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Technical Assistance for Strengthening Fundamental Rights Sector Coordination

COMPARATIVE STUDY ON ANTI-DISCRIMINATION (FRANCE-IRELAND-CROATIA)



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**COMPARATIVE STUDY
ON ANTI-DISCRIMINATION
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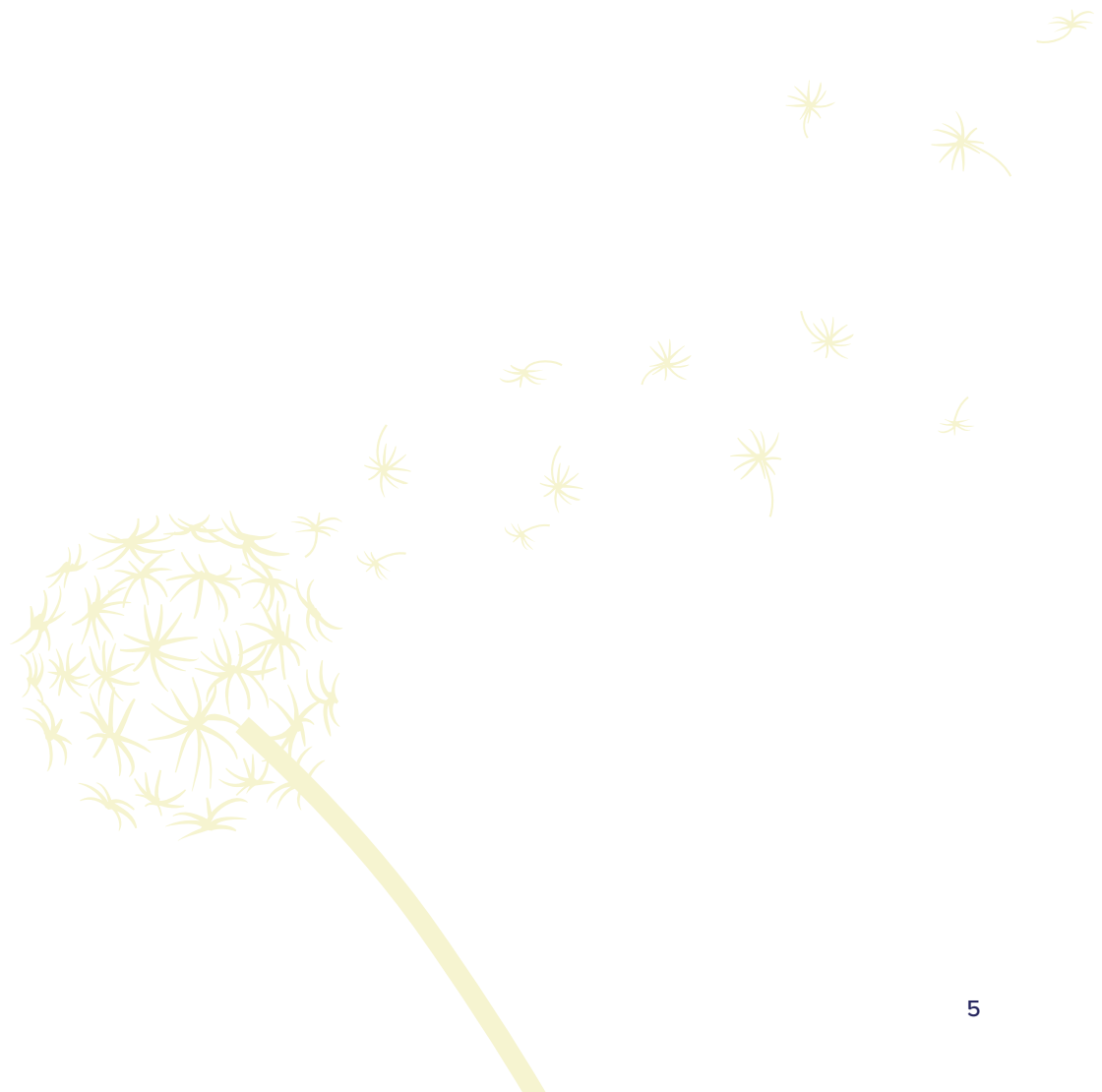


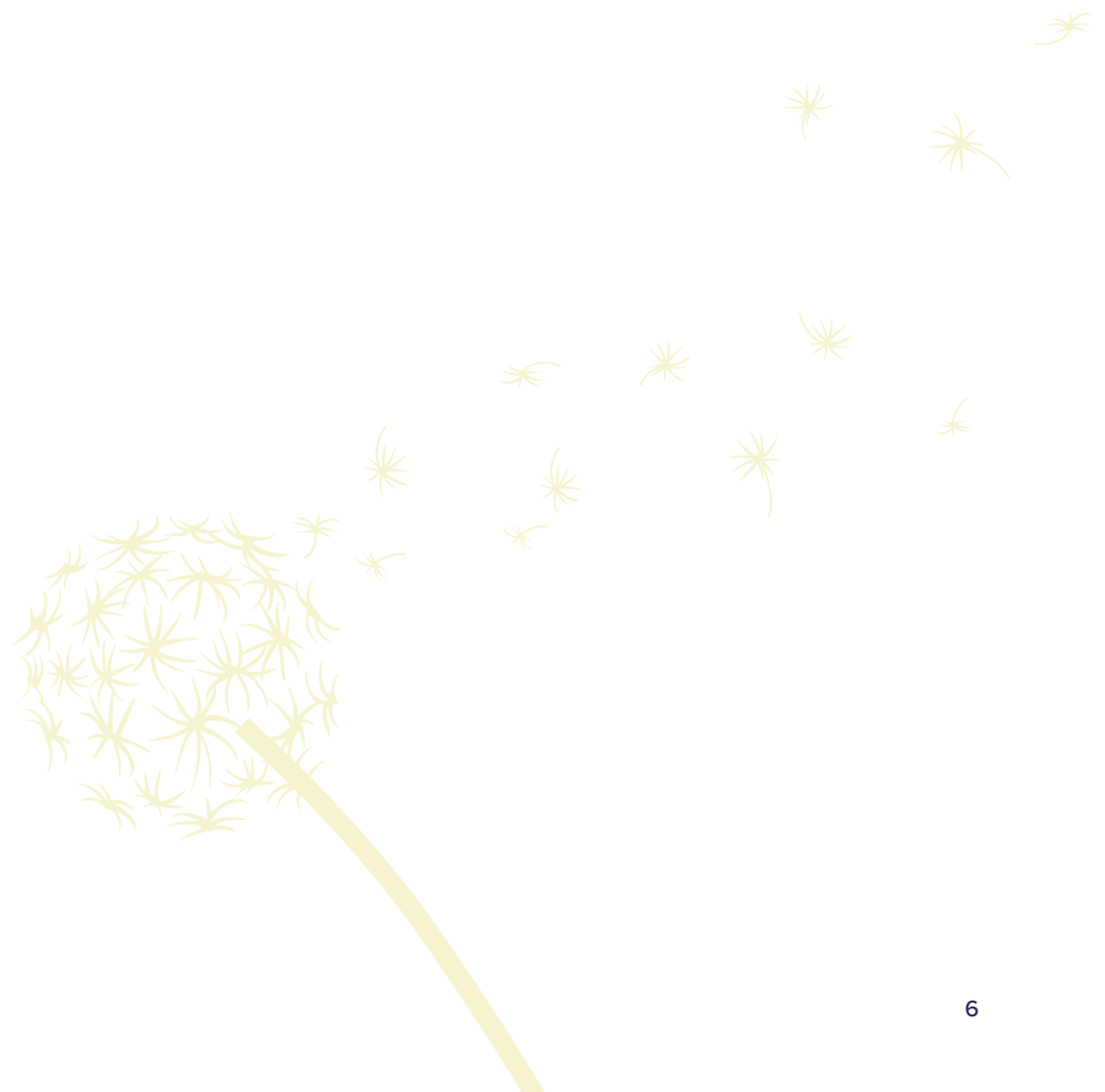
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LIST OF ABBREVIATIONS

CJEU	Court of Justice of the European Union
ECHR	European Convention on Human Rights
EU	European Union
ILO	International Labour Organisation





Introduction



This study is prepared as a comparative study of three Member States (France, Ireland and Croatia) of the European Union (EU) in the area of 'Anti-Discrimination' under the 'Technical Assistance for Strengthening Fundamental Rights Sector Coordination Project'. To this end, firstly, the study briefly examines the EU acquis in relation to anti-discrimination. Secondly, the reason behind the selection of the above three Member States for comparison is given. Thirdly, legislation and practices of these three States are discussed in relation to anti-discrimination. Finally, the legislations and practices of the Member States are compared and good practices are identified.

