stimulating the expertise of BMR-women on the fields of social development, economic policy en decision-making and social economic issues, promoting dialogue between and collective action among women in Europe, exchanging information and experiences

FNV: Prevention and combating of discrimination have become issues of interest for the FNV in the last couple of years. FNV carried out some projects in this area: 'Towards a workforce without discrimination' and 'Dialogue at work'. FNV has further pushed for the development of a national monitor discrimination in employment. Finally, FNV has established a discrimination hotline for members and non-members.

CNV: CNV has no formal structures for prevention and combating of discrimination. CNV workers receive few complaints that can be defined as discrimination, because it often concerns individual circumstances or forms of mobbing not overtly related to ethnic origin or other grounds of discrimination. Discrimination in recruitment and selection is difficult to prove, because the reasons for rejecting an applicant will almost never be described in discriminatory terms.

20. Do they take up complaints of discrimination?

Most of the national NGOs generally do not deal with discrimination complaints. A network of local NGOs, most of whom are members of the Association against Discrimination, handle individual discrimination complaints. These local NGOs also provide training, and are doing advocacy work with municipalities and provincial authorities.

The specific activities of NGOs and trade unions are as follows:

E-Quality: no.

CG-raad: Yes. The legal support department supports clients in claims and administrative procedures. Discrimination takes up a small portion of their work.

COC: no.

LEEFtijd: no.

EARN: Yes. Earn receives and records complaints. Members of Earn sometimes take follow-up action on a personal basis. Other complainants are directed towards the local anti-discrimination agencies.

Vereniging tegen Discriminatie (Association against Discrimination): yes. Individual complaints are dealt with by the local members.

Movisie: no

TIYE international: no.

21. Do they focus on their own community?

Some of the NGOs mainly focus on their own community, others direct their activities to society in general. Especially where awareness raising, advocacy and training is concerned, all NGOs try to reach the general public.

E-Quality: no

CG-raad: yes.

COC: yes.

LEEFtijd: no.

EARN n/a

Vereniging tegen Discriminatie (Association against Discrimination): no.

Movisie: no.

TIYE international: yes.

22. Do they work with victims directly?

Some NGOs do work with people who have been confronted with discrimination, others don't. Anti-discrimination agencies at the local level provide assistance and counselling of people who have been confronted with discrimination.

More specific:

E-Quality: no.

CG-raad: no.

COC: yes.

LEEFtijd: no.

EARN: Yes. In their capacity as active members of Earn they often manifest themselves against discrimination and thus receive regular discrimination complaints. Vereniging tegen Discriminatie (Association against Discrimination): yes.

Movisie: no.

TIYE international: no.

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

Trade unions only represent their own members. Only AVV supports the idea that all workers have a say in trade union policy.

24. Do they do ‘case work’?

FNV, CNV and MHP deal with individual cases in the area of employment, consumer goods, rental issues. In practice, very few cases of discrimination are dealt with by the trade unions. AVV is a new, small trade union which is aimed at collective support of their members.

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

The legal support departments of the trade unions receive some state funding.

26. Does this include legal representation?

No.

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

Yes. Representation in court is restricted to the *kantonrechter*. In practice, NGOs only represent clients in procedures before the Equal Treatment Commission (ETC). Trade unions are not known to represent clients in discrimination cases, neither in court nor at the ETC.

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

The Civil Procedures Act (*Wetboek van burgerlijk procesrecht*) allows foundations and associations to bring legal action on behalf of the persons they represent. Some anti-discrimination agencies take a case in their own name before the ETC, if the victim is unwilling or unable to stand him/herself. This only happens with the consent of the victim.

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

The members of the Vereniging tegen Discriminatie do counselling and try to resolve a problem in non-legal ways. They give information to schools and to employers or employees on non-discrimination.

Among the main tasks of trade unions at the individual level is assisting their members in attaining their employees' rights. Apart from solving employment problems, the unions also offer other services, such as filling in tax forms. In the field of non-discrimination, the FNV organised debates between workers at company level. The objective of these debates was to improve the relationship between workers of various (ethnic) backgrounds.

30. Do they advocate changes in legislation and policies?

E-Quality, CG-Raad, COC, Vereniging tegen Discriminatie and TIYE international do lobby and advocacy work at policy and legislative level. The trade unions do the same, although non-discrimination is not high on their priority list.

31. What are their relations with the central government?

On macro-economic and social issues, trade unions take part in several consultative bodies, such as the Labour Foundation (Stichting van de Arbeid) and the Social and Economic Council (Sociaal-Economische Raad – SER). They act as spokesorganisations for workers in talks and negotiations with the government.

On issues related to equal treatment and non-discrimination, NGOs sometimes act as discussion partner for the government. NGOs have been invited to comment on policy initiatives and legal proposals, e.g. with regards to the implementation of the EC equal treatment Directives. Often, NGOs are invited to discuss the content of the shadow reports they submit to international treaty bodies (CEDAW, CERD).

32. With regional governments or municipalities?

Trade unions often talk with provincial and municipal authorities about regional and local employment issues. The mandate of the province and municipality in employment and social issues is limited, so there is little need for formal relationships at this level.

Of the national NGOs, COC and Movisie regularly discuss issues with local and provincial authorities. The local members of the Vereniging tegen Discriminatie (Association against Discrimination) are discussion partners for local and provincial authorities. The other mentioned NGOs tend to work at the national level only.

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

See above on trade unions' participation in consultative bodies. Trade unions negotiate with employers and their organisations about general labour agreements.

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

Some NGOs are working together with the specialized body, the Equal Treatment Commission (ETC) on specific projects, others have no or rare collaboration with the ETC.

E-Quality, CG-raad, COC, LEEFtijd, Vereniging tegen Discriminatie have regular meetings with the ETC. The Vereniging tegen Discriminatie is seen as a specialized body itself, as it performs tasks as described in Article 13 of the Racial Equality Directive (support victims of discrimination). Trade unions have no relations with the ETC.

