

COMPARATIVE ANALYSIS OF EXISTING IMPACT ASSESSMENTS OF ANTI-DISCRIMINATION LEGISLATION

**Mapping study on existing national legislative measures – and their impact in – tackling
discrimination outside the field of employment and occupation on the grounds of sex,
religion or belief, disability, age and sexual orientation, VT/2005/062**

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Executive summary

The purpose of this report is to provide the European Commission with independent and authoritative information on the application and impact of existing national measures combating discrimination in fields and on the grounds where there is no Community legislation. In other words, this study analyses the conclusion of impact assessments of national anti-discrimination law on the grounds of gender, age, religion and belief, disability, and sexual orientation in fields outside employment, such as education, healthcare, access to goods and supply of services, social services and advantages, social protection. This report aims to produce an overview and comparison of existing impact assessments of anti-discrimination legislation. It considers

- a. the methodologies of impact assessments used in the field of anti-discrimination and
- b. the impact which anti-discrimination legislation has had in various jurisdictions. The report further provides a summary of the conclusions reached by the selected impact assessment studies.

The Mapping Study demonstrates that impact assessments remain a rather unknown policy instrument for those involved in anti-discrimination policies and law at national level, despite the fact that the term is increasingly being used in wider policy circles. Although, many studies assess the impact of anti-discrimination law, they are not entitled "impact assessments". These studies have been selected for this research because despite their name, they correspond to the characteristics of impact assessments.

Particular care was taken in ensuring that a wide range of countries were covered. Twenty two studies were analysed from Australia, Belgium, Canada, the Czech Republic, France, Germany, Hungary, the Netherlands, Portugal, Sweden, the United Kingdom and the United States of America. Attention was further given to ensuring that the different grounds of discrimination were well covered. Disability was particularly well represented; there are comparatively more studies on the impact of disability discrimination legislation, and no study focused solely on religion and belief (although religion was covered in two general studies and one study on race and religion). Furthermore, attention was given to ensuring that there was a fair division over the fields outside employment and occupation. In particular, the fields of education and access to goods and services have been adequately represented.

National impact assessments were considered in legal contexts. However, the analysis of the studies reveals that there are a lot of similarities in the impact assessments assessed. This relative homogeneity of findings might be biased, as there might be similarities between countries that chose to assess anti-discrimination legislation.

Studies which have been analysed include those on the impact and effect of:

- The level of protection offered
- The use of the law
- The activities undertaken to promote awareness of the law
- The measures put in place to enforce the law and their effectiveness
- The costs and benefits of the legal measures
- The contribution of the measures to the achievement of overall social policy goals
- The effect on the socio-economic position of certain groups.

The analyses of the selected impact assessments of anti-discrimination legal measures reveals that almost all impact assessments provide information regarding possible problems with enforcement, acceptance and/or compliance. Indeed, one of the most problematic issues in relation to anti-discrimination law is the lack of effective measures to implement the law. There is often a gap between the theory prohibiting discrimination and the reality in the application of this principle. The Mapping Study shows that effectiveness of anti-discrimination measures are enhanced when they are in the form of hard law. Enforcement or equality bodies and the existence of positive actions measures are also important measures which contribute to the effectiveness of anti-discrimination legislation. Furthermore, the degree to which anti-discrimination is effective depends on the existence of coherent, clear and harmonious legislation.

Further, a number of concepts such as indirect discrimination and reasonable accommodation facilitate the effectiveness of the legislation in combating discrimination. Other concepts, such as the 'dominant reason' test with relation to age discrimination; the restrictive interpretation of 'public authority' and 'the general interest of the State' with regard to ethnic discrimination; or 'the assessment of needs' with regard to disability discrimination, constitute barriers to the implementation of anti-discrimination law.

A number of factors contributing to the acceptance and effectiveness of anti-discrimination law have been identified. The good implementation and effectiveness of an anti-discrimination law can result from the fact that prior to the adoption of the law, in practice people were already complying with the particular requirement. Other factors identified include adequate availability of public funding to support the law and/or advantageous tax policies such as credits and deductions. Further, anti-discrimination law can be reasonably accepted and effective when the legislation aims to raise awareness and attitude change. In addition, the analysed studies show that there is a lack of knowledge and/or understanding of anti-discrimination legislation. Anti-discrimination legislation should therefore be complemented by measures aimed at raising awareness of non-discrimination legislation.

The analysed studies consider how anti-discrimination law is enforced. The indicators on enforcement are:

- Development of case law and complaints submitted
- Informal dispute resolution
- Participation of people from minority and/or groups discriminated against in the workplace, education, transport, social welfare system, or to the civil society
- Performance of people from minority and/or groups discriminated against
- Awareness of the rights and obligations defined by anti-discrimination law
- Establishment of enforcement structures and bodies
- Accessibility of legal mechanisms (legal aid and legal assistance)
- Resources level allocated by States in order to facilitate enforcement mechanisms

National impact assessments of anti-discrimination law show that such legislation has the capacity to contribute to the achievement of Europe's socio-economic goals as it eliminates barriers for the contribution of all individuals to the economy and to society. Indeed, anti-discrimination law leads to a high participation of all individuals in society, including services related to health, employment and education. The performance of individuals in protected

groups, measured in ways such as education attainment or narrowing of the pay gap, also improves upon the adoption of effective anti-discrimination law.

In terms of economic impact, the report shows that anti-discrimination law leads to both costs and benefits. Generally in order for anti-discrimination law to be effective, a certain level of public funding is necessary to accompany and support the legislation. In particular, public contributions towards the funding of awareness raising campaign, functioning of the equality (enforcement) body, and training requirements lead to effectiveness of the anti-discrimination law. A number of specific costs and benefits are included in national impact assessments of anti-discrimination law and are analysed in the report.

For *disability discrimination legislation*, the analysis of benefits includes those accruing to people with disabilities such as: increase in choice, enhanced self-esteem resulting from the effective application of the legislation, improvement in educational attainment, knowledge and skills. Further benefits to people with disabilities include greater access to buildings and transport facilities and enhanced social inclusion. The benefits of anti-discrimination law on the grounds of disability also include those accruing to people without disabilities such as more flexible work environment, greater access to building and transport facilities, greater independence for carers, improved school environments through inclusion of disabled students, lower costs for some service delivery organisations who traditionally provide special provisions for disabled people. Furthermore, organisations that comply with the legislation also benefit from it as they can tap into people with more diverse sets of skills. Finally, the economy in general benefits from anti-discrimination law on the grounds of disability as it leads to increased labour supply, less welfare dependency and possible increases in social contacts and networks.

Individuals and groups to whom increased costs accrue following the adoption of disability discrimination law include national institutions that implement the legislation such as equality bodies; those that mount legal challenges under the new legislation and organisations that need to modify practices and physical infrastructure to accommodate people with disabilities (although this can be delayed depending on timing of appointing such people or the life span of physical capital and they can also be subsidised by the State). These organisations include educational institutions at all levels, hospitals, and other service delivery organisations that must provide access to people with disabilities.

For *sexual orientation discrimination legislation*, the analysis of benefits includes those for men and women living in same-sex relationships who become eligible to claim benefits usually only available to heterosexual couples and more intangible benefit of social recognition of the legitimacy of the relationship.

Costs linked to anti-discrimination law on the grounds of sexual orientation include tax regimes which are often based on more traditional understandings of the nuclear family and may penalise same sex couples who have double income and thus offset any benefit that result from greater access to social benefits. Further, formal recognition of same-sex relationships may decrease couples' autonomy in decision-making in financial and other affairs due to applied tax regimes, which continue to be oriented towards more traditional understanding of the nuclear family.

For *age discrimination legislation*, the analysis of benefits includes those for young or old workers and job seekers entering the labour market.

Costs include an increase in implementation costs which arise in order to comply with the legislation. These costs are more important with those organisations that currently employ young workers (distribution sector, hotels, and catering sectors). These costs are related to training and social protection. Costs linked to the adoption of anti-discrimination law on the grounds of age are also higher for businesses and organisations, which employ older workers (in public administration, health, and education sectors of the economy). These costs are related to health insurances, occupational pension and social protection.

Adoption of anti-discrimination law may lead to an increase in litigation which entails costs. However, over time the number of cases may stabilise and eventually decreases. In addition, as the legislation becomes more effective in practice, substantially less litigation is eventually expected.

The report also highlights the need for the Community and Member States to monitor discrimination. It is necessary to collect valid, meaningful, and reliable time-series data that can be disaggregated to demonstrate patterns of discrimination and or differential access to service delivery and the market economy.

1. Introduction

1.1 Aims and objectives of the research

The purpose of this report is to provide the European Commission with independent and authoritative information on the application and impact of existing national measures combating discrimination in fields and on the grounds where Community legislation has not yet been introduced. In other words, this study analyses the impact of anti-discrimination law on the grounds of gender, age, religion and belief, disability, and sexual orientation in fields outside employment, such as education, healthcare, access to goods and supply of services, social services and advantages, social protection etc. This report aims to produce an overview and comparison of existing impact assessments of anti-discrimination legislation. It does not look at legislation and their impacts at first hand, rather it considers impact assessment studies. Both prospective and retrospective impact assessments of anti-discrimination law in all fields and conducted by public authorities and academic were analysed. In addition, the Commission requested information on the methodology of impact assessments conducted elsewhere. This research aims to

- a. consider the methodologies of impact assessments used in the field of anti-discrimination;
- b. to consider the impact which anti-discrimination legislation has had in various jurisdictions; and
- c. provide a summary of the conclusions reached by the selected impact assessment studies.

1.2 Terminology of impact assessments

Generally speaking, impact assessments analyse the intended or unintended impact policies have or are expected to have. The practice of making impact assessments originates in Anglo-Saxon countries and was originally applied in the field of the environment and environmental policies and is now applied in other countries as well as in other fields: from environmental impact assessments to social impact assessments and human rights impact assessments ¹They analyse the impact of policies on the environment, on the social situation and human rights, respectively.

The purpose of impact assessments is to analyse the intended and unintended impacts which policies and/or legislation have or are expected to have. Such impact assessments, which consider the impact of legislation are also called '**regulatory impact analysis assessment**' (RIA). This study considers impact assessments of anti-discrimination legislation. These RIA on anti-discrimination law usually provide information on:

- Budgetary, social, economic and environmental costs and benefits;
- Possible problems with enforcement, acceptance and compliance;
- Distribution of the costs and benefits within the population and within subgroups;
- Possible flaws, contradictions, lack of clarity and gaps;
- Unwanted side effects.

¹ Todd Landman, (2006) Studying Human Rights, Routledge.

When impact assessments study the impact of policies in a particular area or on particular groups, one sometimes speaks of **partial impact assessments**. Examples are gender equality impact assessments that analyse the impact of general policies on the position of women. Equality assessments measure the impact of legal and other measures in all kinds of policy areas on equality (EQIA's). Anti-discrimination law may require such assessments and conducting EQIA's would thus be an effect of anti-discrimination law. Given that the topic of this research is on the impact of anti-discrimination law, we have included a number of full RIAs and partial impact assessments, focusing on the impact of legislation in particular fields.

In both theory and practice, an important distinction is made between retrospective and prospective impact assessments. A **retrospective impact assessment** is similar to a policy evaluation. It studies whether and to what extent goals have been achieved, and whether and to what extent this can be attributed to the implementation of the measures. A **prospective impact assessment** is a systematic and forward looking analysis of intended or unintended effects of proposed policy or legislative measures. In many instances there is a fine line between the two. Prospective impact assessments may use policy evaluations in order to be able to better assess the possible effects of new measures. Prospective impact assessments may also set the parameters for future policy evaluations as they analyse the goals of proposed policies and their implementing measures.

1.3 Methods for impact assessment

The main aim of impact assessment in the field of anti-discrimination is to determine the degree to which a 'set of human activities'² has an impact on discriminatory practices. The impact is represented by numerous indicators which can be either qualitative or quantitative, or both. In our view and in light of the studies that we examined, there are four categories of impact assessment that can be used in the field of discrimination, which reflect the methods found in environmental impact assessment (EIA), human rights impact assessment (HRIA), regulatory impact assessment (RIA), and social impact assessment (SIA). These categories of impact assessment are drawn from their different forms and timing, and include:

1. prospective and direct,
2. prospective and indirect,
3. retrospective and direct, and
4. retrospective and indirect.

Figure 1 shows these four types of impact assessments. Our study has focussed on impact assessments of intentional policies (anti-discrimination legislation) that are meant to have a direct impact on discriminatory practices, while remaining mindful of the unintended consequences of anti-discrimination legislation. The studies we identified were both prospective and retrospective, and thus fall into Cells I and III in Figure 1. It is possible that other activities of the public and private sector have an impact on discrimination that could be the subject of assessments and would thus fall in Cells II and IV, but the purpose of the analysis conducted here has been to analyse those studies that are explicit in their attention to the impact of newly introduced anti-discrimination legislation.

² Mohr, L. B. (1995) *Impact Analysis for Programme Evaluation*, Second Edition, Thousand Oaks and London: Sage Publications.

Retrospective direct assessments examine in particular the differences in discriminatory practices and situations that may be associated with the introduction of new legislation. Both types of impact assessment ideally need a baseline assessment against which outcomes (either real or imagined) can be compared. For prospective direct assessments, different possible effects can be projected against the baseline assessment of discriminatory practices and situations, while for a retrospective assessment discriminatory practices before the introduction of the legislation are compared to those after the legislation. It is typical for retrospective assessments to allow for some degree of delay or lag time between the introduction of the legislation and an assessment of the outcome conditions.

Typical indicators used for the baseline assessment, projections, and/or outcomes include socio-economic and administrative statistics, as well as individual level data on perceptions of discrimination that have been disaggregated according to the grounds of discrimination (i.e. gender, sexual orientation, disability, ethnic identity and religious affiliation). These indicators include access to public facilities and service delivery, educational attainment, social security benefits, justice, civic involvement and employment. Prospective assessments project the positive changes in these indicators that are likely to occur as a result of the anti-discrimination legislation. Retrospective assessments examine the actual changes in these indicators and compare their trends before and after the introduction of the legislation. While rigorous causal inferences are difficult to draw from retrospective assessments, it is possible to examine the relative change in them and, in the case of good quality data, the magnitude and statistical significance of such changes.

		Forms	
		Direct	Indirect
Timing	Prospective	I Intentional planning to change discriminatory practices/situations	II Awareness of impact of other and/or unrelated activities
	Retrospective	III Evaluation and assessment of policies, strategies, and programmes for changing discriminatory practices	IV Evaluation and assessment of outcomes of policies, strategies, and programmes that were not intended for changing discriminatory practices

Figure 1. Categories of Impact Assessment in the Field of Anti-Discrimination

Our examination of the studies draw on these general methods of impact assessment, and we specified a series of categories to organise our assessment, including

1. macro-impact,
2. enforcement and compliance,
3. costs and benefits,
4. flaws, and
5. unintended consequences. We developed an analytical grid with these five main categories and applied them to the 22 main studies under review and then used the results of the grid to generate the comparative analysis reported here.

Regulatory Impact Assessments are systemic/scientifically underpinned and focussed processes that identify, describe and analyse the impact of policies and law as they affect particular groups, sectors of the economy, and/or society as a whole.³ The methods used in order to practically assess the impact of an anti-discrimination legislation are not always, however, per se scientific exercises and can include a set of hearings and/or consultations, statistical analysis, case law and/or complaint analysis, and, in some cases, a combination of methods. As a result, if some of the elements constituting normally a RIA are missing, or if there are a combination of methods, we could speak of an RIA-like assessment.

1.4 Study methods of this research

Two research questions were formulated for this study.

1. What methodologies have been applied by national governments in conducting impact assessments on legislative anti-discrimination measures, and what aspects of these studies are relevant to prospective impact assessment to be undertaken by the European Commission?
2. What would be the impact of extending the legal protection against discrimination to fields of application that are not yet covered by Community anti-discrimination law?

1.4.1 Initial identification of studies

As a first step, it has been necessary to identify existing impact assessments in 32 countries included in the Mapping Project. These countries included the member States of EU 25, Romania and Bulgaria as well as Australia, Canada, New Zealand, South Africa, and the United States of America. Questionnaires were prepared by the research team during the inception phase. National experts of the 32 countries were asked to complete these questionnaires identifying impact assessments made in their countries of anti-discrimination law. Initially, they were asked to identify impact assessments, made by public authorities of anti-discrimination law covering the grounds of discrimination within the scope of the study (notably, excluding race and gender in the fields of employment and occupation).

The results of the initial questionnaire were limited, in that impact assessments appeared to be rather an unknown policy instrument for those involved in anti-discrimination policies and law, despite the fact that the term is increasingly being used in wider policy circles. Review of relevant literature demonstrated that the term remains rather unclear and means different things to different people and organisations. Our experts consulted with governmental

³ OECD, Regulatory Impact Analysis (RIA) Inventory, 15 April 2004, GOV/PGC/RD(2004)1

officials and with their colleagues in the social-sciences. However, it appeared that anti-discrimination law can be enacted and yet not be reviewed for its effectiveness. Most national experts could not find that (any) impact assessments as such that had been made. In consequence, the number of studies originally identified was rather small.

We therefore sent to the experts a second round of questionnaires and decided not limit ourselves to using the exact terminology of "impact assessment". Many studies assess the impact of anti-discrimination law but are not entitled "impact assessment". We had, therefore, to identify studies which, despite not using the terminology of "impact assessment", correspond to the characteristics of impact assessment. We provided our experts with the elements which characterised impact assessments and asked them to look for studies displaying these characteristics in their countries. In other words, we put less emphasis on the term and definition of impact assessments and instead looked for the information which could be used for a Commission prospective impact assessment. For example, we looked at the British studies which were called impact assessment and we compared them with German reports which were not called 'impact assessments' as such but gave similar types of information. We then decided that this German study is an impact assessment despite its title. As a consequence, the national experts' responses to this second round of questionnaires were more positive.

However, the results of the second round of questionnaires also showed that only a few impact assessments identified came within the scope of the Mapping Study (grounds and fields of discrimination, retrospective impact assessments and national authority). Arguably, the impact assessment instrument is largely under development in the field of anti-discrimination law. While it is more of an exact approach in the field of environment, it represents a somewhat 'softer' approach in the social field and in human rights.

Following a meeting with the European Commission, it was agreed to adapt the scope of the studies, and we returned to the national experts yet again, asking for further details of impact assessments in grounds outside the scope of the study (i.e. race and gender) and in fields outside the scope of the study (i.e. employment and occupation). We also relaxed the requirement that impact assessments should have been carried out by government authorities, asking also for any studies which had been carried out by interest groups and/or academic institutions, but which otherwise had the nature of an impact assessment and which, in particular, had been carried out in a scientifically way without bias. Finally, we also considered prospective impact assessment.

1.4.2 Selection and analysis of studies

Using the information contained in the questionnaires, a selection was made for further analysis. The selection criteria were as follows:

- Quality of the study: use of scientific methods, inclusion of stakeholders, use of variety of methods
- Role the studies play in policy debates
- Coverage of at least one study per ground and field of application
- Coverage of as many as possible countries but include at least five EU member States
- Commissioning organisation is public authority and/or enforcement agency

- Studies undertaken by academic or other research centres but commissioned by authorities
- Covering a range of issues relevant for assessing impact: guaranteeing protection, cost-benefits, enforcement, improving position of vulnerable groups, etc.

Twenty two studies were selected, as listed in appendix 1 - Selected Countries and Reports. Particular care was taken in ensuring that a wide range of countries were covered. Studies were analysed from Australia, Belgium, Canada, the Czech Republic, France, Germany, Hungary, the Netherlands, Portugal, Sweden, the United Kingdom and the United States of America. Attention was given to ensuring that the different grounds of discrimination were well covered. Disability was particularly well represented, as there were comparatively more studies on the impact of disability discrimination legislation submitted to us, and no study focused solely on religion and belief (although religion was covered in two general studies and one study on race and religion). Further attention was given to ensuring that there was a fair division over the field outside employment and occupation. In particular, the fields of education and access to goods and services have been adequately represented.

The 22 studies selected were analysed by the research team working on strand 2 of the mapping project. The analysis is presented in the form of an analytical grid (see Appendix 2 – Methods and Indicators). This analysis broke down the findings of the studies into five categories, typical of impact assessments, in order to respond to research question 2:

- Budgetary, social, economic, environmental costs and benefits represent the macro-impact of legislation, including possible fiscal implications, broad changes in the social, economic, and environmental sphere.
- Possible problems with enforcement, acceptance and compliance include those areas of impact assessment that concern the degree to which a given piece of legislation has been implemented, and may include an assessment of institutional capacity for enforcement, the relative acceptance of the new legislation, and the overall level of compliance (i.e. notable levels of violation of the legislation or possible legal challenges for non-compliance).
- Distribution of the costs and benefits within the population and sub-groups may include analysis of the obligations of duty bearers to uphold the anti-discrimination legislation as well as benefits extended to the rights holders and their ability to make claims under the new legislation.
- Possible flaws, contradictions, lack of clarity, and gaps concerning the limitations of the legislation that may have been revealed through impact assessments, including difficulties in implementation and interpretation by duty bearers and rights holders.
- Unwanted side effects and unintended consequences concerning all those aspects of the legislation that may have produced perverse effects such as a new structure of incentives that may encourage cheating, false claims, or other forms of rent-seeking within the agencies of the state, groups in civil society, and individuals.

The country analysis (Annex 1) indicate the methodologies which were used in producing the impact assessments, in order to respond to research question 1.

This comparative analysis was produced on the basis of the Country and Reports Analysis. The comparative analysis cross-references the analyses of the individual studies by the prohibited

ground and by country, in order in particular to highlight factors influencing differentials in impact experienced in different countries, and between different grounds.

1.4.3 Difficulties which were encountered

One of the biggest challenges has been to find a pool of impact assessments, particularly within EU Member States. At first, the results of the initial questionnaires did not lead to finding many studies named “impact assessments”. However, we started rethinking the issue. As already mentioned, we did not attach ourselves to the specific name “impact assessment” rather we looked for studies which displayed the characteristics of impact assessment. This approach enabled us to find enough impact assessments of good quality for this study.

The outcome of both rounds of questionnaires strongly suggested that regulatory impact assessment is a largely unknown policy instrument in almost all countries of this study (the 32 national experts consulted relevant ministries and looked for academic studies). The main reasons seem to be:

- Impact assessment is a rather new policy instrument.
- When it is carried out in particular Member States, it is done in policy fields other than anti-discrimination law.
- Anti-discrimination law was not very well developed in most EU Member States before the introduction of Community anti-discrimination law and it seems too early to assess its impact.

Another finding is that the reasons for the introduction of or changes in anti-discrimination law are mainly improving protection and remedying gaps in anti-discrimination law, but also the duty to comply with international and European norms (for which it was felt no prospective impact assessment was needed). Not much attention is apparently given in many Member States to the overall economic costs and benefits of anti-discrimination law or to the costs and benefits for certain groups. Finally, we found that in a number of countries substantial reports were prepared on the implementation of (certain aspects of) anti-discrimination law, which could be considered as (retrospective) impact assessments. Some of them deal with the situation in a province or ‘Land’.

