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**Strengthening anti-discrimination policies**

**Document 10**

**Comparative Study on the  
Operational Basis of Organisational Structures  
Implementing Anti-Discrimination Policies and  
Coordinating Mechanism**

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## 1 Introduction

The following study gives an overview about the equality bodies in Ireland, the Netherlands and the United Kingdom. The antidiscrimination legislation in the respective countries has already been described in the paper “Comparative Study on Anti-discrimination Legislation and Policy in Ireland, the Netherlands and the United Kingdom” within the framework of the Twinning-Project. Thus reference to the respective legislation is only made if necessary.

## 2 United Kingdom

### 2.1 Introduction

The antidiscrimination system<sup>1</sup> in Great Britain is characterised by the existence of a separate legal and institutional structure for different grounds of discrimination, which can be explained by the historical development of British antidiscrimination policies from the two strands of gender equality and antiracism. Currently separate laws govern protection from discrimination with regard to gender, “race” and disability. Until now, there is no legislation against discrimination based on sexual orientation and age<sup>2</sup>. A bill against age discrimination implementing the age strand of the European Employment Directive (Council Directive 2000/78/EC of 27 November 2000) is in preparation and will come into force from October 2006<sup>3</sup>. Three different bodies – the Equal Opportunities Commission, the Race Relations Commissions and the Disability Rights Commission - have been set up to implement the respective legislation. A change from the currently predominant vertical “single issue, multiple bodies”-approach to a horizontal “single body, multiple issues”-approach is currently being discussed.

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<sup>1</sup> For the purpose of this paper an antidiscrimination system should be understood as the specific arrangement of legislation, implementation bodies and general policy measures fostering antidiscrimination policies.

<sup>2</sup> The government has published a ‘Voluntary Code of Practice on Age Diversity’ in 1999. The Code offers advice for employers on eliminating age discrimination and introducing good practice to improve people management in their business and may be accessed at [www.dfee.gov.uk/agediversity/](http://www.dfee.gov.uk/agediversity/).

<sup>3</sup> cf. Dti 2003, p.6, [http://www.dti.gov.uk/er/equality/age\\_consultation.pdf](http://www.dti.gov.uk/er/equality/age_consultation.pdf)

In Northern Ireland, this change already has been implemented in 1999, when the former “Commission for Racial Equality for Northern Ireland”, the former „Equal Opportunities Commission for Northern Ireland“, the former „Fair Employment Commission“ and the former „Northern Ireland Disability Council“ were merged to the „Equality Commission for Northern Ireland“.

The following chapters will give a short overview of all bodies in Great Britain and will give a more detailed analysis of the British “Disability Rights Commission”, the “Commission for Racial Equality” and the “Equality Commission for Northern Ireland”.

## ***2.2 Independent Bodies to fight discrimination in Great Britain***

Gender-based discrimination was first issue, which was tackled by a specific institution in Great Britain. Following the *Equal Pay Act 1970 (EPA)*, which gave individuals the right to equal contractual payment, the *Sex Discrimination Act 1975 (SDA)* made it unlawful to discriminate based on sex or marital status in employment and vocational training, education and the provision of goods, facilities and services. The SDA also established the *Equal Opportunities Commission (EOC)* as a statutory independent body working towards the elimination of discrimination and the promotion of equality of opportunity between the sexes. The *Sex Discrimination (Gender Reassignment) Regulations of 1999* extended the protection of the SDA to transsexuals. These regulations were amended in 2001 widening the the definition of indirect discrimination and shifting the burden of proof towards the employer.

The EOC was followed by the “Commission for Racial Equality”, which was set up in 1976. In 1999, the “Disability Rights Commission” was installed.

## ***2.3 Disability Rights Commission<sup>4</sup>***

### **2.3.1 History and institutional structure**

The Disability Rights Commission is set up under Section 1 of the Disability Rights Commission Act 1999. The Commission opened for business on 25 April 2000. It is a publicly funded non governmental body (a non-departmental public body according to British law), sponsored by the Secretary of State for Work and Pensions. It is a national body covering Great Britain. Its main office is located in London. It is planned to set up regional offices to increase accessibility.

The Commission consists of 15 Commissioners, including the Chairperson, who are appointed by the Secretary of State through a process involving independent assessment under guidance issued by the Commissioner for Public Appointments. The Commissioners are appointed for a period of five years. The Chairperson of the Commission is consulted about Commissioners' appointments before they are made. According to the Disability Rights Commission Act 1999, at least half of the members of the board have to be persons with disabilities (Currently the Chairperson and nine Commissioners are people with disabilities). The Commissioners represent a wide range of interests within both the disabled and the wider community. One Commissioner has special responsibility for Wales, and one has special responsibility for Scotland.

The Commission is installed as a permanent body. However, the Department for Work and Pensions will review the Commission's activities and justification every five years. The Department will determine the timing and format of the review and will advise the Commission.

Although being an independent body, the Secretary of State may exercise influence on the overall policy of the Commission by sending a remit letter to the Commission setting out the key strategic objectives the Government expects the Commission to meet each year. Each year the Commission must submit for the Secretary of State's

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<sup>4</sup> The report on the Disability Rights Commission is based on Council of Europe 2002, European Commission 2001, Pilling 2001, PLS -Ramboll Management 2002

approval a Corporate Plan for the three-year period from the following 1 April, setting out its strategic objectives and its plans for achieving them. The Commission is also accountable for its activities publicly and to Parliament through the production of an Annual Report. The Secretary of State must lay a copy of the report before Parliament and arrange for such further publication of it as s/he considers appropriate. S/he will also arrange for a copy of the report to be made available to the Scottish Parliament and to the National Assembly for Wales.

