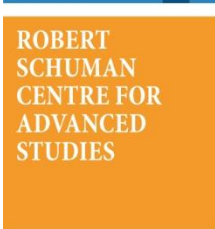




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Variations in Responses to Anti-Discrimination
Legislation among Trade Unions and Employers in EU
Countries

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Abstract

This paper looks at European trade unions and employers, their awareness of racial/ethnic discrimination, and their receptiveness to legislation against it, focusing both on differences among EU member states, and on changes that have occurred since the 1990s. It draws specifically on two research projects carried out by two EU agencies: the European Foundation for the Improvement of Living and Working Conditions, and the EU Agency for Fundamental Rights (FRA), published 14 years apart. The comparison indicates that the 'no problem here' stance regarding racial discrimination, common in the early 1990s, is no longer dominant amongst the EU15 unions and employers, but could still be found amongst respondents in some of the 12 member states that had joined the EU in after 2004. In general, trade unionists and employers in these newer member states are significantly less sympathetic to the EU's Racial Equality Directive and its rationale than their counterparts to the west. Drawing on qualitative interviews from the FRA research, the paper contrasts the various arguments in support of and against the legislation.

Keywords

Trade unions, migrants, ethnic minorities, racial discrimination, Racial Equality Directive, European Union

Introduction

This paper looks at European trade unions and employers, their awareness of racial/ethnic discrimination, and their receptiveness to legislation against it, focusing both on differences that are apparent between European Union (EU) member states, and on changes that have occurred since the 1990s. It does this by drawing specifically on research projects carried out by two EU agencies: the European Foundation for the Improvement of Living and Working Conditions (EUROFOUND) in Dublin, and the EU Agency for Fundamental Rights (FRA) in Vienna. In particular it contrasts the findings of two comparative research reports published 14 years apart and in which the author was directly involved* (EUROFOUND 1996 and FRA 2010c), focusing on the changes that have been evident across the two decades. The paper's primary emphasis is on trade unions – however, it also includes some parallel research material on employers when this information was collected during the same research projects, and when this provides useful contextual material in which to locate the findings on trade unions.

There has been a great variety in the nature of trade union responses to the concerns of migrant workers and the issue of racial discrimination across countries of the European Union. This variety inevitably reflects factors such as historically different industrial relations traditions (Ferner and Hyman 1992) and historical differences in national responses to immigration and ethnic diversity (Castles 1995). National differences within western European trade union movements are highlighted by Ackers et al. (1996) as including the Southern European model, characterised by competing Catholic, socialist and communist national confederations, and a Northern European model of a single Social-Democratic or Labour centre. Added to this are union divisions within some countries along the lines of language or religion, and extreme differences between countries in terms of union density, and degrees of politicisation or institutionalisation of unions (Ackers et al. 1996: 2). The addition of new member states to the EU from the east in 2004 and 2007 added even more complexity to the picture. A comparison of eight countries from Central and Eastern Europe (CEE) poised to join the EU in 2004 noted that despite a transformation geared towards western European models, labour relations were varying significantly along nationally characteristic lines, considerably increasing the diversity within the industrial relations picture of an enlarged EU (Kohl and Platzer 2003). With regard to the variety in trade union policies towards immigrants, Penninx and Roosblad suggest a categorisation of four sets of factors which might account for national differences, namely the position of the trade union movement in a society, its power and its structure, the condition of the economy and the labour market within that society at the time of the particular union stance or practice, the context of the society as a whole, its institutions, the political structure, legislation, national ideologies and public discourse, and the characteristics of the immigrants themselves (Penninx and Roosblad 2000: 13–15).

Despite the widely varying national contexts, for several years now all trade union movements in the European Union have faced one common factor which in theory has great potential for producing at least some convergence in their policies towards migrants and minorities, namely the EU Racial Equality Directive (RED), adopted in 2000 with a deadline for transposition into national law of 2003 (and 2004 for the newer member states). Now all countries of the European Union have in place

* The author was contractor and author of the EUROFOUND 1996 report *Preventing Racism at the Workplace*. In 2008, when on leave of absence and working for the EU Agency for Fundamental Rights, he was the initiator and programme manager of the FRA's 2010 research *The impact of the Racial Equality Directive* (the RED Impact Study). The comparison and analysis of these two reports within this paper constitute the views of the author and not of the European Foundation for the Improvement of Living and Working Conditions or the EU Agency for Fundamental Rights.

The author would like to acknowledge the contributions of Kasia Jurczak who, at the FRA, was joint programme manager of the RED Impact Study, and Steve Jefferys and Sonia McKay of the Working Lives Research Institute of London Metropolitan University, who organised and coordinated the RED Impact Study under a service contract with the FRA, and wrote the final report.

legislation forbidding racial/ethnic discrimination in employment, and for some this has been an entirely new development. The introduction of the Directive has provided an opportunity for trade unions to become more active in fighting discrimination in employment, with in some countries unions gaining a legal right to pursue cases that they did not possess before. The law therefore provides a common source of potentially strong pressure for raising awareness and stimulating policy changes across EU trade union movements, regardless of the very different national circumstances.