The difficulties raised by the lack of available impact assessments have been significant. When selecting studies to analyse in more depth, given that we wished the study to demonstrate diversity both in the countries considered and the grounds covered, it became difficult to stick closely to the criteria for selection which we established. Originally this study aimed to exclusively analyse retroactive impact assessment of anti-discrimination law which were exclusively conducted by public authorities on grounds and in fields not yet covered by Community law. However, at the end, and with the agreement of the European Commission, we considered both retrospective and prospective impact assessment of anti-discrimination law which were made by both public authorities and academics in all fields and on all grounds. As the studies were analysed, it became clear that this factor meant that some of the studies we considered demonstrated significant flaws. These flaws are outlined in the comparative analysis in more detail in section 2.4.4. Briefly, they related to the lack of a clear statement of the methodology of the impact assessment, the fact that some studies can only be categorised as RIA-like assessment, and the fact that a few studies could not be categorised as impact assessment at all. Although, many studies assess the impact of anti-discrimination law, they are

not entitled “impact assessments”. These studies have been selected for this research because despite their name, they correspond to the characteristics of impact assessment. Nine of the analysed studies are impact assessment in their full rights (**Australia n.1, Canada n.5, 6, 7, The Netherlands n.15, 16, United Kingdom – Northern Ireland n.20, United Kingdom n.21 and United States n.22**). Further, eight of the analysed studies can be qualified as ‘partial impact assessment’ because they address the effect of policies on a particular area, or a particular group only (**Australia n.2, Belgium n.3, 4, France n.9, 10, Germany n.11, 12 and 13**). Finally, five of the analysed studies can only be qualified as partial RIA-like assessment (**Czech Republic n.8, Hungary n.14, Portugal n.17, 18 and Sweden n.19**).

Notably, the methodology of impact assessment is better developed within the English speaking world. As a consequence, a disproportionate amount of useful data for the purposes of this study has been drawn from the impact assessments carried out outside the EU, in Canada, the United States and Australia, as well as from the United Kingdom. Further, this factor combined with the disproportionate number of studies carried out on disability discrimination, means that, while significant conclusions can be drawn as to the impact of anti-discrimination law in the field of disability, the conclusions drawn in other fields are very limited and often only derived from one or two studies.

1.5 Analyses of selected countries by types of countries in order to place the impact assessments in context

Bearing in mind the constraints posed by the lack of available impact assessments, twelve countries were chosen for study.

As a starting point, it was felt that it would be useful to focus attention on those countries which have a longer tradition of anti-discrimination law covering various grounds. In Europe, these are: **Belgium, The Netherlands, Sweden** and **the United Kingdom**, and outside Europe: **Australia, Canada** and the **United States of America**. One can reasonably expect that anti-discrimination law has been evaluated in these countries.

We added to these countries two large EU Member States (**Germany** and **France**) and three smaller Member States of which one is an ‘old’ Member State (**Portugal** - as an example of a southern European country), and two ‘new’ Member States (**Czech Republic** and **Hungary**). This covers Northern Europe and Southern Europe, central and Eastern Europe and Western Europe, as well as giving examples of non-EU Member States.

The following is a brief analysis of the legal and constitutional framework in which anti-discrimination law exists within these countries.

1.5.1 European Countries with a long tradition of anti-discrimination law: Belgium, The Netherlands, Sweden and the United Kingdom

Belgium

Belgium is a Federal State with a written constitution. The Belgian Constitution guarantees equality before the law and enjoyment without discrimination of the rights and freedoms recognized to all. These equality clauses are directly applicable and apply broadly, with no restrictions as to the grounds of discrimination or as to the areas concerned. In principle, these

provisions apply to both private and public actors; in practice, their importance lies in their binding effect on legislation. Belgium is divided into three Communities and three Regions, each of which have different areas of legislative competence and all of which can, therefore, have competence to pass antidiscrimination legislation in various fields.

Federal legislation covers anti-discrimination law in a wide range of fields. However, regional legislation is much more limited in its scope outside of the field of employment. The Belgian studies considered concern:

- a. the impact of the Federal anti-discrimination law on the employment of people with disabilities within the public service; and
- b. discrimination against foreigners in the employment market in the Brussels-Capitale Region.

The Netherlands

The Netherlands is a unitary State with a written constitution. However, the horizontal applicability of constitutional protections is limited and therefore anti-discrimination legislation is necessary in order to give effect to equality within the legal order.

The main legislative provision in the Netherlands is the Equal Treatment Act, which covers discrimination on grounds of religion, belief, political opinion, race, sex, heterosexual or homosexual orientation and civil status in employment, access to goods and services, concluding, implementing or terminating agreements on the subject, and in providing career orientation and advice or information regarding the choice of educational establishment or career. Legislation also exists to prohibit discrimination on grounds of age and disability in employment and vocational education.

The Dutch studies considered concern;

- a. the application of the Equal Treatment Act and the functioning of the Equal Treatment Commission, and
- b. a prospective analysis on the extension of the prohibition of disability discrimination in primary and secondary education.

Sweden

As for the Netherlands, Sweden is a unitary state with written constitution. As in the Netherlands also, the horizontal applicability of constitutional protections is limited and therefore anti-discrimination legislation is necessary in order to give effect to equality within the legal order.

Swedish legislation contains reasonably broad legislation which covers all relevant grounds except for age: four laws covering different grounds employment; one covering all grounds outside employment and in education; one covering higher education and one covering children and students.

The Swedish study considered concerns structural discrimination on grounds of race and ethnicity, but does not specifically assess the impact of any one piece of legislation.

The United Kingdom

The United Kingdom has no written constitution and no equality principle with constitutional value. However, it has a Human Rights Act and the common law equality principle. Some legislative power is devolved to Scotland and some executive power to England and Wales and Northern Ireland. Employment remains a field of law reserved to the Westminster (central) Parliament except for Northern Ireland for which it is devolved. Other fields, notably education, are devolved. The UK contains within it three legal systems which pre-date devolution: England and Wales, Scotland, Northern Ireland. In practice anti-discrimination law remains the same throughout the UK, although specific enactments are often required for each legal system. However, specific legal provisions, notably on religious discrimination, have been enacted for Northern Ireland, in order to respond to the specific situation within that province. Further, devolution has meant that some secondary legislation relating to discrimination is the responsibility of the devolved executives.

The British legislation prohibits discrimination in employment on grounds of race, gender, sexual orientation, religion and belief, disability and age; and outside employment on grounds of race, gender and disability.

The British studies considered concern

- a. improvements to the United Kingdom-wide Disability Discrimination Act by the Northern Ireland executive; and
- b. a prospective analysis of the impact of a prohibition on age discrimination in employment.

1.5.2 Other big Member States: France and Germany

France

France is a centralised and unitary state with a written constitution. A number of constitutional provisions make mention of equality as a general principle, although the grounds mentioned do not include disability, age or sexual orientation. However, horizontal applicability of these provisions is very limited indeed and equality law is given effect through legislation.

In France, most equality law outside the field of employment is penal law, prohibiting direct discrimination on all relevant grounds. Within the field of employment, discrimination is prohibited by both civil and penal law. The French studies considered concern

- a. the application of the legislation requiring action in favour of people with disabilities; and
- b. the impact of equal opportunities legislation for people with disabilities.

Germany

Germany is a federal state, with a Basic Law directly binding on public authorities. The most important constitutional reference point for anti-discrimination law is Article 1.1 of the Basic Law, which protects human dignity and has guided interpretation of the constitutional guarantee of equality (Article 3 Basic Law). In addition to these broad provisions, there is

special protection against discrimination on grounds of sex, parentage, race, language, homeland and origin, faith, religious or political opinions and disability. Discrimination law falls within both Federal and State competence depending on the field of activity concerned.

In Germany, a general Anti-Discrimination Act was passed in 2006. Prior to that, discrimination was dealt with by means of constitutional provisions (which do not apply to private actors) and provisions of civil law. The German studies considered concern:

- a. the application of the Federal Employees Protection Act on sexual harassment;
- b. the Federal Disability Equality Act; and
- c. a report from the government of one State (Rheinland-Pfartz) on measures following the State Act establishing equal conditions for people with disabilities.

1.5.3 New Member States: Hungary and the Czech Republic

The Czech Republic

The Czech Republic is a unitary state with a written constitution. The constitution of the Czech Republic contains a Charter of Fundamental Rights and Freedoms, which contains a general anti-discrimination clause, and a specific provision on the rights of ethnic and national minorities. Horizontal applicability is limited, although the Czech constitution can be relied on directly in litigation between individuals in so far as the matter concerns civil or political rights (but not social or economic rights).

There is no specific legislation in the Czech Republic outside of the constitutional protections. A Bill proposed in 2006 did not pass Parliament. The Czech study considered is a preparatory proposal relating to the 2006 Bill.

Hungary

As for the Czech Republic, Hungary is a unitary state with a written constitution. The Hungarian constitution protects the equality of men and women and the rights of ethnic and national minorities, and provides that Human rights shall be respected without discrimination on the basis of race, colour, gender, language, religion, political or other opinion, national or social origins, financial situation, birth or on any other grounds whatsoever. Horizontal applicability is limited, and therefore anti-discrimination law is necessary.

Hungary has detailed statutory provisions prohibiting discrimination on the relevant grounds, which apply to public sector actors. The Hungarian study considered is a preparatory proposal relating to the 2003 Anti-Discrimination Law.

1.5.4 Southern Europe: Portugal

Portugal is a unitary state with a written constitution. Its constitution contains a protection of discrimination on the grounds of ancestry, sex, race, language, place of origin, religion, political or ideological beliefs, education, economic situation, social circumstances or sexual orientation. This is binding on public authorities.

There are statutory provisions on discrimination on grounds of race and religious freedom, and discrimination on the grounds of sex is prohibited within employment. There is no legislative provision covering other grounds. The Portuguese studies considered cover

- a. the general issue of gender equality; and
- b. impact assessment studies generally.

1.5.5 Non-European Countries: United States of America, Canada, and Australia

The United States of America

The United States of America is a federal State with a written constitution. The US Constitution's Fourteenth Amendment contains a clause declaring all persons enjoy equal protection under the law, which has been interpreted by the US Supreme Court to cover equality issues to a certain extent. Religious discrimination is addressed by the US Constitution's First Amendment, which sets out that the federal government may not pass laws establishing or limiting the free exercise of religion. Both the Federal and the State authorities have competence to pass civil rights legislation which covers anti-discrimination measures.

Federal legislation has been passed covering disability, race, colour, national origin, religion and gender, covering a limited range of grounds. Further legislation on all grounds exists at State level. The study covered considers the exercise of Federal enforcement agencies of their duties in so far as they have implemented recommendations of the US Commission on Civil Rights, on all grounds.

Australia

Australia is a federal State with a written constitution. The Australian constitution contains no specific equality or non-discrimination clause. Most areas where anti-discrimination law is applied are concurrent competences of the Federal and State authorities, and the Federal government, the States and two of the Territories have enacted anti-discrimination legislation. However, Federal legislation must be justified by reference to the constitution. As there is no equality clause in the constitution, Federal anti-discrimination legislation is usually justified by reference to compliance with international agreements. Significant gaps in Federal legislation can therefore be explained by a lack of constitutional basis for them.

Federal legislation is passed on the specific grounds of race, sex, disability and age. State legislation covers all grounds in the study, with some exceptions for specific states, and covers all fields. The Australian studies covered consider

- a. the impact of the Federal Disability Discrimination Act; and
- b. prior to adoption, the provision of the Federal Age Discrimination Act.

Canada

Canada is a federal State with a written constitution. The Canadian constitution guarantees equality rights in the Charter of Fundamental Rights and Freedoms. The Charter covers a list of enumerated grounds (race, national or ethnic origin, colour, religion, sex, age, and disability) as well as analogous grounds, which have been interpreted by the Supreme Court to include

sexual orientation. Charter rights only apply when the government (or a private entity that has been delegated a governmental power or function) is the agent responsible for the discrimination. There exists a considerable and powerful case law of the Supreme Court concerning the application of the Charter to equality. Legislative competence on anti-discrimination is divided between the Federal State and the provinces and territories: the provinces and territories have competence in most relevant fields, such as employment, education, housing and social assistance.

All jurisdictions in Canada have passed legislation covering a number of different grounds (sex, age, race, ethnicity, religion, disability, and sexual orientation) across the range of social fields covered in this study, according to their competence. The Canadian studies considered here concern

- a. the impact of both Supreme Court judgments and provincial legislation recognising same sex relationships (first and third studies); and
- b. the right to accessible transportation contained within a provincial human rights code.

2. Comparative analysis

2.1 Implementation, enforcement, acceptance and compliance

Any retrospective evaluation or impact assessment (IA) ought to have a set of factors revealing the level of implementation and of acceptance of the law. Any impact assessment should also display a set of indicators to measure the degree of compliance. The analysis of the selected impact assessments of anti-discrimination legal measures reveals that almost all IA's provide information regarding possible problems with enforcement, acceptance and/or compliance. Governments know (for example, by way of retrospective assessments) or wish and expect (for example, by way of prospective assessments) that anti-discrimination law will have a positive impact on the level of protection, enforcement of the law, socio-economic position of certain groups and the achievement of overall socio-economic goals. By being explicit about the desired and expected outcomes, governments are, as it were, drawing up terms of references for future retrospective impact assessments. It is, therefore, important to know whether and how governments intend to assess the impact of the law after a certain period of time.

2.1.1 Why, whether and how governments intend to assess the impact of the law after a certain period of time?

The analysed studies show that it is not the norm for national anti-discrimination legal measures to require that an impact assessment of a policy be evaluated following its adoption. This can be assumed because the analysed studies do not include such an obligation. Notable exceptions can be found in the British Disability Discrimination Act 1995 (**United Kingdom n.20**), the Dutch Equal Treatment Act 1994 (Wet gelijke behandeling) (**Dutch Study n.15**) and in the **United States**, where federal agencies (such as the National Council on Disability) monitor, enforce and conduct impact assessment studies.

Even if not required in the law, impact assessments of anti-discrimination measures have been undertaken in the twelve analysed countries, which include nine EU Member States. Rationales and reasons stated by governments *in policy and official statements* - other than compliance with international and (where appropriate) Community law - for proposing (changes in) national anti-discrimination law includes *inter alia*:

- The need to adjust national law in the light of developing case law
- Fill gaps in legal protection
- Offer more protection (and accessibility) to particular vulnerable groups
- Identify (more clearly) persons and organisations bound by anti-discrimination law
- Put in place compliance and enforcement mechanisms
- Develop complimentary strategies to legal policies
- Address economic development and immigration strategy

The conclusions and results of an impact assessment study can themselves lead to further obligations for the duty bearers. The re-evaluation of an anti-discrimination law may have been the requested in the conclusion of a previous impact assessment.

For instance, in view of the **French study n.10** on disability the duty bearers (including the Ministry of transport and the social partners) agreed to draft an action programme which will aim at

- a. quantifying the situation of people with disabilities in this administration;
- b. provide hard deadlines;
- c. set an evaluation committee and
- d. start an awareness raising campaign.

2.1.2 Assessment of institutional capacity for enforcement

- **Enforcement or equality bodies are important for the measurement of the impact of anti-discrimination legislation.**

Four of the analysed studies highlight the **inadequate funding and staffing** of the national body responsible for the implementation and enforcement of the anti-discrimination legislation, resulting in hindering their enforcement capability (See for example **USA n.22**).

The institutional capacity of the national equality body can hold a number of powers and/or functions including:

- Investigation power
- Conciliation body
- Advisor in policy development
- Enforcement power
- Legislative power
- Judicial power
- Research and data collection

The establishment of enforcement bodies is required in EU Member States with regards discrimination on the grounds of gender and race/ethnicity. The competences of these enforcement bodies are already laid down respectively in Article 20 of the Gender Equality Recast Directive 2006/54 and in Article 13 of the Racial Equality Directive 2000/43, which include some of the competences listed above.

The **Australian n.2** study points out to the **lack of powers and functions** for the low capacity of enforcement by the equality body. The powers and fields of activity of the national body might further need to be increased to comply with EC law (**The Netherlands n.15**).

- **The existence of positive actions measures is also important for the measurement of the impact of anti-discrimination legislation.**

Most examples of positive action measures are found in the field of disability discrimination employment law. **France n.9 and 10**, **Germany n.13** and **Belgium n.3**, evaluate the impact of quotas measures on the level of employment of people with disabilities. The quota imposed in the French and the Belgian legislation generally has not been effective in improving the employment rates of persons with disabilities. In both countries, the level of employment of persons with disabilities is lower than the required legal quota. Surprisingly, the other analysed studies have not identified the existence of many positive action measures of anti-

discrimination law in other fields than employment law and in other grounds than disability (for instance, in the disability arena, the affirmative duty of reasonable accommodation). It results that with the exception of disability discrimination in employment, there is no review of positive actions measures. A study on sexual orientation discrimination law, nevertheless, argues it is necessary to actively to promote positive action to fight stigmatisation (**Canada n.7**).

2.1.3 The degree to which a given piece of legislation has been implemented

- **Harmonisation and coherence**

Four of the analysed studies stress the need for **updating** the legislation after an impact assessment has been made (see for instance **USA n.22**)⁴ In the same vein, three of the analysed studies also conclude that there is a need for **reorganisation** of the law in a coherent and harmonised manner. Mainstreaming the principle of anti-discrimination in all areas of the law could arguably contribute to harmonious legislation. Indeed, the inclusion of concerns related to discrimination in all legal fields, including building or transport law, will go a long way towards achieving greater consistency, coherence and harmonisation of anti-discrimination standards (**Australian n.1 and n.2 and United States n.22**). Harmonisation can be achieved in a number of ways:

- Horizontal harmonisation – harmonisation of different areas of the law.
For instance the **Australian study n.1** has revealed that the Building Codes are inconsistent with the Disability Discrimination Act.
- Vertical harmonisation – harmonisation of the law at higher and lower levels of the State
The **Australian study n.2** highlights the lack of uniformity between Federal and State law and recommends a move to remedy the situation. In the United States, there is growing inconsistency among State disability laws and Federal ADA law.
- Harmonisation as the overall reform of a legal concept.
The **Canadian study n.7** recommends a general reform of the law surrounding conjugality outside of marriage, in order to ensure
 - a. that discrimination on the basis of sexual orientation is completely removed; and
 - b. that the law better reflects the independence of partners and moves away from the traditional model of a single breadwinner and opposite sex relationship.

Specifically, the implementation of disability discrimination legislation can further be impaired by a lack of coordination between the various actors responsible for the specific implementation of the law. Dispersion of responsibility can have serious consequences for people with disabilities who need multiple services and must find them in different places with diverse procedures, and using differing definitions of disability (France n.9).

⁴ The update of anti-discrimination legislation can also be done in reaction to subsequent court interpretation of the law.

- **Concepts contributing high/low degree of implementation**

The aim of the legislation has an impact on the level of enforcement. An anti-discrimination legislation which aims to achieve **equality of opportunity rather than equality of outcome** might be less effective to combat discrimination (**Australia n.1**). Equal opportunity is essentially made of individual rights. However the right holders can not always take the opportunity offered. For instance, the **Australian Disability Discrimination Act 1992** aims to achieve equality of opportunity rather than equality of outcome. Arguably, given the nature of some impairment, it has the result that people with severe disabilities are decreasingly represented in the workforce. (**Australia n.1**) Formal equality does not appear to be helpful either with regards sexual orientation discrimination law. Relationship recognition did not lead automatically to non-discrimination and the application of a general equality clause by itself did not give rise to legislative equality (**Canada n.5**).

While some **concepts facilitate** the implementation of anti-discrimination law, others **constitute barriers** to the implementation of anti-discrimination law.

Concepts facilitating the implementation of anti-discrimination law

- The concept of **indirect discrimination** is necessary for an effective implementation of anti-discrimination law. The concept of indirect discrimination is more effective when objective justifications are defined strictly and narrowly.
- The concept of **reasonable accommodation** for disability is also helpful for an effective implementation of disability discrimination law.

Concepts impeding the implementation of anti-discrimination law

- In relation to **age**, the “**dominant reason**” test (**Australia n.2** - where there is more than one reason for the disadvantage, discrimination on grounds of age is only found to exist if age is the dominant reason for the disadvantage) was found to be a potential barrier to the enforcement of age discrimination law.
- In relation to **ethnic discrimination**, the concepts of “public authority” and “**the general interest of the State**” can be defined broadly to refuse access to certain post to non EU nationals.
- The “**assessment of needs**” of **people with disabilities** is too restrictive where it only takes into account mobility disability and not cognitive, psychological or other medical conditions.⁵

⁵ See the ECJ judgement in Case C-13/05 *Chacón Navas* of 11 July 2006, which establishes that “sickness” is not a disability. The ECJ held that “the concept of ‘disability’ must be understood as referring to a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life” (para. 43) and the “two concepts [disability and sickness] cannot therefore simply be treated as being the same” (para. 44).

2.1.4 Factors contributing to the acceptance of the anti-discrimination legislation

- **Society leads the way**

Some areas of disability discrimination law (education, building and transport) appear to have been enforced without many problems because **society has “led the way”**. In other words, one of the reasons for the good implementation of an anti-discrimination law lies in the fact that prior to its adoption people with disabilities were in practice already integrated in the mainstream system.

This is the case for the implementation of disability discrimination law in **mainstream schools**.⁶ The **Dutch study n.16** anticipates that the implementation of a legislation prohibiting discrimination in access to mainstream schools by children with disabilities does not create any difficulty of implementation.⁷ Indeed, prior to the adoption of the legislation, a high number of children were already educated in mainstream schools. This is an example of societal change leading the way and the legislation following. In **Australia n.1** also there has been an increase of students with disabilities in mainstream schools following the reasonably good implementation of the Disability Discrimination Act. However, other factors, such as greater awareness leading to early diagnosis or wider definitions of disability, have also been put forward to explain the increase in the number of students with disabilities in mainstream schools.

Disability discrimination law in the area of **transport** has also been implemented properly at least in the cities, less so in rural areas (**Australia n.1**) because public transport had adopted good practices and prior to the adoption of the anti-discrimination law.⁸ See also **Germany n.12** with regards disability discrimination in the **building** and **transport** industries.

- **Adequacy of funding**

Anti-discrimination law on the ground of disability can be reasonably effective⁹ when the **legislation is coupled with increased funding** and/or advantageous tax policies such as credits and deductions. For instance, the provisions of services such as banking, telecommunication and access to information have been reasonably implemented in **Australia n.1**. See also **Germany n.12**

The lack of funding is shown a contrario to lower the degree of enforcement of anti-discrimination law. For instance the lack of achievement of students with disabilities in mainstream schools appears to be mostly caused by lack of adequate funding (**Australia n.1; France n.9**). Further, **Canada n.6** shows that when little public funding is given to private public transport authorities for providing access to people with disabilities, this results in poor compliance with disability discrimination law. Finally, the increasing number of complaints

⁶ Note, however, the decision of the European Committee of Social Rights of 4 November 2003, whereby France was found to have failed to fulfill its educational obligations to persons with autism under the European Social Charter (see: <http://www.eph.org/a/1142>).

⁷ For a decision of the European Court of Human Rights on similar issues with Roma children see ECHR, *D. H. and others v. Czech Republic* (no. 57325/00), Judgement of 7 February 2006.

⁸ This is true for United States as well.

⁹ Australia n.1 and Germany n.12

received by the United States Equal Employment Opportunity Commission is matched by a decreasing budget and staff resources of federal agencies (**United States n.22**).

- **Raising awareness**

Anti-discrimination law can be reasonably effective when the **legislation aims to raise awareness and attitude change**. There are therefore needs for raising awareness of anti-discrimination legislation.

Further, at least four of the analysed studies show that there is a **lack of knowledge and/or understanding** of anti-discrimination legislation.¹⁰ Anti-discrimination legislation should therefore be accompanied by the policy goal to raise awareness of non-discrimination legislation. Raising awareness constitutes a strong factor in the level of implementation and acceptance of the law by both the duty bearers and the rights holders.

For instance, French teachers in mainstream schools have highlighted a number of difficulties in dealing with children with disability, which are linked to lack of understanding of the disability. They fear not to be able to take care of disabled students or they are afraid to do something wrong for example with students equipped with artificial breathing.¹¹ The low level of knowledge of particular disabilities and the lack of pedagogical training are identified as reasons for the difficult integration of children with disabilities in mainstream schools (**France n.9**).