### **2.3.2 Staff and Funding**

The Commission has the right to employ its own staff. Only the appointment of the Chief Executive is subject to the approval of the Secretary of State. Appointments to specific posts below Chief Executive are made by the Chief Executive, subject to approval by the Secretary of State as to numbers and terms and conditions. In 2002 the staff of the Commission numbered about 180 employees, 10% of them general academic staff, some 15% legal and some 20% policy experts.

The budget of the Commission is laid down in the annual allocation in the fiscal budget. Marginal resources derive from ad-hoc project-based grants from EU structural funds or the special funds in the UK. In 2003, the budget totalled Euro 21,8 million (including staff costs).

### **2.3.3 Duties**

The Commission has the following statutory duties:

- to work towards the elimination of discrimination against disabled persons;
- to promote increased equality of opportunity for disabled persons;
- to take such steps as it considers appropriate, with a view to encouraging good practice in the treatment of disabled persons;
- to keep under review the working of the Disability Discrimination Act 1995 and the Disability Rights Commission Act 1999.

According to the Commission's self-understanding, building strong contacts with civil society organizations is an important condition for fulfilling its tasks. For this purpose the DRC is building links with disability and advisory groups, networks and organizations representing business and employers and organises awareness-raising campaigns. The DRC also works with other public and statutory bodies when a joint approach is appropriate in dealing with issues relating to discrimination. The DRC reports on the nature and effectiveness of its links in its Annual Report. In addition, the DRC is working to build capacity, especially amongst disabled people's organisations.

#### **2.3.4 Rights of the Commission**

The Commission has the right to prepare and issue statutory Codes of Practice explaining what the law means in practice. These Codes of Practice do not only provide guidance for employers and service providers, but they also can be cited in courts and tribunals as evidence of the defendant's compliance or otherwise with the requirements of the law. Such Codes of Practice must be approved by the Secretary of State and laid before Parliament.

The Commission may undertake formal investigations into how disabled people are treated in a particular organisation or sector, and into unlawful acts by particular organisations. The Commission has the power to serve a non-discrimination notice if it is satisfied that a person has committed or is committing an unlawful act following a formal investigation. A non-discrimination notice gives details of the unlawful act and requires the perpetrator not to commit further similar unlawful acts. The notice may also require the perpetrator to produce an action plan to ensure compliance with the law. If the Commission considers that an action plan is inadequate it may apply to a county court (or to the sheriff) for an order.

The Commission has the power to require any person to give written or oral information for the purposes of a formal investigation. When supporting legal cases and when conducting formal investigations, the DRC can ask for internal documents from com-

panies, even if these documents are confidential. The DRC must also treat the documents in confidence.

The Commission has the right to provide counselling and to refer victims of discrimination to a solicitor, a local advice centre, disability organisations, trade unions etc. The Commission may grant assistance to an individual who is bringing proceedings before the court in connection with unlawful discrimination. This is a matter for the discretion of the Commission, which will take into account whether the case raises a matter of principle and whether it is unreasonable to expect the applicant to deal with the case unaided. If given, assistance may take the form of legal advice and/or representation, efforts to settle the dispute, or any other assistance, which the DRC thinks appropriate. The Commission itself does not have the right to issue a formal decision in cases of discrimination.

### **2.3.5 Other activities**

The DRC has made arrangements for a conciliation service which will be available to any disabled person who thinks they may have been discriminated against in relation to access to goods, facilities, services and premises in accordance with the provisions of the Disability Discrimination Act 1995 (DDA). This service is being run by a separate organisation on behalf of the Disability Rights Commission.

Furthermore, the Commission organises awareness-raising and public-relation campaigns and commissions studies and surveys in its field of competence.

## ***2.4 Commission for Racial Equality***<sup>5</sup>

### **2.4.1 History and institutional structure**

The “Commission of Racial Equality” was established in 1976 under Section 43 of the Race Relations Act 1976. It is a publicly funded, non-governmental body (a non-departmental public body according to British law), funded by a grant from the Home Office. It is a single-issue body dealing solely with issues of racial discrimination. The CRE is a national body covering Great Britain. Its main office is located in London, and there are regional offices in Birmingham, Leeds, Manchester, Edinburgh and Cardiff.

According to section 43(1) of the Race Relations Act 1976, the Commission consists of eight to fifteen Commissioners appointed by the Home Secretary (currently it is composed of 15 Commissioners). One of the Commissioner serves as the full-time Chair of the Commission. The Commissioners are appointed for a five years term following an open competition and selection process.

The Commission is installed as a permanent body. It carries out its work independently and does not have to report to the Home Office with regard to its priorities and business plans. Nevertheless, the Home Secretary has the power to order the Commission to carry out an investigation.

The Commission has to deliver an annual report on its activities and use of budget resources to the parliament and to the public.

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<sup>5</sup> The report on the CRE is based on CRE 2003, ECRI 1999, 2001, HMSO 1976, Home Office 2001, 2003; Migration Policy Group 2002, PLS-Ramboll Management 2002.