Research on trade unions and migrants

Since the late 1990s there has been a growing interest in comparative research on European trade unions and issues of immigration and discrimination. For example, Penninx and Roosblad (2000) compared unions and immigration issues in seven countries: Austria, France, Germany, the Netherlands, Sweden, Switzerland and the UK. The European Trade Union Confederation (ETUC) in 2003 published a survey of all the (then) 15 EU member states (except Greece), plus Norway, the Czech Republic and Poland, on their policies in relation to migrant and ethnic minority workers (ETUC 2003). Between 2003–2005, the EU-funded RITU project on the role of trade unions in combating discrimination and xenophobia interviewed over 400 trade union officials, activists and members in five countries: Belgium, Bulgaria, France, Italy and the UK (ETUI-REHS 2007). There has been research on trade unions and migrant worker issues comparing Denmark with the UK (Wrench 2004) and Italy with the Netherlands (Marino and Roosblad 2008). There have been two studies on trade union responses to migration issues specifically in the context of the free movement of labour in an enlarged EU: Krings (2009) comparing unions in Austria, Germany, Ireland and the UK, and Maerdi (2012) comparing unions in Austria, Germany, Poland and the UK. In 2011-2012 the EU-funded TEAM project on trade unions and migrant workers covered six countries: Austria, Belgium, Italy, Poland, Spain and the UK. A mixture of methods included 73 interviews with trade union and employers' representatives, between 8-10 in each country.¹

Cross-national comparative research is expensive in resources, which is no doubt one reason why most of the above projects covered between two and eight countries. (The exception was the 2003 survey by the ETUC, which covered 17 countries by sending a questionnaire to all its affiliated national confederations.) In general, European Commission bodies and EU Agencies are better placed to carry out large scale comparative research in the EU, having both the resources and the mandate to initiate research covering all member states simultaneously. One of the latest examples is the 2010 research funded by the Directorate-General for Employment, Social Affairs and Inclusion which examined trade union initiatives to fight discrimination and promote equality in 34 European countries, covering all 28 EU member states, (including Croatia which joined in 2013) plus the EFTA/EEA states (Iceland, Lichtenstein, Norway), two candidate countries (Turkey, the former Yugoslav Republic of Macedonia) and one potential candidate country (Serbia) (European Commission 2010).

This paper focuses specifically on the work in this field of EU agencies. Agencies are specialized bodies set up to assist member states to cope with new tasks of a legal, technical or scientific nature, whose working remit covers all EU member states.² The paper begins by examining a project organised by the European Foundation for the Improvement of Living and Working Conditions (EUROFOUND), in the mid-1990s, and then continues by looking at the recent work of the EU Agency for Fundamental Rights (FRA), focusing in particular on changes in the general level of awareness of the issue of racial discrimination in employment, and on the general receptiveness to the area in terms of trade union priorities.

¹ At the time of writing the final report of this project has not been published: see <http://www.ub.edu/TEAM/>

² See the official website of the European Union: <http://europa.eu/agencies/>

EUROFOUND research

In the early 1990s, in many countries of the EU, the issue of racism and ethnic discrimination in the labour market and at the workplace was nowhere on the agendas of trade unions or employers. A number of initiatives to change this came at a European level. In 1995 the European Social Partners signed a Joint Declaration on the Prevention of Racial Discrimination and Xenophobia and Promotion of Equal Treatment at the Workplace, in Florence. In 1996 a report was published which for the first time brought together the evidence on the problem from all the (then 15)³ EU member states⁴, drawing attention to practices of discrimination that were significantly undermining employment opportunities for immigrants and minorities in Europe (EUROFOUND 1996). The research was carried out by the European Foundation for the Improvement of Living and Working Conditions in Dublin, drawing on evidence commissioned from researchers in each member state.

The report highlighted the variety in trade union activities between countries. At that time, trade unions in the UK were able to report the widest range of practices against racism and discrimination. In Germany, unions had worked hard to ensure equal rights for foreign workers and the IG Metall union had granted immigrant workers the right to organise autonomously within the union. However, the problem of racism was generally categorised as something which happened outside the factory gates, probably carried out by Neo-Nazis and right-wing extremists (an assumption also common among trade unions in Austria and France). In France, whilst unions had also battled hard for the rights of immigrant workers, the unions generally felt that any special policies for immigrant workers would undermine class unity.

Like the unions in France and Germany, the Italian, Spanish and Portuguese unions had worked for the equal rights of immigrants, and actively supported external movements and demonstrations against racism and racist violence, but were far less ready to reflect critically on the situation of migrants at the workplace or within the union itself. In Sweden and the Netherlands, following the introduction by the main trade union confederations of policies and codes of practice against discrimination, the practical responses of trade unions were found to be minimal and 'lukewarm'. In Denmark there was very little evidence of union activity in measures to combat racism at the workplace, and in Finland, Ireland and Luxembourg there was very little reported evidence of any awareness by trade unions of a potential problem of racial discrimination at the workplace. In the case of Greece, researchers could find little to say about trade union policies on minority or immigrant issues because the trade unions had taken very little interest in either of these groups. And in Austria the highly nationalistic and protectionist policies of the trade unions was seen to be one of the reasons for the ease of exploitation of migrant workers by employers (EUROFOUND 1996: 98-131).

One of the most striking findings of the EUROFOUND project was the level of ignorance of the issue exhibited by employers and trade unionists. The launch of the report at a conference in Madrid in 1996, attended by policy makers and European social partners' representatives, elicited responses such as "Racism isn't a problem in our country because historically we have never been a colonial power" or "there is no problem of racial discrimination because we have traditionally been a country of emigration, and understand the problems of migrants" (Wrench 2000: 276). Appropriately, three of the most important recommendations of the 1996 report were (1) the need for an EU directive prohibiting racial discrimination in employment, (2) the need for anti-discrimination legislation at a national level in all EU member states, and (3) the need for more awareness-raising, information provision and research on the area.