Raising awareness can take the form of **training requirements**. The lack of training requirements have been identified as one factor contributing to the non-acceptance of disability discrimination law by for example private (taxi drivers) and public employees (bus drivers) (**Canada n.6**).

Enforcement practices further show weakness in the absence of practical manuals explaining compliance and review process (**United States n.22**).

- **Social and cultural environment**

Low level of compliance has been identified in some areas as a result of negative social and cultural environments.

For instance the level of compliance with disability discrimination is very low in **public service employment (Australia n.1; Belgium n.3; France n.10)**. This has been explained by the “culture” in the public service. The low level of compliance has also been explained by the lack of personnel managing and leading disability standards in the administration (**France n.10**). It has further been argued that the characteristics of the public service (heavy, rigid, slow, bureaucratic, complicated) are unhelpful in addressing the needs of disabled people (**Belgium n.3**).

In order for substantive equality to be achieved, attention needs to be given to **social attitudes** as well as to legislative provisions.

¹⁰ This is true in the United States today.

¹¹ See French study n.9.

In relation to discrimination on the grounds of **sexual orientation**, legislation providing for relationship recognition and aiming towards equal opportunity can have a limited effect. Indeed, the effect of equality in relationship recognition may be limited as it relies on an obligation to declare the existence of a conjugal same sex relationship, which some participants were unwilling to do, due to the social and cultural environment in which they live (**Canada n.7**).

- **Active compliance of duty bearers**

In the analysed studies, three duty bearers (taxi drivers, bus conductors and public servants) are identified as not complying with their obligations under anti-discrimination legislation on the grounds of disability.

One of these duty bearers are **taxi** drivers who have been identified in at least two jurisdictions (**Australia, Canada**) for infringing anti-discrimination law. It is argued that it is difficult to enforce industry standards against taxi operators, who operate independently rather than as employees (**Australia**). It was also argued that even if taxi drivers are employees, their private firms can be unreliable and refuse to comply with the requirement to reasonable accommodation (**Canada n.6**).

2.1.5 The overall level of compliance

The analysed studies consider how anti-discrimination law is enforced. The indicators on enforcement are:

- Development of case law and complaints filed
- Informal dispute resolution¹²
- Participation of people from minority and/or other groups discriminated against in the workplace, education, transport, social welfare system, or to the civil society
- Performance of people from minority and/or other groups discriminated against
- Awareness of the rights and obligations defined by anti-discrimination law
- Establishment of enforcement structures and bodies
- Accessibility of legal mechanisms (legal aid and legal assistance)
- Resources level

- **Amount of case law and complaints filed as an indicator of the effectiveness of the law**

The amount of complaints made in application of the anti-discrimination legislation procedure can be a crude indicator of the law's level of enforcement. A low or non-existent level of complaints can indicate that the law is highly effective (**Germany n.12**). A contrario, large numbers of complaints can be an indicator of low level of compliance (**United Kingdom n.21**) or of a high level of knowledge of rights and a legal system willing to enforce them. Over time, a falling amount of complaints could reveal that the applicable anti-discrimination legislation is efficient. For instance, Australian Disability Discrimination Act 1992 seems to be efficient in

¹² This indicator is particularly big in the United States Department of Justice.

reducing disability discrimination as complaints have fallen from just over 1200 in 1994-1995 to around 500 in 2002-2003 (**Australia n.1**).¹³

The amount of complaints recorded according to the field of application can show where the legislation is efficient at combating discrimination and where it is not. The Australian Disability Discrimination Act 1992 seems to be more efficient in some areas compared to others. In the field of employment, the legislation appears relatively ineffective by comparison to for example the area of transport. Employment consistently attracts the largest number of complaints, largely relating to unlawful termination of contracts (**Australia n.1**).

- **Participation as an indicator of the effectiveness of the law**

The legislation has been efficient if the participation of a given minority group has increased following the application of the law. For instance with regards to disability discrimination in the Netherlands, the law is expected to be efficient and lead to an increase participation of students with disabilities in mainstream schools (**The Netherlands n.16**).¹⁴

On the contrary, anti-discrimination law can be said to not have had a positive impact on the level of a minority group if the participation of this group has stagnated or decreased.

- An example of stagnation can be found in **France n.9**, where the participation of students with disabilities has not increased in mainstream schools despite the adoption of the legislation and further regulatory measures.¹⁵
- Examples of decreasing participation can be found in **Australia n.1**, **Belgium n.3** and **Germany n.13**. Despite the existence of anti-discrimination law, the Australian study on disability discrimination shows that people with disabilities made up a smaller proportion of the workforce in 1998 than they did in 1992. This is also true in Germany and the same trend was observed in Belgium in relation to the employment of disabled people in the federal administration.¹⁶

- **Performance as an indicator of enforcement**

The performance of the group considered can reveal the level of enforcement of the law. For example the disparities between the average pay of people from minority and/or other groups discriminated against and other people can be an indicator of the ineffectiveness of the anti-discrimination law (**Australia n.1**). Another example can be found in relation to disability and education. Despite the increasing participation of students with disabilities in mainstream schools, their achievement remains limited. Disabled students are less likely to complete their studies (**Australia n.1; France n.9**). Although there is little data regarding educational attainment, the suggestion on the basis of data available is that attainment has improved but students with disabilities still perform less well than students without disabilities. The arguments made suggest that funding, rather than discrimination, remains the major barrier.¹⁷

¹³ Note that a lot of complaints also allege multiple grounds of discrimination.

¹⁴ See also the increase civic participation of people with disability in the United States. More people with disabilities are voting, in part because voting has become accessible.

¹⁵ This is the case in Spain as well.

¹⁶ However, we note that employment rates are closely tied to benefit rates so this can be misleading.

¹⁷ This is, however, complicated as in the United States the poor recorded performance of students with disability in mainstream school has also to do with the disconnection between vocational and educational training.

- **Establishment of enforcement structures and bodies as indicators of enforcement**

The non-existence of enforcement mechanisms is a strong indicator that anti-discrimination law is not enforced. In **Germany n.11** for instance, complaints officers and training are not often provided, despite the fact that they are required under the legislation.

- **Awareness as an indicator of enforcement**

Wide level of familiarity with the legislation indicates high compliance with the legislation (**Germany n.12** within the building and transport industries). On the contrary, the lack of awareness of the anti-discrimination law leads to low enforcement (**Germany n.11**).

- **When the level of compliance cannot be assessed**

Sometimes it is not possible or it is difficult to evaluate the level of compliance of anti-discrimination law. In the area of employment for example, discrimination at the hiring stage is more easily concealed than discrimination at the termination stage. In other words, it is easier to detect discrimination when a person is being dismissed rather than when a person is not being hired. The **Australian study n.1** shows that disability discrimination at hiring stage is easily concealed through reference to job conditions.

2.2 Macro Impact of Anti-Discrimination Legislation

Any evaluation or impact assessment ought to have a set of indicators for the macro impact of a policy intervention. This is the case for the four main types of impact assessment identified in this study: direct prospective, indirect prospective, direct retrospective, and indirect retrospective. As mentioned in the section on methods, the studies analysed here are direct prospective and direct retrospective assessments of anti-discrimination legislation. Indicators of macro impact should be relevant to the policy area that is being analysed, and in the case of the studies analysed here, the indicators that were used all relate to some aspect of the policy area of discrimination, the potential groups that would be (or have been) affected by the policy intervention. As its name implies, macro refers to collective and or aggregate units of analysis, not individual events or individual human beings. Such indicators show a decrease, or increase in values of some variable over time. Prospective impact assessments engage in speculation about the likely changes that will take place over time in the macro indicators, while retrospective impact assessments compare indicator values before and after the policy intervention to judge the relative impact such an intervention may or may not have had.

The studies that were analysed here varied in their attention to macro impact, the use of macro level indicators, and the types of indicators that were used. Such variance is explained by the different substantive focus of the studies, the socio-legal environment of the country in which the assessments were carried out, and the style of the study itself (i.e. descriptive versus analytical). The grounds for discrimination covered in these studies include:

1. physical disability (Australia, Belgium, Canada, France, Germany, Netherlands, Northern Ireland)
2. intellectual disability (France)
3. age (Australia)
4. race, ethnicity, and religion (Belgium, Sweden)

5. sexual orientation (Canada)
6. gender (Germany, Portugal)

Indicators for macro level impact included:

1. market competition (**Australia Study n.1**)
2. changes in employment of different groups (**Australia Study n.2; Belgium Study n.4**)
3. the level of recruitment and integration of disabled people (**Belgium Study n. 3, France Study n.8**)
4. ethno-stratification of employment market¹⁸ (**Belgium Study n.4**)
5. levels of discrimination (**Belgium Study n.3, Study n.4**)
6. availability and access to transportation (**Canada Study n.6**)
7. resource allocation in labour markets (**United Kingdom, study n.21**)
8. labour supply (**United Kingdom, study n. 21**)
9. GDP growth (**United Kingdom, study n. 21**)
10. case law and legislation (**Canada Study n.7**)
11. focus group perceptions (**Canada Study n.7**)
12. court judgments (**Germany Study n.12**)
13. interview responses of stakeholders (**Germany Study n.11**), **Netherlands Study n.16**, **France Study n.10**)

2.3 Distribution of the costs and benefits within the population and sub-groups

The analysis of costs and benefits is closely related to macro impact in the sense that if done properly, it should be able to identify 'winners' and 'losers' from a particular policy intervention. Equality and anti-discrimination legislation can impose a heavy burden on some key actors in society while at the same time providing tremendous advantages and/or benefits to other groups.¹⁹ Prospective impact assessment looks at the net costs and benefits that are likely to accrue to different groups once the legislation has been enacted, while a retrospective impact assessment will analyse the actual net costs and benefits that accrue to different groups.

Given the different foci of the various studies analysed here (physical disability, intellectual disability, age, race, ethnicity, religion, sexual orientation, and gender) there are necessarily different groups within society that will experience different net costs and benefits. The beneficiaries of a given policy intervention include those people 'inside' the group in society to whom the legislation is meant to apply, but it is also the case that the beneficiaries may include those that are 'outside' the particular societal group. It is also the case, that many individuals have multiple identities (e.g., women who are gay and have disabilities, people with disabilities from a particular ethnic minority, etc), which means that the assessment of net costs and benefits becomes particularly challenging.

¹⁸ This corresponds to the stratification of employment according to the ethnic backgrounds. In other words, white European will be found in highly paid and skilled top jobs whereas people from African origins will more often occupy the lower end of the employment spectrum.

¹⁹ Although, it is assumed to be good for all, the types of costs associated with implementation means that the statement that "it is good for all" cannot be sustained.

- **For disability discrimination legislation, the analysis of benefits includes**
 1. Those accruing to people with disabilities (**Australia Study n.1, Belgium Study n.3; Canada Study n.6; France Study n.9; UK Study n.20**):
 - Increased choice, enhanced self-esteem, improvement in educational attainment, knowledge and skills (**Australia Study n.1; Canada Study n.6**)
 - Greater access to buildings and transport facilities, enhanced social inclusion (**Australia Study n.1**)
 - Freedom to travel
 2. Those accruing to people without disabilities:
 - More flexible work environment, greater access to building and transport facilities, greater independence for carers, improved school environments through inclusion, lower costs for some service delivery organisations who traditionally provided special provisions for disabled people (**Australia Study n.1; Canada Study n.6**)
 3. Organisations that comply with the legislation:
 - More diverse set of skills on the market and some increase in commitment from people with disabilities (**Australia Study n.1; Canada Study n.6**)
 4. The economy in general
 - Increased labour supply, less welfare dependency, possible increases in social capital (**Australia Study n.1; Canada Study n.6**)

Individuals and groups to whom increased costs accrue include the

1. national institutions that implement the legislation (**Australia Study n.1; Canada Study n.6**)
 2. those that mount legal challenges under the new legislation (**Australia Study n.1; Canada Study n.6**)
 3. organisations that need to modify practices and physical infrastructure to accommodate people with disabilities (although this can be delayed depending on timing of appointing such people to an organisation or the life span of physical capital). These organisations include educational institutions at all levels, hospitals, and other service delivery organisations that must provide access to people with disabilities (**Australia Study n.1; France Study n.9; Netherlands Study n.15**)
- **For sexual orientation discrimination legislation, the analysis of benefits includes**
 1. men and women living in same-sex relationships who become eligible to claim benefits usually available to heterosexual couples (**Canada Study n.7**)

2. more intangible benefit of social recognition of the legitimacy of the relationship (**Canada Study n.7**).

Costs include:

1. Tax regimes are often based on more traditional understandings of the nuclear family and may penalise same sex couples who have double income and this offsets any benefits that result from greater access to social benefits. The possible net losses are greater for women in same sex relationships than men, since wage disparities mean that women in same sex relationships will tend to be worse off than their male counterparts (**Canada Study n.7**).
2. Formal recognition of same-sex relationships may decrease couples' autonomy in decision-making in financial and other affairs (**Canada Study n.7**).

- **For age discrimination legislation, the analysis of benefits includes**

1. Workers less than 25 years old and more than 50 years old, as well as job seekers entering the labour market (**United Kingdom n.21**).

Costs include:

1. For the younger workers, businesses and organisations that experience the highest costs include those found in the distribution, hotel, and catering sectors of the economy (**United Kingdom n.21**).
2. For older workers, the organisations that experience the highest costs include those found in public administration, health, and education sectors of the economy (**United Kingdom n.21**).
3. Costs also accrued to pension providers and organisations involved in calculating and disbursing redundancy payments (**United Kingdom n.21**).

The analysed studies did not provide enough information regarding the grounds of sex, religion or belief, for us to be able to provide comprehensive costs/benefits analysis.

2.4 Possible flaws, contradictions, lack of clarity, and gaps

The analysed studies have revealed a number of flaws, contradictions, lack of clarity, and gaps concerning the limitations of anti-discrimination legislation.

2.4.1 The limitations of the legislation

- **Lack of available funding**

The lack funding comes top of the list of legislative limitation. The impact of anti-discrimination law is often limited because adequate funding is not available to raise awareness (**France n.9**), to allow the enforcement body to function efficiently (**Canada n.6, United States n.22**) or to create enforcement mechanisms (**France n.9, Australia n.1**).

- **Lack of or mediocre reliable statistics and data**

Three of the analysed studies have identified the lack of reliable statistical and data as one of the barrier to proper implementation of the law. Two studies provide strong evidence for the creation of efficient statistical and data collection systems (**Belgium n.3, France n.9**). The availability of reliable statistical and data collection is needed for pedagogical and legal reasons. For instance, indirect discrimination can often only be established with the use of statistics. Furthermore, the use of multiple definitions of disability that are socially constructed is also confusing.

The methodology for collecting data and statistics should be adapted to inform policy makers. This is a complex process. **Canadian Study n.5**, for example, includes discussion of the major methodological difficulty with demographic analyses that lack population data about same sex couples. The Canadian census does not ask questions about sexual orientation and therefore, while it is possible to identify households where two parties of the same sex are living, it is not possible to assess whether they are in a same sex relationship or merely 'room-mates'. This lack of information makes it difficult to produce really reliable data, given that

- a. the existence of a committed relationship will have an impact on financial organisation and
- b. employment discrimination has the effect of lowering the incomes of lesbians and gay men.

Although, data and statistical evidence are needed to inform policy making, there is evidence that policy makers are not necessarily relying on existing scientific evidence. The **French Study n.9** shows for instance that the legislation has not taken into account the existence of demographic data related to people with disabilities. Despite the fact that life expectancy of people with disabilities (e.g. intellectual and mental health disabilities) has tripled in 50 years, the legislator has not taken into account the situation of elderly population with disabilities. The result is that a growing number of individuals are not protected by the applicable disability discrimination law. The legislation should therefore to be amended in view of data and statistical evidence.

2.4.2 Difficulties in implementation and interpretation by duty bearers and rights holders

- **Outdated and confusing legislation**

In at least three countries (France, Belgium and Canada), anti-discrimination legislation is claimed to be outdated and legal concepts to be contradictory and confusing (**Belgium n.3, France n.9, Canada n.6**). As a result there is a low level of legal certainty for both the duty bearers and rights holders (**Belgium n.3, France n.9**). Sometimes the old legislation has not been repealed resulting in a confusing set of rights being applicable (**Belgium n.3**). In federal countries, the federal and federate anti-discrimination law is often incompatible and sometimes even contrary (**Canada n.6, Belgium n.3**). Confusion between the law and policies at city, regional and national levels can also be found. For instance the **Canadian study n. 6** shows there is a lack of integration between transit authorities and between municipalities resulting in contradictory and even lack of rights. The analysis of the studies reveals that there is need for greater coherent legal frameworks.

- **The shortcomings of formal equality**

Two of the analysed studies have identified obvious flaws in the formal equality approach (**Australia n.1, Canada n.7**). In particular, formal equality does not achieve social change and stigmatisation remains.

- **Limited definition**

With regards disability discrimination, the analysed studies show that anti-discrimination law is more efficient when definitions of the disability and conditions of eligibility are broadly established to reach the maximum amount of people (**Canada n.6, Australia n.1**). A strict assessment of needs is not helpful and contributes to excluding a large number of persons with disabilities or perceived as having disabilities.

2.4.3 Identification of any uncertainties or risks

Studies which provide no or little quantitative or qualitative assessment are less reliable than those which do (**France n.10**).

The **United Kingdom study n.21** shows substantial variation in various estimates on the effects of discrimination legislation.

2.4.4 Difficulties linked to impact assessment

The analyses of the studies have also revealed flaws in the conduct of impact assessments. Studies which include flaws cannot inform objectively and completely policy makers and stakeholders.

- **Timing of the Impact Assessment**

To obtain the best results, retrospective impact assessments of anti-discrimination law are best conducted at least two years after the legislation has entered into force. If an impact assessment is done too early, it can impair the ability to assess important medium to long terms effects (**Belgium n.4, Germany n.12 and 13**). However, the timing of the impact assessment also depends on the impact that is to be measured. Measuring the impact of the law on raising awareness can be done earlier than the impact on improving social position.

- **Methodology**

At least four of the analysed studies, typically parliamentary reports, are lacking the necessary methodological information, or even evidence of scientific method, and are extremely limited in scope. One of the reasons for this lack of methodological information is that parliamentary reports are often based on hearings. The result is that the information to be gleaned from these studies is limited if not biased (See for instance **Australia n.2, Germany n.11, 13**).

The quality of the indicators used in the study to evaluate enforcement practices (i.e. complaints resolved and reviews conducted) may well produce biased results and misspecification errors in assessing agency's civil rights performance. Other more complex

tools such as analysis of behavioural data and/or public opinion surveys should have been included in the analysis (**United States n.22**).

- **Some studies only provide limited impact assessment of anti-discrimination law**

The analysed studies from the **Czech Republic, Hungary, Portugal** and **Sweden** display very few of the characteristics of impact assessment either in their content and/or their methodology.

- For instance in terms of content, **Portugal n.18** reflects well the state of the art and the need for impact assessments but can only be considered as a guide on how to do such assessments. The **Swedish** study is descriptive and vague.
- In terms of methodology, **Portugal n.17** presents a chronology of legal rights and descriptive statistics on the status of women without attempting to link the two or to examine the time-series relationship between the proliferation of legal protections for women and their changing status in Portuguese society. The **Swedish** study is unclear as to under what basis the inquiry is intended to make a case for the need to change anti-discrimination law. Finally, the **Hungarian** study provides only one explanation for changing the law, namely the transposition at the national level of the legal obligations ratified at the international level (mainly: EC directives and the European Convention of Human Rights).
- These studies can be helpful in other ways. For instance the **Portuguese study n.17** provides a useful baseline assessment of the status of women in Portuguese society and provides value-added by comparing that status across the member states of the EU. The **Portuguese study n.18** further provides a very good start for those wishing to carry out gender impact assessments. The **Hungarian** and the **Czech Republic** studies aim primarily at outlining the structure of a future law and prepare the ground for the legislative elaboration of the anti-discrimination code.

2.5 Unwanted and unintended side effects

The majority of studies considered did not explicitly refer to unwanted or unexpected side effects (negative and positive) of anti-discrimination legislation. This may be either because those carrying out the studies did not consider the issue specifically, or because such unwanted side effects were not in fact found.

The analysis of unwanted side effects may be divided into three parts: unexpected economic or fiscal consequences, unexpected costs for a range of actors and institutional cost.

- **Economic and fiscal consequences**

In general, discrimination litigation may be expected to improve employment rates by removing the discriminatory barrier to employment. However, there are suggestions that this may be balanced out by the consequences of a fear of litigation, in that some employers may find ways of not employing younger and older workers (**United Kingdom n.21**). This may therefore decrease the impact of the legislation on the employment rate. This finding supports the suggestion in **Australia n.1** that at least some types of anti-discrimination legislation (here, disability discrimination legislation) may not significantly improve access to the labour market, due to attempts by employers to conceal discrimination by reference to job descriptions.

Further, if the costs of complying with disability discrimination legislation are significant, they may lead to an overall increase in unemployment rates, as employers are financially unable to maintain their workforce or take on new staff (**Australia n.1**)

If, however, anti-discrimination legislation is successful to at least some degree in increasing supply to the labour market, this may have a temporary depressing effect on wages. It is suggested that this may not be permanent as the economy will expand in response (**United Kingdom n.21**).

A major finding of two **Canadian studies n.5 and 7** is that relationship recognition can have unexpected financial costs for same sex couples, and particularly lesbian couples, due to the loss of social security benefits without any increase in tax transfer benefits. Given that those costs are derived from taxation and social security, they translate into financial benefits for national and provincial authorities.

- **Unexpected Costs**

- To business/consumers

It is expected that businesses will have to bear the costs of adapting their buildings or vehicles to make them more accessibility, and that those costs may be passed on to consumers. However, **Australia n.1** suggests that there may be more indirect and unexpected costs arising from such adaptations. In the field of public transport, vehicles accessible to persons with disabilities carry fewer passengers, thus decreasing fare income unless fares are increased. For owners of buildings, the requirement for accessible facilities may mean that more floor space is taken up, thus decreasing the value of the building.²⁰

- To other sectors of the population

In general, studies find that anti-discrimination legislation also improves the position of those who do not suffer from the particular discrimination concerned. However, there are some exceptions. Australia n.1 indicates that, within the sphere of education, the need to provide accommodation and support for pupils with disabilities may disrupt the education and thus the progress of students without disabilities. The extra workload may also increase workplace stress for teachers.

Australia n.1 suggests that, even within the field of disability, accommodations made in order to suit one set of people (e.g. wheelchair users) may work to the detriment of people with other types of disability (e.g. the visually impaired or those with different types of mobility impairment).

- **Institutional impact**

- Increased litigation

Potentially, any new legislation is likely to lead to increased litigation. This may be even more the case when the legislation contains within it imprecise or general principles, such as objective justification (**United Kingdom n.21**). This has a financial impact on employers and

²⁰ Or alternatively increasing the value and life of the building as it is more accessible to all.

taxpayers and also on the Court services. It may also have implications in terms of the case load of the court services and the amount of time it takes for litigation to be settled or decided.

- Changing function of certain institutions

Belgium n.4 finds that anti-discrimination legislation can change the role of institutions involved in its implementation. Here, the public job placement service has an increasing role of mediator between foreigners (or persons of foreign origin) seeking jobs and employers. Its role has also evolved into one of control of implementation of social policies and employment procedures.

3. Overall conclusion

3.1 Conclusions pertaining to all grounds

The analysis of the studies reveals that there are a lot of similarities in the impact assessments assessed. This relative homogeneity of findings might be biased, however, as there might be similarities between countries that chose to assess anti-discrimination legislation.