35. What are the qualifications of the staff?

Most organisations employ both legal and non-legal staff, depending on the task that is carried out. For some posts in the policy field, academic qualifications are required, for other posts an advanced degree is necessary.

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

The Vereniging tegen Discriminatie (Association against Discrimination) offers courses for staff working at its member organisations, the local anti-discrimination agencies. Other organisations are welcome to attend these training sessions. Other organisations organise in-house training in their area of work.

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

We have no information about training of staff in developing proposals and reporting.

38. How do they evaluate their “success” and the quality of their anti-discrimination work?

Trade unions:

As far as ethnic minorities are concerned, FNV organises an annual ‘Minority Day’, on which the previous policy is discussed and evaluated, and new policies are presented. During the annual general FNV congress, the policies are evaluated. Evaluation also takes place in committees for specific issues, such as minority issues.

Other trade unions perform no formal non-discrimination activities which must be evaluated. NGOs: We have no detailed information about monitoring and evaluation processes by the NGOs.

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?

At work floor level, discrimination is difficult to prove. Employees themselves, but also intermediary organisations do not always recognize discrimination, due to lack of experience, lack of knowledge about their rights.

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

Trade union staff doesn’t have the expertise and skills involved in anti discrimination work. This is one of the main problems.

NGOs sometimes lack the resources to carry out research and projects. A problem signalled by NGOs is the lack of commitment by the government to take action against structural forms of discrimination. For example, an appeal to the government to include non-discrimination in the mandate of the labour inspectors fell on deaf ears.

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

Yes, the first contact the members have is with the staff of the front office. The members contact the front office with request for individual interest care. Most of the request are not be traded by the staff. It’s very important for the victims to be heard and to be taken seriously.

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

- building up of expertise
- skills
- National anti-discrimination legislation
- European anti-discrimination legislation

43. Is their staff sufficiently trained in relation to national anti-discrimination legislation?

Some training and information has been given, after implementation of the Directives (2004). Further training is deemed to be necessary.

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

Little training is given; NGOs often have been trained or gained knowledge through attending international events; some NGOs have given training on the EC-legislation themselves.

Trade union staff have received little training on equal treatment laws. Some training was given after the implementation of the EC-Directives in 2004. Because the trade unions receive very few complaints about discrimination, the knowledge has not been used in practice.

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

Sufficient training has been provided.

Both NGOs and trade unions have qualified and professional staff that follow the developments at legislative and policy level. They have been trained to translate this into policy and other proposals.

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

Yes. Before promoting their discrimination role they have to be trained. Where non-discrimination is concerned, trade unions lack the required knowledge and skills. Often a discriminatory element in an employment conflict is not recognized and thus not addressed. In order to increase trade unionists' awareness and knowledge, training is required.

47. Do they need to “do more” with victims, clients or potential clients, members or potential members?

Yes. Most of the victims that contact our front office don't get the individual interest care they should have. It is very difficult to prove that the victims have been discriminated.

48. Do they need to “do more” with government – to increase their credibility and status?

Yes, together with the government the unions' credibility will increase.

NGOs are able to provide the information and skills required by trade unions. Thorough intensified collaboration, the issue can stay on the trade unions' agenda, which will increase the credibility of trade unions among the target groups. The issue of non-discrimination requires structural and continuous attention.

49. For the trade unions, do they need to “do more” with the companies/employers organisations?

Yes, they should work more together especially and make a fist against discrimination.

50. Would they need to “do more” with public opinion and awareness raising?

Yes, training their members and make them more aware.

51. What would they need to develop?

Information and training towards (potential) members and companies.

c) National legislation in the field of anti-discrimination

1. The transposition of the Directives into national law

Introduction

In the Netherlands, where the circumstances are the same, everyone must be treated in the same way. This is laid down in the first Article of the Constitution . An employer must therefore treat all his employees in the same way, and may not discriminate in matters of recruitment and selection, pay and other conditions of employment, vocational training, promotion or dismissal, on the basis of any irrelevant characteristics which their employees may have.

In addition to the Constitution, there are also a number of international conventions that outlaw discrimination. General provision is made in the European Convention on Human Rights, and also in the Covenant on Civil and Political Rights. Discrimination against women is forbidden by the Convention on the Elimination of all forms of Discrimination Against Women, known by the English acronym CEDAW, and the banning of racial discrimination has been incorporated in the Convention on the Elimination of all forms of Racial Discrimination (CERD).

The ban on discrimination has been developed over the years in a number of specific pieces of legislation: the Equal Treatment Act (Algemene wet gelijke behandeling, AWGB), the Equal Treatment in Employment (men and women) Act (Wet gelijke behandeling mannen en vrouwen, WGB), the Equal Treatment (working hours) Act (Wet verbod op onderscheid naar arbeidsduur, WOA), the Equal Treatment Temporary and Permanent Employees Act (Wet Onderscheid Bepaalde en Onbepaalde Tijd, WOBOT), the Equal Treatment (Disability or Chronic Illness) Act (Wet Gelijke Behandeling op grond van handicap of chronische ziekte, WGBh/cz) and the Equal Treatment in Employment (Age Discrimination) Act (Wet Gelijke Behandeling op grond van leeftijd bij de arbeid, WGBL). The texts of all these pieces of legislation are to be found at www.cgb.nl.

In addition, there are in the Civil Code a number of articles which forbid discrimination between men and women in the workplace (article 7:646 to, and including, 7:649) and articles 125g and 125h of the Civil Servants Act are also relevant. Here is to be found a ban on discrimination between civil servants made on the grounds of differences in working hours.

The effect of this legislation is to prohibit an employer from discriminating between his employees on any of the following grounds: religion, political conviction, belief, race, gender, nationality, heterosexual or homosexual orientation, civil status, working hours (fulltime or parttime), employment tenure (temporary or permanent), disability and chronic illness, and age.

Besides legislation which outlaws unequal treatment at work, the Penal Code also contains a number of articles which forbid discrimination, the application of which however we shall not be considering further here.