### **2.4.2 Staff and Funding**

The Commission employs its own staff. In 2003, the staff of the Commission was at about 220, approximately half of them in the central office in London. In the central office, about 25 – 30 persons work in the legal department, about 50 in the policy and communication department and about 30 in other areas (IT, finance, human resources management, clerical staff etc.). The staff of the local offices is composed accordingly. In 2002, the total budget (including staff) amounted at about 31 million Euros.

### **2.4.3 Duties**

The statutory duties of the CRE are (section 43.1 RRA 1976):

- to work towards the elimination of racial discrimination;
- to promote equality of opportunity and good relations between persons of different racial groups generally,
- to keep under review the working of this Act (the RRA 1976, B.P.), and, when they are required so by the Secretary of State or otherwise think it necessary, draw up and submit to the Secretary of State proposals for amending it.

The CRE cooperates with and supports the work of almost 100 local Racial Equality Councils. These are autonomous voluntary bodies set up across the UK to promote equality at local level. In 2000/2001, the CRE spent Euro 7,4 million in support of these structures. The CRE also cooperates closely with the other antidiscrimination bodies and with official inspection bodies, which are responsible for assessing different aspects of the performance of public institutions and participates in networks in areas like sports, business or education.

#### 2.4.4 Rights of the Commission

The CRE is vested with wide powers and has a major law enforcement function. It may

- conduct formal investigations where it is believed that discrimination is or has been occurring;
- issue non-discrimination notices;
- institute legal proceedings in cases of persistent discrimination;
- take proceedings in respect of discriminatory practices, advertisements and in respect of discriminating instructions or pressure;
- assist at individual complaints.

Its powers include statutory powers to require production of documents and oral evidence. Formal investigation powers are not used in relation to individual complaints, which are considered by industrial tribunals and civil courts. Often, individual cases act as a trigger, alerting the Commission to discriminatory practices within an organisation and leading to formal investigations into organisations, firms or areas of economic activity. Where an investigation discloses acts of unlawful discrimination, the Commission can issue a non-discrimination notice requiring the respondent or organisation to bring the particular acts of discrimination to an end and to inform the Commission by a specified date of the measures taken to prevent further discrimination. The notice remains in force for 5 years and, if not followed by the company, may be enforced by the civil courts<sup>6</sup>. Since 1977, the Commission has carried approximately hundred formal investigations in a wide range of public and private organisations (MPG 2002, p.28).

The CRE is bound by law to consider all applications for assistance in cases of alleged discrimination. The CRE can only consider an application for assistance, if the Race Relations Act covers the complaint. If the complaint is against an employer, the

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<sup>6</sup> A formal investigation on its own cannot provide damages to victims of discrimination, who will have to approach the appropriate court or industrial tribunals.

CRE will try to settle the case through the advisory, conciliation and arbitration service in employment relations) on behalf of the applicant. The CRE itself has the right to pass binding decisions, which may be challenged at a labour court for labour-related cases and a district court for non-labour related cases.

The CRE also has the right to support individuals in civil proceedings before labour courts ('industrial tribunal'). It can take over costs, send staff as lawyers and give legal advice. The CRE expects trade unions to advise their members on discrimination claims and will refer applicants who are trade union members to their union, in the first instance. Although preliminary legal advice is given by the CRE, only cases of a more general nature will receive legal representation. In most cases an agreement out of court of the controversy parties is reached. Only very rarely those accused of discrimination refuse to cooperate with the Commission.

The RRA 1976 authorizes the CRE to issue so-called 'Codes of Practice' for specific sectors. They explain in detail what measures can be regarded as racial discrimination and what procedures, albeit formally non-discriminatory, might induce discrimination in effect and give recommendations on policies that can be implemented in order to help to eliminate racial discrimination and enhance equality. The Codes themselves do not impose legal obligations and only have advisory status. However, evidence about the performance of the Code's recommendations can be taken into account in proceedings under the Race Relations Act, inter alia by industrial tribunals deciding whether an act of unlawful discrimination has occurred and when assessing the degree of liability by employers for such an act. If employers take the steps that are set out in the code to prevent their employees from doing acts of unlawful discrimination they may avoid liability for such acts in any legal proceedings brought against them.

Further to its legal powers, the CRE has the task to evaluate the effectiveness of the RRA 1976 and to suggest improvements. It has published several reviews of the RRA 1976 (1985, 1992, 1998), which partly have been implemented by the RR(A)A 2000.

### **2.4.5 Other activities**

Further to its function in the field of implementation of antidiscrimination legislation, the provision of information, public awareness-raising through media campaigns and the press, the collection of data on discrimination and supporting and commissioning studies in the field of racial discrimination is an important part of the work of the CRE fulfilling its duty to promote equality of opportunity and good “race relations”. The CRE also played a major role in antiracist networks within the European Union lobbying for European antidiscrimination legislation and has heavily influenced European legislation in this field.

## ***2.5 The Equality Commission for Northern Ireland<sup>7</sup>***

### **2.5.1 History and institutional structure**

The Equality Commission for Northern Ireland was established under the Northern Ireland Act 1998 in 1999 as a non-departmental public body sponsored by the Office of the First and Deputy First Minister (OFMDFM). It took over the functions previously exercised by the Commission for Racial Equality for Northern Ireland, the Equal Opportunities Commission for Northern Ireland, the Fair Employment Commission and the Northern Ireland Disability Council. It is a multi-issue body covering the whole of Northern Ireland.