1. Anti-Discrimination in the European Union Acquis



The importance of anti-discrimination in the EU acquis increased especially after the Treaty of Amsterdam (1999). Accordingly, the EU was given competence to take appropriate measures to combat discrimination.¹ The Treaty of Lisbon (2009) maintained this *competence* related to anti-discrimination², while addressing the issue in terms of the following: First, anti-discrimination becomes a part of the EU's *values*: 'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, [...]. These values are common to the Member States in a society in which pluralism, *non-discrimination*, tolerance, justice, solidarity and equality between women and men prevail'.³ Secondly, anti-discrimination becomes a part of the EU's *fundamental rights*: Any discrimination based on the grounds laid down in Article 21 of the Charter of Fundamental Rights of the EU is prohibited.⁴ Third, anti-discrimination (on certain grounds) becomes part of the EU's *objectives*: The EU, *inter alia*, 'combats [...] discrimination'⁵ and aims to combat discrimination based on the grounds laid down in Article 10 of the Treaty on the Functioning of the European Union.⁶ In short, non-discrimination is a part of (i) the EU's values and (ii) the EU's fundamental rights, and anti-discrimination (on certain grounds) is (iii) a part of the EU's objectives and (iv) the EU may take appropriate measures in this regard.

Against this background, the EU has specifically regulated anti-discrimination on certain grounds, especially through EU acts. These regulations can be broadly divided into two: those that concern equality between men and women (only the ground of sex) and those that concern other certain grounds. Examples for the first category are Directive on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (Directive 2006/54/EC – Employment Directive)⁷ and Directive on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity (Directive 2010/41/EU)⁸. The Racial and Ethnic Origin Directive (Directive 2000/43/EC)⁹ and the Employment Framework Directive (Directive 2000/78/EC)¹⁰ can be given as examples for the second category. This study focuses on the second category.

1 Article 13 of the Treaty establishing the European Community amended by the Treaty of Amsterdam.

2 Article 19 of the Treaty on the Functioning of the European Union ("TFEU").

3 Article 2 of the Treaty on European Union ("TEU") amended by the Treaty of Lisbon.

4 Article 21(1) of the Charter of Fundamental Rights of the European Union ("Charter").

5 Article 3 of the TEU amended by the Treaty of Lisbon.

6 Article 10 of the TFEU.

7 Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) [2006] OJ L 204/23.

8 Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC [2010] OJ L 180/1.

9 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] OJ L 180/22.

10 Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L 303/16.

The Race and Ethnic Origin Directive aims to lay down a framework for combating discrimination on the grounds of racial or ethnic origin.¹¹ Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.¹² In general terms, if a dispute falls within the scope of application of this Directive¹³: (a) if there is *direct* discrimination (if one person is treated less favourably than another is treated in a comparable situation) on the listed grounds, then the Directive is violated; (b) if there is *indirect* discrimination (if persons in certain conditions are put at a particular disadvantage) and if this practice cannot be proportionately justified by a legitimate aim, then the Directive is violated¹⁴. The Directive also specifies cases where occupational requirements shall not be considered as discrimination.¹⁵ Moreover, if a person can establish facts from which it may be presumed that there has been discrimination, it shall be for the respondent to prove that there has been no breach.¹⁶ Finally, in accordance with the Directive, as a reflection of the institutionalisation of human rights, Member States shall designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin.¹⁷

Directive 2000/78/EC aims to lay down a general framework for combating discrimination as regards employment and occupation.¹⁸ Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.¹⁹ In general terms, if a dispute falls within the scope of application of this Directive²⁰: (a) if there is *direct* discrimination (if one person is treated less favourably than another is treated in a comparable situation) on the listed grounds, then the Directive is violated; (b) if there is *indirect* discrimination (if persons in certain conditions are put at a particular disadvantage) and if this practice cannot be proportionately justified by a legitimate aim, then the Directive is violated²¹. The Directive also specifies situations in which differences of treatment based on age and occupational requirements will not constitute discrimination²² and also provides a rule regarding the provision of reasonable support for persons with disabilities.²³ Finally, if a person can establish facts from which it may be presumed that there has been discrimination, it shall be for the respondent to prove that there has been no breach.²⁴

2. Member States Selected for Comparison: France, Ireland and Croatia

Three EU Member States, namely France, Ireland and Croatia, were selected for this comparative analysis study.

France²⁵ is one of the founding countries of the EU and one of the states implementing the continental European legal system. France is a unitary state in the semi-presidential system – republican government – and the principles of freedom, equality and solidarity are emphasised in the Preamble of the 1958 Constitution.

Ireland²⁶ became a member of the EU with the first enlargement of the EU, applying an Anglo-Saxon legal system. Ireland is a unitary state in the parliamentary system – republican government.

Croatia²⁷ became a member of the EU with the latest enlargement of the EU. Croatia is a unitary state in the parliamentary system – republican government.

11 Article 1 of Directive 2000/43/EC.

12 Article 6 of Directive 2000/43/EC.

13 Article 3 of Directive 2000/43/EC.

14 Article 2 of Directive 2000/43/EC, for example see Case C-83/14.

15 Article 4 of Directive 2000/43/EC.

16 Article 8 of Directive 2000/43/EC, for example see Case C-54/07.

17 Article 13(1) of Directive 2000/43/EC.

18 Article 1 of Directive 2000/78/EC.

19 Article 8 of Directive 2000/78/EC.

20 Article 3 of Directive 2000/78/EC.

21 Article 2 of Directive 2000/78/EC, for example see Case C-303/06.

22 Articles 4 and 6 of Directive 2000/78/EC, for example see Case C-411/05 and Case C-188/15.

23 Article 5 of Directive 2000/78/EC, for example see Case C-485/20.

24 Article 10 of Directive 2000/78/EC, for example see Case C-415/10.

25 <https://european-union.europa.eu/principles-countries-history/country-profiles/france_en>

26 <https://european-union.europa.eu/principles-countries-history/country-profiles/ireland_en>

27 <https://european-union.europa.eu/principles-countries-history/country-profiles/croatia_en>

The differing and similar structures of the three EU Member States selected for the study have affected their legislation and practices in the field of anti-discrimination, which led them to adopt models overlapping on the one hand and diverging on the other. For this reason, we considered that it would be useful to examine and compare these three countries. More concretely, these States stand out as examples of good practice, as will be explained in detail below, because:

- (i) These States have one or more rules *at the constitutional level* that may be related to anti-discrimination, which broadly include the principle of equal treatment.
- (ii) These States are parties to almost all *international agreements* on this subject.
- (iii) *At the legal level*, Ireland and Croatia have introduced a general framework for anti-discrimination through primary act(s).
- (iv) These States, especially France, *exceed* the requirements of the EU acts in terms of *protected grounds of discrimination*.
- (v) These States try to maintain a *balance* in the combat against discrimination in terms of *protected grounds of discrimination*, sometimes by not defining these grounds (enabling the courts to define them) and sometimes by defining them.
- (vi) Ireland and Croatia explicitly through legislation, and France through court decisions, prohibit *multiple, hypothetical* and associative discrimination.
- (vii) These States have introduced rules regarding direct discrimination, indirect discrimination, harassment and instruction to discriminate with a content broadly in line with the EU acts in terms of *types of discrimination*.
- (viii) In France and Croatia, *everyone* (public and private / natural and legal persons) benefits from anti-discrimination legislation.
- (ix) In these States, *everyone* (public and private / natural and legal persons) can be held responsible from discrimination.
- (x) France has been able to go beyond EU acts and has imposed a ban on discrimination in some areas, for example in the area of education.
- (xi) France keeps the exceptions to a minimum, which are allowed but not required by EU acts.
- (xii) Ireland and Croatia have introduced a general regulation regarding positive action on all or several protected grounds.
- (xiii) These States provide both judicial and non-judicial solutions related to anti-discrimination.
- (xiv) Associations, organisations and unions established in these States can act *to support victims of discrimination*. Moreover, associations, organisations and unions in France and Ireland can act *on behalf of victims of discrimination*. In France and Croatia, an *actio popularis* lawsuit can be filed. In France, a collective action (on behalf of multiple victims in the same incident) can be filed.
- (xv) These States regulate the transfer of the burden of proof from the claimant to the respondent, as required by EU acts.
- (xvi) These States have equality bodies, also as required by the EU acquis.



3. Anti-Discrimination in the Legislation and Practice of Member States



Three general observations can be provided before continuing with the legislation and practice regarding anti-discrimination in France, Ireland and Croatia. Firstly, the legislation and practice of Member States on anti-discrimination was essentially created to transpose the Race and Ethnic Origin Directive 2000/43/EC and the Employment Framework Directive 2000/78/EC.²⁸ Therefore, secondly, the CJEU case-law regarding these acts deserves to be discussed separately since it will have an impact on the legislation and practice of Member States while developing gradually.²⁹ Third, the legislation and practice of Member States may change over time, sometimes through legislative amendments and sometimes through court decisions.

Against this background, the anti-discrimination legislation and practice of France, Ireland and Croatia³⁰ are discussed under the following headings: (1) General Legal Framework, (2) Protected Grounds of Discrimination, (3) Types and Scope of Discrimination, (4) Exceptions to the Non-Discrimination Principle and Positive Action; and (5) Remedies and National Bodies / Equality Bodies.

3.1. France

3.1.1. General Legal Framework

In terms of anti-discrimination, France has a number of constitutional rules and legislative rules, and is party to various international agreements.

Firstly, France has two main rules at the constitutional level: In accordance with Article 1 of the Declaration of the Rights of Man and of the Citizen (*Déclaration des Droits de l'Homme et du Citoyen de 1789*): 'Men are born and remain free and equal in rights.' Moreover, in accordance with Article 1 of the French Constitution of 1958: '... [France] shall ensure the equality of all citizens before the law, without distinction of origin, race or religion'.³¹ As quoted, the Constitutional Council (*Le Conseil constitutionnel*) recognises that the constitutional principle of equal treatment may be based on open-ended grounds (e.g. disability), but may not consider every ground (e.g. age) within this open-ended category.³² Additionally, an individual cannot directly invoke constitutional rules, but can have recourse to them indirectly / defensively through the 'constitutionality exception' procedure.³³

Secondly,³⁴ among the prominent international agreements related to anti-discrimination, France is party to the following: (1) ECHR, (2) Revised European Social Charter, (3) International Covenant on Civil and Political Rights, (4) International Covenant on Economic, Social and Cultural Rights, (5) International Convention on the Elimination of All Forms of Racial Discrimination, (6) ILO Convention No. 111 on Discrimination, (7) Convention

28 To this day, the Commission has published three reports regarding the transposition of these acts:

(1) COM(2006) 643 final, Communication from the Commission to the Council and the European Parliament on the application of Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, <<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52006DC0643>>

(2) COM(2014) 2 final, Joint Report on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('Racial Equality Directive') and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ('Employment Equality Directive'), <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52014DC0002>>

(3) COM(2021) 139 final, Communication from the Commission to the Council and the European Parliament on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('the Racial Equality Directive') and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation ('the Employment Equality Directive'), <<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM:2021:139:FIN>>

29 For example, in accordance with the established case-law of the CJEU, national law will be interpreted, as much as possible, in line with EU law. See Case C-106/89 (Court of Justice) *Marleasing SA v La Comercial Internacional de Alimentacion SA* [1990] ECR I-4135, para 8.

30 This study is prepared, in general, on the basis of the European Equality Law Network reports, which are available at <<https://www.equalitylaw.eu/document/country>>

31 <<https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000571356/>>

32 See Sophie Latraverse, Country Report - Non-Discrimination: France, Publications Office of the European Union, Luxembourg, 2022, p. 16–17.

33 *Ibid*, p. 17.

34 This information is compiled from: *Ibid*, p. 141–142.

on the Rights of the Child, and (8) Convention on the Rights of Persons with Disabilities. Although France has signed Protocol No. 12 of the ECHR, it has not yet ratified it.

Thirdly, France has three basic legislations regarding anti-discrimination:³⁵

- (1) Anti-Discrimination Law (*Loi relative à la lutte contre les discriminations*) No: 2001-1066 (16 November 2001)³⁶,
- (2) Law on diverse adaptations of community law in the field of the fight against discriminations (*Loi portant diverses dispositions d'adaptation au droit communautaire dans le domaine de la lutte contre les discriminations*) No: 2008-496 (27 May 2008)³⁷,
- (3) Law on the Defender of Rights (*Loi relative au Défenseur des droits*) No: 2011-334 (29 March 2011)³⁸.

In this respect, *instead of* introducing a general framework for anti-discrimination with a single act, France seems to prefer to distribute rules on anti-discrimination among various acts regarding areas such as labour law, administrative law and criminal law.

3.1.2. Protected Grounds of Discrimination

In addition to the requirements of EU acts regarding anti-discrimination, France also protects a number of other grounds: family status, physical appearance, vulnerability due to economic situation, surname, residence, bank address, health condition, loss of autonomy, customs and traditions, self-expression in a language other than French, affiliation to a real or assumed ethnic origin, nation, race or a particular religious affiliation.³⁹

Regarding the protected grounds of discrimination, several observations can be made in the case of France. Firstly, the majority of these grounds of discrimination are not separately defined in the French legislation.⁴⁰ On the other hand, for example, the concept of 'disability' is defined in Article 2 of Law No. 2005-102⁴¹ and this definition has also been accepted as valid for anti-discrimination legislation.⁴² Secondly, since France denies the existence of 'race and ethnic origin' (it is accepted that people cannot be distinguished according to race or ethnic origin), it has introduced the words real or assumed (*vraie ou supposée*) to emphasise this.⁴³ Third, although not expressly prohibited by French legislation, multiple discrimination (discrimination on more than one ground) is taken into account by the courts.⁴⁴ Fourth, perceptive discrimination (for example, discrimination against a person by assuming that they are disabled when they are not) is expressly prohibited by French legislation in terms of race and ethnic origin, and French courts have interpreted it to be prohibited on the remaining grounds as well.⁴⁵ Fifth, associative discrimination (e.g. associative discrimination for having a disabled child) is considered prohibited by French courts.⁴⁶

3.1.3. Types of Discrimination and Scope

In terms of anti-discrimination, France has introduced rules regarding direct discrimination, indirect discrimination, harassment and instruction to discriminate. *Direct discrimination* occurs where one person is treated less favourably on protected grounds of discrimination than another person is, has been or would be treated in a comparable situation.⁴⁷ Even though this definition does not include hypothetical situations (*supposed* treatment), French courts also take these situations into account.⁴⁸ Although whether direct discrimination is justifiable is not clearly stated by French legislation, French courts have ruled so far that it is not.⁴⁹ *Indirect discrimination* occurs where an apparently neutral provision, criterion or practice would put persons on the protected grounds

35 For detailed information see *Ibid*, p. 135–140.

36 JORF n°267 du 17 novembre 2001. <<https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000588617/2023-04-06/>>

37 JORF n°0123 du 28 mai 2008. <<https://www.legifrance.gouv.fr/loda/id/JORFTEXT000018877783/2023-04-06/>>

38 JORF n°0075 du 30 mars 2011. <<https://www.legifrance.gouv.fr/loda/id/JORFTEXT000023781167/2023-04-06/>>

39 Article 1 of Law No. 2008-496. See Isabelle Chopin & Catharina Germaine, eds, *A Comparative Analysis of Non-Discrimination Law in Europe 2021*, Publications Office of the European Union, Luxembourg, 2022, p. 12.