European legislation – the transposition of EU law into the Dutch legal system

Two EU Directives (2000/43/EC and 2000/78/EC) adopted in 2000 require that member states of the EU must introduce designated minimum standards in the area of equal treatment.

Because Dutch legislation was already quite extensive, it did not need to undergo any great changes. The Directives have been brought in partly by the adaptation of the Equal Treatment Act (1st April 2004) and partly by the introduction of the Equal Treatment (Disability or Chronic Illness) Act (WGBh/cz, implementation date 1st December 2003) and the Equal Treatment in Employment (Age Discrimination) Act (WGBL, implementation date 1st May 2004).

Transposition of the EU Directives has meant that all their elements have largely been incorporated into Dutch law. One small point of criticism has been that of the sense of the term 'indirect discrimination' which in the Dutch laws referred to, differs from that in the text of the Directives. Interpretation of the term in court has however meant that no conflict has arisen between the intention of the Directives and their implementation in the Netherlands. The exception which allows institutions, on a religious basis, and religious communities to reject employees, where these conflict with the practice of the religion, the so-called 'provision on sole grounds' [*de enkele feit-constructie* (section 5 subsection 2 AWGB)], could be felt to conflict with the Directives. The exception for employment in services which have a private character (article 5, para.3 AWGB) may also be felt to sit awkwardly with the Directives.

On a few points, the transposition of EU Directives has led to broader protection against discrimination. Intimidation has been accepted in legislation as a form of discrimination, as has equally the giving of instructions to discriminate. In the sphere of the protection offered by the law, the shifting of the burden of proof has led to an improved position for victims of discrimination.

During the course of the amendment of the AWGB, discussions took place as to whether the legislation should allow for the possibility of positive action. A member of the Second Chamber proposed an amendment which advocated a ban on positive action, it being the view of his party that such action would lead to positive discrimination, whereby a particular person might be awarded a post, not on account of their qualities, but as a consequence of their origin – something which would be likely to compromise that person's acceptance. The amendment was however defeated, and the ability to take positive action was preserved in the legislation.

The monitoring of legislation to ensure equal treatment

Individual employees, and also works councils, can make a complaint of unfair treatment at work to the Equal Treatment Commission (CGB). The CGB is an independent commission, expert in the field of equal treatment, which can give judgements on all grounds relevant to questions of equal treatment covered by the Equal Treatment Act and other legislation. These are: race, gender, age, disability, religion, belief, political orientation, nationality, heterosexual or homosexual orientation, civil status, duration of employment relation (fulltime or parttime work), and type of contract (temporary or permanent employment contract).

One of the functions of the CGB is thus to test whether the legislation which has been drawn up to ensure equal treatment is being infringed. In addition, the CGB gives advice (to the government, for example) and provides information on matters of equal treatment.

The Commission makes use of equal treatment legislation to try real cases. If it receives a request for a judgement, it will always initially ensure that the request is one that it can deal with. If this is confirmed, then the person or organisation against whom, or which, the complaint has been made, will receive a copy of the complaint, together with a request for their response to it. After both parties have been heard, at a sitting, and written responses have been made to any questions arising, the Commission gives its judgement. In practice, the majority of these judgements are acted upon, even though the Commission's decisions are not, in a legal sense, binding.

Works councils too have the power to lodge complaints, and due to their special role, they have been granted specific legislative authority (by section 12, subsection 1, under e, of the Equal Treatment Act) to ask the CGB for a judgement. The works commission can also go to court.

Making use of the services of the Equal Treatment Commission is free of charge. It is not necessary to obtain legal aid, but applicants can be legally represented if they so wish, and can discuss this initially with the CGB by telephone or e-mail.

A complaint concerning unequal treatment can also be brought to court at any time, either immediately, or after the CGB has made a judgement upon it.

Commentary from international organisations

The Netherlands is obliged periodically to report to bodies within the United Nations on its implementation of the international conventions mentioned above. The committees which review these reports make comments upon the state of affairs in the Netherlands. Thus in January 2007, the CEDAW committee reported adversely on the continuing existence of gender-stereotyping, in particular as regards women born overseas. The committee was also concerned about discrimination against female immigrants and asylum-seekers in their access to education, work, and health-care, and over failure to protect them from violence. The 'glass ceiling' in the workplace, and disparities in women's pay compared with that of men were also named as points of concern.

The CERD committee made its last report in 2004, and in it, inter alia, expressed concern over segregation in education, and the great disparities in labour participation rates between indigenous Dutch people and ethnic minorities.

Research into discrimination

Under the provisions of the AWGB, anti-discrimination legislation must be reviewed every five years. In 2004 accordingly, the CGB carried out research into the effectiveness of the Act.² This showed that present-day legislation is sufficient to enable effective action to be taken against different forms of discrimination. Even though the Commission's decisions are not legally binding, they are in most cases acceded to by the 'defendant', without the further necessity of recourse to the law. The Commission also concluded that the effectiveness of the Act would be further improved if greater recognition were given to their work.

The results of research carried out on behalf of the government underline these conclusions.³ In the Race Discrimination Monitor (*Monitor Rassendiscriminatie 2005*⁴) a review is provided of the state of affairs in relation to discrimination on the grounds of race, nationality, and religion. The scope of the research included discrimination in the workplace, in the provision of goods and services, education and the criminal law. The report also includes the results of research into discrimination as experienced by a representative group of the residents of the Netherlands. From this it appears that people of Moroccan and Turkish origin suffer from a relatively high incidence of discrimination (55% and 48% respectively of those questioned). Other migrant groups, such as people from Surinam or the Antilles reported a lower incidence of discrimination (40% and 37% respectively of those questioned). The incidents reported varied from discriminatory remarks (64%), and unequal treatment (58%) to damage to property and physical assault (7%).

² Commissie gelijke behandeling (2004), *Het verschil gemaakt. Evaluatie AWGB en werkzaamheden CGB 1999-2004*. Utrecht: Commissie gelijke behandeling.