According to the Northern Ireland Act 1998, the Commission consists of 14 to 20 Commissioners, who are appointed by the Secretary of State for a period of three years. The positions are publicly advertised, and upon receiving the applications a selection board nominates candidates for the Secretary of State's approval. Currently the Commission is composed of a Chief Commissioner, a Deputy Chief Commissioner and 18 other Commissioners. It meets every two months, and in the other months three subcommittees hold meetings. According to Section 74 of the Northern Ireland

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<sup>7</sup> The Report on the Equality Commission for Northern Ireland is based on Equality Commission for Northern Ireland 2003, Migration Policy Group 2002, PLS-Ramboll Management 2002, Sierra et al 2001.

Act, a Consultative Council to advise the Commission in relation to functions previously exercisable by the four predecessor organizations, may be set up, but has not been installed yet.

The Commission is installed as a permanent body. It does not receive instructions, but the Office of the First and Deputy First Minister have to formally confirm that its annual plans lie within the statutory remits of the Commission.

### **2.5.2 Staff and Funding**

The Commission has a staff of 143 led by a Chief Executive. The Chief Executive Officer and her staff are hired on normal contractual terms as civil servants. The Board only employs the CEO. A large amount of cases is subcontracted to local solicitors at annual costs of some 9 million Euros. Training activities, the organization of conferences and research also often is subcontracted. In 2002, the Commission had a budget of 6,749 million pounds sterling (approx. 10,1 million Euros, including staff costs).

### **2.5.3 Duties of the Commission**

The statutory duties of the Commission's are:

- Working towards the elimination of discrimination
- Promoting equality of opportunity and encouraging good practice
- Promoting affirmative / positive action
- Promoting good relations between people of different racial groups
- Overseeing the implementation and effectiveness of the public authorities' statutory duties
- Keeping the relevant legislation under review

According to Section 75 of the Northern Ireland Act, the Commission has to be contacted on all policy development having a significant impact potential on the promotion of equality and good relations. Section 75 of the Northern Ireland Act places significant duties on public authorities regarding how they carry out their functions (“statutory duty”). These duties relate to the promotion of equality of opportunities and good relations between people of different groups. The Commission has been given powers and responsibilities for overseeing the effectiveness with which these duties are carried out, including investigating complaints and giving advice to public authorities and others. All public authorities are required to prepare an Equality Scheme stating how they propose to fulfill their duties to promote equality, and these must be submitted to the Equality Commission for approval. The Commission is required to keep the effectiveness of the implementation of the new duties under review, and to offer advice to public authorities.

In addition the Commission is required to prepare guidelines on Equality Schemes, investigate complaints of failure to comply with an approved Equality Scheme, and in certain cases to refer the Schemes to the Secretary of State. The Commission regularly consults with NGOs and has the power to support promotional and educational activities of organizations promoting gender and racial equality.

#### **2.5.4 Rights of the Commission**

The Commission can give free and confidential advice to prospective complainants. It also considers all applications for assistance in cases of alleged discrimination. The Commission can only consider an application for assistance if the complaint is covered by the relevant legislation. The Commission does not have the resources to support every case, but everyone who applies receives some preliminary advice. The cases supported by the Commission are typically those that are seen as cases of principle or ones of strategic importance, i.e. those which clarify the scope of legislation and develop case law.

If the complaint is about an employment matter the applicant must register an 'originating application' with the Office of Industrial Tribunals and Fair Employment Tri-

bunals (OITFET). In the case of a non-employment-related complaint the applicant must issue proceedings in a county court.

The law is not entirely clear on the right of the Commission to take cases to the court, but an extrapolation from the circumstances of other institutions suggests that this would probably be unacceptable.

Within the limits of the existing laws, the Commission can conduct formal investigations and issue a non-discrimination notice. However, the other party to the case almost always challenges such notices in court, and because of legal obstacles they rarely succeed.

In Northern Ireland, employers with more than 11 employees are obliged to annually provide employment profiles to the Equality Commission, which monitors the appropriateness of conduct of the organisation. The Commission does not decide whether discrimination has actually occurred; this is for an independent industrial tribunal or court to decide, but may initiate proceedings if there are hints for possible discrimination.

### **2.5.5 Other activities**

The Commission has a wide range of information, including codes of practice, advisory booklets, leaflets and fact sheets, research reports, formal investigation reports, consultative responses and posters. In this context, the Commission has published several handbooks on model equal opportunity management, anti harassment strategies etc.

The Commission regularly undertakes surveys and provides support for studies. Publishing independent reports and making recommendations on any issue relating to discrimination The Commission undertakes research and/or commissions or financially supports research undertaken by others in order to provide reliable information and inform the debate concerning equality issues.

### 3 The Netherlands

#### 3.1 Introduction

The political system of the Netherlands has long been characterised by a drive for consensus. This drive for consensus most often is explained by the Dutch historic context of the struggle against the water, which already in the twelfth century led to the creation of public boards that organised the protection against the sea and the winning of land. In order to be able to defend themselves against the danger of floods, and because of farming in “polders” needs agreement on the level of ground water and the maintenance of dikes and ditches, the common interest forced people to cooperate in all circumstances and to reach consensual agreements (Butter/Mosch 2001, p. 8-17).