Little of the anti-discrimination legislation surveyed provides an obligation for the State to conduct an impact assessment of the law following its adoption. Consequently, in the field of anti-discrimination law, impact assessments are rare and they only exist in some countries. Impact assessments are conducted more often in countries of Anglo-Saxon traditions. In the case of our study the countries concerned are the United Kingdom, the United States, Canada and Australia. Our endeavour to find impact assessments studies in other jurisdictions led to finding more studies but some were impact assessments only in name. Despite a relatively wide selection of countries and types of impact assessments, the analysis reveals a high level of similarity of impacts. The differences of socio-legal systems are therefore less important factors in determining the impact of anti-discrimination law. The analysis of the studies shows that if some countries are more successful in implementing anti-discrimination law, this has less to do with the socio-legal backgrounds and more with the funding available or the existence of a campaign to raise awareness. Indeed, the analysed studies have revealed that a number of factors contribute directly to the increase effectiveness of anti-discrimination law. These include the following:

- Availability of adequate funding (including funding for enforcement bodies)
- Awareness raising
- Requirement of training
- The legislation which reflects social attitudes (social attitude already complying with the aim of the legislation)

The availability of adequate funding to support the legislation is, according to the analysed studies, one of the most important factors in the effectiveness of the law. Correspondingly, the lack of funding accompanying anti-discrimination law is also the one of the most important reasons why the legislation fails to adequately combat discrimination.

Almost all analysed studies have provided information regarding the enforcement, acceptance and compliance of anti-discrimination law. It appears from the analysis made in particular in the **Belgian study n.4**, that soft law and industry/administration self-regulation is not as effective in combating discrimination as hard law could be.

In addition, almost all the anti-discrimination legislation evaluated aims for equality of opportunity (formal equality) and not equality of outcome (substantial equality).²¹ It appears that, although formal equality can contribute to combat discrimination, it does not achieve social change and stigmatisation remains. This might read like a general and predictable statement, however, the objective of national formal anti-discrimination law can explicitly aim to impact on the society and to challenge stereotypes (see for example **Australia n.1** and **Germany n.12**).

²¹ This excludes in the Northern Ireland legislation which goes much broader than formal equality.

A large number of analysed studies highlight the lack of or the mediocre reliable statistical and data collection (see for instance (**Belgium n.3, France n.9, United States n.22, Canada n.5**)). This results in the inability to evaluate properly (or at all) the impact of anti-discrimination law. The lack of adequate statistical and data collection also makes it difficult at best for individuals to claim indirect discrimination.

Furthermore, a number of analysed studies (**Australia n.1, Belgium n.4 and Canada n.6**) show, that anti-discrimination legislation is less effective for people with multiple disadvantages and/or those who may well suffer from multiple forms of discrimination, notably indigenous people, those who do not speak the language of the country they live in, people from rural and remote regions, often due to racism, language barriers, the remoteness of their location and socio-economic background.

Finally, significant attention must be given to the role of the national body responsible for the implementation and enforcement of anti-discrimination legislation. National bodies must be provided with clear and well defined missions and powers (judicial, scientific, legislative and/or political) in order to be efficient. Further, adequate funding and staffing of the national anti-discrimination body will guarantee and enhance its enforcement capability.

3.2 Conclusions pertaining to specific grounds

- **Discrimination on the grounds of disability**

The analysed studies show clear differences in application and effectiveness among physical, intellectual, cognitive and other types of disability. In other words, disability discrimination law may have a different impact on people according to their type of disability. At least two of the analysed studies look specifically at the impact of disability discrimination law on people with intellectual disability (**France n.9** and **Australia n.1**) and conclude that disability discrimination law is more effective for physical disabilities (such as mobility, hearing or sight impairments) than it is for mental disabilities (such as intellectual, cognitive impairments or other types of invisible disabilities). It is not argued that disability discrimination law should distinguish between different types of disability, rather that the legal definition of disability, the prohibition of disability discrimination and the related reasonable accommodation should be drafted in a way as to include all kinds of disability.

In the same vein, disability discrimination law is more effective for those who are most able to claim their entitlements assertively, through the individualised complaints process. Those who are reliant on others, particularly those with mental illness or learning disabilities, find it more difficult, particularly if they live in an institution. This may have to do with the “equal opportunities” focus of the legislation, as many people cannot take advantage of the opportunities made available. Anti-discrimination legislation helps most those whose disability is least relevant to the circumstances (**Australia n.1**).

- **Discrimination on the grounds of age**

The analysed studies reveal that discrimination on the grounds of age could potentially contribute to a large amount of litigation. However, well-defined and precise legislation can go a long way in providing legal certainty and reducing the number of case law. It was also clear

from the studies that different issues affect different groups of old and young workers, such that organisations bear different costs depending on the mix of age groups involved.

- **Discrimination on the grounds of sexual orientation**

Relationship recognition does not lead automatically to non-discrimination on the grounds of sexual orientation, and it is not clear that same-sex relationship recognition provides a net benefit given for example the ways in which tax regimes continue to be oriented towards more traditional understanding of the nuclear family (**Canada n.5 and 7**).

- **Discrimination on the grounds of religion, race or ethnicity**

Concepts of “public authority” and “the general interest of the State” need to be defined precisely, strictly and narrowly. If not, these concepts are easily utilised to refuse access to certain post to people having certain religious, racial or ethnical characteristics (see **Belgium n.4**).

3.3 Relevance and efficiency of impact assessment

Whether a country is carrying out a prospective or retrospective impact assessment, it needs to collect valid, meaningful, and reliable time-series data that can be disaggregated to demonstrate patterns of discrimination and/or differential access to service delivery and the market economy. In the absence of such data, it is difficult to calculate the impact of anti-discrimination legislation. It then becomes impossible to project the likely impact or assess data from before and after the introduction of the legislation. Impact assessments are grounded in particular theories of change that often assume the introduction of some measure will have a positive impact. While many of the studies considered here did include some consideration of the benefits and costs of anti-discrimination legislation, the lack of high quality data made such assessments difficult to carry out.

It has also been clear that at the conceptual and definitional level, legal definitions of grounds remain ambiguous, leaving open the possibility of multiple interpretations and in some cases (e.g. recognition of same sex relationships) net costs to the targeted beneficiary. Conceptual ambiguity also makes impact assessments difficult since establishing the baseline conditions against which changes are compared becomes problematic.

Overall, impact assessments of the kind that have been analysed here have provided useful entry points for policy makers wishing to understand how anti-discrimination law can bring about positive change, but such assessments in future require much better socio-economic and administrative time-series data that can be disaggregated and analysed in more robust fashion.

3.4 Suggest what possible effects can be expected from expanding Community anti-discrimination law

Expansion of Community anti-discrimination legislation would complete the already existing anti-discrimination and equality legal framework. The Community has already adopted anti-

discrimination legislation in the field of employment on the grounds of sex,²² religion or belief, disability, age or sexual orientation.²³ It has also adopted anti-discrimination law on the grounds of race and ethnic origin in and outside the field of employment.²⁴ Finally, the Community has also adopted anti-discrimination legislation on the grounds of sex in the access to and the supply of goods and services²⁵ and social security.²⁶ This way the legislation in this area will be more coherent and homogenous, making it easier for all citizens (duty bearers and rights holders) to understand and comply with the law.

Benefits resulting from the adoption of anti-discrimination law have been highlighted in all the analysed studies. It is therefore expected that, at Community level, the expansion of anti-discrimination law will also result in a fairer and more economically effective European society. Indeed, anti-discrimination law leads to wider participation and contribution to society by individuals coming from various horizons. In terms of economic effectiveness, Community anti-discrimination law also help all citizens to realise their potential. Ultimately the expansion of Community anti-discrimination law will help the social integration of citizens in the European Community. It is expected that individual citizens of the minority groups identified will benefit from the new legislation. It is also expected that the European Society as a whole will benefit from the expansion of anti-discrimination law. The expansion of anti-discrimination law also falls within the Lisbon goals and Strategy, which focus the European Union's efforts on two principal tasks – delivering stronger, lasting growth and more and better jobs. In order to achieve these goals, the EU and the Member States are urged in particular to develop a stronger and competitive knowledge based economy and to involve higher level of people in education and in work.

However, it is also expected that there will be a few problems. For instance, any new anti-discrimination legislation is likely to lead to increased litigation and consequently to costs.²⁷ Anti-discrimination law also involves some immediate costs unrelated to litigation. For instance immediate costs include the costs of a building alteration for access to people with disabilities.

Further, some individuals or groups bearers of obligations might not comply (intentionally or not) adequately with the new law. Anti-discrimination legislation needs to include a comprehensive financial and awareness-raising package so as to encourage compliance. The legislation also needs to be coupled with adequate public funding for the implementation of strong enforcement mechanisms and bodies.

3.5 Possible effects if Community anti-discrimination law is not expanded

If the Community does not adopt further legislation prohibiting discrimination outside employment on the grounds of religion or belief, disability, age or sexual orientation and sex, a number of consequences can be identified.

²² Recast Directive 2006/54.

²³ Employment Equality Directive 2000/78.

²⁴ Racial Equality Directive 2000/43.

²⁵ Directive 2004/113.

²⁶ Directive 96/97

²⁷ Although, *a contrario*, litigation could lead to benefits such as weeding out market inefficiencies.

Firstly, there is a risk that certain groups of individuals concerned will continue to have no legal redress when they are discriminated against. As identified in the analysed studies, discrimination leads to individual psychological depression and loss of motivation.

Secondly, the European society will further lose out by not including all individuals. Indeed, discriminatory practices mean that society loses out on all the human potential available as all citizens cannot participate fully.

Thirdly, not completing the existing anti-discrimination law will send the message that the fundamental right not to be discriminated against is acceptable in some areas (outside the field of employment law) and ultimately this might reinforce discriminatory practices.

Appendix 1: Selected countries and reports

Australia

1. Productivity Commission, Review of the Disability Discrimination Act 1992 (2004) Australia. www.pc.gov.au/inquiry/dda/finalreport/dda1.pdf (Vol 1) and www.pc.gov.au/inquiry/dda/finalreport/dda2.pdf (Vol 2)
2. The Senate. Legal and Constitutional Legislation Committee. Provisions of the Age Discrimination Bill 2003 (2003) http://www.aph.gov.au/Senate/committee/legcon_ctte/completed_inquiries/2002-04/age03/report/report.pdf

Belgium

3. Etude réalisée par le departement de Psychologie de la Faculté Universitaire Notre Dame de la Paix (Namur) et Hoger Instituut voor Arbeid (Leuven) pour le compte du SPF Personel & Organisation, L'emploi des personnes handicapées dans la fonction publique administrative fédérale [Employment of disabled people in the federal administration] (2004) http://www.fundp.ac.be/psycho/docs/emploi_ph_spf_1.pdf
http://www.fundp.ac.be/psycho/docs/emploi_ph_spf_2.pdf
http://www.fundp.ac.be/psycho/docs/emploi_ph_spf_3.pdf
4. Etude sur l'emploi des étrangers et des personnes d'origine étrangère au sein de la fonction publique administrative fédérale, [Study on employment of foreigners and non native Belgians in the federal administration] (2005) http://www.orbem.be/Observatoire/pdf/Discrimination_ethnique.pdf

Canada

5. Lahey Kathleen, The Impact of Relationship Recognition on Lesbian Women in Canada: Still Separate and Only Somewhat "Equivalent". Report Prepared for Status of Women Canada (2001) http://www.swc-cfc.gc.ca/pubs/pubspr/0662659406/200109_0662659406_e.pdf
6. Ontario Human Rights Commission, Human Rights and Public Transit Services (Consultation Report) (March 2002). <http://www.ohrc.on.ca/english/consultations/transit-consultation-report.pdf>.
7. Irèna Demczuk, Michèle Caron, Ruth Rose and Lyne Bouchard, Recognition of Lesbian Couples: An Inalienable Right. Status of Women Canada (January 2002). To complement other reports http://www.swc-cfc.gc.ca/pubs/pubspr/0662312813/200201_0662312813_e.pdf

Czech Republic

8. Zpráva o možnostech opatření k odstranění diskriminace (Report on measures to combat discrimination) <http://wtd.vlada.cz/vrk/vrk.htm>

France

9. Cour des Comptes, La vie avec un handicap (2003): <http://www.ccomptes.fr/cour-des-Comptes/publications/rapports/vie-handicap/vie-handicap.pdf>
10. Conseil Général des Ponts et Chaussées, Audit sur le development de l'emploi et l'insertion des travailleurs handicaps au sein du ministrère des transports, de l'équipement, du tourisme et de la mer (2005)
<http://www.ladocumentationfrancaise.fr/rapports-publics/064000266/index.shtml>

Germany

11. Beschäftigtenschutzgesetz in der Praxis [The Employees Protection Act in practice] (2002)
<http://www.bmfsfj.de/RedaktionBMFSFJ/Abteilung4/Pdf-nlagen/beschaefigtenschutzgesetz.property=pdf,bereich=rwb=true.pdf>
12. Auswirkungen des Gesetzes zur Gleichstellung behinderter Menschen (BGG) und zur Änderung anderer Gesetze auf die Bereiche Bau und Verkehr [Impact assessment of the Disability Equality Act on building and transport] (2004)
<http://www.institut-bgm.de/mime/42163D1123083136.pdf>
13. Bericht über die Umsetzung des Landesgesetzes zur Herstellung gleichwertiger Lebensbedingungen für Menschen mit Behinderungen gemäß § 13 des Landesgesetzes zur Gleichstellung behinderter Menschen (LGGBehM) [Report from the government of one State (Rheinland-Pflatz) on measures following the State Act establishing equal conditions for people with disabilities (2004)
<http://www.landtag.rlp.de/landtag/drucksachen/3739-14.pdf>

Hungary

14. Az egyenlő bánásmódról és az esélyegyenlőségről szóló törvény koncepciója [Concept Paper for the Law on Equal Treatment and Equal Opportunities] (2 December 2002) Hard copy

Netherlands

15. Equal Treatment Commission, Het verschil gemaakt: Evaluatie AWGB en werkzaamheden CGB (1999-2004) - The difference made, Evaluation Equal Treatment Act and activities ETC (2005) / hard copy
16. Effectstudie toepassing Wet gelijke behandeling op grond van handicap of chronische ziekte in primair en voortgezet onderwijs [Impact Study application Act on Equal Treatment on the grounds of Disability or Chronic Illness in primary and secondary education] October 2003
<http://www.smetshover.nl/Bestanden/Update%20effectstudie%20WGB%20h-cz%20aug%202005.pdf>

Portugal

17. Comissão para a igualdade e para os direitos das mulheres (2003) A igualdade de género em Portugal (Lisbon), [Commission for Equality and Women's Rights (2003) Gender Equality in Portugal]

18. Comissão para a igualdade e para os direitos das mulheres (2005) Impacto em função do género: Avaliação de medidas de política (Lisbon) [Commission for Equality and Women's Rights (2005) The Impact of Gender: Evaluation of Policy Measures]

Sweden

19. P. Lappalainen, Swedish government inquiry into structural discrimination due to ethnicity and religion, Summary – The blue and yellow glass house: structural discrimination in Sweden (SOU 2005) Abstract in English.
http://www.toronto.ca/metropolis/metropolistoronto2005/pdf/ENGLISH_SUMMARY_and_BW_pict.pdf

United Kingdom

20. Draft Disability Discrimination (NI) Order – Consultation Document
<http://www.ofmdfmi.gov.uk/disability-main-consultation.pdf>
21. DTI, Partial Regulatory Impact Assessment Age Discrimination (2004)
<http://www.dti.gov.uk/files/file13160.pdf>

United States

22. An evaluation of the Departments of Education, Health & Human Services, and the Equal Employment Opportunity Commission, Ten years check-up have federal Agencies responded to the Civil Rights Recommendations? Volume IV (2004)
<http://www.usccr.gov/pubs/10yr04/10yr04.pdf>

Appendix 2: Methods and Indicators

The study contains a mixture of prospective and retrospective impact assessments as well as a variety of descriptive mapping exercises depicting existing socio-demographic patterns relating to the various grounds of discrimination that are the subjects of this study.

Some of the studies (e.g. the Portuguese studies on gender) are purely descriptive, providing a portrait of the current state of affairs using standard socio-demographic indicators, while others (e.g. the DTI study on age discrimination in the UK) engage in much fuller impact assessment examining the likely impact of the specific legislation.

The data sources vary across the studies and include, inter alia:

1. Household income and expenditure surveys (wages, income, spending habits, and standard socio-demographic indicators)
2. Surveys of service providers, employers, affected groups and the general public on perceived costs of abiding by anti-discrimination legislation, current state of affairs with respect to access to goods and services, experiences of hostility relating to disability, and the use of complaints procedures.
3. Stakeholder interviews and focus groups (small N)
4. Number of complaints registered
5. Participation of disabled people in society
6. Disaggregated education attainment rates
7. Tax and other transfer data disaggregated by grounds of discrimination
8. Case laws, legislation and case processing
9. Statistics on same sex registrations at one point in time and over time

Demonstrating discrimination

Since discrimination can be an unintentional or intentional act carried out by institutions, individuals, and groups, estimating its presence can present a number of significant methodological challenges. In the absence of events-based data on acts of discrimination, statistical methods have been used to estimate its presence in indirect fashion. This is often referred to as a 'proxy measure' of discrimination.

The Australian study on disability uses a two-stage analysis to analyse the presence of discrimination against the disabled in the labour market. The first stage is a Heckmann selection model that determines the likely reasons why people enter the labour market in the first place. It carries out logistic regression on the probability of any one individual entering the labour market.

The second stage is a vector decomposition regression analysis that examines the explained and unexplained variance in wage differentials between those that are disabled and those that are not. The analysis controls for social demographics that may also account for wage differentials, but if the differences are still statistically different, then the analysis assumes some form of discrimination is taking place.

The analysis in the study shows that between 20 and 44 percent of the wage differential between disabled and non-disabled women can be explained by other determinants, while for

men, the unexplained differential is between 27 and 49 percent. This type of analysis is subject to omitted variable bias (i.e. many factors that may account for wage differentials have not been included in the analysis) and therefore its results should be seen as tentative.

The UK regulatory impact assessment on age discrimination used the measure of those aged over 49 not looking for work because they believed there were no jobs available. Clearly, such a measure is based on a perception of the conditions of the labour market and not actual discriminatory practices. Nevertheless, such a measure features as a key variable in projecting the likely impact of age discrimination in the UK.

Less complex methods use descriptive data analysis to examine differences in a variety of socio-demographic indicators that are broken down according to grounds of discrimination. Such analysis is not measuring discrimination per se, but is showing differential access to goods and services, differential treatment by service providers, and differential attainment with the different sectors of society. As in the Australia study, any number of additional variables can account for such differences in access, treatment, and attainment, thereby making arguments about discrimination tentative at best. Indeed, the Australian study, which is arguably one of the more comprehensive and robust analyses, recognises the tentative nature of its findings.

Assessing impact

Using a combination of data sources, the impact assessments examined in this study are differentiated by their attention to

1. the current state of discrimination,
2. the current impact of anti-discrimination legislation and its likely impact,
3. groups of individuals that fall under the different grounds of discrimination. The variation in methods of assessment, use of data, and reliability of results should all be seen as a function of these differences. No one method of assessment prevails across the studies, which is partly explained by their different foci and partly explained by the developing field of impact assessment in this policy area itself.

On balance, there exists very little systematic statistical analysis across the studies that provide a firm foundation for assessing impact. There are no intervention models typical of impact studies in other fields and there is very little by way of comparing before and after patterns and trends. Rather, different sources of data are used to capture in more qualitative fashion the main contours of discrimination across the various grounds. There are some notable exceptions that attempt to use second order quantitative analysis to capture the nature of discrimination and to estimate the likely impact of anti-discrimination legislation.

The UK regulatory impact assessment has a starting hypothesis that discrimination results in poorer equality matches in labour markets, which leads to lower national output. The data in the study include the proportion of different aged employees in different industry sectors, the costs of implementation, net costs and benefits of retirement options, and costs and benefits relating to unfair dismissal. These estimates were based on analysis of variables that could affect demand for and the supply of older and younger workers.

Variables affecting demand for older workers include the wage premium associated with those over 49, the qualifications of those over 49, capacity in the economy, and the industrial mix. Variables affecting supply of older workers include wage premium of those over 49, the health of those over 49, the benefits available to those over 49, and the availability of flexible working arrangements. Similar variables were used for operationalizing demand and supply for young workers, including the wage premium, capacity in the economy, industrial mix, qualifications, number of dependents, government training schemes, availability of flexible working arrangements.

These variables are used in a series of regression analyses to judge the relative increase in demand for older and younger workers as a function of changing patterns of discrimination. The analysis is 'discounted' for the fact that the line of causality could actually go in the opposite direction.

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Introduction

The studies used as a basis for the Comparative Analysis Report are summarised in this Annex 1. The summary of the studies aims to provide information on the (possible) impact of anti-discrimination law in terms of macro impact, enforcement and compliance, cost and benefits, flaws and unintended consequences. Not all studies provide information on all these points or information at the same level of detail. The studies come closest to what can be called “regulatory impact assessments” (*see in the report point 1.2 Terminology of impact assessment*).

Australia

Study nr. 1: Review of the Disability Discrimination Act 1992, Report, no. 30

Productivity Commission (2004) Melbourne: Commonwealth of Australia

www.pc.gov.au/inquiry/dda/finalreport/dda1.pdf (Vol 1) and www.pc.gov.au/inquiry/dda/finalreport/dda2.pdf (Vol 2)

This is a report produced by the Australian Productivity Commission assessing the economic and social impact of the Disability Discrimination Act 1992. The Productivity Commission is particularly concerned with the effect of the legislation on competition, but the report covers a wide range of economic and social impact.

Categories of impact	Grounds for Discrimination: DISABILITY
Methods and preliminary comments	<p>The study was carried out by means of a range of different statistical analyses, analysis of complaints data, and the consultation of stakeholder organisations and individuals.</p> <p>It is noted that there are significant methodological issues surrounding cost benefit calculations, as it is difficult to estimate the number of people benefiting from improvements and the extent of the benefit, and there is no clear data. Therefore the cost-benefit analysis is more in the nature of a prospective analysis, in that is not based on current data. The problem is compounded by the fact that it is not yet clear the extent to which discrimination has been eliminated.</p>
Macro impact	<p>The report is produced by the Australian Productivity Commission to assess the economic and social impact of the Disability Discrimination Act. The major focus of the agency is to consider whether the legislation affects competition, and, if so, if that effect is justifiable in cost-benefit terms.</p> <p>It should be noted that this is Federal legislation, and that State legislation also exists, and there are differences between different States in terms of actions and funding. This makes it difficult to disentangle the impact of this particular legislation.</p>
Enforcement and compliance	<p>Complaints have fallen from just over 1200 in 1994-1995 to around 500 in 2002-2003. Over half of the complaints were received in the area of employment. The report considers the following fields:</p> <ul style="list-style-type: none">• Employment – the legislation appears relatively ineffective. Employment consistently attracts the largest number of complaints, largely relating to unlawful termination of contracts. It is felt that discrimination at hiring stage is more easily concealed through reference to job conditions. People with disabilities made up a smaller proportion of the workforce in 1998 than they did in 1992. However, given that the objective of the legislation is to achieve an equality of opportunity rather than an equality of outcome, it is argued that this is inevitable given the nature of some impairment. People with disabilities are also paid on average 6% per hour (for men) and 7% per hour (for women) less than people without disabilities; however, econometrics analysis suggests that this in the main is not attributable to discrimination – although issues like lower levels of education continue to play a role. The conclusion is that non-discrimination provisions in employment are not effective in improving labour market participation for people with disabilities.• Access to buildings – of limited effect, due to inconsistencies with building standards. Building codes have now been amended with regards to new buildings although that was delayed. Little attention appears to have been paid to accessibility within existing buildings.