³ M.L.M. Hertogh en P.J.J. Zoontjes (2007), *Gelijke behandeling: principes en praktijken. Evaluatieonderzoek Algemene wet gelijke behandeling*. Nijmegen: Wolf Legal Publishers.

⁴ I. Boog (red.)(2006). *Monitor rassendiscriminatie 2005*, Rotterdam: Landelijk Bureau ter bestrijding van Rassendiscriminatie.

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

2.A Employment and occupation related – all grounds

Legal safeguards

There are a number of ways in which conflicts arising from discrimination can be resolved. These vary from the informal resolution of difficulties to judicial measures.

Many collective labour agreements include clauses which encourage the parties concerned to implement particular aspects of equal treatment. In addition to these, many organisations possess machinery for handling complaints, even if not linked to an antidiscrimination code, to which employees can have recourse; it is questionable however how familiar employees actually are with these arrangements.

Internal arrangements for complaint

Making use of internal arrangements/opportunities to make complaints even where these are not linked to a code of conduct: many organisations possess written arrangements/procedures for making complaints, and employees can in the first instance have recourse to these. In such cases a complaint can often be lodged with a manager, and it can also, where such a person exists, be lodged with a staff counsellor [*vertrouwenspersoon*].

Lodging a complaint with an ADB

If it is desired to use external machinery to lodge a complaint, then this can in the first instance be done through an Anti-Discrimination Bureau (ADB). The ADB will receive the complaint, and, on the principle of hearing both sides, give the person against whom the complaint is made, the opportunity to provide an account of his or her side of the case. In discussion with the complainant, it will review what (judicial) courses of action may subsequently be pursued

Calling on the assistance of the CGB

To make an approach to the Equal Treatment Commission is a second simple way in which an external complaint may be made. The procedure is free of charge, and requires no legal representation. The complainant can approach the CGB independently, or with the assistance of the ADB.

Going to court

If the complainant wishes to bring civil proceedings for breach of the AWGB and the Civil Code, they must do this themselves through their own legal representative.

National Ombudsman

The National Ombudsman (NO) examines whether or not the government has behaved in a proper way. This he does either following receipt of a complaint, or on his own behalf. For the purposes of his enquiry, he makes use of a list which sets out criteria by which proper behaviour can be judged. These requirements form, in a certain sense, a code of conduct for the government. The prevention of discrimination is one of the criteria that the NO uses to make his judgement, and lodging a complaint with the NO is one of the channels by which violations may be challenged. Use cannot be made of his services until after the internal complaints procedure of a government body has been exhausted.

Works Council (OR)

The OR can be called in to ensure that discriminatory cases are exposed, and can play a role in the prevention and combatting of discrimination in business. The Works Councils Law (WOR) stipulates in particular that a Works Council must guard against discrimination in the workplace (Art. 28 WOR).

Bringing a complaint through the Trade Union

For a number of years now, the Trades Union Federation (FNV) has also been a place to which complaints of discrimination can be brought. In addition to lodging a complaint itself, the Union can also play an important role in providing the Anti-Discrimination Bureau with relevant information, which it can often supply in regard to the organisation concerned. It can, for instance, furnish information on whether the particular firm is known to have been implicated more than once in cases of discrimination. Since the Union knows the firm, it will be able to suggest the outlines of the strategy that should then be followed. Through its members too, and with or without the help of the Works Council and staff representation, it will be able to raise these matters within the organisation concerned.

Factory Inspectorate

Another channel that may be employed is the calling in of the Factory Inspectorate under the terms of the Working Conditions Act (*Arbo-wet*). Under this legislation, the employer is specifically obliged to conduct his undertaking so as to avoid, and, if that is not possible, to limit, any psychosocial harm resulting from work (article 3, paragraph 2, *Arbo-wet*). 'Psychosocial harm' in the working environment is understood to include the following factors: sexual harassment, aggression and physical violence, bullying and pressure of work, such as to induce stress (Article 1, paragraph 2, under e, *Arbo-wet*). Discrimination is not specifically mentioned here, although its inclusion has certainly been argued for in discussions on the amendment of the Act.

Legal aid centre

When it comes to industrial relations, it should be appreciated that time limits within which action must be taken can often be extremely strict. Failure to observe these can lead to the loss of the right to challenge an unfavourable decision that the employer may make. If a response is not quickly made to, for instance, instant dismissal, then this is taken as an indication of acceptance. Time-limits are also of the greatest importance in the case where an employee resigns with immediate effect. Such a resignation cannot be withdrawn unless reconsidered within a short period of time (i.e. a few days). These legal aid centres (*Juridisch Loket*) will be able to advise on the best course of action to follow in such cases.

Applicable legislation

Legal steps against discrimination can be taken under the provisions of equal treatment legislation (AWGB, WGB h/cz, & WGBL), and this forms the most important, and most comprehensive arm of the civil law where questions of equal treatment are concerned, in relation to all work-related matters, whether before, during, or after employment. The Equal Treatment Commission is the body charged with the oversight of this legislative area. Complainants can turn to the Commission and present a complaint to it when they feel that they have been subjected to unequal treatment.

The Equal Treatment Act (AWGB)

The AWGB forbids direct or indirect discrimination on the basis of religion, belief, political orientation, race, gender, nationality, heterosexual or homosexual orientation, and civil status.

It applies to all aspects of employment, and includes the government, private businesses and the professions. Apprenticeships, voluntary work, and agency work are also covered by this legislation, which, in a nutshell, applies to all types of employment, and to all aspects of that employment.

As far as work is concerned, section 5 is important. The AWGB speaks of differentiation [*onderscheid*] and not of discrimination [*discriminatie*]. ‘Differentiation’ can be direct or indirect, and the latter is not always forbidden: if it can be objectively justified, then it can be permissible.