This drive to consensus has led to a high degree of openness of the political system vis-à-vis civil society organisations and the social partners. Thus in many areas of political decision-making, consultation procedures with NGOs, the social partners and citizens are a common practice. In most administrative procedures, consultation with advice councils composed of delegates of NGOs and citizens prior to decision-making is a statutory practice. This culture of consensus has been extremely well established within the area of economic and social policy in the 1980s and 1990s, where it has become known as the “polder model” establishing a system of voluntary wage control and budget discipline, which has been the precondition for the economic recovery of the 1990s. (cf. Den Butter/Mosch 2001). This specific political culture has also resulted in a high degree of acceptance of self-regulation by non-binding agreements and recommendations within the Dutch society. Although the drive for consensus has lost momentum in the late 1990s and the early 21<sup>st</sup> century, it is still highly influential in the judicial sphere leading to a wide acceptance of non-binding decisions and agreements.

Thus it might be difficult to transfer institutional solutions, which are successful in the Netherlands, to countries where no comparable political culture exists.

### 3.2 *Independent bodies in the Netherlands*<sup>8</sup>

Equality policy in the Netherlands follows a horizontal approach covering all possible forms of discrimination in one institutional framework. There is only one Independent Body against Discrimination, the “Equal Treatment Commission”. A peculiarity of the Dutch antidiscrimination system is the high degree of NGO-involvement in the area of victim-support and conflict mediation.

The work of the Commission is supported by the existence of some 40 local anti-discrimination offices. The local anti-discrimination offices are organized as Non-Governmental Organisations and provide victim-support, conflict mediation and provide general information on antidiscrimination issues to the public. The state, the provinces and the local municipalities fund them. The local antidiscrimination offices try to find reconciliation on cases brought before them or – if reconciliation proves impossible and the case is sound – transfer the case to the Equal Treatment Commission or directly to a court.

Thus they act as a kind of filter for the Commission, as de facto most cases of discrimination are at first reported to a local anti-discrimination office. It has to be noted, that a separate law grants state funding to the anti-discrimination offices<sup>9</sup>.

Information, documentation and legal advice to victims are carried out by local anti-discrimination offices, which are organised as independent NGOs and funded by the state and the regional and local governments. In the area of racism, the *National Bureau against Racism* (LBR), which forms a part of the umbrella – organisation “Forum”, and is mainly funded by the Department of Justice, has the function of a national centre of expertise for the prevention of racial discrimination in the Netherlands. It provides its expertise through a team of information advisors, documentation specialists, legal and policy advisors and researchers. Key areas of work include: the labour market, housing, the media, education welfare and the legal system. The LBR

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<sup>8</sup> This report is based on CGB 2001, 2002, Houtzager 2001, PLS-Ramboll Management 2002, Zwamborn 2002

<sup>9</sup> Regulation for the promotion of professionalisation of the anti-discrimination bureaus (Stimuleringsregeling professionalisering antidiscriminatiebureaus), Netherlands Official Journal (Staatsvourant, 9 March 2001, No. 49, p1., cf. Zwamboorn 2002, p. 31, fn 42.

cooperates with the local antiracism offices and provides legal training and counselling for them. Similar functions are performed by the “Expertise Centre Age and Society” in the case of age discrimination.

### ***3.3 The Equal Treatment Commission***

#### **3.3.1 History and institutional structure**

The *Equal Treatment Commission* (*Commissie gelijke behandeling*: CGB) was established by the Equal Treatment Act in 1994. It incorporated the tasks of previously existing Equal Pay Commission and Equal Treatment in the Workplace Commission.

The CGB consists of nine commissioners, including a Chair and two co-Chairs. In addition there are at least nine deputy commissioners who are asked to fill in when the Commission is short of members who can investigate cases; deputy commissioners sometimes have more specialized expertise in specific fields.

The CGB has been established as an independent commission (Article 16 Equal Treatment Act). The commissioners and deputy commissioners are appointed by the Minister of Justice in consultation with four other ministers (Minister of the Interior, Minister of Employment & Social Security, Minister of Education & Science, Minister of Welfare, Health & Cultural Affairs). The commissioners and deputy commissioners are appointed for a period of six years. Members may be reappointed immediately after expiry of their term. The Chair and the Vice Chairs have to fulfil the same admission criteria as for the admission to the post of a district judge, the other members are selected according to their expertise in the field of equality policies and legislation. The status of the commissioners is similar to the one of judges, their salaries and working conditions are regulated in a separate law (*het Rechtspositiebesluit*), and they may only be dismissed after a procedure similar to the one followed in the judiciary.

The Chair and the Vice-Chair are appointed on a full time contract, the other members on part time contracts (24-32 hours/week).

The Commission has three chambers, one dealing with gender-based discrimination, one with race and nationality and one with the remaining discrimination grounds.

### **3.3.2 Staff and funding**

The Commission appoints its own staff. In 2001, around 40 persons – around one third of them lawyers - supported the work of the Commissioners. The Commission can request the assistance of civil servants designated by the competent ministers and may outsource work of a more technical character (e.g. data analysis etc). In 2001 the total budget of the Commission was 3.5 Million Euros, including staff costs (De Commissie gelijke behandeling 2001, p. 5).

### **3.3.3 Duties of the Commission**

The Commission has four main duties:

- Investigating complaints on the request of a complainant and giving a ruling
- Investigating an issue on its own initiative and giving a ruling
- Giving recommendations in addition to the rulings and
- Bringing cases before the courts.