	<ul style="list-style-type: none"> • Transport – reasonably effective in the cities; less so in rural areas. Disability standards for public transport were introduced in 2002. Prior to that, 1998 statistics suggest that 87% of people with disabilities are capable of using at least some public transport, although only 47% actually did so. Issues are reported with accessible taxis – discrimination or lack of sensitivity coming from the operators. It is difficult to enforce industry standards against taxi operators, who operate independently rather than as employees. • Service provision generally – reasonably effective, particularly in banking, telecommunications and access to information. However, a number of interviewees observed that the DDA was only one factor in this improvement; increased funding being also important. • Education – reasonably effective in tertiary education; less so elsewhere. There has been a significant growth in the number of school pupils within mainstream schools identified as having a disability, either because of greater awareness leading to early diagnosis, or because of wider definitions of disability. There is also an increase of students in tertiary education, particularly in more vocational fields. However, students with disabilities are less likely to complete their studies. There is a very limited amount of data concerning educational attainment; the suggestion on the basis of data available is that attainment has improved but students with disabilities still perform less well than students without disabilities. The arguments made suggest that funding, rather than discrimination, remains the major barrier. There are no clear overall conclusions about the impact of the legislation in this field. • Public service employment – ineffective. There is evidence that the Australian public service is not yet discrimination-free. <p>It also considers the following points:</p> <ul style="list-style-type: none"> • The legislation is more effective for people with mobility, sight or hearing impairments than for people with mental illness, cognitive problems or other types of invisible disability. It also more effective for those who are most able to claim their entitlements assertively, through the individualised complaints process. Those who are reliant on others, particularly those with mental illness or learning disabilities, find it more difficult, particularly if they live in an institution. This may have to do with the “equal opportunities” focus of the legislation, as many people cannot take advantage of the opportunities made available. Anti-discrimination legislation helps most those whose disability is least relevant to the circumstances. • The legislation is less effective for people with multiple disadvantages, notably Indigenous people, non-English speakers, people from rural and remote regions, often due to racism, language barriers, the remoteness of their location and socio-economic background.
<p>Costs and benefits</p>	<p>Benefits to people with disabilities:</p> <p>Two separate studies are cited here to give the financial calculations. Employment opportunities give rise to higher incomes – the value of income forgone in Australia as a result of a physical environment inaccessible to wheelchair users is \$300 million p.a. – not accounting for other types of disability or other types of discrimination.</p> <ul style="list-style-type: none"> • Greater choice in consumption decisions and service providers: overall cost of inaccessibility of goods and services to wheelchair users: \$480 million p.a. • Intangible benefits: a sense of worth and value and higher self esteem.

- Improvement in educational standards leads to indirect benefits in terms of labour market access and economic advantage.

Benefits to people without disabilities:

- More flexible working patterns.
- Transport and buildings accessibility helps parents of young children and the elderly;
- Carers of those with disabilities find themselves more independent and more able to enter the labour market and make independent consumption decisions;
- Inclusive education benefits the culture of a school

Benefits for complying organisations

- Availability of a wider range of skills on the labour market
- Some suggestion of greater commitment from people with disabilities;
- There were some suggestions that service providers gained commercial advantage through complying with standards; however, there is a lack of evidence, and complaints are still made and upheld against service providers. This could mean that there is no obvious commercial advantage, or it could mean that service providers remain unaware of the benefits.

Benefits for the economy

- The DDA could improve quantity of labour, thus improving national income and output: increased wages would provide a greater incentive, and non-discrimination would also have an impact. However, such factors could equally have a displacement effect, not increasing employment levels overall. This is thought to be unlikely, however, due to issues surrounding labour market flexibility.
- There could be improved labour market efficiency due to employees with invisible disabilities being more able to declare their conditions and allocated to appropriate jobs.
- On the demand side, increased employment among people with disabilities reduces the amount of welfare payments and tax benefits which need to be paid for.
- There may be some benefit in increased income, and therefore consumer power, for people with disabilities – but this may be partly offset by loss of welfare and tax benefits.

More generally, it is suggested, but not proven, that the DDA may contribute to improved social capital within Australia. However, it may lead to eroded social capital in some cases, notably when voluntary organisations or small businesses can not longer operate due to the cost of complying with the DDA. The Commissions considers that the improvements outweigh the costs.

Costs of applying the DDA.

Fall on the Human Rights and Equal Opportunities Commission (funded through taxation) and on legal costs borne by people with disabilities and advocacy groups.

	<p>Costs of complying with the DDA Depends on the nature of the organisation and their commitment to the goals of the DDA. Adjustment costs relating to the physical environment are likely to be most serious. In most cases, it is felt that costs are not serious, but in some cases can be very high. An important issue is unpredictability, in that some organisations, particularly employers, may not have to undergo any costs until they employ someone with a disability, or until they are faced with a complaint. Compliance costs are more predictable in the case of standards-based enforcement, as opposed to complaints-based enforcement. However, standards based enforcement may be more expensive, if it requires accelerated compliance, or if it requires adjustments which are ultimately unnecessary.</p> <p>Effect on competition In principle, the legislation applies equally to all economic actors. However, the cost burden will vary, due to differences in commitment to the goals of the DDA, and to variability of detection and litigation. Small businesses may be less able to absorb the costs. However, such businesses are more likely to be able to benefit from the unjustifiable hardship defence. It is unlikely that the variable costs will be sufficient to affect competition within a whole sector. Standards-based compliance may have an anti-competitive effect if different industries in competition with each other are subject to different standards, or where there is competition from imports which do not have to comply with standards. However, to date disability standards have been relatively neutral in competition terms.</p> <p>Overall, the Commission takes the view that there is a net community benefit in the DDA. However, that benefit could be reduced if standards are not properly defined and safeguards provided.</p>
Flaws in the law	None identified.
Unintended consequences	<p>Unexpected costs: There are a range of examples of unexpected costs listed: E.g. accessible buses carry less capacity and therefore operating costs per customer increase. In employment, compliance costs may lead to reductions in overall employment levels. In education, compliance could give rise to disruption and thus underperformance by some pupils.</p>

Australia

Study nr. 2: Provisions of the Age Discrimination Bill 2003

Legal and Constitutional Legislation Committee (2003). The Senate

http://www.aph.gov.au/Senate/committee/legcon_ctte/completed_inquiries/2002-04/age03/report/report.pdf

This is a parliamentary report. Parts of it have some characteristics of a prospective legal impact assessment. However, the fact that it was conducted over a very short period of time, and the fact that there is little methodological information given, means that its scope is limited. In addition, it reports often on competing submissions from interest groups without always coming to any scientific conclusion about which submission has the most force. The issues raised in the grid are those where the Committee recommended a change to the Bill, and therefore justify their position most clearly. Issues where competing interest group submissions claim different sorts of impact have not been included, since those claims are not scientifically evaluated. The study is at its strongest when it focuses on the wording of the legislation.

Categories of impact	Grounds for Discrimination: AGE
Methods and preliminary comments	The study is extremely limited in its scope. The lack of methodological information or even evidence of scientific method (typical of a Parliamentary report) means that the information to be gleaned is limited.
Macro impact	This is a study carried out by the Legal and Constitutional Affairs Legislation Committee of the Australian Federal Parliament. It is a study of the provisions of the Age Discrimination Bill, and was carried out prior to the full Parliamentary debates. The inquiry was carried out through the examination of submissions made by interested parties. While the legislation covers a wide range of grounds, the main focus of the study is employment. It was carried out within a limited timeframe of one month. It should be noted that, for constitutional reasons, the impact of the legislation was likely to be limited. There already existed age discrimination legislation at State level, and the main reason for passing a Federal Act was to ensure that certain provisions in Federal legislation could be overridden.
Enforcement and compliance	A potential barrier to the enforcement of the principle of non-discrimination on grounds of age was argued to be the 'dominant reason' test: that, where there is more than one reason for the disadvantage, discrimination on grounds of age is only found to exist if age is the dominant reason for the disadvantage. The Committee felt that the term was not sufficiently clarified and had not been properly consulted on. It also pointed out that the test had been removed from the Racial Discrimination Act because it was impractical. The test would make it less likely for actions to succeed and, given that it is not paralleled in legislation surrounding the other grounds, might mean that age discrimination is taken less seriously. Another barrier is the prohibition of indirect discrimination, given that such discrimination could be interpreted as including performance based criteria. Under the legislation, the discriminator may justify indirect discrimination as reasonable in all the circumstances. The Committee found that there was great uncertainty as to what was covered by the justification, and recommended that the legislation ought to specify which factors can be taken into consideration to establish what is reasonable in all the circumstances. The Committee raised the problem of the lack of uniformity between Federal and State law and recommended a move to remedy the situation.

	<p>The Committee noted that, to ensure full effectiveness, the term employment needed to be defined in such a way as to include casual work. However, it supported an exemption for unpaid workers.</p> <p>Issues were raised concerning the powers and function of the Human Rights and Equal Opportunities Commission. This body has the power to inquire into and conciliate complaints of discrimination, and to have input into policy development. It has no direct enforcement powers and no power to undertake systematic investigation. The Committee recommended that more funding and resources need to go to HREOC in order to take on extra responsibilities regarding age discrimination. Representations were received regarding the focus of HREOC on individual complaint at the expense of systematic investigations. However, no recommendation was made as insufficient evidence was available.</p>
Costs and benefits	Not covered
Flaws in the law	Not covered.
Unintended consequences	Not covered.

Belgium

Study nr. 3 : L'emploi des personnes handicapées dans la fonction publique administrative fédérale

Etude réalisée par le département de Psychologie de la Faculté Universitaire Notre Dame de la Paix (Namur) et Hoger Instituut voor Arbeid (Leuven) pour le compte du SPF Personel & Organisation, (2004)

http://www.fundp.ac.be/psycho/docs/emploi_ph_spf_1.pdf

http://www.fundp.ac.be/psycho/docs/emploi_ph_spf_2.pdf

http://www.fundp.ac.be/psycho/docs/emploi_ph_spf_3.pdf

The federal law of 25 February 2003 combating discrimination (hereafter the 2003 law) amends the Act of 15 February 1993 setting up the Centre for Equal Opportunities and Opposition to Racism. The Study aims to analyse the impact of the amended law on recruitment and on the integration of disabled people in the federal administration. The study starts with a description of the system of public administration recruitment of disabled people in a number of other countries (Canada, UK, the Netherlands and France) and of the federate states of Belgium (The Walloon Region (*Région wallonne*), the Flemish Region (*Vlaams Gewest*), and the Region of Brussels (*Région de Bruxelles-capitale*)).

Categories of impact	Grounds for Discrimination: DISABILITY
Methods and preliminary comments	<p>This is a retrospective study.</p> <p>The methodology includes: (1) an analysis of previous studies,²⁸ (2) interviews with disabled people, association of disabled persons and management and (3) analysis of responses to questionnaires.</p> <p>The study does not really explore the legal reason for the low level of compliance. It only just touches on the institutional and possibly the psychological reasons for non compliance.</p>
Macro impact	<ul style="list-style-type: none">• The aim of the study is to analyse the impact of the 2003 law on the level of recruitment and on the integration of disabled people in the federal administration.
Enforcement and compliance	<ul style="list-style-type: none">• The 2003 law requires that the federal administration should employ a minimum of 2% of disabled employees (that is the equivalent of 1,200 persons). At the time of the study, the number of disabled employees is of 454 or 0.6%. The number of disabled persons recruited is decreasing every year.• The public administration is based on heavy, rigid and slow organisation (bureaucratic). It has therefore difficult for the administration to answer flexibly, innovatively or quickly. The public administration's characteristics in principle go against the specific needs required by disabled employees. Further the administrative system is complicated. There are also disparities on the interpretation of the law. Finally, the administration is subject to a lot of reforms making continuity and

²⁸

- Enquêtes périodiques de l'Institut de Santé Publique (ISP) en 1997 et en 2001.
- Enquêtes réalisées par l'Institut Nationale des Statistiques (INS) en 1966 et 2002.
- Les études d'Erik Samoy du service d'étude du VLAFO
- Enquête EFT 2002
- Enquête du magazine FEDRA

	<p>adaptation for disabled persons difficult. Paradoxically, a few success stories of good integration result from the specific actions of individual managers.</p> <ul style="list-style-type: none"> • The requirement of reasonable accommodation for disabled employees is either ignored or not known.
Costs and benefits	<ul style="list-style-type: none"> • Disabled persons should be the beneficiaries of the 2003 law. However, the administration has been ignoring or refusing to comply with the new legislation.
Flaws in the law	<ul style="list-style-type: none"> • The study provides strong evidence for the creation of efficient statistical and data collection systems which are at present mediocre if not lacking. • There is a legal confusion with regard employment of disabled persons in the public administration. The legislation needs to be clarified and updated. The old legislation need to be repelled since it has not been so far.
Unintended consequences	<ul style="list-style-type: none"> • Not part of this particular study.

Belgium

Study nr. 4: Discrimination des étrangers et des personnes d'origine étrangère sur le marché du travail de la Région de Bruxelles-Capitale 2005

http://www.orbem.be/Observatoire/pdf/Discrimination_ethnique.pdf

The study is concerned with discrimination in the access to employment on the Brussels' employment market for foreigners and persons of foreign origin and particularly with regards persons from Africa, Northern Africa, Turkey, Middle East and Eastern Europe. It assesses the effectiveness of the existing soft law and industry self regulation.

Categories of impact	Grounds for Discrimination: RACIAL DISCRIMINATION
Methods and preliminary comments	The study is based on interviews of nationals, foreigners and persons of foreign origin.
Methods and preliminary comments	<p>The study is divided in four parts and four different methods used to produce the information contained in this study:</p> <ol style="list-style-type: none">(1) The statistical analysis of the study confirms previous studies in that there is an ethno-stratification of the employment market in the region of Brussels-Capital.(2) The empirical research shows that foreigners and persons of foreign origin, especially those originating from Africa, Northern Africa, Turkey, Middle East and Eastern Europe, are often faced with a high degree of discrimination.(3) The qualitative longitudinal study shows that foreigners and persons of foreign origin experience discrimination often on recruitment and during employment.(4) The last part of the study evaluates the public policies of the social partners and the operators of integration. <p>The last part of the study provides an analysis of the findings and conclusion.</p>
Macro impact	<ul style="list-style-type: none">• The study analyses impact of the regional provisions on integration and the various actors of integration.
Enforcement and compliance	<ul style="list-style-type: none">• Administrations are interpreting the concepts of "public authority" and "the general interest of the State" very broadly to refuse access to certain post by foreigners and persons of foreign origin.• Although trade unions are aware of the situation, racial discrimination is not a point on their agenda. They rarely mobilise themselves collectively for this issue.
Costs and benefits	<ul style="list-style-type: none">• Discrimination against foreigners or persons of foreign origin result is high cost:<ul style="list-style-type: none">•<ol style="list-style-type: none">(a) Process of de-qualification: job seekers accept jobs requiring lower qualification or employers refuse to provided equivalence of diplomas obtained abroad (outside the EU).(b) Discrimination on persons with low qualification and education results in social and psychological problems. Thus, (1) there is a link between discrimination and the low rate of employment. (2) A number of costs are associated with the discrimination: social, medical, economic and financial (although the study does not quantify these costs).

	<ul style="list-style-type: none"> • The stratification of employment is shown to be lasting. There is very little effect if the foreigner or person of foreign origin accedes to the Belgian nationality. The term foreign person is related here to African, Northern African, Turkish, Middle Eastern and Eastern European exclusively. The level of education and qualification does not change the stratification of employment. • Under use of people's productive ability. • Democratic deficit • The ethno-stratification of the employment market leads to a society of social casts where social mobility is not possible. This is highly detrimental to the free market and competition.
Flaws in the law	The impact assessment of policies must take place immediately after implementation of the policy AND later after the provisions have been applied for a while.
Unintended consequences	<ul style="list-style-type: none"> • The public service of placement has an increasing role of mediator between the foreigners or persons of foreign origin seeking jobs and employers. Its role has also evolved into one of control of implementation of social policies and employment procedures.

Canada

Study nr. 5: The Impact of Relationship Recognition on Lesbian Women in Canada: Still Separate and Only Somewhat “Equivalent”.

Lahey, Kathleen (September 2001). Report Prepared for Status of Women Canada.

http://www.swc-cfc.gc.ca/pubs/pubspr/0662659406/200109_0662659406_e.pdf

This study concerns the impact of relationship recognition on lesbian women in Canada. It was carried out prior to the 2005 Civil Marriage Act, at a time when judgments of the Canadian Supreme Court and Provincial Courts had held that section 15 of the Canadian Charter of Rights and Freedoms includes sexual orientation as a prohibited ground of discrimination and means that legislation which makes marriage a requirement for entitlement may be held to be in violation of the Charter if there is discrimination and disadvantage. In some provinces, legislation had thus been introduced or modified to recognise same-sex relationships, without allowing same-sex couples to marry.

Categories of impact	Grounds for Discrimination: SEXUAL ORIENTATION
Methods and preliminary comments	<p>The study was carried out by means of a legal analysis of legislation relating to conjugality in the various provinces, and a demographic study based on information about the income and other characteristics of gay and lesbian couples, and an analysis of the tax and social security implications.</p> <p>The study contains some discussion of the major methodological difficulty with a demographic analysis of this sort: the lack of public demographic data about same sex couples. The census does not ask questions about sexual orientation and therefore, while it is possible to identify households where two parties of the same sex are living, it is not possible to assess whether they are in a same sex relationship or merely ‘room-mates’. This lack of information makes it difficult to produce really reliable data, given that (a) the existence of a committed relationship will have an impact on financial organisation and (b) employment discrimination has the effect of lowering the incomes of lesbian and gay men.</p>
Macro impact	<p>The study sets out to consider whether this application of the equality principle contained within s 15 leads to full equality for lesbian couples, and what other impacts may exist. It concludes that there is a lack of legislative equality despite relationship recognition, and that there are in fact other consequences of relationship recognition which are negative for lesbian couples.</p>
Enforcement and compliance	<p>The study finds that, while in principle Section 15 requires equality before the law, in practice, what legislation was passed continued to discriminate, particularly between same sex couples and married couples. Marriage confers rights, particularly property rights, which are not held by unmarried cohabiting couples, and, while opposite sex couples have the option of marrying if they choose, same sex couples (at the time of the report) did not. Relationship recognition did not lead automatically to non-discrimination and the application of a general equality clause by itself did not give rise to legislative equality. The application of s 15 is therefore a formal equality exercise which may not in itself have much practical impact within the legislation.</p>
Costs and benefits	<p>A significant proportion of the study is focused on the financial impact of relationship recognition. As initial claims were bought in the context of social security claims, women in same sex partnerships gain financial benefit through having access to some social security benefits. However, because of the Canadian system of tax-transfer which, it is argued, is</p>

	<p>premised on a traditional nuclear family with one earning and one dependent partner, extra taxation burdens are placed upon women in same sex partnerships. The loss experienced here is not made up for by the gains in social security claims. The statistics used in the study suggest:</p> <ul style="list-style-type: none"> • New costs of between \$130 million-\$155 million in 2000 • New gains of between \$10 million-\$15million in 2000 • A consequent net loss in 2000 of consumable income for lesbians and gay men of between \$89 million and \$149 million, depending on how it is calculated <p>The loss is significantly greater for female couples, due to the overall disparity between male and female salaries. Lesbian women are thus subject to double discrimination. The suggestion is that this is because the taxation system is based on opposite sex couples with a male breadwinner, and therefore discriminates on the grounds of both sexual orientation and gender.</p> <p>However, gay men also suffer losses, partly due to employment discrimination which affects their earning power, and partly due to issues such as de facto financial responsibility for children of whom they are not recognised as parent and thus cannot claim benefit for. In general, low-income couples are most negatively affected.</p> <p>As this is primarily a demographic analysis, other sorts of benefits are speculated upon. Non financial benefits to the individuals of recognition include the right to have ones partner recognised as next of kin, the right to make claims for child support or other forms of support in case of relationship breakdown. Non-financial costs include a perception that relationship recognition removes the autonomy of a couple to decide their own financial and other affairs.</p>
Flaws in the law	Not covered.
Unintended consequences	It is probable that this financial disadvantage was unintended, and is a consequence of following through a formal equality approach without examining the bases of social organisation, such as taxation systems, to see whether they are likely to discriminate.

Canada

Study nr. 6: Human Rights and Public Transit Services

Consultation Report Ontario Human Rights Commission, (March 2002)

<http://www.ohrc.on.ca/english/consultations/transit-consultation-report.pdf>

The study is of accessible public transit within Ontario. The right to accessible public transit is contained within the Ontario Human Rights Code as a general principle, and the purpose of the study is to assess the extent to which this principle is achieved in practice. It considers the accessibility of conventional public transit services, and the existence and effectiveness of *paratransit* (services provided by transit authorities to people with disabilities who are unable to use conventional public transit).

Categories of impact	Grounds for Discrimination: DISABILITY.
Methods and preliminary comments	The study was carried out through the analysis of submissions made by interested stakeholder organisations; notably transit authorities and pressure groups for people with disabilities.
Macro impact	It considers: <ul style="list-style-type: none">• Availability of accessible transit and <i>paratransit</i>• Its fitness for purpose• Funding• Distribution of rights and responsibilities. While its focus is on people with disabilities, it is recognised throughout the study that older people who develop mobility difficulties are a particular sub-group to be considered, and that other groups of people, notably parents with young children, benefit from accessible transit.
Enforcement and compliance	Other than a general legislative provision, there are no enforceable standards for accessible transit. This is one factor in an overall problem which is one of variable provision throughout Ontario. Another factor, noted below, is that the significant costs inherent in providing accessible transit services are not borne by public subsidy. While some transit authorities are creatively exploring ways of raising the funds through public/private partnership, authorities with fewer financial resources find themselves in difficulties. The other solution is to raise funds through increased fares, which would have the effect of making public transit less attractive to users. While the Ontario Human Rights Commission believes that provision of <i>paratransit</i> is part of the duty to accommodate contained within the Ontario Human Rights Code, provision is variable. Some authorities rely on contracts with the private sector (notably with taxi firms). This is identified as problematic, as private firms are unreliable and employees (i.e. taxi drivers) are not sensitive to the needs of people with disabilities and are reported as behaving in ways which are experienced as offensive. No training is required for these employees. It is suggested that some private sector firms are unwilling to take on board their legal duties. Equally, many public sector employees, such as bus drivers, are untrained and lack awareness as to

	<p>specific needs. In some areas there is some reliance on voluntary organisations to provide <i>paratransit</i>. Access to <i>paratransit</i> services is based on an assessment of need. There is some concern that this can be overly restrictive, particularly if they only take into consideration mobility problems, and not cognitive, psychological or other kinds of medical condition. One case was identified of a blind parent who would not require <i>paratransit</i> when travelling alone, but who was unable to use conventional transit with his young child in a buggy. There are significant issues with regards to reciprocity across municipal boundaries, and cross-boundary travel.</p>
<p>Costs and benefits</p>	<p>Significant benefits of accessible transit are identified: access to education and employment for people with disabilities; tourism related benefits, benefits related to social and community inclusion. Economically, accessible transit makes a significant contribution by including a greater range of people in the labour market, and making tourism more accessible to visitors. There are also efficiency benefits in integrating transit costs. It is estimated that \$1bn is spent in a year by the Ministries of Education, Community and Social Services, and Health and Long Term Care providing transport for patients where no accessible transit or <i>paratransit</i> is available.</p> <p>Cost is discussed in the report, although few figures are given. The legislation requires transit authorities to accommodate up to the point of undue hardship. In cost terms, undue hardship means that the size and significance of the cost would change the essential nature or the viability of the service. This is a very high standard.</p> <p>It is noted that public subsidy is low – around 25% of revenue, compared with a typical 60% of revenue in the US. Public subsidy comes from municipalities and is at risk at times of economic downturn. The rest of the transit authorities’ revenue comes from fares, and thus, ultimately, cost is borne by the users of public transit. There is some increased investment at provincial and federal level, which is welcomed.</p> <ul style="list-style-type: none"> - 90% of Ontario transit authorities have in place a procurement policy in favour of accessible stock (no indication is given as to whether such stock is more expensive than non-accessible). Given the long life span of buses this takes time and it is suggested that maximum accessibility may take at least fifteen years to achieve. The cost of a quicker solution would be prohibitive. - Transit authorities are also required to bear the cost of making stations, routes, etc accessible. The cost can be significant. There is some attempt at public/private finance for some of this. <p>The Toronto Transit Commission estimates its cost to fulfil its duties according to its plan at around \$1bn</p> <p>The locus of <i>paratransit</i> costs varies depending on who is providing it (see above). Its cost is higher and public subsidy per user is much higher. While most systems have similar fare structures to conventional transit, a few charges extra for <i>paratransit</i> services and the cost is thus also borne by the user. It should be noted that, as able-bodied people do not use <i>paratransit</i>, cost raised through fares is borne entirely by people with disabilities, rather than by society as a whole. Volunteer groups also bear some of the cost.</p>

	<i>Paratransit</i> is less economically efficient, as well as giving less flexibility and scope for full social integration, but it is suggested that some users would be reluctant to give up the convenience. In some cases, either because of the nature of the disability or the lack of public transit in a particular location, <i>paratransit</i> is the only solution.
Flaws in the law	The study identifies as problematic: <ul style="list-style-type: none"> • Lack of provincial and federal funding • Lack of integration between transit authorities and between municipalities. • Overly narrow conditions of eligibility for <i>paratransit</i>.
Unintended consequences	Not discussed

Canada

Study nr. 7: Recognition of Lesbian Couples: An Inalienable Right.