40 See Latraverse, fn. 32, p. 19.

41 JORF n°36 du 12 février 2005.

42 See Latraverse, fn. 32, p. 21.

43 See *Ibid*, p. 19.

44 See *Ibid*, p. 23.

45 See *Ibid*, p. 24.

46 See *Ibid*, p. 25.

47 Article 1(1) of Law No. 2008-496

48 See Latraverse, fn. 32, p. 26.

49 See *Ibid*, p. 27.

of discrimination at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means for achieving that aim are appropriate and necessary.⁵⁰ *Harassment* is defined as unwanted conduct related to the sex of a person as well as on the protected grounds of discrimination occurring with the purpose or effect of violating the dignity of that person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment.⁵¹ Finally, *instruction to discriminate* consists of instructing any person to adopt any prohibited conduct and constitutes discrimination.⁵²

The French anti-discrimination legislation has a certain personal and material scope of application. First, *everyone* (public and private / natural and legal persons) benefits from this legislation.⁵³ Second, both natural and legal persons in public and private environments can be held responsible from discrimination.⁵⁴ Thirdly, this legislation broadly covers employment-related issues.⁵⁵ Finally, this legislation broadly covers issues related to social protection, social benefits, education, housing, and access to and supply of goods and services.⁵⁶

3.1.4. Exceptions to the Non-Discrimination Principle and Beyond (Positive Action and Reasonable Support)

France has made *exceptions* to the prohibition of discrimination, sometimes on all protected grounds of discrimination and sometimes on a specific basis of discrimination (e.g. age). First, France has made an exception to genuine and determining occupational requirements: The prohibition of discrimination does not prohibit discrimination in treatment if it constitutes a genuine and determining occupational requirement, pursues a legitimate aim and is proportionate.⁵⁷ Secondly, France does not provide for an exception for employers with an ethos based on religion or belief.⁵⁸ Third, France has made an exception for the armed forces and other specific professions in terms of age or disability.⁵⁹ Fourth, France does not provide for any exceptions related to disability and health and safety.⁶⁰ Fifth, France has recognised, under certain conditions, the possibility of specific exceptions or justifications for discrimination on the ground of age.⁶¹ Finally, France does not provide for any exceptions regarding public security, public order, criminal offences, protection of health, and protection of the rights and freedoms of others.⁶²

France has introduced rules on positive action and reasonable support to *complement* the prohibition of discrimination. Firstly, although France does not have any general regulation on positive action (specific measures to prevent or eliminate disadvantages linked to protected grounds of discrimination), there are specific regulations, particularly regarding disability.⁶³ Secondly, the obligation to provide reasonable support (to provide reasonable support for persons with disabilities in terms of employment) is separately and clearly regulated, provided that it is not a disproportionate expense, and failure to comply with this regulation is considered a form of discrimination.⁶⁴

3.1.5. Remedies and National Bodies / Equality Bodies

France has also introduced rules in relation to legal remedies regarding anti-discrimination. First, both judicial and non-judicial remedies (general / discrimination-specific remedies) are available in France.⁶⁵ In this respect, for example, there is an administrative procedure enabling persons with disabilities to access their rights, labour inspectors have powers in this regard and persons with disabilities can file a lawsuit before courts.⁶⁶ Second, associations, organizations and trade unions in France can act on behalf of victims of discrimination or

50 Article 1(2) of Law No. 2008-496.

51 Article 1(3) of Law No. 2008-496.

52 Article 1(4) of Law No. 2008-496.

53 See Latraverse, fn. 32, p. 43–44.

54 See *Ibid.*

55 Article 2(2) of Law No. 2008-496. For detailed information see *Ibid.*, p. 44 ff.

56 Article 2(3) of Law No. 2008-496. For detailed information see *Ibid.*, p. 48 ff.

57 Article 6(3) of Law No. 2008-496. See *Ibid.*, p. 66.

58 See *Ibid.*, p. 68.

59 See *Ibid.*, p. 69.

60 See *Ibid.*, p. 72.

61 See *Ibid.*, p. 72 ff.

62 See *Ibid.*, p. 80.

63 Article 2(5) of Law No. 2008-496 and *Ibid.*, p. 81.

64 See Article L5213-6 of the labour Code (*Code du travail*) and *Ibid.*, p. 36, 37, 39.

65 See *Ibid.*, p. 84.

66 See *Ibid.*, p. 84 ff.

in support of victims of discrimination.⁶⁷ In this regard, *actio popularis* (in the name of public interest, without a specific victim) and collective action (on behalf of multiple victims in the same incident) can be filed in France.⁶⁸ Third, French law contains rules that require the burden of proof to be transferred from the claimant to the respondent.⁶⁹ Fourth, France has introduced regulations that protect against victimisation.⁷⁰ Finally, in France, there are basically compensation for damages, orders to put an end to discrimination and penal fines in case of criminal prosecution.⁷¹

France has a single national anti-discrimination institution / equality body. To this end, a Defender of Rights (*Défenseur des droits*) was established.⁷² The Defender of Rights was established based on the constitution⁷³ and is an independent administrative authority.⁷⁴ The Defender of Rights has control over the use of its budget.⁷⁵ The Defender of Rights is entitled to promote and protect rights and freedoms in five areas: (i) protecting the rights of public service users, (ii) protecting the rights of children, (iii) ensuring that security staff such as the police, gendarmerie, private security services comply with ethics, (iv) combating discrimination and promoting equality, and (v) providing guidance to and protecting whistleblowers.⁷⁶ The Defender of Rights evaluates complaints and concludes these complaints mainly with recommendations and reports.⁷⁷

3.2. Ireland

3.2.1. General Legal Framework

In terms of anti-discrimination, Ireland has a number of constitutional rules and legislative rules, and is party to various international agreements.

First, Ireland guarantees the principle of equality at the constitutional level. In accordance with Article 40(1) of the Irish Constitution of 1937: 'All citizens shall, as human persons, be held equal before the law.'⁷⁸ This provision implicitly covers the grounds of sex, race, language, religious or political opinion, age, marital status, pedigree and disability.⁷⁹ In addition, it is stated that this provision is invoked relatively rarely⁸⁰ and does not appear to be enforced against individuals.⁸¹

Secondly,⁸² among the prominent international agreements related to anti-discrimination, Ireland is party to the following: (1) ECHR, (2) Revised European Social Charter, (3) International Covenant on Civil and Political Rights, (4) International Covenant on Economic, Social and Cultural Rights, (5) International Convention on the Elimination of All Forms of Racial Discrimination, (6) ILO Convention No. 111 on Discrimination, (7) Convention on the Rights of the Child, and (8) Convention on the Rights of Persons with Disabilities. Although Ireland has signed Protocol No. 12 of the ECHR, it has not yet ratified it.