Any natural or legal person who feels to have been discriminated, witnesses of discrimination and pressure groups, NGOs and trade unions either independently or on behalf of a plaintiff can bring a written application for a ruling. In addition, employers or organisations may submit their own procedures for a statement of proof with anti-discrimination legislation. The procedures before the Commission are free of charge. The Commission has no remit in cases that involve the government or governmental organisations acting in a public capacity.

The Commission's rulings are non-binding, and it cannot award damages. Due to the specific political culture in the Netherlands, the courts most often follow the rulings of

the Commission. Nevertheless, the lack of binding rulings is constantly been criticised as well by the Commission as by activists and researchers. Currently the status of the Commission is under review. An important part of the review procedure is the legal status of the Commission's rulings.

Furthermore, the Commission is requested to evaluate the existing antidiscrimination legislation all five years and to give advice on new proposals for antidiscrimination legislation.

### **3.3.4 Rights of the Commission**

The Commission is a complaints body, which receives cases, investigates them and arrives at a conclusion. Furthermore, it has the right to carry out investigations at its own initiative. In this context, it has the right to obtain all relevant information and get access to the files it defines as relevant for the case. It may question the complainant, the "other party" and third parties, if necessary and may hear witnesses. It is compulsory to provide information to the Commission; refusal is considered a criminal offence.

To start an investigation at its own initiative, the Commission must have evidence of discrimination in a certain organisation or a more general area of society.

### **3.3.5 Other features**

In addition to its task as a complaint body, the Commission gives training to lawyers, judges, civil servants and NGOs. It maintains a database on its decisions on its website (<http://www.cbg.nl>) and publishes its own judgements and annual reports, press release and information material on its work. Members of the Commission regularly hold lectures about the Commission for NGO's, social partners and in the academic world.

## **4 Ireland**

### ***4.1 Introduction***

The Irish population is to a large extent very homogenous in regard to ethnicity. The ‘Traveller Community’ – a group that suffers a lot from social exclusion and discrimination - is the largest minority group. Non-nationals now make up 5% of the population, coming from 163 countries.

Modern Equality legislation has been implemented in Ireland in the 1990s, when existing laws from the 1970s were reformed. In 1992 the Labour Party proposed new equality legislation in its election manifesto and successfully introduced it in its programme for government in 1992 with Fiona Fail. It was maintained in the government programmes with the following Labour and Democratic Left Parties. Following consultations with the social partners and the relevant NGOs, two draft anti-discrimination laws were tested with regard to compliance with the constitution in 1992. Amended laws were then put into force in 1999 and 2000. The Employment Equality Act 1998 (EEA) and the Equal Status Act 2000 (ESA) form a basis for Irish anti-discrimination policy. The Employment Equality Act 1998 also transformed the former “Employment Equality Agency” into two equality bodies, the “Equality Authority” with the general task of promoting equality and the “ODEI - the Equality Tribunal” (former name: “Office of the Director of Equality Investigations”), a quasi-judicial enforcement agency.

### ***4.2 Independent Bodies in Ireland<sup>10</sup>***

Like in the Netherlands, equality policy in Ireland follows a horizontal approach covering all possible forms of discrimination in one legal and institutional framework. The two independent bodies against discrimination, the “Equality Authority” and the

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<sup>10</sup> This report is based on Equality Authority 2003, Ellis 2002, Equality Tribunal 2003, Merriman 2004, PLS-Ramboll Management 2002

ODEI, cover all grounds of discrimination mentioned in the EEA 1998 and the ESA 2000, namely

- gender
- marital status
- family status
- age
- disability
- race
- sexual orientation
- religious belief and
- membership of the Traveller Community

### ***4.3 The Equality Authority***

#### **4.3.1 History and Institutional Structure**

With the coming into force of the EEA 1998 the former 'Employment Equality Agency' was changed into the new 'Equality Authority' in October 1999. The previous institution mainly dealt with gender- and marital-status-based discrimination on the labour market. Its mandate was extended to also include the provision of goods and services, education facilities and accommodation and the nine grounds of discrimination mentioned in the EEA.

The Equality Authority is established as an independent and permanent body under the EEA 1998. Its board comprises 12 members, of whom at least five must be female and five must be male. Two members are nominated by the organisation of the employers and two by the trade unions, the other eight are nominated by the Minister of Justice, Equality and Law Reform. The board includes a chair and vice chair. Board members are drawn from the social partners and from organisations knowledgeable in equality issues with regard to reasons of discrimination mentioned in the EEA, or in consumer and social affairs, law, goods and services finance, management and administration. The board serves a 4 year term. The Equality Authority may appoint

Advisory Committees to consult with the civil society on specific equality issues (currently: Advisory Committee on Equality for Lesbians, Gays and Bisexuals; Advisory Committee on Equality for Older People)

The overall planning of the Equality Authority is laid down in a 3-years strategic plan, which is agreed with the Ministry of Justice, Equality and Law Reform. An annual business plan details the implementation of the strategic targets of the Authority.