³ In this paper 'EU15' refers to the 15 member states that formed the EU prior to the two enlargements in 2004 and 2007, and 'EU12' refers to the members states that joined afterwards.

⁴ In addition, Norway was included.

International initiatives

In the ensuing years, all these recommendations have taken form. Firstly, in 2000 the European Union adopted the Racial Equality Directive,⁵ which prohibits direct and indirect discrimination on grounds of racial or ethnic origin in employment (and other areas). Also adopted was the 'Employment Equality Directive'⁶ which prohibits discrimination in employment and occupation on the grounds of religion or belief, disability, age or sexual orientation. Secondly, all member states now have laws prohibiting racial/ethnic discrimination in employment (and other fields). For many countries this was a direct result of the Racial Equality Directive, and for some it was the first time in their history that anti-discrimination legislation covering racial/ethnic discrimination in employment had been introduced. Another result of the Directive has been the creation of specialised bodies promoting equal treatment in each member state, an important function of which is the provision of assistance to victims of discrimination. The Directive also set out that in judicial procedures the burden of proof should be shared between the claimant and the respondent (FRA 2001 1c: 9).

Thirdly, there have been a number of international initiatives designed to both raise awareness and stimulate research in the area. For example, the year 1997 was designated the "European Year against Racism", which acted as a catalyst for a range of awareness-raising activities and projects. In the early 2000s one major programme which stimulated anti-discrimination awareness and practice among trade unions was the EU-funded EQUAL Community Initiative which ran from 2000-2006 "to promote new means of combating all forms of discrimination and inequalities in the labour market" (Metis 2010: 9). A rule of the EQUAL programme was that funded projects must include 'social partner' organisations and NGOs, and a large number of EQUAL projects involved trade unions in trans-national networks with other trade unions and NGOs developing practices and exchanging knowledge about antidiscrimination measures. In terms of EU funding the EQUAL programme has been described as "by far the most important tool to implement the idea of antidiscrimination into overall labour market policies" (Liegl et al. 2004: 17)

Another international initiative which raised awareness about employment discrimination in the 1990s was the programme of discrimination testing or 'situation testing' carried out by the International Labour Office (ILO). In this method, researchers arranged for two or more equally matched testers, one belonging to a majority group and the others to minority ethnic groups, to 'apply' for the same jobs, and then record the degree to which the 'applicant' from the majority background is preferred to the others from minority groups. The 1996 EUROFOUND report noted that at that time such tests had been carried out in the UK and the Netherlands, and remarked that "although this method is one of the most important and effective means of demonstrating the existence of the problem, it has still not been widely applied in other EU countries" (EUROFOUND 1996: x). This changed during the 1990s when the ILO went on to sponsor the test in Belgium, Germany, the Netherlands and Spain (Zegers de Beijl 2000), and over the next decade in Italy, France and Sweden (Taran 2008). (Similar research was also carried out independently of the ILO, but guided by its methodology, in Denmark (Hjarnø and Jensen 1997), Switzerland (Fibbi et al. 2003), Greece (Drydakis and Vlassis 2010) and Norway (Midtbøen and Rogstad 2012)). All of the studies found significant levels of discrimination against 'applicants' of migrant or minority ethnic origin, as identified by factors such as name or skin colour. Overall net-discrimination rates of 35 per cent were found by the ILO to be common, meaning that in at least one out of three applications the minority candidates were discriminated against on the grounds of their ethnic origin. Another way of presenting the results is to state that the minority candidates usually had to make three to five times more attempts than majority candidates to obtain a positive response (Taran 2008). The method proved to be a particularly effective one in bringing to public attention the issue of ethnic discrimination, particularly when, as often happened, the results of the tests were taken up in stories in the national media.

⁵ Council Directive 2000/43/EC

⁶ Council Directive 2000/78/EC

All of these developments in international initiatives, law and research contributed to a broader awareness of employment discrimination, and helped to place it on the agenda in countries where it had been absent.

The work of the FRA

This paper will now concentrate on the outcome of one EU initiative of 1998 that combined the two desired activities of carrying out research and raising public awareness, namely the creation of the Vienna-based European Monitoring Centre on Racism and Xenophobia (EUMC). This Agency was given the primary objective of “providing the Community and its member states with objective, reliable and comparable data at a European level on the phenomena of racism and xenophobia”. Between 2000-2007 the EUMC published each year reports bringing together data from all the member states of the EU, documenting various aspects of racism and ethnic discrimination. In 2007 the Agency was strengthened through its metamorphosis into the EU Agency for Fundamental Rights (FRA) with a much broader mandate (including discrimination on grounds of sexual orientation, disability, age, and religion). In the context of its broader mandate, the Agency’s Annual Reports continue to present yearly overviews of developments regarding racism and discrimination in EU member states (FRA 2009a, 2010a, 2011a, 2012, 2013) and the latest FRA comparative report specifically on the subject of ethnic discrimination and exclusion in employment in all EU countries was published by the Agency in 2011 (FRA 2011b).