An example of direct differentiation/discrimination would for instance be the failure to invite someone for interview because they were of foreign origin. A situation that could result in indirect discrimination would be the requirement in an advertisement for production-line workers that applicants should be Dutch-speaking. Such a requirement would specifically affect applicants born overseas, while the requirement in itself would not be necessary for the performance of the job. For the performance of the post of secretary on the other hand, the requirement to speak Dutch is clearly relevant, and the differentiation made could be objectively justified, and would thus be permissible.

Section 5 of the AWGB forbids discrimination in:

recruitment and selection: the offering of a post, and the management of the application procedure;
the commencement, extension, and conclusion of employment; the terms of employment, including pay, holiday arrangements; training, instruction and professional development, either during or prior to employment; promotion, working conditions (treatment) and work-related services.

All conditions of work, whether agreed upon in writing, or verbally, with the employer, fall within the scope of the AWGB: pay, holiday arrangements, opportunities for promotion, dismissal, professional development and training. Discrimination is therefore forbidden just as much during recruitment and selection as during the course of the employment itself and at its conclusion.

Consequent upon the implementation of EC Directive 2000/43, the so-called ‘racial equality Directive’, the AWGB was expanded to include working conditions and work-related services (section 5).⁵ These now also fall explicitly within the scope of the AWGB. The term discrimination now also includes intimidation and this is therefore now also banned (section 1a). Sections 8 and 8a are concerned with protection against victimisation (e.g. the loss of a job consequent upon the making of a complaint against discrimination) and provide not only for the protection of the complainant/victim but also for that of anyone who assists them. Think for example of a witness. Lastly, implementation of the Directive has meant that the rules of evidence for bringing legal proceedings through the CGB have been simplified. A complainant who claims that he has been treated rudely or in a discriminatory way by his employer has merely to provide sufficient facts to show that his claim is reasonable. It is sufficient to show that a *suspicion* of discrimination exists. It is therefore up to the employer to prove that he has not discriminated against the complainant

The Civil Code

The Civil Code (BW -*Burgerlijk Wetboek*) also provides channels which may be employed to combat discrimination. Mention may be made here of the provisions dealing with unlawful acts and good employment practice, articles 6:162 and 7:611 respectively of the BW. The latter is of the greatest importance because of the duty of care it imposes on an employer towards his employees.⁶

⁵ Amendment of the Equal Treatment Act and some other acts on the implementation of Directive no. 2000/43/EC and Directive no. 2000/78/EC (EG-implementatiewet AWGB), Kamerstukken II, 2002-2003, 28770, nrs. 1-2.

⁶ For a more detailed explanation, see the paragraph concerning discrimination by a manager or colleague.

Important too are articles 7:646 to, and including 7:649 of the Civil Code. These forbid discrimination on the grounds, inter alia, of gender, differences in working hours, and the temporary or permanent nature of the work contract. The Equal Treatment (working hours) Act (WOA) and the Equal Treatment Temporary and Permanent Employees Act (WOBOT) are thus implemented through the Civil Code.

In relation to the law concerning civil servants, the following articles are important, namely articles 125g and 125h of the Civil Servants Act (AW).

The Equal Treatment in Employment (Age Discrimination) Act (WGBL)

Legislation concerning equal treatment at work on the grounds of age has been in force in the Netherlands since 1st May 2004. The legislation covers the whole field of work, including access to professional training and vocational guidance, and membership of employees' and employers' organisations.

In contrast to the AWGB, the WGBL recognizes a more open approach, whereby discrimination on the grounds of age remains permissible, on condition that a legal exception is provided or there is an objective justification.

The legal exceptions are named in articles 7 and 8 of the WGBL, and the ban on discrimination on grounds of age does not apply if the age barrier:

- a) is based on employment or work practices which are aimed at furthering the participation in the workplace of particular age-groups, provided that these practices are laid down in or by statute;
- b) relates to the reaching of the statutory pensionable age (known as the AOW age) or a greater age if this is laid down in statute, or agreed between the parties;
- c) objectively justifiable for a legitimate objective, and the means for attaining that objective are appropriate and necessary (art.7);
- d) relates to the ages at which pension provision may be made, or to the statutory pensionable age.

An age barrier is objectively justified if three conditions are met. Firstly, its objective must be a legitimate one – this means that the achievement of the objective must satisfy a genuine requirement of the organisation concerned, that the objective is not in conflict with other legislative requirements, and that the desired objective is not a discriminatory one. Secondly, the means (i.e. the age barrier) must be appropriate to the achievement of the objective. Finally, the use of the specific age-discrimination must also be necessary for the achievement of the objective. This final condition means that it must not be possible for the objective to be achieved by other means i.e. without the need for discrimination on grounds of age.⁷

The Equal Treatment (Disability or Chronic Illness) Act (WGBH/CZ)

This act came into force on 1st December 2003. Its scope is as yet limited to the fields of work and professional training.

Public transport is included in the text of the Act, but the relevant provisions are not yet in force. The expectation is that from 2010, some parts of public transport will be adapted so that buses are accessible for disabled people. Trains will not have to be adapted until 2030.

The ban on discrimination on the grounds of disability or chronic illness also means that the employer is required, as necessary, to make effective adaptations to the workplace, unless doing so constitutes an excessive burden upon him.

⁷ www.leeftijd.nl

This requirement is included in WGBH/CZ, so as to enable disabled people, or people suffering from chronic illness, in individual cases, to take part, or to continue to play a productive part, in the workplace.⁸

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

The banning of discrimination in the AWGB applies also to fields outside work and the professions. The provisions of the legislation also cover the offering of goods and services, amongst which are housing and education. Only in regard to race does the Act extend to the field of social protection, among which are included social security and social benefits (section 7a AWGB).

As far as the grounds of disability, chronic illness and age are concerned, legislators have imposed no ban on discrimination in the offering of goods and services, although in regard to disability and chronic illness, legislation is being developed that will have a bearing on the field of public transport. This will primarily require the making of adaptations so that disabled people will be able to make use of the benefits of public transport.