The Equality Authority is organised into five sections: administration, communication, project-development, research and legal affairs. It does not have local offices, but holds partnerships with local Citizens' Information Centres, where staff of the Equality Authority can be contacted on a regular base

#### **4.3.2 Staff and Funding**

The Board appoints the director, the other staff – except the legal advisor and staff on a temporary contract - is recruited through the Civil Service Hiring Commission. Staff is mainly recruited among civil servants from other ministries and public authorities. In 2003, the Equality Authority had a staff of 54, mainly with a legal, administrative or research expertise. In 2003, the budget of the Equality Authority was Eur 2,17 million (excluding staff costs). The Department of Justice, Equality and Law Reform covers staff salaries. External legal expertise and researchers are sometimes used to conduct casework, assist in surveys or do research projects.

#### **4.3.3 Rights and Duties of the Equality Authority**

The statutory duties of the Equality Authority are with regard to the nine grounds of discrimination mentioned in the EEA:

- promoting and defending the rights established in the equality legislation and
- providing leadership in -
  - building a commitment to addressing equality issues in practice
  - creating a wider awareness of equality issues
  - celebrating the diversity in Irish society
  - mainstreaming equality considerations across all sectors

In its annual report 2002 the Equality Authority described the framework governing its approach as a holistic approach to equality addressing the economic, cultural, political and affective arenas and named four interlinked objectives of its work:

- Redistribution in terms of access to resources, income and public sector provision.
- Recognition in terms of difference and diversity being acknowledged, valued and accommodated.
- Representation in terms of power and access to decision making.
- Respect in terms of access to caring relationships and solidarity.

In practice, awareness raising, networking, public relations, project development and policy consultancy form the major part of the work of the Authority. A major element of its work is network-building among civil society organisations, social partners, companies and the academic world by convening meetings, conferences and roundtables. The EA also provides training and information material.

Another important aspect of the work of the Equality Authority is the development of Codes of Practice, which, after approval by the government, are admissible in evidence and if relevant may be taken into account in any criminal or other proceedings before a Court, proceedings before the Labour Court, the Labour Relations Commission, the Employment Appeals Tribunal, the Director of Equality Investigations and a rights commissioner.

Casework only forms a small part of the work of the Equality Authority. The main organisation for hearing cases is the ODEI. The Equality Authority looks at all incom-

ing cases, gives free and confidential information to employers and service providers, but gives legal advice to possible victims of discrimination only in cases of strategic importance, where it also may offer free legal representation. In most cases the victim is referred to trade unions or other organisations for advice and support in a potential case. In order to cope with the case-load, the unions, NGO's and the Citizens' Advice Centres are regularly informed about results of test cases, which can be used as legal advice for potential victims.

The Equality Authority does not give advice to employers and service providers, but informs them on all matters related with equality.

The statutory functions of the Authority include consulting with the ministries and departments in relation to equality issues and the right to evaluate the functioning of the Irish equality legislation and to suggest improvements.

## ***4.4 ODEI – The Equality Tribunal***

### **4.4.1 History and Institutional Structure**

The ODEI was established in 1999 under the Employment Equality Act 1998 as an independent statutory body with the function to adjudicate and/or mediate complaints of unlawful discrimination.

The ODEI consists of the Director, who is appointed by the Minister of Justice, Equality and Law Reform and staffed by 13 Equality Officers and Equality Mediation Officers, who are appointed via the Civil Service Commission. The Director and the Equality Officers are independent in the performance of their functions and need not have professional judicial training. They are trained in discrimination law and mediation. There are no regional offices, but equality officers will travel around the country to hear cases.

#### **4.4.2 Staff and Funding**

A staff of 29 persons (professionally qualified legal advisers, clerical and administrative workers) supports the work of the ODEI. The ODEI is funded by the Exchequer. In 2002, the total budget was Euro 1,608 million (1, 238 million of which for payment of staff). The budget for 2003 was set at euro 1,823 million.

#### **4.4.3 Rights and Duties of the ODEI**

As an independent statutory body, the ODEI has the right to adjudicate and/or mediate claims of unlawful discrimination in relation to employment and access to goods and services under the Employment Equality Act 1998 and the Equal Status Act 2000 (and, in restricted areas, under the Pensions Act 1990). Its jurisdiction covers all claims of discrimination except that of discriminatory dismissal, which have to be handled by the Labour Court), and those against registered pubs, which resort to the District Courts. The ODEI is not obliged to consider any case brought forward, but may decide on what cases to take. In cases of gender-bases discrimination in employment the claimant has the option to go directly to the Circuit Court. The procedure at the ODEI is free.

The ODEI is entitled to

- handle complaints and claims of persons, who feel discriminated against;
- question and hear people, whose testimony could be of some use for these cases;
- give binding decisions or orders in a concrete case – these can concern a complete plan of action or a compensation for the victim.

The scope of the ODEI is limited to

- Employment (including access to employment, excluding discriminatory dismissal)
- Provision of Goods and Services
- Access to Accommodation
- Disposal of goods and property
- Certain aspects of education

An investigation is a quasi-judicial process carried out by the Tribunal Equality Officer, similar to that of the Labour Court. Tribunal Equality officers sit at sole member tribunals and normally request and consider information from both parties before arranging a joint hearing of the case, which is followed by a decision. Where discrimination is found to have occurred, an order for redress is made, including, where appropriate.:

- Compensation
- Equal Pay
- Arrears of Equal Pay
- Equal Treatment
- An order for a specified person or persons to take course of action

The decision of an Equality Officer is binding and enforceable at law. Decisions with regard to the Employment Equality Act 1998 may be appealed at the Labour Courts, decisions under the Equal Status Act 2000 at the Circuit Court. As an alternative to the investigation process the ODEI offers a statutory mediation option. If both parties agree to mediation, the case is referred to an Equality Mediation Officer. Either party may withdraw from mediation at any time. In this case the normal investigation procedure is enacted. A mediation agreement is legally binding.