Irène Demczuk, Michèle Caron, Ruth Rose and Lyne Bouchard (January 2002) Status of Women Canada

http://www.swc-cfc.gc.ca/pubs/pubspr/0662312813/200201_0662312813_e.pdf

This study is best understood in conjunction with study no 5, in that it was carried out around the same time, focusing on the same issues (the impact of relationship recognition on lesbian women) but uses a different methodology. It concerns the impact of relationship recognition on lesbian women in Canada.

Categories of impact	Grounds for Discrimination: SEXUAL ORIENTATION
Methods and preliminary comments	<p>The study was carried out through:</p> <ul style="list-style-type: none"> • An analysis of case law and legislation; and • Focus groups held with members of lesbian community organisations.
Macro impact	<p>It explores the extent to which formal equality approaches and an incrementalist strategy of achieving equality are effective in achieving equality and social justice for lesbian women. It considers the effectiveness of the legislation, and factors affecting enforcement.</p> <p>In general, it finds that a formal equality approach and an incrementalist strategy are not effective in achieving genuine authority.</p>
Enforcement and compliance	<p>The study finds that an incrementalist approach is only of limited use in achieving genuine equality. Many of its findings are similar to those of CA2.</p> <p>It recommends a general reform of the law surrounding conjugality outside of marriage, in order to ensure (a) that discrimination on the basis of sexual orientation is completely removed; and (b) that the law better reflects the independence of partners and moves away from the traditional model of a single breadwinner opposite sex relationship.</p> <p>The focus group research suggested that financial disadvantages (identified below) were one factor leading interviewees to be less than positive about relationship recognition. In addition, relationship recognition can give rise to an obligation to declare the existence of a conjugal same sex relationship, which some participants were unwilling to do, due to the social and cultural environment in which they live. In consequence, the effect of equality in relationship recognition may be limited if it relies on a couple formally declaring the existence of their relationship. Therefore, in order for substantive equality to be achieved, attention needs to be given to social attitudes as well as to legislative provisions. This is a reason why one of the recommendations of the report is to give thought to a more flexible model of extra-marital conjugality, to give couples freedom of choice as to whether to declare or not. Another is actively to promote positive action to fight stigmatisation.</p>

<p>Costs and benefits</p>	<p>The study finds that declaring a same sex relationship involves significant financial costs, and only some benefits.</p> <ul style="list-style-type: none"> • Universal programmes (where there is no spousal condition in principle) – some impact due to the non-applicability of same sex relationships when residence is calculated; • Assistance programmes – based on the concept of family income. There is no financial benefit to relationship recognition in assistance programmes, as same sex couples are often dual income earners. The existence of a second income is often sufficient to make the applicants ineligible or to reduce benefit. Thus, in situations where assistance programmes do not recognise same sex relationships, such couples gain financial advantage from the non-recognition of their conjugality and there is a disincentive to their declaring the existence or nature of their relationship. The only assistance programme where it is financially advantageous for lesbian couples to have their relationship recognised is the Spouses Allowance – intended originally for couples where the breadwinner had retired and the non-working spouse was not old enough to claim old age pension. • Taxation – the study found that there is little tax benefit in declaring a relationship, as most tax transfer benefits accrue when one half of the couple has no, or little, income. This tends not to be the case for same sex couples, who are usually dual income. In addition, single parent tax payers lose benefits if their relationship with a second tax payer is recognised. Recognition gives same sex couples access to certain taxation benefits surrounding the transfer of property, usually after the death of one party. However, two tax restrictions relating to property become applicable: the prohibition on reporting more than one principal place of residence; and the requirement to declare income deriving from an asset given or loaned to a spouse. • Relationship recognition is financially advantageous in the case of public insurance plans, supplementary health insurance plans and retirement pension plans. <p>In general, there is little overall impact in the case of a dual income couple where the partners have equal and reasonable incomes. Poor lesbian mothers have the most to lose, and high income childless gay men have the most to gain. The study recommends an overall rethinking of the legal regime of extra marital conjugality, and a move towards universal programmes (based on the individual) rather than assistance programmes (based on family income).</p>
<p>Flaws in the law</p>	<p>The study identifies obvious flaws in the formal equality approach, notably:</p> <ul style="list-style-type: none"> • Formal equality does not achieve social change and stigmatisation remains • Formal equality is ineffective when the basic structure of the system (here, the taxation and social security system) is premised on a heterosexual single income family model.
<p>Unintended consequences</p>	<p>Not covered</p>

Czech Republic

Study nr. 8: Zpráva o možnostech opatření k odstranění diskriminace

(July 2002) (Report on measures to combat discrimination)

<http://wtd.vlada.cz/vrk/vrk.htm>

This is a preliminary proposal prepared by the Chairman of the Legislative Council proposing anti-discrimination legislation in the Czech Republic (legislation which ultimately has failed to pass through Parliament). The first part of the paper is not relevant for this study, in that it enumerates the activities already conducted by the Czech authorities in the field of non-discrimination. The second part constitutes an analysis of the way in which the Czech Republic does not meet its obligations to protect victims of discrimination. It provides only limited information about how the real needs for protection against discrimination are linked to benefits and costs brought by equality legislation or outlining socio-economic outcomes. There is a lack of research and scientific data relating to socio-economic costs and benefits.

Categories of impact	Grounds for Discrimination: ALL GROUNDS (NON-ENUMERATIVE)
Methods and preliminary comments	No specific methodological information is given. The study consists of what types of legal solution would best protect against discrimination in the Czech Republic.
Macro impact	The study starts from the position that there is a lack of effective anti-discrimination legislation in the Czech Republic and argues that the passing of a general anti-discrimination law is necessary in order better to protect against discrimination (in accordance with the Constitution), as well as ensure compliance with international obligations.
Enforcement and compliance	<p>The study proposes non-enumerative legislation, rather than separate legislation for each ground and each field of activity. This will give greater legal consistency and certainty, which will contribute to comprehensibility and thus improve compliance levels.</p> <p>The study envisages permitting positive action measures in order to combat historical, cultural or social circumstances which have worked to the disadvantage of one group or to improve representation of all groups in certain fields of activity.</p> <p>The study proposed the establishment of clear procedures by which victims of discrimination can seek redress and compensation, wherever possible built on existing judicial or administrative procedures.</p> <ul style="list-style-type: none"> • Civil procedures provide the protections of the judicial system, but can be lengthy and expensive, and often disadvantage weaker members of society, given the adversarial nature of the system. They can be problematic if the legal profession and judiciary are insufficiently trained and aware of discrimination issues. • Investigative or administrative procedures place responsibility on an administrative body, where the voice of a weaker party is more likely to be heard. They are managed by specialists in discrimination issues. They involve no cost for the parties. However, existing legislation provides for no sanctions, and some judicial protections, such as access to evidence for the parties and public decision making, are not available.

	<ul style="list-style-type: none"> • Mediation can provide an early and non-judgmental solution to a conflict. However, it cannot determine the rights of the parties and has little enforcement power. <p>The study proposes an administrative agency investigating discrimination complaints, together with civil jurisdiction to hear complaints, and a procedure of enforceable conciliation. It is argued that this will achieve the best results in terms of effective enforcement.</p>
Costs and benefits	Not covered
Flaws in the law	Not covered
Unintended consequences	Not covered

France

Study nr. 9: La vie avec un handicap

Cour des Comptes, (2003) rapport public particulier

This study assesses the implementation and application of the Loi d'orientation en faveur des personnes handicapées n. 75-534 of 30 June 1975 (hereafter 1975 Law) – the 1975 Law provides for 4 principles: (1) the definition of a 'national obligation' to cover all ages of the disabled person and all types of disability; (2) the joint execution of this obligation between private actors (family, associations) and public actors (State, local authorities, social security); (3) this obligation should in principle be executed in the ordinary environment; (4) the coordinator role of the State.

Categories of impact	Grounds for Discrimination: DISABILITY
Methods and preliminary comments	This study is a typical Court des Comptes analysis and consequently will look at implementation issues. This study is the most recent of the Cour des Comptes investigation on disability discrimination law. It is a retrospective analysis of the law.
Macro impact	<ul style="list-style-type: none"> This study assesses the impact of the 1975 Law particularly on persons with a mental disability at three level (1) education of disabled children and teenagers, (2) integration in the workplace of disabled adults and (3) the care of old aged disabled persons. It does not address directly the issue of discrimination but only the inter-related problem of compensation of disability.
Enforcement and compliance	<ul style="list-style-type: none"> There is an obligation in the Law 1975 to educate disable children in the ordinary schooling system. This study highlights the difficulty to integrate disabled children in ordinary schools. A number of reasons are provided: high number of children in the class; absence of disabled access in the buildings (no elevator, hallways too narrow, revolving doors, no adapted toilets, no access ramp); fear of not being able to do or to do wrongly (for instance for students equipped with artificial breathing); low level of knowledge of the disability; lack of pedagogical training; Absence of help (school nurse). The ratio between the number of children educated in ordinary schools and the total number of children educated in specialised schools is on average less than 1%. In 1999, the ministry for education and the ministry for employment adopted the 'Plan Handiscol' with 20 measures in order to help the integration of disabled in ordinary schools. Its mission was to double the number of disabled children in ordinary schools in three years. This Plan has had a very limited success. (p.101-103) A number important (between 5,000 and 14,000) of disabled children have never been provided education for. An inter-ministry group (social affairs and education) is going to work on the data of disabled children which have not been provided education for. (p.106-107) The objective of the Law 1975 is the integrate disabled persons in the ordinary workplace. In reality the unemployment rate for disabled persons is 26% while only 9% for the total French population. The implementing law n. 87-577 of 10 July 1987 in favour of disabled persons obliges employers of at least 20 employees to employ disabled workers in a minimum of 6% of their total number of employees. This can be done in a number of ways. The objective of 6% is almost never achieved (the reality is between 3 and 4.5%). While generally undertakings are reluctant to employ disabled persons, 85% of the undertakings that have employed disabled people are satisfied with their decision. (p. 114)

<p>Costs and benefits</p>	<ul style="list-style-type: none"> • The costs considered in this study are generally associated with effort made by the State to adapting the society for disabled persons. • In 2000 the “Social budget for disability” provided by public authority is estimated to be 24.5M€. ²⁹ In the budget of the public authorities is evaluated at a minimum of 26.2M€ and represents 1.7% of the PIB. ³⁰ • The definition of “disability” is variable and unclear; it results in difficulties to quantify the effort of the public finances. It is not possible yet to have an estimation of the number of disabled persons. • This study provides a tentative comparison between the costs of the provision of education for disabled children in general and in specialised schools. Article 4 of the Law 1975 provides that disabled children should be educated in the ordinary education system or if not possible in a specialised education system. This law has never been implemented by secondary legislation only by administrative directive and it results that the legal provision is weak. Three types of education form co-exists: (1) the integration of the individual disabled child in the ordinary educative system depending on the national education Ministry; (2) the collective integration of disabled children in specialised classes depending on the national education Ministry and (3) education in medical environment depending on the Ministry of social affairs. <p>In 2000, the average cost for a disabled child educated in ordinary schools was € 4,040 and in specialised classes it was € 7,790 (Reference from “L’Etat et l’école – 30 indicateurs sur le système éducatif français” October 2000). This evaluation does not however include the cost of any medical or social support, help in the school, pedagogical training and material and building of access. In 1999, the cost of a place in a medical environment was between € 50,137 and € 13,409 (Résultat synthétiques 1999, Ministère de l’emploi et de la solidarité (DGAS)).</p> <p>The average cost for a disabled child in a specialised class is about twice the cost for an able child. For disabled children in medical environment the cost is three and an half more than for able children. However, the Cour des Comptes warns that the average cost as such does not provide a clear enough picture of the real costs. The Court’s advice is to organise some management indicator according to categories of schools. (p.107-108)</p> <ul style="list-style-type: none"> • 1999-2003 Plan to create 16,500 places (a mix of both work and care) for disabled adult is estimated to cost 205.8M€ for the health assurance and 94.94M€ for the State. • The cost of employing a disabled person in an ordinary workplace seems to be a little cheaper by comparison to the cost of employing a disabled person in a protected workplace. However, if the comparison is made similar pathologies, the cost is quite close. (p. 125)
<p>Flaws in the law</p>	<ul style="list-style-type: none"> • The study provides strong evidence (Chapter 1) for the creation of efficient statistical and data collection systems which are at present mediocre if not lacking. • The legislation has not taken into account the demography of disabled people. Life expectancy of (mentally) disabled people has tripled in 50 years. It is estimated that 150,000 disabled persons will reach the age of 60 in the next 10 years. The legislation does not cover the situation. The report highlight three problems:

²⁹ This is divided as follow: 7.32M€ from the State; 7.47M€ from the Social Security; 2.29M€ from the local councils (departments); 7.32M€ from others. Source: Plan en faveur des personnes handicapées 2001-2003, presentation on 25 January 2000.

³⁰ See table page 50 and tables here under.

	<ul style="list-style-type: none"> (1) old disabled persons stay in accommodation and work made for young disabled persons (2) structure of protected work must be adapted to function with old aged disabled persons (3) the legal status of old aged disabled persons and the assumption of responsibility changes at the age of 60 – presently a disabled person who reaches the age of 60 must leave his/her specialised accommodation to return to his/her family or if not possible to be placed in an old people’s home. However, most of the old people’s homes are unable to provide the necessary care and equipment required for disabled persons. <p>It seems that the status and the assumption of financial responsibility should be continuous. The present legislation needs therefore to be changed.</p> <ul style="list-style-type: none"> • Article 1 of Law 1975 provides that the State, in the form of an inter-ministerial committee, must coordinate and organise the actions in this field. This committee has almost never met. A number of ministries (health and family, youth and education, equipment and transport etc) have implemented policies in favour of disabled people. This has been done without organisation and co-operation. It results that numerous administrations provide services for disabled people. Legislative competences regarding disability discrimination have been distributed according to administrative or legal criteria and not according to the need of disabled people. This means that for instance, while the health minister issues regulations providing rights to disabled people in the field of health, the education ministry issues regulations regarding accommodation. Each of these regulations might not be coordinated and to benefit from each of these regulations, a disabled person might have to apply to two different ministries. Despite the general administrative requirement to provide a “unique office” it is the contrary evolution which has happened in the field of disability. The consequences resulting from this dispersion of responsibility are serious for disabled people who need multiple services and must find them in different places with diverse procedures. (p.60) • The study concludes that the legislative standard is poorly developed and weak. New legislation is needed.
Unintended consequences	<ul style="list-style-type: none"> • Absence of “disability studies” as an autonomous field of research. Research on disability results from multiple disciplines. There is no coordination. It is therefore difficult to evaluate the French researches in the field.

Dépenses de l'Etat liées au handicap en 2001

(en milliers d'euros)

Financement de l'AAH	4 097 067
Pensions d'invalidité et allocations spéciales des grands invalides	2 455 713
Centres d'aide par le travail	1 019 603
Garantie de ressources	883 791
Fonds spécial d'invalidité	242 749
Financement du régime de Sécurité sociale des pensionnés de guerre- invalides de guerre	196 727
Tutelle et curatelle d'Etat	116 208
Soins médicaux aux titulaires d'une pension d'invalidité	91 637
Ateliers protégés, centres de distribution du travail à domicile	30 131
Autres actions	86 984
<i>Sous total dépenses d'interventions publiques</i>	<i>9 220 610</i>
AES versée aux fonctionnaires	14 372
Autres aides, allocations et mesures d'insertion	27 360
Subventions de fonctionnement pour les établissements nationaux pour jeunes sourds et aveugles	11 967
Subventions de fonctionnement pour l'Institution nationale des invalides	6 831
<i>Sous total dépenses de personnel et de fonctionnement</i>	<i>60 530</i>
Subventions d'équipement pour les établissements pour enfants et adultes handicapés	4 258
Subventions d'équipement pour les établissements pour jeunes sourds et aveugles	1 877
<i>Sous total dépenses de subventions d'investissement</i>	<i>6 135</i>
TOTAL	9 287 275

Coût des principaux avantages fiscaux accordés au titre du handicap, de l'invalidité ou de l'infirmité

Désignation de la mesure	1999	2000	2001	2002
Impôt sur le revenu :				
1. Exonération de l'allocation aux adultes handicapés	116	123	128	134
2. Majoration de quotient familial pour invalidité du contribuable	289	335	320	330
3. Majoration du quotient familial pour personne invalide à charge	79	79	80	80
4. Réduction d'impôt pour frais d'hébergement en établissement de long séjour	36	40	37	50
TVA :				
Taux de 5,5 % pour certains appareillages, ascenseurs et équipements spéciaux pour personnes handicapés	180	175	236	253
TOTAL	700	752	801	847

Ces chiffres peuvent être considérés comme sur, sous réserve de l'imprécision des critères distinguant le handicap de l'infirmité.

Coût de certains dispositifs bénéficiant partiellement aux personnes handicapées

(en millions d'euros)

Désignation de la mesure	1999	2000	2001	2002
Impôt sur le revenu :				
1. Abattement en faveur des personnes âgées de plus de 65 ans ou invalides quel que soit leur âge	350	320	255	235
2. Réduction d'impôt pour primes versées dans le cadre de contrats d'assurance-vie à primes périodiques, de contrats	274	244	210	200
3. Réduction d'impôt pour emploi d'un salarié à domicile	1 220	1 311	1 350	1 360
TOTAL	1 844	1 875	1 815	1 795

Source : ministère de l'économie, des finances et de l'Industrie (DLF)

France

Study nr. 10: Audit sur le developement de l'emploi et l'insertion des travailleurs handicaps au sein du ministère des transports, de l'équipement, du tourisme et de la mer

Conseil Général des Ponts et Chaussées, (2005)

<http://www.ladocumentationfrancaise.fr/rapports-publics/064000266/index.shtml>

Law n. 2005-100 of 11 February 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées (OJ n. 36 of 12 February 2005 p. 2353) (hereafter the 2005 law) aim to combat discrimination on the grounds of disability in particular with regards employment.

Categories of impact	Grounds for Discrimination: DISABILITY
Methods and preliminary comments	The methodology is based on interviews of managers in the ministry, persons in charge of this question in the central administration, of three large public companies and three trade unions. This study is mostly qualitative. It is a retrospective analysis of the law.
Macro impact	<ul style="list-style-type: none"> • This study assesses the efficiency of the ministry of transport, equipment, tourism and sea in recruiting and integration of disable people within its ministry following the adoption of a new Law in 2005. • It also aims to assess the cultural changes in the way disable people and their rights are being viewed (presently as an issue of solidarity). • The study provides a list of recommendations in order to improve the recruitment and the integration of disable people. The main recommendation is that there should be real obligations with quotas and deadlines.
Enforcement and compliance	<ul style="list-style-type: none"> • The recruitment rules related to disable persons are exclusively implemented when individual persons take the initiative to actively and personally engage with the issue. • Lack of personal in Human Resources of the Ministry. • Lack of high level engagement within the Ministry. There is a gap between the will at the top of the ministry and the management of human resources in the every day life.
Costs and benefits	<ul style="list-style-type: none"> • There is not a cost-benefit analysis presented • Key groups of beneficiaries: Disable people represent 5% of the ministry however the culture has not changed (prejudice).
Flaws in the law	<ul style="list-style-type: none"> • This study does not provide a quantitative assessment of the situation
Unintended consequences	<ul style="list-style-type: none"> • Not part of this particular study.

Germany

Study nr. 11: Beschäftigtenschutzgesetz in der Praxis

The Employees Protection Act in practice (2002)

<http://www.bmfsfj.de/RedaktionBMFSFJ/Abteilung4/Pdf-nlagen/beschaefigtenschutzgesetz,property=pdf,bereich=rwb=true.pdf>

This is a study of the legal impact of the provisions of the German Employment Protection Act 1994. This legislation places a duty on employers to protect their employees against sexual harassment. Employers are required to investigate and, where necessary, take measures against employees found to be guilty of sexual harassment. They are also required to take preventive measures, in the form of awareness-raising activities. They must provide that victims of sexual harassment can bring complaints without fear of victimisation. Victims have the right to take action against their employers in cases where this duty is breached.

Categories of impact	Grounds for Discrimination: GENDER (specifically, sexual harassment)
Methods and preliminary comments	The study was carried out through: <ul style="list-style-type: none">• An analysis of questionnaires distributed to Germany companies• Legal analysis of court judgments• Interviews with lawyers, judges, harassment advisors and victims of harassment.
Macro impact	The study does not aim to consider whether the legislation has had an impact in reducing the incidence of sexual harassment at work in Germany. Instead, it considers how the legislation is applied within firms and within the courts. Its focus is on the extent to which the cases become known and whether proceedings are instituted. It can therefore be characterised as a legal impact assessment, but does not venture beyond the legal sphere. An overall finding is that the legislation is little known and therefore little enforced both within the employment context and within the courts.
Enforcement and compliance	The study finds that the enforcement of the legislation is very limited. There is a lack of knowledge and understanding of the legislation across the board, from employees and employers to lawyers and judges. The law tends to be applied very narrowly and its importance is undervalued. Gender roles and stereotypes continue to play an important part in how harassment is dealt with by the legal system. An important problem is that there is a perception, both among employers and among lawyers, that the law is not really necessary. The problem of sexual harassment is devalued and lawyers claim that existing legal provisions are sufficient. Complaints officers and training are not often provided, despite the fact that they are required under the legislation. The protection against victimisation is irrelevant, mainly because it is so unknown. The employers' duty to take action to prevent harassment is not respected. As a result, claimants under the legislation are unlikely to succeed in their claims

Costs and benefits	Given that the evaluation of the legislation is that it has little impact, cost- benefit issues do not really arise, and the study does not purport to address those issues.
Flaws in the law	The study does not consider that there are flaws within the law itself. However, it notes that, without a wider acceptance of the necessity of the legislation and the importance of its goals, the effectiveness of the law can be limited.
Unintended consequences	Not covered.

Germany

Study nr. 12: Auswirkungen des Gesetzes zur Gleichstellung behinderter Menschen (BGG) und zur Änderung anderer Gesetze auf die Bereiche Bau und Verkehr

Impact assessment of the Disability Equality Act on building and transport (November 2004)

<http://www.institut-bgm.de/mime/42163D1123083136.pdf>

This is a study of the impact of the German Disability Equality Act 2002 on the built environment and on public transport. This legislation has as a basic goal that people with disabilities ought to be able to move without barriers in buildings and on public transport. It aims at a paradigm shift in terms of how people with disabilities fit into society.