One of the main sources of national data and information for the Agency has been its network of National Focal Points (NFPs), one in each member state, which supply the FRA each year with socio-legal data on fundamental rights issues, including information on racism, xenophobia and related issues, under common headings provided by the Agency. Included among the data on employment discrimination submitted annually to the Agency by NFPs have been regular items of information about trade union activities, and these pointed to a continuing unwillingness on the part of many trade unions to acknowledge and address issues of racism and discrimination, long after the date of adoption of the Racial Equality Directive (Wrench 2007: 490-491).⁷ Whilst such examples and cases provided over several years by the NFPs indicated relative inaction by many trade unions in this field, the picture they provide cannot be seen as rooted in anything with the validity of a survey. However, the FRA has done more than collecting existing secondary data on migrants, minorities and employment discrimination. It has also initiated its own EU-wide comparative research projects, and one of these has been able to provide a more rigorous insight into trade union attitudes and practices, ten years after the Racial Equality Directive was adopted.

Research on the impact of the Racial Equality Directive

A research project specifically on the responses of trade unions and employers to the Racial Equality Directive was begun in 2009. The aim was to gather primary qualitative data on the awareness of member state social partners on the Racial Equality Directive and corresponding national legislation, gain their opinions on its value and relevance, and identify anti-discrimination practices that might have been encouraged by the presence of the Directive (FRA 2010c). A total of 344 respondents from all 27 EU countries were interviewed, roughly evenly divided between trade union and employer representatives, plus a small number of respondents from equality bodies and NGOs (FRA 2010c: 17). The social partner respondents came from the major trade union and employer confederations in each country, as well as from some individual trade unions and companies. In this paper, this project will be referred to in abbreviated form as ‘The RED Impact Study’.

⁷ Many of these examples came from NFP national reports to the FRA, but were not ultimately published in the reports of the FRA.

Positive reactions

In general, trade union respondents in the RED Impact Study were more positive about the Directive than employers. Many trade unionists were quite convinced that the Directive had helped to spread a more general awareness of workers' rights among the general public. The interviewee from the Swedish local government union Kommunal stated "*The EU Racial Equality Directive and the subsequent Swedish law have made the problem of racism and discrimination more visible*" and this view was echoed by Handel, the Swedish commercial employees union: "*The public debate on ethnic discrimination in recent years has increased awareness among the members*". In Belgium the general workers federation (FGTB) noted that collective bargaining on discrimination had become noticeably easier with the employers after the Directive had been transposed into national law, and another respondent from the same confederation stated "*The directives have helped to implement diversity policies and provide strong arguments to legitimate them*".

A respondent from the French workers confederation CGT was convinced that "*without the European legislation the strength of denial has always been so strong that we would still be having to battle in order to start the fight against discrimination*". The UK Communication Workers Union respondent felt that the harassment provisions of the Directive were particularly significant, and that although it was still possible to find "shocking examples" where 'race' had been the primary motivation, the situation was improving as employers became more aware of their legal duties. In Germany the respondent from the chemical and mine workers union IG BCE noted "*Society has become more sensitive. We have been able to see many areas affected, especially the employers who were against the laws*". In Sweden the Construction Industry Federation emphasised the importance of the fact that the union could now take up cases of discrimination whereas before it was only the Discrimination Ombudsman who could do that. The Danish Confederation of Professional Associations (AC) saw the shift in the burden of proof to be a very important change, along with the fact that the Danish Institute for Human Rights had now been given the mandate to initiate cases: "*It has set things straight*". (FRA 2010c: 49-50).

Even if some respondents felt that the Directive had changed little in their particular context, they could still feel that it was worth having. The UNITE trade union interviewee in the UK stated that "*In terms of race equality we already had legislation in place, so the Racial Equality Directive did not make much difference... But it is always helpful to have legislation that encourages us and other bodies to negotiate with employers.*" In Slovenia, although the Free Trade Union (SSS) respondent felt that the new laws had not stimulated employers to adopt equality and anti-discrimination policies, the legislation nevertheless "*helps the trade unions to become more active on anti-discrimination issues, in particular with the Roma and the German-speaking minority.*" (FRA 2010c: 51-52).

Whilst the research showed that in general, trade unions were more positive about the Racial Equality Directive than employers, equally positive reactions could also be found on the part of some employers. Some saw the Directive as making a strong contribution to a more open society, and stimulating new training, codes of conduct or complaints procedures. A Finnish local authority representative stated that the new law was important not only because it showed that these issues are serious, but also it gave a tool to develop recruitment: "*The new law recognises that ethnic discrimination should be taken seriously into account*". An Austrian company representative saw the new law as an important weapon for HR managers to develop non-discriminatory practices and tackle harassment: "*Behaviour regarded as a peccadillo before, is now an offence to be prosecuted*". The respondent for a large Dutch employers' organisation remarked that "*the employers who didn't know and didn't want to know are probably now more aware*", and a Swedish employers' confederation respondent stated "*the EU Racial Equality Directive and Swedish law have helped raise public debate and awareness on these issues.*" The interviewee from a UK government department saw the law as helpful in focusing employer attention on the need to be actively engaged in challenging discrimination, and no longer ignoring the problem. And several employers saw the law as having a positive "symbolic value" even if no immediate tangible benefits could be seen (FRA 2010c: 32-33).