The ceiling for compensation under the ESA 2000 is set at Euro 6350.-, for compensation under the EEA 1998 at 3 years salary for discrimination with regard to equal pay and 2 years salary for discrimination with regard to equal treatment.

#### 4.4.4 Other aspects

The ODEI is required to submit an annual report to the Minister of Justice, Equality and Law Reform.

## 5 Summary

- **Horizontal vs. vertical approach**

Whereas in the British case a separate legal and institutional framework has been established for different grounds of discrimination, as well the Dutch as the Irish case follow an horizontal approach, where a single body handles all complaints. Due to the implementation of the EU-directives, also in the UK the move to a single body is being reviewed. Generally, the historically younger institutions (NL, Ireland) are single-bodies, whereas the establishment of separate implementation bodies in the UK is a product of the peculiar British history.

- **Independence**

In all three countries, the equality bodies are independent by law, although in some cases (Disability Rights Commission, CRE), the government has the possibility to interfere into strategic planning.

- **Staffing and Budget**

Staffing and Budget varies widely between the bodies. Staff number range from 29 – 220, funding from Euro 3,5 million to Euro 31 million..

	United Kingdom			Netherlands	Ireland	
	Disability Rights Commission	Commission for Racial Equality	Equality Commission for Northern Ireland	Equal Treatment Commission	Equality Authority <sup>(1)</sup>	ODEI – the Equality Tribunal <sup>(1)</sup>
Funding (Euro, 2002), including staff costs	21.800.000.-	31.000.000.-	10.150.000.-	3.500.000.-	5.019.000	1.700.000.-
Staff	180	220	143	40	54	29

<sup>(1)</sup> figures for 2001

- **Functions of the Institution**

In the British and the Irish case the implementation bodies have as well a quasi-judicial and a more political and public function including network – building, policy consultation, awareness raising and research. The Dutch Commission for Equal Treatment only has quasi-judicial functions, here the other functions necessary for a successful antidiscrimination system are taken over by a well developed and funded NGO – network. In Ireland, the tasks of adjudication and awareness – raising and policy consultation are divided between two authorities, one of which, the ODEI, only has the task to adjudicate and redress.

- **Victim support**

Both the British implementation bodies as the Irish Equality Authority provide victim-support. Both, as well as the Dutch Equal Treatment Commission, may also represent the victim before the court or initiated proceedings on their own. In Ireland, as structure of local Citizens´ advice offices cooperate with the Equality Authority and

provide an infrastructure for victim support. In the UK, there are local outlets of the implementation bodies to allow for access to victims.

In the Netherlands, victim support is organised within a framework of NGOs, which run local antidiscrimination offices and receive statutory funding by the central government, the provinces and the municipalities. In Ireland, as structure of local Citizens' advice offices cooperate with the Equality Authority and provide an infrastructure for victim support. In the UK, there are local outlets of the implementation bodies to allow for access to victims. Seen from the viewpoint of civil-society activation for equality, the Dutch model puts the strongest emphasis on civil-society involvement.

- **Investigative powers, redress**

In all three countries the analysed institutions hold investigative powers and have the right to get access to files in cases of alleged discrimination. All institutions do not only have the right to investigate cases, but also to investigate companies and institutions, if they suspect them to discriminate.

As well the British Race Relations Commission as the Equality Authority do not only have the right to investigate, but they also may issue enforceable courses of action to change institutional practices. The Dutch Equal Treatment Commission is missing this opportunity, but may only issue recommendations. Although due to the Dutch climate of consensus its recommendations are often followed, this lack of powers hampers seriously its effectiveness.

- **Status of decisions, compensation**

Both in the British and the Irish case the implementation institutions have the right to pass binding decisions, which may be challenged before the court. In the UK, the CRE may pass these decisions itself, but is not allowed to award compensation. In Ireland, there is a separate adjudication body, which may not only pass binding decisions, but also may award compensation. In Ireland, the height of compensation is set at up to several annual incomes in labour-related cases, and at a ceiling of several

thousand Euros in other cases. In Britain, there are no fixed ceilings, but the amounts awarded by the courts are much lower.

The Dutch Equality Commission only may pass recommendations for the parties concerned. The courts need not follow this recommendations, and there is no way to enforce them. The lack of power to pass binding decisions is a major shortcoming of the Dutch model.

- **Representation of potential victims**

In all three countries the equality bodies have the right to represent cases before the court. In no country the potential victim has a right to representation. In all three countries there exists the possibility of conflict-mediation, if so wished by the parties. In the UK and Ireland this task is referred to trained officers of the respective institution; in the Netherlands the staff of the local antidiscrimination offices does mediation.

- **Codes of Conduct**

As well in Ireland and in the UK the development of Codes of Practice, which are admissible in evidence and if relevant may be taken into account in proceedings, is another major task of the equality bodies. Codes of Practice also exist in the Netherlands, but there they do not have any legal status.

- **Policy Advisory Role**

In all three countries the relevant equality bodies do have a policy advisory role and the statutory task to evaluate the functioning of existing antidiscrimination legislation to ensure their further development. This policy advisory role is seen by all authorities as an important precondition to be able to fulfil their task.

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