Thirdly, Ireland has four basic legislations regarding anti-discrimination:⁸³

- (1) Employment Equality Act (1998)⁸⁴,
- (2) Equal Status Act (2000)⁸⁵,
- (3) Irish Human Rights and Equality Commission Act (2014)⁸⁶,
- (4) Workplace Relations Act (2015)⁸⁷,

67 See *Ibid*, p. 90, 91.

68 See *Ibid*, p. 91.

69 See Article 1 of Law No. 2001-1066, Article 4 of Law No. 2008-496 and *Ibid*, p. 93.

70 Article 3 Law No. 2008-496 and *Ibid*, p. 95.

71 See *Ibid*, p. 96.

72 See Article 71 of the French Constitution of 1958 and Law No. 2011-333 and *Ibid*, p. 100.

73 Article 71-1 of the French Constitution of 1958 amended by the Law No. 2008-724.

74 Article 2, 10, 24 and 37 of Law No. 2011-334.

75 Article 10 of Law No. 2011-334.

76 <<https://www.defenseurdesdroits.fr/en/an-independent-institution>>. See also Article 4 of Law No. 2011-334.

77 See Article 25 of Law No. 2011-334.

78 <<https://www.irishstatutebook.ie/eli/cons/en/html>>

79 See Judy Walsh, *Country Report - Non-Discrimination: Ireland*, Publications Office of the European Union, Luxembourg, 2022, p. 13.

80 See *Ibid*, p. 6.

81 See *Ibid*, p. 13.

82 This information is compiled from: *Ibid*, p. 119–120.

83 For detailed information see *Ibid*, p. 5; 117–118.

84 For the original see <<https://www.irishstatutebook.ie/eli/1998/act/21/enacted/en/print>>

For the revised version see <<https://revisedacts.lawreform.ie/eli/1998/act/21/revised/en/html>>

85 For the original see <<https://www.irishstatutebook.ie/eli/2000/act/8/enacted/en/html>>

For the revised version see <<https://revisedacts.lawreform.ie/eli/2000/act/8/revised/en/html>>

86 For the original see <<https://www.irishstatutebook.ie/eli/2014/act/25/enacted/en/print>>

For the revised version see <<https://revisedacts.lawreform.ie/eli/2014/act/25/revised/en/html>>

87 For the original see <<https://www.irishstatutebook.ie/eli/2015/act/16/enacted/en/>>

In this respect, Ireland seems to have preferred to introduce a general framework regarding anti-discrimination with two main acts *instead of* distributing the rules on anti-discrimination among various acts regarding areas such as labour law, administrative law and criminal law.

3.2.2. Protected Grounds of Discrimination

In addition to the requirements of EU acts regarding anti-discrimination, Ireland also protects a number of other grounds such as traveller community membership and housing allowance.⁸⁸

Regarding the protected grounds of discrimination, several observations can be made in the case of Ireland. First, some of these grounds of discrimination are not separately defined by Irish legislation, while others are. For example, traveller community is defined as ‘the community of people who are commonly called Travellers and who are identified (both by themselves and others) as people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland’.⁸⁹ Second, some of these grounds of discrimination have been interpreted by the courts. For example, in accordance with the case-law, ‘national origin is acquired by a person at the time of birth and connects that person with one or a group of persons who can be described as a ‘nation’’.⁹⁰ Third, multiple discrimination (discrimination on more than one ground) is expressly prohibited by Irish legislation.⁹¹ Fourth, perceptive discrimination (for example, discrimination against a person by assuming that they are disabled when they are not) is expressly prohibited by Irish legislation.⁹² Fifth, associative discrimination (e.g. associative discrimination for having a disabled child) is expressly prohibited by Irish legislation.⁹³

3.2.3. Types of Discrimination and Scope

In terms of anti-discrimination, Ireland has introduced rules regarding direct discrimination, indirect discrimination, harassment and instruction to discriminate. *Direct discrimination* occurs where one person is treated less favourably on protected grounds of discrimination – which exists at present or previously existed but no longer exists or may exist in the future – than another person is, has been or would be treated in a comparable situation.⁹⁴ Direct discrimination is not justifiable under Irish law (subject to exceptional situations that do not constitute discrimination).⁹⁵ *Indirect discrimination* occurs where an apparently neutral provision would put persons on the protected grounds of discrimination at a particular disadvantage compared with other persons, unless that provision is objectively justified by a legitimate aim, and the means for achieving that aim are appropriate and necessary.⁹⁶ *Harassment* is defined as unwanted conduct on the protected grounds of discrimination occurring with the purpose or effect of violating the dignity of that person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment.⁹⁷ Fourth, *instruction to discriminate* is prohibited, but the term instruction is not defined.⁹⁸

In general, *only natural persons* benefit from the Irish anti-discrimination legislation.⁹⁹ Both natural and legal persons in the public and private sphere can be held responsible from discrimination.¹⁰⁰ In terms of scope, the legislation is mainly limited to employment-related issues.¹⁰¹ Finally, this legislation broadly covers issues related to social protection, education, housing, and access to and supply of goods and services.¹⁰²

For the revised version see <<https://revisedacts.lawreform.ie/eli/2015/act/16/revised/en/html>>

88 Article 6(2) of the Employment Equality Act (1998) and Article 3(2) of the Equal Status Act (2000). See Chopin & Germaine fn. 39, p. 13.

89 Article 2(1) of the Employment Equality Act (1998) and Article 2(1) of the Equal Status Act (2000).

90 Walsh, fn. 79, p. 14.

91 See *Ibid*, p. 19–20.

92 Article 6(1/a/iv) of the Employment Equality Act (1998) and Article 3(1/a/iv) of the Equal Status Act (2000).

93 Article 6(1/b) of the Employment Equality Act (1998) and Article 3(1/b) of the Equal Status Act (2000).

94 Article 6(1/a) of the Employment Equality Act (1998) and Article 3(1/a) of the Equal Status Act (2000).

95 See Walsh, fn. 79, p. 24.

96 Article 19 and 22 of the Employment Equality Act (1998) and Article 3(1/c) of the Equal Status Act (2000).

97 Article 14A(7) of the Employment Equality Act (1998) and Article 11(5) of the Equal Status Act (2000).

98 Article 2(1) of the Employment Equality Act (1998). The Equal Status Act does not explicitly prohibit instruction. See Walsh, fn. 79, p. 30–31.

99 See *Ibid*, p. 33–34.

100 See *Ibid*, p. 39. Article 8 of the Employment Equality Act (1998) and Article 2(1) of the Equal Status Act (2000).

101 See Article 8(1) of the Employment Equality Act (1998). For detailed information see *Ibid*, p. 40 ff.

102 See Equal Status Act (2000). For detailed information see *Ibid*, p. 45 ff. For example, in the absence of a clear regulation regarding social benefits, the case-law does not seem to provide full protection. See *Ibid*, p. 47.