Both trade unions and employers could point to equality initiatives which they had introduced in recent years. Among those introduced by trade unions were measures to promote the participation of minorities within the union, measures to monitor differences in wages and working conditions, and the establishment of support mechanisms in trade unions for victims of racial or ethnic discrimination. Employers had introduced new measures to promote equality such as codes of conduct, training programmes, diversity audits, changes in recruitment policies, and initiatives to integrate foreign workers. (FRA 2011c: 10)

Negative reactions: the law as inappropriate

However, among trade union respondents there could also be found voices expressing negative views towards the Directive. Among those respondents from the EU15 this opposition was not rooted in a denial of the existence of the problem of racism and ethnic discrimination. Rather it was because the Directive and the law in general were not seen as the right mechanisms for fighting discrimination.

For example, in countries with a consensus industrial relations system and a tradition of collective bargaining between workers organisations and employers, there were concerns that a policy of pursuing legal remedies on an individual level could lead to a weakening of unions' positions. Following the 1995 Florence Joint Declaration, many Works Councils in Germany had used the legal framework of the Works Constitution Act to secure company-level anti-racist agreements. According to one of the DGB interviewees, these company agreements went much further than what was set down by the anti-discrimination law: *"They not only address the question of what happened when discrimination occurs, but they also include preventative measures to protect people from discrimination, and the contents of management training."*

Similarly in Denmark, the unions faced an ideological dilemma, identified by the 3F trade union interviewee as a conflict between collective rights, represented in the Danish model, and individual rights, seen as represented in the EU model. *"There is a fundamental fear in the Danish model that EU laws will dictate and limit the Danish model, which is based on dialogue and consensus between the different parts of the labour market."* Although this respondent was in agreement with the stance of 3F that human rights must overrule all agreements, he found it to be something of a challenge to promote that view amongst the membership. (FRA 2010c: 50).

There was also disagreement on the use of the law from a country with an entirely different industrial relations tradition: an interviewee from the CFDT (French Democratic Confederation of Workers) insisted that the real way that racism is challenged is through concrete actions on the ground: *"It's not the law that brings about change"*. And an Austrian interviewee from the GMTN industrial trade union saw legislation as *'not a very efficient means of handling the issue of and combating discrimination.'* and used the example of lack of progress in women's fight for equality to illustrate the point (FRA, 2010c: 52-53).

There were also employer respondents in the EU15 who were highly critical of the Directive and expressed strong resistance to any legally binding instruments that might interfere with the freedom of enterprise. Arguments were heard that the Directive was an unnecessary burden which imposed additional costs and bureaucracy on businesses, and that the whole principle of trying to regulate attitudes and behaviour with the law was flawed (FRA, 2010c: 35). Criticism of the law was particularly noticeable amongst employers in Denmark and Germany. Representatives of four different Danish employers' organisations made statements to the effect that the laws were naïve, irrelevant, and had changed nothing (FRA, 2010c: 35-36). Similarly the respondents from three German employers' organisations and two major companies came out strongly against the legislation as wrong, misguided, unnecessary, with one describing it as *'a law for idiots'* and another stating *'I would get rid of it straightaway'* (FRA 2010c: 36-37, 62). Strongly negative employers could also be found in

Finland, the Netherlands, Belgium, Hungary and Latvia, expressing various arguments against the legislation and fearing that it had the potential for doing more harm than good (FRA 2010c: 35-37).

Denial of the problem

Although among the EU15 respondents there were both trade unionists and employers who expressed a lack of sympathy with the Racial Equality Directive, their opposition was not rooted in a view that discrimination did not exist; rather they believed that the law was not the best way to tackle the problem. This is a qualitatively different opposition to that found among respondents in the 12 newer member states that had joined the EU in 2004 and 2007, where both trade unionists and employers could be found who believed that the legislation was completely irrelevant to their own organisation or national context. Some viewed anti-discrimination legislation as part of a Western package of 'exotic' and irrelevant issues that were forced upon them from outside in the process of EU accession negotiations.

In the newer member states there could still be found examples of the 'no problem here' stance, and a denial that racism or ethnic discrimination was an issue. For example, in the Czech Republic, an interviewee from the blue collar metal-working trade union OS KOVO felt that "*the racial discrimination issue is marginal*"; the Estonian Trade Union Confederation (EAKL) respondent asserted "*I think that racial discrimination in the workplace is not present in Estonia*", and the Latvian Energija trade union respondent stated that "*The EU non-discrimination law is seen as something forced on the country from the outside, and non-essential*". The interviewee from the Czech building workers union OS STAVBA felt that racial discrimination was "*kept on about in the media more than is needed*" (FRA 2010c: 53-55).

The 'no problem here' stance was even more pronounced among employers. For example, one respondent from a Romanian employers' organisation stated "*All in all, I do not consider that there are racial problems in Romania*," and an interviewee from the Cyprus Chamber of Commerce and Industry asserted: "*Today, all foreigners enjoy equal rights with Cypriots and there is equal treatment by employers*." A representative from a Latvian employers' organisation stated "*Maybe there have been problems in Germany historically – we know that with the Jews. But in Latvia we have never had anything like that. Ethnic discrimination is not a problem, it has never been here. Never!*"

In several countries the issue of ethnic discrimination was considered to be a rare occurrence and too low a priority for the employers to be expected to respond to. An interviewee from a Slovenian Chamber of Commerce considered that if discrimination existed in employment it was just because of the "*ignorance or intolerance of particular individuals*", and was not a widespread problem. The respondent from a Hungarian employers confederation emphasised "*The opinion of Hungarian employers is fixed. For them it is not a priority issue*." A Bulgarian employers' organisation representative was adamant that "*Working people from the minorities... do not feel oppressed or discriminated against*". In the Czech Republic an interviewee working for a Regional Authority added another dimension to this, believing that the victims of discrimination often did not see that they were being discriminated against, because they simply considered the behaviour of the majority society towards them as normal (FRA 2010c, 38-39).