Categories of impact	Grounds for Discrimination: DISABILITY
Methods and preliminary comments	<p>The study is primarily an analysis of legal provisions and how they affect particular situations. Outside of the analysis of the legal provisions, it was carried out through interviews with stakeholders, including NGOs, equality bodies, professionals and companies</p> <p>The study considers the immediate implications of the legislation, in terms of acceptance and application. However, because it was carried out relatively quickly after the legislation came into effect (within 18 months), it was unable to consider long term effects on accessibility or on the position of people with disabilities within society.</p>
Macro impact	<p>The study is positive about the legal and social impact of the legislation, in that action has been taken at many levels to given effect to the goals set out in the legislation. There is thus significant impact on the legal system, but the timing of the study means that the impact on society as a whole is not analysed.</p>
Enforcement and compliance	<p>A significant range of further legislation in specific fields has been passed in order to give effect to the goals set out in the BGG and to develop technical standards. Planning activities are taking access issues into consideration and there is evidence of a wide level of familiarity with the legislation within the building and transport industries.</p> <p>In budgetary terms, the Finance Law for Community Transport provides that the Federal authorities will fund State development of transport services in certain circumstances. This legislation has been modified in order to clarify that such circumstances include disability access.</p> <p>There is a high level of satisfaction amongst pressure groups for people with disabilities. There exists a Federal level complaints system but it has never been used.</p> <p>Significantly, the study observes that improvements in the built environment and in transport had already been visible prior to the entry into force of the BGG.</p>

Costs and benefits	Not covered.
Flaws in the law	Not covered.
Unintended consequences	Not covered.

Germany

Study nr. 13: Bericht über die Umsetzung des Landesgesetzes zur Herstellung gleichwertiger Lebensbedingungen für Menschen mit Behinderungen

Report on the implementation of the State Act to Establish Equal Conditions for disabled people (December 2004)

<http://www.bmfsfj.de/RedaktionBMFSFJ/Abteilung4/Pdf-nlagen/beschaefigtenschutzgesetz.property=pdf,bereich=rwb=true.pdf>

The study is produced by the government of Rheinland Pfalz. It is a government report outlining measures which have been put into place to give effect to the 2002 State Act to establish equal conditions for disabled people – legislation which parallels the Federal Law on the Equality of people with disabilities.

Categories of impact	Grounds for Discrimination: DISABILITY
Methods and preliminary comments	There are no details given of the methodology of the report. It is a report rather than an IA, and a report made by a state government of its own activities. There is little independent evaluation of the projects outlined, and little indication that a scientific methodology has been used in reporting the activities. Some statistics are given, but the lack of an overall methodological framework makes it difficult to evaluate them effectively.
Macro impact	The focus of the study is on outlining legislative and policy measures which have been taken, rather than assessing their impact narrowly. The number and range of policies and initiatives outlined demonstrates that the government is taking seriously its obligations to implement policy with a view to achieving a level of equality for people with disabilities. However, there is much less information about other sorts of impact: employment rates are cited, demonstrating that, while unemployment has increased among the population generally, it has decreased among people with disabilities. Employment rates are higher in the public service, due to a quota system. The timeframe (the legislation was passed in December 2002 and the report was published in December 2004) also provides a relatively narrow timeframe to assess wider impact.
Enforcement and compliance	The main points of the legislation are: <ul style="list-style-type: none">- prohibition against discrimination;- shift in the burden of proof;- particular regard to the situation of women with disabilities;- the right to group litigation;- the obligation placed on states to ensure barrier free access for people with disabilities. The Social Law Code has been updated (in 2004) to encourage the improvement of the education of children and young people with disabilities, by requiring specific accommodations to be made within the educational process. Community service points have been set up to advice and support people with disabilities.

	<p>An integration service has been set up, specifically for the purpose of helping people with disabilities integrate into the employment market.</p> <p>The report mentions a range of projects which have been set up to integrate people with disabilities; however, it does not really evaluate their success. It is notable that policy choices have been made in some cases to make use of positive action programmes social rehabilitation programmes, and designated workplaces for people with disabilities, and that these choices may account for the significant improvements in the employment levels of people with disabilities (although the report notes that some such programmes have been in existence since the 1970s). It further outlines a range of projects within education to identify and support children with disabilities, and recent legislative provisions have been passed to support this. There are further measures which exist to help people with disabilities integrate within the community more generally, including financial support (in July 2003 771 people were able to access a personal budget for these purposes, of whom the majority (637) have psychological or intellectual disabilities). There are provisions for sheltered and supported housing for people with disabilities and other community projects.</p> <p>Barrier free access</p> <p>The report lists a number of projects and achievements in this field, which appears to be prioritised, such as:</p> <ul style="list-style-type: none"> - The creation of a project group and working on a barrier free environment, whose work will finish at the end of 2004, plus some other projects; - Various steps taken to make the State’s online information accessible to people with disabilities; - The recognition and use of German sign language; - Projects are in hand to ensure that public buildings are made accessible; - Agreements have been made with public transport companies to require them to make their public transport more accessible. - The ‘simple language’ initiative, to ensure that documents and signs are accessible to all.
Costs and benefits	Not a part of this report.
Flaws in the law	Not part of this report.
Unintended consequences	Not a part of this report.

Hungary

Study nr. 14: Az egyenlő bánásmódról és az esélyegyenlőségről szóló törvény koncepciója

Concept Paper for the Law on Equal Treatment and Equal Opportunities (2 December 2002)

Legislative background: the study was published by the Ministry of Justice, in the process of the preparation of a general anti-discrimination law in Hungary. [Based on the comments of academics and NGO's the study was then finalized in February 2003. A Draft Bill was prepared by August 2003. The law (Act CXXV of 2003) was eventually promulgated in December 2003].

Categories of impact	Ground for Discrimination: GENERAL
Methods and preliminary comments	<p>This is not an impact assessment study, but according to the country expert this is the closest approximation of that type of study so far undertaken in Hungary.</p> <ul style="list-style-type: none">• The study itself does not seem to display the characteristics of impact assessment either in its content or in its methodology: no impact analysis of any kind is carried out, neither is it clear why an anti-discrimination law needs to be passed. As for this latter point, it seems that the only explicit reason to undertake anti-discriminatory legislation refers to the need to transpose at the national level the legal obligations ratified at the international level (mainly: EC directives and the European Convention of Human Rights).
Macro impact	<ul style="list-style-type: none">• After dealing briefly with the international obligations underlining the legislative necessity to adopt a general anti-discrimination law (i.e. the EC directives; the European Convention on Human Rights), the study examines in detail the most important concepts of a future anti-discrimination code. It touches upon the issue of protected grounds, material and personal scope as well as the definition of terms such as direct and indirect discrimination, harassment, victimization, segregation and positive action. A separate section is devoted to cover different fields of the ban of discrimination (namely: employment and occupation, social protection and healthcare, education and training, access to goods and services). Two further sections cover sanctions (both general and field-specific sanctions) and possible models for an equality body (i.e. issues related to the coherence of the legal system). <p>In short, given that the primary aim of the study is to outline the structure of a future law, non-legislative issues (such as the overall impact of new legislation on the Hungarian economy and society) are touched upon very briefly, and in any case only through general statements about the positive impact of anti-discrimination law in several fields.</p>
Enforcement and compliance	<ul style="list-style-type: none">• The section dealing with sanctions may be the most important part of the study: firstly, it deals with those sanctions that are relevant for all grounds of discrimination. After that, the study focuses on the provisions concerning certain individual fields (namely: employment; social protection and health care; activities of public authorities; access to goods and services; education and training). General sanctions include:<ul style="list-style-type: none">○ Acknowledgment, just satisfaction: a person whose inherent rights have been violated may: a) demand a court declaration of the occurrence of the infringement; b) demand to have the infringement discontinued and the perpetrator restrained from further infringement; c) demand that the perpetrator make restitution in a

	<p>statement or by some other suitable means and, if necessary, that the perpetrator, at his own expense, make an appropriate public disclosure for restitution; and d) finally demand the termination of the injurious situation and the restoration of the previous state by and at the expense of the perpetrator.</p> <ul style="list-style-type: none"> ○ Damages: in the majority of litigious proceedings the payment of damages should by all means be applicable. Therefore, in case any provision of the Act is violated, the aggrieved party should be authorized to request that the other party pay pecuniary and non-pecuniary damages. ○ Fine: Parallel to civil law sanctions, the Act would make it possible to impose a fine for the violation of the requirement of equal treatment (fine for discrimination). The fine would be imposed by the Equal Treatment Committee ex officio or upon the complainant's request. The amount of the fine shall be established on the basis of all the case's circumstances, including the gravity, length, frequency and effects of the violation. The minimum amount would be HUF 50,000 (EUR 188), the maximum would be HUF 3,000,000 (EUR 11,320). There would be a possibility for the judicial review of the decision on imposing the fine, in accordance with the provisions of the Code of Administrative Procedure. ○ Other sanctions: any company or association found to be in breach of the ban on discrimination should be banned for three years from receiving state support or orders by state organizations, or from submitting bids in public tenders. <ul style="list-style-type: none"> ● NOTE: Due to its primary aim (preparation of legislation) the study only deals with the legislative aspects of enforcement (i.e. the system of sanctions and legal remedies).
Costs and benefits	<ul style="list-style-type: none"> ● Not covered
Flaws in the law	<ul style="list-style-type: none"> ● As it was mentioned, the primary aim of the study was to prepare the ground for the legislative elaboration of the anti-discrimination code (more precisely, the "Act on Equal Treatment and Equal Opportunities³¹"). Indeed, the entire study analyses the law and its main components (i.e. general provision; the fields of the ban on discrimination; remedies and sanctions). Therefore, it deals in much details with legal issues, while other questions (such as social and economic impacts, cost and benefits; unintended consequences of legislation or indeed flaws) are entirely disregarded.
Unintended consequences	<ul style="list-style-type: none"> ● Not covered

³¹ The title stems from the fact that – according to the study – the more common expression 'anti-discrimination law' is somewhat misleading, since the enforcement of the ban on discrimination is only one of the main objectives of the planned piece of legislation. Indeed, an equally important goal is to guarantee equal opportunities, or at least to create the framework in which this can be done.

The Netherlands

Study nr. 15: Het verschil gemaakt: Evaluatie AWGB en werkzaamheden

CGB 1999-2004 (The difference made: Evaluation of The Equal Treatment Act and the functioning of the Equal Treatment Commission 1999 – 2004)

The report was written in the light of the legal obligation to evaluate the Equal Treatment Act every 5 years (Section 20(2), ETA). In 1999 the first evaluation was carried out through a study by the Nijmegen University (Gelijke behandeling: regels en realiteit [Equal treatment: norms and reality], I.P. Asscher-Vonk and C.A. Groenendijk). In 2004, the Equal Treatment Commission carried out its evaluation in the form of the report 'Het verschil gemaakt'. In the meantime, the government has commissioned an independent evaluation to complement the ETC's report, to be carried out by the University of Tilburg. This report has not been published yet.

For the English text of the ETA, see: <http://www.cgb.nl/cgb170.php>

<p>Categories of impact</p>	<p>Grounds for Discrimination: GENDER, RELIGION, BELIEF, POLITICAL OPINION, RACE, NATIONALITY, SEXUAL ORIENTATION AND CIVIL STATUS</p>
<p>Methods and preliminary comments</p>	<p>This is a retrospective study corresponding to the legal obligation to evaluate the Equal Treatment Act.</p>
<p>Macro impact</p>	<ul style="list-style-type: none"> • In this report, the ETC describes its experiences with the enforcement of the Equal Treatment Act and the other equal treatment laws: <ul style="list-style-type: none"> - Equal Opportunities Act (Wet gelijke behandeling mannen en vrouwen, WGB) - Equal Treatment (working hours) Act (Wet verbod op onderscheid naar arbeidsduur, WOA) - Sections 7:646 through 7:649 of the Civil Code (Burgerlijk Wetboek) - Sections 125g and 125h of the Civil Servants Act (Ambtenarenwet) - Equal Treatment Temporary and Permanent Employees Act (Wet Onderscheid Bepaalde en Onbepaalde Tijd, WOBOT) - Act on Equal Treatment on the grounds of Disability or Chronic Illness (Wet gelijke behandeling op grond van handicap of chronische ziekte, WGBH/CZ) - Equal Treatment in Employment (Age Discrimination) Act (Wet gelijke behandeling op grond van leeftijd bij de arbeid, WGBL). <p>The ETC also investigated the impact of its tasks and instruments. The research questions were formulated as follows: To what extent have the equal treatment laws contributed to protection against discrimination? Are improvements necessary and should the scope of the law be broadened? Did the ETC with her working methods and her available instruments contribute to the protection against discrimination?</p>

	<p>Is the ETC sufficiently known and accessible? Are the powers of the ETC sufficient? As far as the impact assessment is concerned, the ETC investigated the opinion of other actors to the extent that the ETC's opinions have been followed by parties who put a request before the Commission, how judges utilize the opinions of the ETC and how various parties value the opinions.</p> <p>In the study, a general opinion poll among 2200 respondents was carried out as well as interviews with parties who submitted requests before the commission between 2003 and 2005.</p>
Enforcement and compliance	<ul style="list-style-type: none"> The Equal Treatment Commission concludes that the text of the Act is well workable. However, the tension between the various fundamental rights and equality rights has increased in the changed Dutch society. Changes in the law are however not necessary. Where the effect of the closed system of the law creates problems in terms of incompatibility with standards of reasonableness, the CGB allows itself not to apply the law as long as it falls within the boundaries of European equal treatment norms. <p>The commission pleads for an extension of its powers to governmental actions, which are excluded forms testing against the Equal Treatment Act up to now. The newly introduced area of social protection (based on Directive 2000/43/EC) creates the need to increase the scope of activity of the Commission to other one-sided governmental acts.</p>
Costs and benefits	<ul style="list-style-type: none"> Although the visibility and reputation of the Equal Treatment Commission have increased over the past years, most people and potential victims of discrimination do not know what the Commission does. <p>The rulings of the Commission, although not binding upon the parties, have been increasingly followed by the respondents. Around 75 per cent of the respondents follows the opinion of the Commission and change their policy in individual cases or their company policy as a result of the ruling. In those cases where a court decides on a case which previously has been ruled upon by the Commission, more than 80 per cent of the judicial decisions follow the line of reasoning by the Commission.</p> <p>In some cases, parties have not reached a solution for their problem, despite an opinion by the Commission.</p>
Flaws in the law	<ul style="list-style-type: none"> The report gives no information on this issue.
Unintended consequences	<ul style="list-style-type: none"> The report gives no information on this issue.

The Netherlands

Study nr. 16: Effectstudie toepassing Wet gelijke behandeling op grond van handicap of chronische ziekte in primair en voortgezet onderwijs

Oktober 2003/Update 2005 (Impact Study application Act on Equal Treatment on the grounds of Disability or Chronic Illness in primary and secondary education.)

<http://www.smetshover.nl/Bestanden/Update%20effectstudie%20WGB%20h-cz%20aug%202005.pdf>

The Act on Equal Treatment on the grounds of Disability or Chronic Illness in primary and secondary education came into force on 1 December 2003 and only includes employment and vocational training. Regular education in primary and secondary education was not included, but the law is built in such a way that new fields of application can be attached. In 2003, the Ministry wanted to receive information on the practical and financial effects if the law would be extended to primary and secondary education. The impact study delivers that information. An update of this impact study was finalised in 2005

Categories of impact	Grounds for Discrimination: DISABILITY
Methods and preliminary comments	This is a prospective study.
Macro impact	<ul style="list-style-type: none">The Impact Study was commissioned by the Ministry of Education with a view to obtain information on the possible effects of bringing the field of education under the application of the Act on Equal Treatment on the grounds of Disability or Chronic Illness.
Enforcement and compliance	<ul style="list-style-type: none">The study is carried out <i>ex-ante</i>, at a time that the Act has not been passed. The assessment therefore does not give information about experienced problems with enforcement, acceptance and compliance. According to the researchers, implementation of the law will be able to take place with relatively few problems. They base their conclusion on the fact that there is a large number of students with a handicap that already participate in regular education, a large number of schools is allowing students with a handicap, and the fact that the Act includes a test on reasonableness. The percentage of students with a disability will tentatively grow from 20 per cent to 25 per cent, but will probably not exceed 30 per cent.
Costs and benefits	<ul style="list-style-type: none">The assessment report initially concluded that implementation of the Act for primary and secondary education could lead to an additional cost of EUR 20 million per year. This would be the result of adaptation of buildings in order to increase the accessibility; technological adaptations, especially for students with dyslexia, and extra care for students with socio-emotional disorders (ADHD and autism). In the 2005 update, however, the additional costs have been reduced; according to advanced insight and new information, there would be no additional costs. This new assessment is based on a different estimate of costs involved for adaptation of buildings, the estimated care and a different budget available for technological adaptations. The number of students being able to participate in regular education has been adapted on the basis of experiences in the existing school system.

	<ul style="list-style-type: none"> • Benefit for disabled students: The existing system of financial support for students with a handicap ('LGF') has proven to be effective: almost two thirds of all elementary schools have taken in pupils with a handicap. It is not expected that the other one third will not be able to take this category of pupils just because of the lack of provisions laid down in the Act on Equal Treatment. The same assumption is made for secondary education.
Flaws in the law	<ul style="list-style-type: none"> • The report does not provide information on this question.
Unintended consequences	<ul style="list-style-type: none"> • The report does not provide information on this question.

Portugal

Study nr. 17: Comissão para a igualdade e para os direitos das mulheres (2003) A igualdade de género em Portugal (Lisbon) Commission for Equality and Women’s Rights (2003) Gender Equality in Portugal)

This study is a descriptive overview of the evolution in legal protections for equality in general, and women’s equality in particular. It is complemented with descriptive statistics on the all aspects of gender equality, including education, work, salaries, and violence towards women.

Categories of impact	Grounds for Discrimination: GENDER
Methods and preliminary comments	<p>This study approximates an RIA, but is purely descriptive in its analysis of data.</p> <ul style="list-style-type: none"> • Content: As such, this is fully descriptive study with no ‘second-order’ analysis that examines the causes and consequences of gender inequality in Portugal. It is not an impact assessment, but provided a useful baseline assessment of the status of women in Portuguese society and provides value-added by comparing that status across the member states of the EU. • Methodology: At best, this study is a parallel presentation of legal chronology and descriptive statistics on the status of women. There is no attempt to link the two or to examine the time-series relationship between the proliferation of legal protections for women and their changing status in Portuguese society.
Macro impact	<ul style="list-style-type: none"> • The study traces all the equality legislation, particularly that which was passed after the democratic transition in 1974 and the 1976 Constitution. • There have been numerous Decree Laws and other statutes laying out the grounds for possible discrimination and how equality is meant to be guaranteed and protected. • The most recent laws listed are the Decree Law Number 3/2003 which created the national coordinator for family matters, Council of Ministers Resolution Number 88/2003 on the national plan to combat domestic violence, and the Council of Ministers Resolution on the National Plan for equality.
Enforcement and compliance	<ul style="list-style-type: none"> • The study does not examine enforcement and compliance per se, but presents a short legal analysis of the equality provisions in the Constitution, a list of relevant EEC and EC directives, Committee of Ministers Resolutions from the Council of Europe, National Assembly, and the United Nations. • This section is purely a chronological listing of all relevant legal documents. • The final section of the report outlines to the two main mechanisms for promoting equality: (1) the Commission for Equality and Women’s Rights and (2) the Commission for Equality in Work and Employment.
Costs and benefits	<ul style="list-style-type: none"> • There is not a cost-benefit analysis presented. Rather, there are tables of descriptive statistics on women’s equality in education, professionalisation, work and employment, family, maternity and reproductive rights, the power to make decisions (including formal political representation), violence against women, and poverty. • These statistics are presented for the national context and then in the comparative European context by comparing Portugal to the other member states of the EU.

	<ul style="list-style-type: none"> • The descriptive statistics include a measure of gender balance across all the areas examined and show that such a balance is positive for many areas (e.g. educational attainment), but negative in those identified in other EU member states (e.g. professional salaries compared across those with and without formal qualifications). • Reading between the lines, it is possible to conclude that there is still a large gap between the <i>de jure</i> protection of women's rights and equality on the one hand, and the <i>de facto</i> realisation of those rights. But such a gap is present in all societies and is not particularly surprising in the case of Portugal given its recent history of the Salazar dictatorship and its Catholic value orientations.
Flaws in the law	<ul style="list-style-type: none"> • Not part of this study.
Unintended consequences	<ul style="list-style-type: none"> • Not part of this particular study.

Portugal

Study nr.18: Comissão para a igualdade e para os direitos das mulheres (2005) Impacto em função do género: Avaliação de medidas de política

Lisbon: Commission for Equality and Women’s Rights (2005) The Impact of Gender: Evaluation of Policy Measures

This study is a guide on why, how, and what ways a gender impact assessment should be carried out.

Categories of impact	Grounds for Discrimination: GENDER
Methods and preliminary comments	<p>This study approximates an RIA, but is a guide on how to carry out ex ante, in itinere, and ex post impact assessments of gender policy measures.</p> <ul style="list-style-type: none"> • Content: This is not an Impact Assessment of gender policies in Portugal, but a guide on how to do such assessments. It reflects well the state of the art and the need for such assessments and gives reasonable examples of areas in which IA could be used. • Methodology: The method that is outlined is a very good start for those wishing to carry out gender impact assessments, but would need to be applied more thoroughly for application to a specific policy or to an area of policy relevant to gender (and any other form of discrimination).
Macro impact	<ul style="list-style-type: none"> • The study makes explicit reference to Portugal’s National Plan for Equality (2003-2006) (see Portugal Grid 1 for this). • It first summarises the notion of gender mainstreaming and then provides a reference matrix for the evaluation of gender equality policy measures • The guide has been informed by four phases of work: (1) a study of <i>ex ante</i>, <i>in itinere</i>, and <i>ex post</i> instruments for impact assessment, (2) establish a network of contacts with a view to collect a series of impact assessment instruments, (3) literature review and analysis of gender impact assessment, and (4) generate a proposal for the best ways in carrying out gender impact assessments.
Enforcement and compliance	<ul style="list-style-type: none"> • The study is based in the premise that anti-discrimination laws and gender equality laws have now been fully elaborated and that what is really needed is a series of impact assessments in this field. • In its discussion of gender mainstreaming, it reviews the idea of equality (for men and women), reviews the international development in gender equality (e.g. CEDAW, the 1995 Beijing conference, and recommendations from the Council of Europe and European Commission). • It makes explicit reference to the 1998 European Commission’s ‘Guide to Evaluating the Impact of Gender’.
Costs and benefits	<ul style="list-style-type: none"> • There is not a cost-benefit analysis presented. Rather, there is an outlining of requisites, methods, and beneficiaries associated with carrying out a gender impact assessment, complete with a proto-survey instrument to assess the relevance of gender policies. • In addition to the <i>ex ante</i> and <i>ex post</i> categories of impact assessment, it adds the further category of <i>in-intinere</i> assessment, which take place while the policies are being developed and implemented.

	<ul style="list-style-type: none"> • It outlines good practice guidance on the types of indicators of gender (in) equality that should be collected in order to carry out an impact assessment and gives examples of the kinds of areas that could be researched and analysed. • It concludes with suggestions for how the guide could be used and a brief comparative assessment of other gender impact instruments, in particular, the gender impact assessment (GIA) method also from Holland, and the <i>Gender Mainstreaming for Policymakers</i> from the UK. http://www.womenandequalityunit.gov.uk/equality/mainstreaming_explained.htm http://www.womenandequalityunit.gov.uk/equality/gender_impact_assessment.pdf
Flaws in the law	<ul style="list-style-type: none"> • Not part of this study
Unintended consequences	<ul style="list-style-type: none"> • Not part of this particular study.