3.2.4. Exceptions to the Non-Discrimination Principle and Beyond (Positive Action and Reasonable Support)

Ireland has made *exceptions* to the prohibition of discrimination, sometimes on all protected grounds of discrimination and sometimes on a specific basis of discrimination (e.g. age). First, Ireland made an exception to genuine and determining occupational requirements: The prohibition of discrimination does not prohibit discrimination in treatment if it constitutes a genuine and determining occupational requirement, pursues a legitimate aim and is proportionate.¹⁰³ Secondly, Ireland does not provide for an exception for employers with an ethos based on religion or belief.¹⁰⁴ Third, Ireland has made an exception for the armed forces and other specific professions in terms of age or disability.¹⁰⁵ Fourth, Ireland does not provide for any exceptions related to disability and health and safety.¹⁰⁶ Fifth, Ireland has recognised, under certain conditions, the possibility of specific exceptions or justifications for discrimination on the ground of age.¹⁰⁷ Finally, Ireland does not provide for any exceptions regarding public security, public order, criminal offences, protection of health, and protection of the rights and freedoms of others.¹⁰⁸

Ireland has introduced rules on positive action and reasonable support to *complement* the prohibition of discrimination. Firstly, Ireland has introduced a general regulation on positive action (specific measures to prevent or eliminate disadvantages linked to protected grounds of discrimination).¹⁰⁹ Secondly, the obligation to provide reasonable support (to provide reasonable support for persons with disabilities in terms of employment) is separately and clearly regulated, provided that it is not a disproportionate expense, and failure to comply with this regulation is considered a form of discrimination.¹¹⁰

3.2.5. Remedies and National Bodies / Equality Bodies

Ireland has also introduced rules in relation to legal remedies regarding anti-discrimination. First, both judicial and non-judicial remedies (general / discrimination-specific remedies) are available in Ireland.¹¹¹ In this respect, the Workplace Relations Commission (WRC) in particular serves as the primary institution for handling complaints regarding Irish anti-discrimination legislation.¹¹² Second, associations, organisations and trade unions in Ireland can act on behalf of victims of discrimination or in support of victims of discrimination.¹¹³ On the other hand, *actio popularis* (in the name of public interest, without a specific victim) and collective action (on behalf of multiple victims in the same incident) cannot be filed in Ireland.¹¹⁴ Third, Irish law contains rules that require the burden of proof to be transferred from the claimant to the respondent.¹¹⁵ Fourth, Ireland has introduced regulations that protect against victimisation.¹¹⁶ Finally, in Ireland, there are basically compensation for damages, orders to put an end to discrimination and criminal sanctions.¹¹⁷

Ireland has a single national anti-discrimination institution / equality body. To this end, an Irish Human Rights and Equality Commission has been established.¹¹⁸ Moreover, the Ombudsman may handle the allegations of discrimination in access to public services.¹¹⁹ The Irish Human Rights and Equality Commission has been established on a statutory basis¹²⁰ and is an independent institution.¹²¹ The Irish Human Rights and Equality Commission has its own budget.¹²² The Irish Human Rights and Equality Commission operates in five areas: '(a)

103 Article 37(2) of the Employment Equality Act (1998).

104 Article 37(1) of the Employment Equality Act (1998).

105 Article 37(5) of the Employment Equality Act (1998).

106 Article 7(2) of the Employment Equality Act (1998).

107 See Walsh, fn. 79, p. 64–65.

108 See *Ibid.*, p. 71–72.

109 Article 33 and 35 of the Employment Equality Act (1998) and Article 14(1/b) of the Equal Status Act (2000). See also *Ibid.*, p. 75–77.

110 See Article 16(3) of the Employment Equality Act (1998). See also *Ibid.*, p. 32–37.

111 See *Ibid.*, p. 78 ff.

112 Workplace Relations Act (2015). See *Ibid.*, p. 78.

113 See *Ibid.*, p. 83–84.

114 See *Ibid.*, p. 84–85.

115 Article 85A of the Employment Equality Act (1998) and Article 38A of the Equal Status Act (2000).

116 Article 74(2) of the Employment Equality Act (1998) and Article 3(2/j) of the Equal Status Act (2000).

117 See Walsh, fn. 79, p. 86 ff. For example see Article 82 of the Employment Equality Act (1998).

118 Human Rights and Equality Commission Act (2014).

119 Ombudsman Act (1980). <<https://www.irishstatutebook.ie/eli/1980/act/26/enacted/en/html>>

120 Irish Human Rights and Equality Commission Act (2014).

For the original see <<https://www.irishstatutebook.ie/eli/2014/act/25/enacted/en/print>>

For the revised version see <<https://revisedacts.lawreform.ie/eli/2014/act/25/revised/en/html>>

121 Article 9(2) of the Irish Human Rights and Equality Commission Act (2014).

122 See Walsh, fn. 79, p. 90.

to protect and promote human rights and equality, (b) to encourage the development of a culture of respect for human rights, equality, and intercultural understanding in the State, (c) to promote understanding and awareness of the importance of human rights and equality in the State, (d) to encourage good practice in intercultural relations, to promote tolerance and acceptance of diversity in the State and respect for the freedom and dignity of each person, and (e) to work towards the elimination of human rights abuses, discrimination and prohibited conduct.¹²³ The Irish Human Rights and Equality Commission evaluates complaints¹²⁴ and may give independent recommendations on discrimination.¹²⁵

3.3. Croatia

3.3.1. General Legal Framework

In terms of anti-discrimination, Croatia has a number of constitutional rules and legislative rules, and is party to various international agreements.

First, the constitution of Croatia includes the principle of equality: In accordance with Article 3 of the Constitution of Croatia of 1990: 'Freedom, equal rights, national and gender equality, peace-making, social justice, respect for human rights, inviolability of ownership, conservation of nature and the environment, the rule of law and a democratic multiparty system are the highest values of the constitutional order of the Republic of Croatia.' In accordance with Article 14 of the Constitution of Croatia: 'All persons in the Republic of Croatia shall enjoy rights and freedoms, regardless of race, colour, gender, language, religion, political or other conviction, national or social origin, property, birth, education, social status or other characteristics. All persons shall be equal before the law.'¹²⁶ Article 14 does not include 'citizenship' under the term 'national' and, under the case-law, it covers grounds such as age and disability under the term 'other characteristics'.¹²⁷ Moreover, Articles 3 and 14 cannot be invoked before ordinary courts and cannot be asserted against individuals, but they can be subject to constitutional complaint in the Constitutional Court.¹²⁸

Secondly,¹²⁹ among the prominent international agreements related to anti-discrimination, Croatia is party to 1) ECHR, (2) Protocol No. 12 of the ECHR, (3) International Covenant on Civil and Political Rights, (4) International Covenant on Economic, Social and Cultural Rights, (5) International Convention on the Elimination of All Forms of Racial Discrimination, (6) ILO Convention No. 111 on Discrimination, (7) Convention on the Rights of the Child, and (8) Convention on the Rights of Persons with Disabilities. Although Croatia has signed the Revised European Social Charter, it has not yet ratified it.

Thirdly, Croatia has four basic legislations regarding anti-discrimination:¹³⁰

- (1) Anti-Discrimination Act (*Zakon o suzbijanju diskriminacije*)¹³¹,
- (2) Gender Equality Act (*Zakon o ravnopravnosti spolova*)¹³²,
- (3) Labour Act (*Zakon o radu*)¹³³,
- (4) Ombudsman Act (*Zakon o pučka pravobraniteljica*)¹³⁴.

In this respect, Croatia seems to have preferred to introduce a general framework regarding anti-discrimination with three main acts *instead of* distributing the rules on anti-discrimination among various acts regarding areas such as labour law, administrative law and criminal law.

123 Article 10(1) of the Irish Human Rights and Equality Commission Act (2014).

124 See Walsh, fn. 79, p. 103.

125 See *Ibid*, p. 96, 97.

126 <<https://www.sabor.hr/en/constitution-republic-croatia-consolidated-text>>

127 Ines Bojić, *Country Report - Non-Discrimination: Croatia*, Publications Office of the European Union, Luxembourg, 2022, p. 16, fn. 42 and 43.