Poor awareness of the law

Regardless of what they felt themselves about the Directive, many respondents from both trade unions and employers felt that the laws were ineffective because of a widespread lack of public awareness about the Directive and the relevant national laws. This was particularly so in countries from central and eastern Europe, and southern Europe. For example, the respondent from the EAKL union confederation in Estonia stated "*I am afraid that awareness has not increased enough – it is a longer process*," and a compatriot from the union confederation TALO stated bluntly "*The new legislation has*

not produced any changes, especially in connection with race'. The interviewee from the Bulgarian Food Workers Federation felt that there was no visible change since the implementation of the Directive: *'Where discrimination exists, it is still there. (...) There is European harmonisation on paper, but this is the trouble in Bulgaria – laws are not respected'* (FRA, 2010c: 53). In Hungary, the interviewee from an employers' organisation considered *'People are absolutely not aware of the discrimination laws.'* The respondent from a Romanian employment agency commented that the level of public awareness was very low, especially among members of minority or migrant groups. *'On the whole people do not benefit from the Racial Equality Directive regulations.'* The overall situation in Romania was that *'the implementation of anti-discrimination legislation had not led to any significant improvement of national labour market conditions, given that not much publicity was carried out to raise public awareness around it'* (FRA, 2010c: 37-38).

Several employers from southern Europe felt that awareness of the Directive was generally low. An Italian respondent from an employers' association in the Padua region commented *'There is not yet much awareness of this law'* and an employer from a marble-producing company confirmed that its non-Italian workers showed no awareness of protection against ethnic origin discrimination, or the Directive in particular. Another interviewee from the Italian hotel industry related the lack of awareness of their rights among the region's hotel and tourism workers to the seasonal nature of employment. A respondent from Athens Airport considered awareness of the Directive in Greece to be minimal.

Ranking the respondents

Once the interviews had been completed the researchers who had carried out the interviews in each country were asked to gauge the level of awareness of the Directive by each respondent, and their organisation's response to the legislation. The evaluations were made according to a number of questions the researchers asked themselves, namely:

- Are they (employers or unions) aware of the Racial Equality Directive?
- Are they aware of national legislation against racial/ethnic discrimination resulting from transposition of the Directive?
- Are they aware of their national equality body, if one exists?
- Have they adapted their policies and practices to include anti-discrimination measures as a result of the directive?
- Are they strongly committed to combating racial discrimination?

The respondents were scored on a scale ranging from 'limited awareness and response' to 'extensive awareness and response'. (FRA 2010c: 25).

Of course this was not a particularly 'scientific' exercise. The evaluations were subjective assessments on the part of the interviewers, and the respondents were to a degree 'self-selected' in that they agreed to be interviewed in the first place. Nevertheless it is significant that the hierarchy of ratings divided exactly along the lines of the 'old' EU15 member states and the EU12 who joined after 2004. In other words, the 'top' 15 in the assessment scale of awareness and response coincided exactly with the EU15.

Assessment of awareness and responses to the Racial Equality Directive on a three-point scale (1 = low awareness; 3 = high awareness)

Country	Score
Sweden	3.00
Ireland	2.85
Finland	2.75
UK	2.60
Germany	2.55
Belgium	2.50
Denmark	2.50
Netherlands	2.35
Austria	2.30
France	2.25
Portugal	2.25
Spain	2.25
Italy	2.10
Greece	2.00
Luxembourg	1.90
Cyprus	1.85
Slovenia	1.80
Slovakia	1.75
Malta	1.70
Hungary	1.65
Lithuania	1.65
Poland	1.65
Romania	1.65
Bulgaria	1.60
Czech Republic	1.60
Latvia	1.50
Estonia	1.40

[This table did not appear in the FRA report. The figures to compile it have been taken from Figure 2, FRA 2010c, p. 26.]

The EU-MIDIS survey

Around the same time that the RED Impact Study was being carried out, the FRA was also implementing a major survey of migrants and minorities across all 27 EU countries – the EU-MIDIS survey. The findings of these two surveys can in places be interlinked.

The EU-MIDIS (European Union Minorities and Discrimination Survey) was the first of its kind to systematically survey minority groups across all EU member states using the same standardised questionnaire, covering 150 questions and 300 variables. It asked a range of questions on experiences of discrimination in various areas of social life, including employment, and also asked about the respondents' rights awareness. It covered two or three minority groups per country, selected on the basis of being the largest ethnic minority or immigrant groups in a country, and being at risk of discrimination and potentially vulnerable to racially, ethnically or religiously motivated criminal incidents. The number of interviewees in a single country ranged from 500 to 1500. In total 23,500 minority respondents were interviewed. (FRA 2009b).