The legal safeguards provided are similar to those in the workplace. Cases of discrimination can be challenged by:

Internal channels

Codes of conduct, internal complaints machinery/channels: many organisations have their own complaints machinery/procedures. Complaints can also be laid before boards of arbitration, or before semi-public supervisory bodies, such as the Consumers Authority [*Consumentenautoriteit*] and the Financial Markets Authority [*de Autoriteit Financiële Markten (AFM)*]. Additionally, the complainant can lodge his complaint with an Anti-Discrimination Bureau (ADB), make application to the CGB, or go to court.

Legal proceedings in a civil court under the AWGB or the Civil Code must be brought by the complainant themselves through their legal representative.

2.C Where a choice of avenues for raising either an employment related or a non-employment related complaint exists

As set out above, anyone who is confronted with discrimination has a number of different means by which they may lodge their complaint.

No general advice can be given on the adoption of any particular approach, although in most cases an anti-discrimination bureau will be able to help with advice on what strategy should be followed.

In the weighing-up of the for and againsts of a particular course of action, many different elements have a part to play.

The following can be discussed with the parties concerned:

- What the desired outcome is;
- What the objective of the complaint is – other than the resolution of an individual problem, or the increase of the awareness of discrimination or ‘differentiation’;
- The urgency with which resolution of the problem is required, and the time necessary for the process to be completed;
- The time limits within which the different procedures must be completed and the question of whether the parties concerned can meet these;
- The possibility of obtaining an amendment to the legal measure at issue;
- Whether a legally binding solution is feasible;

⁸ CGB-judgement 2006-181.

- Assessment of the relevant facts;
- Assessment of the available evidence, or of the availability of facts which give rise to a suspicion of discrimination;
- Whether the employment of a lawyer, or a legal adviser is required, or strongly desired;
- The availability of legal aid;
- The likelihood of obtaining damages;
- The likelihood of the reinstatement of the (work) relationship;
- Suitability of the case for publicity and for increasing public consciousness;
- Effect of the complaint on public opinion;
- Possibility of a group action;
- Estimation of the costs of the different procedures;
- Possible (negative) consequences for the complainant following the lodging of the complaint.

2.D What are the technical procedural requirements of each available remedy?

With different procedures, different requirements can be of importance. When a case is brought to court, time-limits are important: a legal adviser or lawyer will pay attention to these. In general, it is important to gather as much evidence as possible.

The procedures of the CGB are informal, although when a complaint is lodged for adjudication, some requirements are made. Information on these procedures can be found on the Commission's website: www.cgb.nl. The CGB can be contacted at: postbus 16001, 3500 DA Utrecht, tel. 030-8883888.

Information about anti-discrimination bureaus is obtainable from Art.1, vereniging tegen discriminatie [*Association against Discrimination*], Schaatsbaan 51, 3013 AR Rotterdam, www.art1.nl. Art.1 is a centre of expertise in regard to discrimination on the grounds of race, ethnic origin, nationality, religion and other anti-discrimination matters.

The following organisations are engaged in anti-discriminatory activities:

E-Quality, kenniscentrum voor emancipatie, gezin en diversiteit,
 [E-quality, information centre for emancipation, the family, and diversity]
 Postbus 85808
 2508 CM Den Haag
 tel. 070 365 97 77
info@e-quality.nl
www.e-quality.nl

Expertisecentrum LEEFtijd, adviesbureau voor vraagstukken over leeftijd en levensloop
 [Centre of expertise Age, an advice bureau for problems concerning age and careers]
 Postbus 19238
 3501 DE UTRECHT
 tel. 030 266 2000
 fax 030 266 2837
redactie@leeftijd.nl
www.leeftijd.nl

Chronisch zieken en Gehandicapten Raad Nederland, de koepel van organisaties van mensen met een chronische ziekte of een handicap
[Dutch Council for Sufferers from Chronic Illness and the Disabled, the umbrella organisation for people with disability and chronic illness]

Postbus 169
3500 AD Utrecht
tel. 030 291 66 00
fax 030 297 01 11
bureau@cg-raad.nl
www.cg-raad.nl

Movisie lesbisch en homo-emancipatiebeleid, kenniscentrum voor overheden, belangen- en welzijnsorganisaties
[Movisie- organisation for the emancipation of lesbians and gay men; an information centre for governments, interested - , and welfare organisations]

Postbus 19129
3501DC Utrecht
tel. 030 789 20 00
fax 030 789 21 11
algemeen@movisie.nl
www.movisie.nl

COC Nederland
Postbus 3836
1001 AP Amsterdam
tel. 020 623 45 96
fax 020 626 77 95
info@coc.nl
www.coc.nl

2.E What support exists at national level for accessing the different procedures, and what can be done to overcome any impediments/obstacles?

As previously stated, a complainant can obtain advice and support from an anti-discrimination bureau. In work-related cases, a complainant who is a member of a trade union can appeal to the union for assistance. Someone who commences legal action can, in certain cases receive financial assistance through the legal aid scheme, but will nevertheless have to make their own contribution to the total costs. This contribution is related to their income. For an estimate of the likely contribution, see www.rvr.org.

2.F Referrals to the European Court of Justice

In cases which are handled by a judicial body, the effect of rules applied by European law can sometimes be unclear. In such a case, the judge may, under article 234 of the European Convention, apply to the European Court of Justice in Luxemburg for an interpretation of those rule. This relates to prejudicial questions. The parties to the case can call upon the judge to submit questions of this kind, or the judge may do so on his own initiative. All judicial bodies can act in this way. The CGB is however not a judicial body, and lacks this prerogative.

2.G Petitions to the European Parliament

The Petitions Committee of the European Parliament can receive petitions from citizens who consider that their rights under European law are unsatisfactorily observed.