128 See *Ibid*, p. 16.

129 This information is compiled from: *Ibid*, p. 115–116.

130 For detailed information see *Ibid*, p. 15; 113–114.

131 <<https://www.zakon.hr/z/490/Zakon-o-suzbijanju-diskriminacije>>

132 <<https://www.zakon.hr/z/388/Zakon-o-ravnopravnosti-spolova>>

133 <<https://www.zakon.hr/z/307/Zakon-o-radu>>

134 <<https://www.zakon.hr/z/128/Zakon-o-pu%C4%8Dkom-pravobranitelju>>

3.3.2. Protected Grounds of Discrimination

In addition to the requirements of EU acts regarding anti-discrimination, Croatia also protects a number of other grounds: national or social origin, social status, marital or family status.¹³⁵

Regarding the protected grounds of discrimination, several observations can be made in the case of Croatia. Firstly, the majority of these grounds of discrimination are not separately defined in the Croatian legislation.¹³⁶ Second, some of these grounds of discrimination have been interpreted by the courts.¹³⁷ Third, multiple discrimination (discrimination on more than one ground) is expressly prohibited by Croatian legislation.¹³⁸ Fourth, perceptive discrimination (for example, discrimination against a person by assuming that they are disabled when they are not) is expressly prohibited by Croatian legislation.¹³⁹ Fifth, associative discrimination (e.g. associative discrimination for having a disabled child) is explicitly prohibited by Croatian legislation.¹⁴⁰

3.3.3. Types of Discrimination and Scope

In terms of anti-discrimination, Croatia has introduced rules regarding direct discrimination, indirect discrimination, harassment and instruction to discriminate. *Direct discrimination* occurs where one person is treated less favourably on protected grounds of discrimination than another person is, has been or would be treated in a comparable situation.¹⁴¹ Direct discrimination is not justifiable under Croatian law (subject to exceptional situations that do not constitute discrimination¹⁴²).¹⁴³ *Indirect discrimination* occurs where an apparently neutral provision, criterion or practice would put persons on the protected grounds of discrimination at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means for achieving that aim are appropriate and necessary.¹⁴⁴ *Harassment* is defined as unwanted conduct on the protected grounds of discrimination occurring with the purpose or effect of violating the dignity of that person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment.¹⁴⁵ Fourth, *instruction to discriminate* is prohibited, but instruction is not defined.¹⁴⁶

The Croatian anti-discrimination legislation has a certain personal and material scope of application. First, *everyone* (public and private / natural and legal persons) benefits from this legislation.¹⁴⁷ Second, both natural and legal persons in the public and private sphere can be held responsible from discrimination.¹⁴⁸ Thirdly, this legislation broadly covers employment-related issues.¹⁴⁹ Finally, this legislation broadly covers issues related to social protection, social benefits, education, housing, and access to and supply of goods and services.¹⁵⁰

3.3.4. Exceptions to the Non-Discrimination Principle and Beyond (Positive Action and Reasonable Support)

Croatia has made *exceptions* to the prohibition of discrimination, sometimes on all protected grounds of discrimination and sometimes on a specific basis of discrimination (e.g. age). First, Croatia has made an exception to genuine and determining occupational requirements: In general, the prohibition of discrimination does not prohibit discrimination in treatment if it constitutes a genuine and determining occupational requirement, pursues a legitimate aim and is proportionate.¹⁵¹ Secondly, Croatia provides for an exception for employers with an ethos based on religion or belief.¹⁵² Thirdly, although in terms of age and disability, the Croatian anti-

135 Article 1(1) of the Anti-Discrimination Act. See Chopin & Germaine fn. 39, p. 12.

136 See Bojić, fn. 127, p. 17.

137 See *Ibid.*, p. 17–20.

138 Article 6(1) of the Anti-Discrimination Act.

139 Article 1(3) of the Anti-Discrimination Act.

140 Article 1(2) of the Anti-Discrimination Act.

141 Article 2(1) of the Anti-Discrimination Act and Article 7(1) of the Gender Equality Act.

142 Article 9 of the Anti-Discrimination Act.

143 See Bojić, fn. 127, p. 24.

144 Article 2(2) of the Anti-Discrimination Act and Article 7(2) of the Gender Equality Act.

145 Article 3 of the Anti-Discrimination Act.

146 Article 4(1) of the Anti-Discrimination Act. See Bojić, fn. 127, p. 31.

147 See *Ibid.*, p. 43.

148 See *Ibid.* Article 8 of the Anti-Discrimination Act.

149 See Article 8(1) of the Anti-Discrimination Act. For detailed information see *Ibid.*, p. 44 ff.

150 See Article 8(1) of the Anti-Discrimination Act. For detailed information see *Ibid.*, p. 46 ff.

151 Article 9(2/4) of the Anti-Discrimination Act.

152 Article 9(2/5) of the Anti-Discrimination Act.

discrimination legislation does not provide for an exception in relation to the armed forces and other specific professions, for example, the armed forces legislation, establishing a *lex specialis*, may seek such conditions.¹⁵³ Fourth, Croatia does not provide for any exceptions related to disability and health and safety.¹⁵⁴ Fifth, Croatia has recognised, under certain conditions, the possibility of specific exceptions or justifications for discrimination on the ground of age.¹⁵⁵ Finally, Croatia provides for an exception regarding public security, public order, criminal offences, protection of health, and protection of the rights and freedoms of others.¹⁵⁶

Croatia has introduced rules on positive action and reasonable support to *complement* the prohibition of discrimination. Firstly, Croatia has introduced a general regulation on positive action (specific measures to prevent or eliminate disadvantages linked to protected grounds of discrimination).¹⁵⁷ Secondly, the obligation to provide reasonable support (to provide reasonable support for persons with disabilities in terms of employment) is separately and clearly regulated, provided that it is not a disproportionate expense, and failure to comply with this regulation is considered a form of discrimination.¹⁵⁸

3.3.5. Remedies and National Bodies / Equality Bodies

Croatia has also introduced rules in relation to legal remedies regarding anti-discrimination. First, both judicial and non-judicial remedies (general / discrimination-specific remedies) are available in Croatia.¹⁵⁹ In this regard, the Ombudsman is mainly involved in mediation and civil or criminal courts are involved in trials regarding the anti-discrimination legislation.¹⁶⁰ Secondly, in Croatia, associations and organisations, except trade unions, cannot act on behalf of victims of discrimination, but associations, organisations and trade unions can act in support of victims of discrimination.¹⁶¹ In this regard, in Croatia, *actio popularis* (in the name of public interest, without a specific victim) can be filed, but collective action (on behalf of multiple victims in the same incident) cannot be filed.¹⁶² Third, Croatian law contains rules that require the burden of proof to be transferred from the claimant to the respondent.¹⁶³ Fourth, Croatia has introduced regulations that protect against victimisation.¹⁶⁴ Finally, in Croatia there are basically compensation for damages, orders to put an end to discrimination and criminal sanctions.¹⁶⁵

Today, Croatia has a single national anti-discrimination institution / equality body. To this end, an Ombudsman (*Pučka Pravobraniteljica*) has been established.¹⁶⁶ The Ombudsman of Croatia was established based on the constitution and is an independent authority.¹⁶⁷ The Ombudsman of Croatia has its own budget.¹⁶⁸ The Ombudsman of Croatia is responsible for: (i) the promotion and protection of human rights and freedoms, (ii) the performance of the mandates of the National Equality Body, (iii) the performance of the mandates of the National Preventive Mechanism for the protection of the persons deprived of their liberty, and (iv) external reporting of irregularities within the Whistleblowers' Protection Act.¹⁶⁹ The Ombudsman of Croatia evaluates complaints and concludes these complaints mainly with reports.¹⁷⁰

153 See Bojić, fn. 127, p. 62–63.

154 See *Ibid.*, p. 66.

155 Article 9 of the Anti-Discrimination Act.

156 Article 9(2/1) of the Anti-Discrimination Act.

157 Article 9(2/2) of the Anti-Discrimination Act. See also Bojić, fn. 127, p. 75–77.

158 Article 4(2) of the Anti-Discrimination Act. See also *Ibid.*, p. 32–42.

159 See *Ibid.*, p. 78 ff.

160 See *Ibid.*, p. 78–79.

161 See *Ibid.*, p. 82–83.

162 See *Ibid.*, p. 83–85.

163 Article 20 of the Anti-Discrimination Act.

164 Article 7 of the Anti-Discrimination Act.

165 See Bojić, fn. 127, p. 86 ff. For example see Article 11 of the Anti-Discrimination Act.

166 Article 12 of the Anti-Discrimination Act and the Ombudsman Act.

167 Article 93 of the Constitution of Croatia of 1990.

168 See Bojić, fn. 127, p. 91.

169 See <<https://www.ombudsman.hr/en/about-us/>>

170 See Article 20-27 of the Ombudsman Act.

4. Comparison of Legislation and Practices of Member States on Anti-Discrimination and Good Practices



4.1. General Legal Framework

The following three statements can be made regarding the comparison of France, Ireland and Croatia in terms of *general legal framework* of anti-discrimination.