Awareness of the laws

The first link that can be made between the two surveys is on the question of public awareness of the Racial Equality Directive or resulting national laws. In the RED Impact Study, respondents from several countries offered the opinion that there was a noticeable lack of awareness on the part of their workforce or amongst migrants and minorities of any anti-discrimination laws. The EU-MIDIS survey asked respondents about their awareness of any legislation in their country forbidding ethnic discrimination in employment. Only 39 per cent of minorities interviewed were aware that anti-discrimination legislation existed. Further, of those who reported experiencing acts of discrimination, the survey showed that the overwhelming majority did not report them at the places where they occurred, or to any other organisation.

Respondents were asked if they knew of any organisation in their member state that could offer support or advice to people who have been discriminated against – for whatever reason. The results indicate that the majority of respondents in all groups – ranging from Roma in Greece and Africans in Malta, through to Somalis in Sweden and Russians in Finland – did not know of any such organisation. Between 59 and 94 per cent of respondents (depending on the group and country surveyed) were unaware of any organisation offering support and advice to people who have suffered discrimination. When asked about their knowledge of equality bodies, as established under the Racial Equality Directive, 80 per cent of all respondents could not think of the name of a single such organisation that could offer support to victims of discrimination (FRA 2010b: 3-5). The findings of the EU-MIDIS study therefore would seem to confirm the views of those in the RED Impact Study who felt that people were generally unaware of legislation designed to protect them from ethnic discrimination.

Discrimination

On the other hand, one area where the opinions of employers and trade unionists were not confirmed by the EU-MIDIS survey was in the case of those who asserted that racial discrimination was not a problem in their country and that migrants and minorities did not feel discriminated against. The findings of the EU-MIDIS survey highlighted ‘beyond any doubt’ that discrimination on the basis of ethnicity was experienced as a major problem for minorities in all EU countries. This was particularly true at work and when looking for work, where perceptions of discriminatory treatment were the strongest (FRA 2009b: 6). Of all the minority groups surveyed, reported rates of discrimination were consistently highest among the Roma, and those with a Sub-Saharan background, followed by those with a North African background. For example, more than one fifth (22 per cent) of the Sub-Saharan African respondents interviewed by EU-MIDIS believed that they had been discriminated against when looking for work, and 20 per cent of North African job-seekers indicated the same. For those people who were in work, respondents from these groups also reported that they had been treated unequally and unfairly because of their ethnicity or immigrant background – 17 per cent of Sub-Saharan Africans, and 16 per cent of North Africans, as well as 13 per cent of CEE migrant workers and 10 per cent of those with a Turkish background (FRA 2009b: 42-43).

The Roma

The case of the Roma minority provided the most striking example of contradiction between the material from the interviews in the RED Impact Study and the questionnaire responses of migrants and minorities in the EU-MIDIS survey. In many of the new member states the largest minority group is the Roma. Yet in the RED Impact Study, hardly any interviewees mentioned Roma as a group relevant to the coverage of anti-discrimination legislation. One notable exception was the Hungarian Railway Union VDSZSZ which had recently won a discrimination case defending 12 Roma track workers who were being made redundant (FRA, 2010c: 56). However, other interviewees consistently failed to see

the poor labour market position of Roma as relevant to anti-discrimination legislation. Even though trade union respondents in the new member states might be aware of the inequality and exclusion experienced by members of the Roma minorities in their own countries, they still did not regard this as having anything to do with discrimination. In Bulgaria, a Podkrepa interviewee argued: *‘There are some practices in Bulgaria that are not discrimination, but as a result there are Roma people in an unfavourable position.’* He considered that this was the result of the Roma's own desire to remain a 'closed group' who *‘wish to preserve their way of living as they understand it’*. Another Bulgarian from the Food Workers Federation stated that the union didn't receive any complaints of discrimination based on ethnicity, race or religion, *‘with the exception of the preference for Bulgarian workers at the expense of Roma workers’*. But he saw this as understandable – *‘the work habits and the qualification are better with the Bulgarians’*. And in Lithuania the Trade Union Confederation (LPSK) respondent argued: *‘We don't see a lot of discrimination here in Lithuania at all,’* before adding *‘As regards Gypsies, our employers do not like to have workers who are Gypsies’* (FRA, 2010c: 54-55). Similarly, employer respondents saw the poor labour market position of Roma to be a result of their personal failings, rather than of discrimination. For example, an employer respondent from Lithuania held the view that *‘The problem in Lithuania is about the ‘Roma species’ as we call them here. They simply don't want to work (...) they don't want to learn, they don't want to respect the country's laws’* (FRA, 2010c: 40).

In the EU-MIDIS survey, respondents with a Roma background were interviewed in seven Member States: Bulgaria, the Czech Republic, Greece, Hungary, Poland, Romania and Slovakia. The survey identified the Roma minority as experiencing more discrimination than any other minority group. For example, on average, every second Roma respondent claimed to have been discriminated against at least once in the previous 12 months, and those discriminated against reported an average of 11 incidents of discrimination for that period. Of those who indicated that they did not have a job in the last five years, Roma respondents were the most likely to say that they were looking for a job but did not find one (30 per cent) (FRA 2009b: 39). On average, 28 per cent of Roma job seekers indicated that they were discriminated against when seeking a job at least once in the 12 months preceding the survey. Of those Roma who had a job, 19 per cent said they had been treated unfairly because of their ethnic background in the last 12 months at work (FRA 2009b: 42).