2.H Alerting the European Commission to discriminatory administrative practices

Citizens of the member states of the EU, who consider that the government of their own country is incorrectly applying European law, can also appeal directly to the European Commission to take action. The European Commission can make its own inquiry, and, if necessary, commence a so-called 'process of breach'. Through a procedure of this kind, the Commission's aim is to cause the member state concerned appropriately to adapt its legislation or its policy. If its government does not comply, the Commission can institute proceedings against the member state in the European Court of Justice. The Commission is obliged to accept an appeal of this kind from a European citizen and to act upon it.⁹

2.I Complaints to the European Court of Human Rights

Additionally, a complainant can, once all avenues of appeal to other judicial bodies have been exhausted, lodge a complaint with the European Court of Human Rights in Strasbourg. Discrimination is forbidden by the European Convention on Human Rights, in article 14, and in the twelfth additional protocol to the Convention. The Netherlands have ratified this protocol, and it has therefore direct effect in our legal system.

Collective complaints, from, for example, trade unions, can be lodged under the provisions of the European Social Charter (ESC).

2.J Other international remedies

The Netherlands have ratified a number of international conventions, some of which have direct effect in the Dutch legal system. Among these is the International Convention on Civil and Political Rights. Under the International Convention for the Elimination of all forms of Racial Discrimination (CERD) and the International Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) residents of the Netherlands are able to appeal in an individual capacity to the committees charged with ensuring that these Conventions are observed. Such an appeal can however only be lodged if all national judicial procedures (including appeal to the higher courts) have been exhausted. NGOs often produce 'shadow reports' to supplement the periodical reports which the government sends to the committees charged with oversight of the Conventions.

2.K Professionalism

Every member of an NGO or trade union who is dealing with the case of an individual complainant or of a group of people, must be aware that they must display a high level of professionalism. Included in this is a need for confidentiality, and the efficient management of case files. Those whom an NGO or trade union are unable to assist, must be given satisfactory information, and where possible must be referred to others who will be able to give them advice and assistance.

3. Societal issues

The personal consequences of discrimination

Discrimination has a great influence on the personal life of those who suffer from it. People who have to cope with discriminatory or racist remarks, and who feel themselves to have been treated unequally, and to be excluded, experience these things as humiliating.

⁹ Article 41 Charter of Fundamental Rights of the European Union:

1. 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. 2. 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 interests of confidentiality and of professional and business secrecy, and the obligation of the administration to give reasons for its decisions.

An important strategy to deal with these experiences is the avoidance of situations in which people could be confronted with forms of discrimination.

Discrimination by those in authority, and by other public functionaries, has the greatest negative effects on people.

Age and education

A matter of particular importance arises where racial discrimination is concerned, namely that the better-educated members of the ethnic minorities are more likely to complain of discrimination than those with a lower standard of education. The better educated are also more negative about the social climate in which immigrants in the Netherlands live, and have a more negative view of indigenous Dutch people. Younger members of the ethnic minorities are also more likely to complain of discrimination than their older compatriots. The younger members of these communities are more active in the social field, and have therefore to deal with hostile treatment and exclusion in education, in social life, in their local neighbourhood, and in access to employment.

Of those subjects relating to discrimination which claim attention in the Netherlands, the following stand out:

The difference in rates of pay of women when compared with those of men, and of ethnic minorities when compared with those of the indigenous population. The 'glass ceiling': both women and members of the ethnic minorities hold less higher-status posts than men and members of the indigenous population.

Disabled people can participate less in society than others, because, for example, making use of public transport is always a problem for them. People over a certain age cannot get insurance, or obtain a loan any more. Young people are discharged when they reach the age of 19 or 20, displaced by yet younger, cheaper, workers. Gay men and lesbians are still bullied on the work floor if they are honest about their sexual orientation. Many will not 'come out' for precisely this reason. Young men from the immigrant communities are regularly turned away from places of entertainment. Muslims who wear a headscarf as an expression of their religion have less chance of obtaining work placements than others.

Of those who experience discrimination, there are very few who mention the experience, let alone make a complaint about it. This is because they fear the negative consequences of doing so, and believe that to complain is pointless. A part is also played here by the fact that not everyone knows what rights they do have, or where they can take a complaint. Members of trade unions and NGOs must also recognise that they themselves may well harbour prejudices where minority groups are concerned, whether these are homosexuals, Moroccans, or disabled people.

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

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

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

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

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

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

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

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 EC delegation in The Netherlands does not provide funding for non-discrimination activities.

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

The Ministry of Social Affairs and Employment provides for subsidies in the area of general employment. Non-discrimination may be included.

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?)

The funding is usually only project funding, with a fixed starting date and a fixed end date.

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

A funding request can be sent to the Ministry of Social Affairs and Employment. Within the Ministry, the 'Agentschap SZW' ('SZW Agency') is responsible for handling funding requests. It deals with allocating national subsidies and with funds under the European Union's EQUAL and ESF programmes. The EQUAL programme has been terminated in 2006. Under the Dutch regulation regarding ESF 2007-2013, some of the key areas for action including reinforcing social inclusion by combating discrimination and facilitating access to the labour market for disadvantaged people.

In the framework of the European Year of equal opportunities 2007, the Ministry opened a competition for project funding. Proposals could be submitted until the end of January 2007.

It is difficult to say in general whether a funding request will be granted; this completely depends on the aim of the project, the costs involved, the availability of funds within the Ministry and the priorities of the Ministry.

The formal conditions are laid out in specific regulations. These regulations are governed by the 'Regeling algemene regels met betrekking tot de verstrekking van subsidies' (General Regulation Subsidies Social Affairs and Employment), which is based on the 'Kaderwet SZW-subsidies' (Framework Act Subsidies Social Affairs and Employment). The general conditions concern the aims of the projects, the percentage own funding, guidance by a public servant, publication of the results etc. Information can be found on:

http://agentschap.szw.nl/index.cfm?fuseaction=dsp_rubriek&rubriek_id=90013

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

Not applicable.

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

Some Provinces supply subsidies for employment projects. Municipalities may also provide funding for specified local projects or activities.

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?