Sweden

Study nr. 19: Summary – The blue and yellow glass house: structural discrimination in Sweden

P. Lappalainen, Swedish government inquiry into structural discrimination due to ethnicity and religion, (SOU 2005)

http://www.toronto.ca/metropolis/metropolistoronto2005/pdf/ENGLISH_SUMMARY_and_BW_pict.pdf

This study was commissioned by the Swedish government to review the structural discrimination on the grounds of ethnicity and religion.

Categories of impact	Grounds for Discrimination: RELIGION AND RACE/ETHNICITY
<p>Methods and preliminary comments</p>	<p>The Commission suggested to look at this report from Sweden (see key points EC meeting 30-07-06). Although it deals with discrimination due to ethnicity and religion (i.e. it does cover one of the specific grounds the Commission is interested in), <u>it only an approximate RIA</u>. Therefore, the amount of relevant information is limited.</p> <p><i>In general terms, the study is plenty of flaws, if judged from an IA perspective. But such a negative evaluation might be wrong, given that the report is not intended to be an example of IA</i></p> <ul style="list-style-type: none"> • Content: From reading the inquiry we know that the author concludes that “structural discrimination is most effectively counteracted within the framework of a comprehensive anti-discrimination law and supervision” (!). • Methodology: The account of “structural discrimination” provided here is rather descriptive and often vague. Several statements are done with reference to other studies [such as “many studies have shown that ...”, “there is wide support for the idea that”, research in the fields shows that”] but: 1) no specific reference to any study is provided and 2) no systematic evidence (i.e. measures or indicators of any kind) is given about the extent to which discrimination is actually affecting sectors of Swedish society. It this thus very unclear under what basis the inquiry is intended to make a case for the need to undertake anti-discrimination law.
<p>Macro impact</p>	<ul style="list-style-type: none"> • As stated in the introduction (p.4) the task of the inquiry is threefold: <ol style="list-style-type: none"> 1. To review and present the existing research and information in Sweden on structural discrimination due to ethnicity or religion. 2. To review and present relevant research and information about and measures against ‘structural discrimination’ in other countries. 3. To propose measures for counteracting structural discrimination as well as measures to fill the gaps in knowledge. • This study might be well understood as a (rather synthetic) inquiry into the historical and structural/institutional roots of discrimination, its contemporary manifestation within different public spheres [mass media, political system, education, labour market, housing, welfare system, legal system] and a summary of suggested measure to overcome it.

	<ul style="list-style-type: none"> Unfortunately, the last objective (the most critical in terms of IA) is delivered throughout the text by a simple summary of general recommendations and proposals, along three main directories (p.12): 1) political leadership focused on counteracting discrimination; 2) a strong movement against racism and discrimination within civil society 3) laws and other measures that are focused on changing behaviour. Beside those general statements, no analysis is carried out about the possible macro impacts of the anti-discrimination measures advanced by the author.
Enforcement and compliance	<ul style="list-style-type: none"> Not part of this study.
Costs and benefits	<ul style="list-style-type: none"> No direct information is provided about cost and benefits of each policy recommendation suggested in the study (i.e. police training and education; change in the educational system; creation of a research institutions for research on discrimination). Possibly, the author's 'implicit' perspective is about the negative costs for society as a whole and for specific groups (foreigners, immigrants, ethnic minorities, etc.) due to the maintenance of the status-quo and/or failures to implement anti-discriminatory policies. These costs include (p. 12) <i>"the increased health costs related to physical and mental illness related to discrimination, costs related to the lack of trust in the police and other parts of the legal system and the lack of faith in government"</i>. Supposedly, those costs will disappear (or translated into "benefits") once the suggested recommendations will be implemented.
Flaws in the law	<ul style="list-style-type: none"> Not part of this study
Unintended consequences	<ul style="list-style-type: none"> Not part of this study.

United Kingdom – Northern Ireland
Study nr. 20: Draft Disability Discrimination (NI) Order

Consultation Document (2005)

<http://www.ofmdfni.gov.uk/disability-main-consultation.pdf>

- **Legislative background:** disabled people are protected against unlawful discrimination by the Disability Discrimination Act (DDA). In 1997, UK government established a Disability Rights Task Force (DRTF) to consider how the Act could be improved. In 2001, the Northern Ireland Executive published its response to the DRTF recommendations, setting out the Executive’s proposals for taking forward those of the Task Force’s recommendations with which it agreed. This Draft Disability discrimination order in council (2005) is the next step towards fulfilling Government’s commitment on civil rights for disabled people and proposes to take forward measures previously identified in the 2001 response to DRTF.

Categories of impact	Ground for Discrimination: DISABILITY
<p>Methods and preliminary comments</p>	<p>As part of its consultation on proposed legislation to enhance disability rights, the NI executive has prepared a draft of the Equality Impact Assessment (EQIA). This is because NI anti-discrimination law requires such assessments to be made when reviewing and developing policy. Although an EQIA is included in this study (pp. 29-40), it is NOT part of the analysis carried out below, given that EQIAs are not the topic of the Mapping study (see note on follow-up research on strand 2 - p. 2).</p> <ul style="list-style-type: none"> • No major flaws can be identified in this study, which is in fact a good example of RIA on anti-discrimination legislation. Particularly valuable the section on cost-benefits, which analyses the estimated impact of each article of the new legislation, while also providing some information on the methodological underpinnings of the estimates presented. Possibly, the section on enforcement and compliance could have received more attention in the study. <p>The information the report provides is interesting for the purpose of a possible prospective impact assessment the Commission may undertake and that justifies this report’s inclusion.</p>
<p>Macro impact</p>	<ul style="list-style-type: none"> • This study is a good example of PROSPECTIVE regulatory impact assessment made by NI Executive with regard to changes in extant disability anti-discrimination law, as established through the Disability Discrimination act (DDA 1995) and its following amendments. <p>To this end, an entire section of this study (i.e. “main elements of the Order – p. 12-28) describes how specific articles of the Order amend previous articles of the DDA, usually by extending its scope and/or clarifying the terminology used.</p> <ul style="list-style-type: none"> • As stated in the Introduction, (p. 2-3), “<i>the new legislation will ensure that more people than ever before are protected by the DDA. (...) Disabled people will have in place truly comprehensive legislation</i>”. More precisely, NI Executive intended macro-impact is “<i>to bring more people with the progressive conditions of HIC, cancer and multiple sclerosis within the scope of the Disability Discrimination legislation. It will also change the law in relation to the rights of disabled people using transport services and in joining private clubs. Furthermore, it will extend the legislation to cover the exercise of functions of public bodies so that it would apply to most of their activities, not just those that consist of the provision of services. Other important measures will be the strengthening of existing rights in the areas of renting of premises and discriminatory job advertisements</i>”.

<p>Enforcement and compliance</p>	<ul style="list-style-type: none"> Those procedures are not a specific concern of this study, which in fact draws on previous anti-discriminatory legislation (the DDA 1995) and its already existing enforcement/compliance measures. The study thus contains only a brief statement which recalls the mechanisms available to enforce the new legislation and ensure compliance with the law: <p><i>“Enforcement and sanctions are, in the main, already laid down in the DDA and the Equality (Disability, etc) (NI) Order 2000. The courts and tribunals continue to be the means for individuals to obtain legal redress. The Equality Commission continues to have enforcement powers and can support individual disabled people with legal complaints. Where new measures are being proposed, or existing measures are being extended, enforcement and sanctions will involve the courts, tribunals and the Commission as appropriate. The Commission, as part of its overall duty to monitor the DDA in Northern Ireland, will keep the legislative framework under review”. (p. 52-53)</i></p>
<p>Costs and benefits</p>	<p>This section covers a substantial part of the study, which contains a large summary of the Regulatory Impact Assessment published to estimate the quantifiable costs and benefits deriving from the implementation of the new legislation. [A full version of the RIA is available at www.ofmdfmi.gov.uk/equality].</p> <p>The Annex 1 of the study (p.57-87) provides a detailed and well documented account of the estimated impacts of each Draft article.</p> <p>The Annex 2 of the study (p. 88-91) draws on Annex 1 and seeks to provide a more general summary of quantifiable costs and benefits, as follows:</p> <p>Benefits to business:</p> <ul style="list-style-type: none"> - improved retention of staff due to slight extension of DDA to cover more people with HIV, cancer and MS; - from widening the pool of people wishing to rent property because communications with landlords and renting are easier; - easier identification of problems for disabled people in accessing goods, services and premises (and other matters covered by Part III of the study) through use of the questionnaire procedure leading to more ready resolution or sometimes helping them decide not to make a formal complaint; - the development of effective public sector practices and policies which set the standard for businesses <p>Benefits to disable people:</p> <p>Disabled people form a very substantial proportion of the total population; a proportion that is likely to increase in the future because of the ageing of the population and the higher incidence of disability among older people. It has been estimated that approximately 20 per cent of the adult population is covered by the provisions of the DDA. Benefits will arise from:</p> <ul style="list-style-type: none"> - Improved personal mobility for disabled people; - Access to a wider range of facilities and activities (including employment) enabling disabled people to play a fuller role in the economy and in society; - Improved legal rights of access to services. More transport services will become accessible in the fullest sense of the word. Service providers that are already doing much to help disabled travellers will be encouraged to do more.

	<p>While it is not possible to quantify these benefits accurately in financial terms, transport service providers could expect to see increasing numbers of disabled people using their services over time.</p> <p>Compliance Costs:</p> <ol style="list-style-type: none"> 1. extension of the DDA to cover more people with HIV, cancer and MS may result in just over £2,000 recurring costs; 2. extension of the duty to make reasonable adjustments to landlords will result in £44,000 recurring costs; 3. bringing local councillors within scope of Part II of the DDA will result in a one off cost of £6,800, with a cost of £200 per new disabled councillor elected estimated; 4. removing the Disability Discrimination Act Part III exemption for providers of transport services will result in a one off cost of approximately £4.068M and recurring costs of £5.106M per annum mainly being used on disability awareness training for staff throughout the public and private transport sector. <p>More details on how the estimates of costs have been computed are discussed in the study. A table also provides a full summary of recurring and one-off costs [see table attached below]</p>
Flaws in the law	<ul style="list-style-type: none"> • Not part of this study.
Unintended consequences	<ul style="list-style-type: none"> • This section is completely missing in the study. A brief section on “risk assessment” is included, but it refers only to the risks deriving from not implementing the new legislation. More precisely (p.45): <i>“If the measures in the Order in Council are not implemented, then disabled people will continue to face discrimination and barriers in accessing services and facilities that other members of society take for granted”.</i>

Costs

Quantifiable Cost	Recurring costs	One-off costs
Extension to cover more people with HIV/cancer/Multiple Sclerosis	£2,000	
Extend duty to make reasonable adjustments to landlords and managers (other than to physical premises).	£44,000	
Bringing local councillors within scope of Part II of the DDA		£6,800
Recurring Transport related costs per annum	£5.106M	£4.068M
TOTAL	£5.152M	£4.075M

Costs related to the removal of the Disability Discrimination Act Part III exemption for providers of transport services.

Costs to service providers: rail services

Item	Non-recurring costs (£M)	Recurring costs (£M) per annum
Training in disability awareness	-	0.011
Full staffing of unstaffed stations	Substantial	2.000

Costs to service providers: buses and coaches Costs to service providers: public and private hire

Item	Non-recurring costs (£M)	Recurring costs (£M) per annum
Training in disability awareness (Translink)	-	0.07
Training in disability awareness (private sector)		0.019

Item	Non-recurring costs (£)	Recurring costs (£) per annum
Loss of earnings during training	1,478,000	75,000
Charges for training	556,000	28,000
Totals	2,034,000	103,000

Costs to service provider – car hire

Item	Non-recurring costs (£M)	Recurring costs (£M) per annum
Provision of vehicle	-	2.0 – 2.8
with adapted controls		

United Kingdom
Study nr. 21: DTI, Partial Regulatory Impact Assessment Age Discrimination
2004

<http://www.dti.gov.uk/files/file13160.pdf>

This study was carried out by the Department of Trade and Industry. It examines what would be the possible impact of an anti-discrimination law on the grounds of age.

Categories of impact	Grounds for Discrimination: AGE
Methods and preliminary comments	<p>This is a prospective impact assessment.</p> <ul style="list-style-type: none"> • On the content of the study it should be highlighted that there are substantial variation in various estimates on the effects of discrimination legislation (between – and + values). • The objective (p. 1): “The aim of the legislation is to maximise the participation and economic (and social) contribution of groups that are currently subject to discriminatory practices both inside and outside the labour market because of their age. At the same time the Government recognises that there are exceptional circumstances when some age-based practices are capable of being objectively justified, and the Directive allows this. In implementing the Directive, the Government will therefore aim to improve opportunities and choice for individuals, and encourage labour market participation, whilst still allowing employers to manage their businesses effectively.”
Macro impact	<p>The study asserts that discrimination results in poorer quality matches in labour market. Therefore, by providing protection to those subject to discriminatory practice and by stimulation a cultural change, the new legislation seeks to increase the participation of older and younger workers in the economy, while at the same time helping employers draw on a wider pool of workers. Three main macro-impacts can thus be identified:</p> <ol style="list-style-type: none"> 1. <u>a better allocation of human resources within the labour markets;</u> 2. <u>an increase in labour supply;</u> 3. <u>an increase of the national economic growth/GDP.</u> <p>The total increase in the workforce could be between 19,000 and 51,000, resulting in an increase in GDP of between about £0.7 billion to £2.0 billion by 2016. This is a plausible figure when compared with the estimate of the cost to the economy of low employment amongst older workers by the Cabinet Office of £16 billion each year.</p>

Enforcement and compliance	<ul style="list-style-type: none"> • According to the study, experience of the current discrimination jurisdictions in Great Britain suggests there could be a significant number of tribunal applications. Evidence of age discrimination in the United States also suggests there could be large numbers of cases. Based on expectation for discrimination claims under the other jurisdictions, the study assumes an average of 8,000 Employment Tribunal claims per year. • The average cost of an Employment Tribunal application for an employer is on average around £4,900 and for the taxpayer £990. The cost to the Exchequer costs of will be around £8m each year (p.15)
Costs and benefits	<ul style="list-style-type: none"> • Key groups of beneficiaries: those affected most by age discrimination tend to <u>be older workers</u> (about 50 years or over) and <u>young workers</u> (up to about 25 years). Therefore, those are the two sub-groups which are expected to receive the most substantial benefits from the legislation. Also, the legislation is aimed at benefiting the <u>job seekers</u> who face discrimination entering the labour market. For individuals the overall benefit over ten years ranges from £0.6 billion to £3.4 billion. • Business sectors affected: given that some sectors have a higher proportion of older workers (<u>public administration, education, health sector</u>) or younger workers (<u>distribution sector, hotels, catering sectors</u>) they will be the most affected by the legislation. • Implementation costs (small/large firms): (p.6): <i>“Implementation costs will arise because in order to comply with the legislation companies will have to become familiar with it and will need to make decisions about what action needs to be taken as a result of the legislation”</i>. Taken over a ten year period, the estimate of the net present value of the costs and benefits to firms ranges from an overall loss of £0.2 billion to an overall benefit of £2.4 billion. • Implementation costs (other agencies): (p. 6) There will be further implementation costs for <u>trustees</u> in becoming familiar with the legislation on occupational pensions (<u>about £3.6m</u>) and the <u>Insolvency Service</u> in changing computer systems to cope with the new formula for statutory redundancy payments (£100,000).
Flaws in the law	<ul style="list-style-type: none"> • Not part of this study.
Unintended consequences	<ul style="list-style-type: none"> • This section is quite short in the study, given the plan to carry out follow up surveys, between two to four years after the legislation has been implemented. However, two issues are identified as susceptible of producing unintended consequences: <ol style="list-style-type: none"> 1. The notion of “objectively justified” aged-based difference in treatment. According to the DTI, the legislation will make it unlawful to discriminate against individuals on the basis of age in employment, vocational training, and in respect of membership and representation in professional organisations, except where these can be ‘objectively justified’ by a legitimate aim and the means of achieving that aim are appropriate and necessary. No clear guidelines are provided about possible ways to identify those “objectively justified” conditions, thus it is likely that the subjects involved (workers and employers) will appeal to Employment tribunals under conflicting understanding of the legislation. The DTI explicitly acknowledges this arguing that “there could be a significant number of tribunal

	<p>applications". [Costs for those applications are provided, but those costs only refer to employers and taxpayers facing ET].</p> <p>2. The increase of labour supply. An unexpected effect of higher labour supply can be a depression in the level of wages. DTI argues that "<i>while this may be true in the short run, it is unlikely to be sustained as the economy expands in response to this increase in available workers</i>". But: will this necessary be the case? No detailed evidence is provided in support of this statement.</p>
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United States

Study nr. 22: Ten years check-up: Have federal Agencies responded to the Civil Rights Recommendations?

An evaluation of the Departments of Education, Health & Human Services, and the Equal Employment Opportunity Commission, Volume IV (2004)

<http://www.usccr.gov/pubs/10yr04/10yr04.pdf>

This study is the part of a four volumes & four-years report issues by the United States Commission on Civil Rights (established by US Congress in 1957).

Categories of impact	Grounds for Discrimination: GENERAL
Methods and preliminary comments	<p>This study is mainly concerned with the extent to which federal civil rights agencies have carried out their enforcement responsibilities. After an introduction referring to the scope and the methodology used, the analysis is delivered through four different chapters, one for each agency assessed. <i>Therefore, the grid format will follow (whenever possible) the same framework and briefly analyze each category of impact by indicating the respective agency it refers to.</i></p> <ul style="list-style-type: none">• Methodology: the methodology is clearly set out and consistently followed throughout the study: <i>"In assessing whether the departments or their components have responded to the Commission's previous recommendations, the Commission conducted fact-findings that included interrogatories posing questions which focused on the recommendations made to each federal agency. (...) In addition to analyzing interrogatory responses, the Commission reviewed relevant policy, planning, and budget documents, annual reports, and Civil Rights Implementation Plans; interviewed civil rights staff; and reviewed other appropriate reports."</i> (p.5)• BUT: as admitted by the Commission itself (p.III and p. 5) <i>"Overall, agencies generally focus on process and not mission-oriented factors to measure progress. Federal civil rights enforcement, to evaluate effectiveness, must also formally assess agency progress towards discrimination reduction"</i>. In other words, the quality of the indicators used in the study to evaluate enforcement practices (i.e. complaints resolved and reviews conducted) may well produce biased results and misspecification errors in assessing agency's civil rights performance. Other more complex tools such as analysis of behavioural data and/or public opinion surveys should have been included in the analysis. <p>This methodological pitfall is emphasized by the Commissioner Jennifer C. Braceras, whose statement is included at the end of this study. She raised serious reservations as to the scope and methodology used to prepare the report, and precisely about <i>"the Commission's emphasis on "inputs" rather than "outputs" in evaluating the effectiveness of federal civil rights agencies. In this volume, the Commission continues to emphasize budget and staffing levels as measures of civil rights enforcement success.</i></p>

	<p>(...)Instead of focusing on the number dollars spent by civil rights divisions, the Commission should limit the scope of its review to examining the productivity of these divisions and their level of success in reducing, deterring, and punishing discrimination" (p.151).</p>
<p>Macro impact</p>	<p>This study is the part of a four volumes & four-years report issues by the United States Commission on Civil Rights (established by US Congress in 1957). This final volume of the series (2004) evaluates the extend to which four different federal agencies have responded to Commission recommendations made during the past decade and if civil rights enforcement has improved or changed as a result. More precisely, the Commission's reports over the last decade have identified a set of civil rights elements that if carefully followed promotes enforcement.</p> <p>Consequently, this study analyzes the following elements relevant to civil rights enforcement at each agency level:</p> <ul style="list-style-type: none"> • priority of civil rights; • resources (funding and staffing), provided to carry out the work; • effective planning; • policy guidance prepared and issued; • technical assistance; • education and outreach; • effective compliant processing process; • quality compliance reviews; • staff training • Initiatives that maximize effectiveness in accomplishing civil rights enforcement <p>On overall, the record is uneven. The Commission's investigation of the extent to which the Departments of Education (DOEd), Health and Human Services (HHS), Housing and Urban Development (HUD), and the Equal Employment Opportunity Commission (EEOC) implemented recommendations made in its previous reports finds mixed results. HUD implemented many of the Commission's recommendations; DOEd indicates that some recommendations were not addressed because the specific issues were no longer priorities within the Office for Civil Rights (OCR); HHS implemented some but not most of the recommendations; EEOC implemented few recommendations, asserting that existing or other practices better served it.</p> <p>The study concludes by a new detailed list of Commission's findings and recommendations to each federal agency, based on elements critical to civil rights enforcement (pp. 136-150).</p>

Enforcement and compliance	<p>This is the most substantial issue reviewed and assessed throughout the study. In general, the Commission’s study discovers several problems that continue to affect civil rights enforcement, as it follows:</p> <ul style="list-style-type: none"> • Resources remain an issue for some agencies, whether they elect to publicly acknowledge it or not.; • Guidance issuance and update remain weak; • Assessments of initiatives and follow-up with target groups to obtain feedback are infrequently carried out. • Agencies emphasize performance indicators focusing on assessing process results (such as the number of mediations resolved) and not achievement of agency mission, such as eradication of discrimination. This lack of evaluations methods that measure mission attainment (i.e. “output” rather than “input”) represents a serious pitfall (see also “flaws” section below). <p>More detailed assessment of enforcement and compliance procedures is carried out for each federal agency. Several points are worth noting:</p> <ul style="list-style-type: none"> • Department of education = There is a serious problem with available resources. The Commission found that Office for Civil Rights – OCR’s workload, in particular the number of complaints it received, had increased steadily over time, but its budget and staff resources had fallen. However, DOEd’s Office for Civil Rights asserts that a 6 percent decrease in full-time-equivalent staff (FTEs) between 2002 and 2003 without a commensurate decrease in mission or workload does not hinder its ability to fulfil its responsibilities and to enforce civil rights statutes. Also, enforcement practices show weakness in the absence of manuals explaining compliance and review process. • Department of Housing and Urban Development: as for the other agencies, a general financial problem relates with enforcement capacity. Despite past Commission recommendations urging the President and Congress to increase HUD resources, its funding and staffing remain insufficient. On overall, while much is improved complaint processing is not. • Equal Employment Opportunity Commission: The study emphasized that, despite the Commission’s previous recommendation, EEOC still has not issued an updated compliance manual since 1998 [EEOC’s guidance on definitions of key terms relevant to the Americans with Disabilities Act (ADA) was primarily issued between FY 1993 and 2000 and – according to the study - is in need of review to determine relevance and currency]. Beside that, EEOC programs also suffer from inadequate funding and staffing, which in turn can hinder enforcement capabilities [it has been calculated that EEOC has not received a significant funding increase since 1998, and key positions remain vacant due to limited resources]. • Department of Health and Human Services: the Office for Civil Rights (OCR) is the body in charge to enforce US federal statutes to prevent and eliminate unlawful discrimination in access to health care. Speaking about guidance issuance and update, the study found that OCR has substantially improved complain processing and enforcement through
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	several measures (i.e. improved legal training, technical assistance, and outreach to operating divisions, grant recipients, communities, and advocacy group). However, shortcomings have been identified too: HHS' OCR still needs to revise and update the case resolution manual that investigators use in their enforcement work.
Costs and benefits	<ul style="list-style-type: none"> • No part of this particular study.
Flaws in the law	<ul style="list-style-type: none"> • No part of this particular study.
Unintended consequences	<ul style="list-style-type: none"> • No part of this particular study.