Discussion

This paper has examined the ways in which the EU-wide research and data collection of EU agencies has been able to cast light on changes in the levels of awareness of trade unions and employers on the problem of ethnic discrimination, and in their responses to anti-discrimination legislation. Agencies of the European Union have a special role amongst research bodies in Europe, in that they have the official mandate to carry out research in all EU member states, and have the resources to cover all these countries simultaneously.

In particular the paper has focused on the work of two EU agencies, and two research projects which were published 14 years apart. The EUROFOUND study, published four years before the adoption of the Racial Equality Directive, described a state of relatively low awareness of the problem of racism and discrimination in employment, and a complacent ‘no problem here’ attitude amongst representatives of trade unions and employers in many countries of the EU, (which at that time consisted of the EU15). The findings of the FRA's RED Impact Study, published at the end of the first decade of operation of the Directive, indicate that the “No problem here” stance is no longer dominant amongst the EU15 social partners, in contrast to 14 years earlier. Activities at a European level in the areas of law, research and awareness raising have undoubtedly played a part in this change.

The RED Impact Study showed, not surprisingly, that trade union respondents tended to be more positive than employers about the Directive, and many were quite convinced that it had helped to spread a more general awareness of workers' rights among the general public. Some employers were

also positive about the awareness-raising role of the Directive, and both trade unions and employers could point to equality measures which they had introduced in recent years. Some respondents also felt that the Directive had helped to confer legitimacy on existing equality initiatives.

In the EU15, trade unionists and employers could be found who were critical of the Racial Equality Directive. However, their opposition was not rooted in a denial of the existence of the problem of racism and ethnic discrimination. Rather it was because they believed that the Directive and the law in general were not seen as the right mechanisms for fighting discrimination.

However, indications of the ‘no problem here’ stance could still be found amongst respondents in the 12 newer member states that had joined the EU in 2004 and 2007. Here, respondents asserted that the legislation was completely irrelevant to their own organisation or national context. In general, the trade unionists and employers in the member states who joined the EU after 2004 were significantly less aware of, or sympathetic to, the Racial Equality Directive and its rationale than were their counterparts to the west.

There may be several reasons for this lower state of awareness of employment discrimination as a potential problem. Unlike in the EU15, most of these member states did not have an established anti-discrimination regime in their regulatory framework before the Racial Equality Directive, which may be both a reflection of a lack of recognition of discrimination as a problem, and a reason for its continuation. Also unlike their peers in the EU15, the social partner organisations in the newer member states were not involved during the 1990s in awareness-enhancing activities such as the 1995 Florence Declaration, or in the consultations and discussions with EU institutions in the build-up to the Directive.

Some employer respondents recognised this, and acknowledged that they had some catching up to do. A representative from a Cyprus Chamber of Commerce noted that “The EU15 are much more active and developed in this field”, and a representative of a Bulgarian employers’ organisation stated that “*In Bulgaria we do not have traditions in the application of such laws. However, I suppose that with time things will be regulated and in Bulgaria legislation will be applied.*” (FRA 2010c: 34). In its 2011 overview of the application of the Racial Equality Directive and the challenges to the realisation of its goals, the FRA notes:

The prevalence, among the social partners from Member States joining the EU more recently, of the view that discrimination was not a problem may go some way to explaining why many of the EU-12 did not have a detailed non-discrimination regime before the Racial Equality Directive. Put otherwise, where there is a lack of awareness or recognition that discrimination is a problem, a society may be less likely to generate a demand for regulation in this area (FRA 2011c: 20).

Furthermore, the EU12 countries have not had the same history of post-war labour immigration that had been experienced by many countries in the EU15, and for them, issues around immigration, including discrimination, are seen as relatively ‘new’ concerns. Nevertheless, there does seem to have been a discrimination ‘blind spot’ in some of the new member states, which is not explainable simply by the historical absence of labour migrants. Many of these countries are home to significant populations of Roma indigenous minorities. In the FRA’s EU-MIDIS survey, the Roma came out as experiencing more discrimination than any other migrant or minority group. Yet, in the interviews with trade unionists and employers in the RED Impact Study, hardly any of them saw employment discrimination against Roma as an issue to be addressed, or saw Roma as a group relevant to the Racial Equality Directive.

This paper has focused primarily on what might be seen as the ‘first stage’ in trade union responses to migrant workers and ethnic discrimination, comparing the states of awareness of the legislation in different countries, and the degree of recognition of the potential problem of racism and ethnic discrimination by trade unions and employers. Of course, even if trade unions are fully aware of the legislation and fully in sympathy with its aims, there are still a dozen reasons why anti-discrimination action might not follow on in practice. In the RED Impact Study, trade union respondents mentioned

some of the difficulties faced by unions in this field; for example, the low density of union membership, the problem of migrants working predominantly in the informal economy or non-unionised workplaces, a rightward shift in the electorate along with anti-immigrant populism, the victimisation of trade union activists by employers in a context of the economic crisis, restructuring and redundancies, the covert and insidious nature of racial discrimination, and the reluctance of workers to make complaints of discrimination through fear of losing their jobs. This is the context in which many trade unionists in many countries find themselves and which has implications for the priority they give in practice to tackling ethnic discrimination. Nevertheless, this comparative analysis, focusing more narrowly on levels of awareness and receptiveness to the problem in different EU countries and their changes over time, covers an important part of the picture. An awareness of anti-discrimination legislation, and a recognition of the existence of the problem of racism and ethnic discrimination in employment by trade unions, are necessary prerequisites for the adoption of anti-discrimination measures in practice.

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