Some private funds supply funding for employment-related projects. Foundation *Doen* ('Stichting Doen') is one of the largest sponsors, but its funding activities are restricted to 'socially vulnerable groups', which may lose contact with society. Examples of target groups are deprived youths, ex-prisoners, the homeless and persons with a disability.

8. Are there any other source of funding?

There are other private funds possibly approachable for projects related to non-discrimination:

Oranje Fonds: Contributions must be intended for investments or projects occurring within the Netherlands, the Netherlands Antilles or Aruba and which contribute to the Fund's general objective: a society in which people are mutually involved in each other's lives.

Mama Cash: a women's fund which finances projects conceived by women. Projects must set an example for other women.

IV. Diversity Management seminar

Design of the training

The content of the Diversity Management seminar was developed by the trainer in the Netherlands, Mrs. Lida van den Broek. She is the founder of one of the longest existing diversity management bureaus in the Netherlands, Kantharos.

Based on Mrs. Van den Broek's experience as a trainer in diversity management issues, it was decided to give the training seminar the title 'The Next Step'. Diversity management practices have been applied in the Netherlands for considerable time. Many employers, including large companies, small and medium-sized enterprises as well as governmental agencies are aware of the benefits of diversity policies and apply various forms of diversity policies.

In order to support these employers in further developing their diversity management approaches, the content of the seminar was aimed at meeting their demands in this area. This idea was further strengthened by the fact that there have been a significant number of seminars on the topic of diversity management over the past period in the Netherlands. Most of these targeted a 'beginners' audience. There seemed to be scope for a seminar with a different starting point.

The training manual proved to be of relative value for this purpose, as it was written with the objective to raise awareness and to introduce the issue of diversity management to a target group of organisations with little or no experience in the field.

Preparation of the seminar

As indicated in the needs assessment, Diversity Management policies concentrate on the issues of gender, age and ethnicity.

Because similar seminars on diversity management are regularly organised in the Netherlands, we needed to generate a specific interest in the seminar in order to attract a relevant selection of participants. For this purpose it was important to offer new insights, practical instruments and interesting speakers.

In the preparations for the seminar the key issue that then was identified, was to discuss the 'Next Step' for organisations applying diversity management policies. In the Netherlands, a large number of companies in various sectors already have introduced diversity management policies. For them it seemed useful to create a stage to discuss problems encountered and finding ways forward.

It was decided to invite a speaker who could take a critical look at past experiences and who, on the basis of empirical research, could offer comprehensive proposals for a change of direction in diversity management policies. The person who fitted this profile was Dr. Hans Siebers of the Department of Organisation Studies, Tilburg University.¹⁰

For the preparation of the seminar, the project leader and the trainer consulted DIV. This organisation, in full National Network Diversity Management DIV, was established in 2002 with support of the Ministry of Social Affairs and Employment. It has the objective to promote diversity issues among employers in the Netherlands.¹¹ DIV acts as a network organisation and publishes information materials, organises meetings and advises individual employers and employers' organisations. DIV gave valuable insight in the various sectors to be targeted for the seminar, gave input on the content of the programme and agreed to advertise the seminar in their network.

¹⁰ <http://www.tilburguniversity.nl/webwijs/show/?uid=h.g.siebers>

¹¹ <http://www.div-management.nl/>

The organisers tried to involve one of the larger employers' organisations. However, the contacts at this organisation showed no interest in collaboration.

The venue, *Kloostersalons Mariënhof* in Amersfoort was chosen because of its central location in the country.

The announcement of the seminar was sent to a large number of contacts of Kantharos, DIV, and Art.1. The seminar was announced in *Contrast*, a monthly magazine on multicultural issues. It was also published on a number of websites.

The registration turned out to go extremely well. Within ten days, a number of 60 participants had registered and the number of registrations grew even then. With the consent of the project organisers, the number of participants was increased to 100, the maximum capacity of the venue.

The registration had to be closed well before the date of presenting the list to the European Commission and a number of possible participants had to be disappointed.

A week before the seminar, the participants were asked to prepare their participation by thinking about two questions:

- What is the key question that needs to be asked to take a further step in your own organisation?
- What discussion can cause a new wave of creativity that will give a boost to your organisation's process?

These questions were used as the initial input for the debate during the seminar.

The registered participants formed a well balanced mix of representatives of small, medium sized and large companies, 78 percent of the participants was female and 22 percent male. One third of the participants represented a training or consulting firm.

Of the 100 registrations, 82 persons actually attended the seminar, of which one third with a minority ethnic background.

Carrying out the seminar

On the basis of information from the organisers of the diversity management seminar in Germany, the working method of the World Café was also applied in the seminar in the Netherlands.

This method allowed for a plenary introduction, followed by a series of table discussions. Each table formulated a question, which was discussed by a different group.

The key note speech was delivered in the morning by Dr. Hans Siebers. According to mr. Siebers, diversity management can only be applied successfully if the whole organisational structure is revised. His research shows that carrying out a number of interculturalisation workshops or similar one-off events, as sometimes is the case, is ineffective.

The business case was presented in the afternoon by representatives of insurance company Achmea. Achmea is the largest insurer in the Netherlands and has daughter companies in the Netherlands and in several EU member states. The approach of Achmea focuses on a life course perspective in diversity management. The experience of Achmea showed that the diversity management process needs continuous attention and development. The process needs to be supported by the top echelons of management, as well as by the lower levels. A key point in their presentation was the need for communication about the effects of diversity management practices throughout the company.

Among the key issues for taking next steps, participants stated that resistance in the company, and especially at management level is a difficult issue. Strategies that were mentioned in this respect were to stress the interest of the company, to point to results and to involve all levels of management and staff. Another strategy was looking at development of talents of individuals, rather than applying a diversity management policy *per se*. If the organisation looks at skills rather than awareness, the basis for organisational change will be strengthened.

Main lessons learned seminar

The success of the seminar can to a large extent be attributed to the chosen theme of the 'Next Step', which appears to fulfil a need in the market. Another factor may be that the seminar was free of cost – other seminars of this kind require a substantial participation fee.

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.