First, each State has one or more rules *at the constitutional level* that may be related to anti-discrimination, which broadly include the principle of equal treatment. Constitutional rules cannot be invoked directly in France and Croatia, and in Ireland they can be invoked (against the state) but not against individuals. In this respect, good practice can be defined as regulating the principle of equal treatment or the prohibition of discrimination in the constitution and applying it both against the state (vertically) and against the individual (horizontally), as some of the other Member States do, except the three examined in this study,¹⁷¹ since in this way, individuals will have a constitutional safety net in terms of anti-discrimination (for example, against possible gaps in legislative regulations).

Second, each of the three States is party to (1) ECHR, (2) International Covenant on Civil and Political Rights, (3) International Covenant on Economic, Social and Cultural Rights, (4) International Convention on the Elimination of All Forms of Racial Discrimination, (5) ILO Convention No. 111 on Discrimination, (6) Convention on the Rights of the Child, and (7) Convention on the Rights of Persons with Disabilities. However, although France and Ireland have signed Protocol No. 12 of the ECHR, and Croatia has signed the Revised European Social Charter, they have not yet ratified them.

Thirdly, in terms of *legislative level*, all three States have introduced a number of primary regulations on anti-discrimination. On the other hand, France seems to have preferred to distribute rules on anti-discrimination among its acts in various fields, while Ireland and Croatia have preferred to introduce a general framework regarding anti-discrimination with primary act(s). In this respect, *good practice* and also the *tendency* can be defined as creating a general/comprehensive anti-discrimination legislation,¹⁷² since this would provide a more compact framework for anti-discrimination.

171 See Chopin & Germaine fn. 39, p. 10.

172 See Chopin & Germaine fn. 39, p. 11.

4.2. Protected Grounds of Discrimination

The following table details the comparison of France, Ireland and Croatia in terms of *protected grounds of discrimination* regarding anti-discrimination.

Table 1: Protected Grounds of Discrimination

	France	Ireland	Croatia
Have the grounds for discrimination been clearly listed?	Yes – Article 1 of Law No. 2008-496 –	Yes – Article 6(2) of the Employment Equality Act (1998) and Article 3(2) of the Equal Status Act (2000) –	Yes – Article 1(1) of the Anti-Discrimination Act –
Is it defined by legislation?	Partially	Partially	Partially
Has it been interpreted by the courts?	Partially	Partially	Partially
Is multiple discrimination prohibited?	No (but the courts take it into consideration)	Yes	Yes
Is perceptive discrimination prohibited?	Yes (only in terms of race and ethnic origin) (but courts also take it into account in terms of other grounds)	Yes	Yes
Is associative discrimination prohibited?	No (but the courts take it into consideration)	Yes	Yes

Based on this table, the following three statements can be made. First, for each State, the protected grounds of discrimination exceed the requirements of EU acts, with France being the state with the highest number of discrimination grounds. In this respect, *good practice* can be defined as clearly stating in legislation the grounds of discrimination that are sought to be protected, since it would thus be clear what constitutes ‘unacceptable discrimination as it is generally known’¹⁷³.

Second, these grounds are often not defined by legislation, but are interpreted by the courts as they handle disputes. *Good practice* in this respect may vary from case to case: Sometimes it may be preferred to ensure the development of the combat against discrimination on the relevant ground through the courts (through case-law) by not defining these grounds, and sometimes it may be preferred to contribute to the development of the combat against discrimination on the relevant ground (before court decisions) by explaining these grounds in detail. In fact, it is observed that the states evaluated try to keep this balance.

Third, while multiple discrimination, perceptive discrimination and associative discrimination are expressly prohibited by Irish and Croatian legislations, in France it is taken into account by the courts in the absence of clarity in the legislation. This underlines not only the importance of regulations in a state, but also the importance of how they are handled by the courts. Thus, *good practice* in this respect could be defined as explicitly prohibiting multiple, perceptive and associative discrimination in legislation, as done by Ireland and Croatia as examples for other Member States,¹⁷⁴ since in this way the prohibition of discrimination would have an impact in a wider area.

¹⁷³ Evelyn Ellis & Philippa Watson, *EU Anti-Discrimination Law*, 2d ed, Oxford University Press, Oxford, 2012, p. 2.

¹⁷⁴ See Chopin & Germaine fn. 39, p. 33–37.

4.3. Types of Discrimination and Scope

The comparison of France, Ireland and Croatia in terms of *types of discrimination* regarding anti-discrimination shows that in line with the main *trend*, rules regarding direct discrimination, indirect discrimination, harassment and instruction to discriminate have been introduced by each State with a content broadly in line with EU acts. In this respect, *good practice*, as well as the *tendency*, can be defined as including all types of discrimination included in EU acts, as they are covered in those acts, since in this way,¹⁷⁵ the prohibition of discrimination would be able to have an impact on a wider area by being used against both explicit and implicit discrimination, as well as harassment and instruction to discriminate. In particular, *good practice* in terms of direct discrimination can be defined as making it clear in legislation that direct discrimination cannot be justified, as done by Ireland and Croatia as examples for other Member States,¹⁷⁶ since in this way, the combat against direct discrimination can be more effective.

The following table details the comparison of France, Ireland and Croatia in terms of *scope* regarding anti-discrimination.

Table 2: Scope of Anti-Discrimination Legislation

	France	Ireland	Croatia
Who benefits from anti-discrimination legislation?	everyone (public and private / natural and legal persons)	only natural persons	everyone (public and private / natural and legal persons)
Who can be held responsible for discrimination?	everyone (public and private / natural and legal persons)	everyone (public and private / natural and legal persons)	everyone (public and private / natural and legal persons)
What issues does anti-discrimination legislation cover?	employment and social protection, social benefits, education, housing and access to and supply of goods and services	employment and social protection, education, housing and access to and supply of goods and services	employment and social protection, social benefits, education, housing and access to and supply of goods and services

Based on this table, the following three statements can be made. First, in Ireland *only natural persons* can benefit from anti-discrimination legislation, while in France and Croatia, *everyone* (public and private / natural and legal persons) can benefit from anti-discrimination legislation. In this respect, *good practice*, as well as the practice in most States, can be defined as enabling both natural and legal persons to benefit from anti-discrimination legislation,¹⁷⁷ since in this way, a wider segment of society would be able to benefit from the combat against discrimination.

Second, for each state, *everyone* (public and private / natural and legal persons) can be held responsible from discrimination. In this respect, *best practice* can be defined as holding both natural and legal persons responsible for discrimination, as done by France, Ireland and Croatia as examples for other Member States, since in this way, a wider group of people would be made responsible for discrimination.

Thirdly, *except* social benefits in Ireland, and *in addition to* social benefits in France and Croatia, anti-discrimination legislation covers employment, social protection, education, housing and access to and supply of goods and services. More specifically, the following three statements can be made in terms of material scope of application of anti-discrimination legislation: Firstly, some Member States, such as Ireland, have excluded certain categories, such as social benefits,¹⁷⁸ while narrowing the scope of some categories included, such as

¹⁷⁵ See *Ibid*, p. 38.

¹⁷⁶ See *Ibid*, p. 38–39.

¹⁷⁷ See *Ibid*, p. 53.

¹⁷⁸ See *Ibid*, p. 58.

employment.¹⁷⁹ Second, some Member States, such as France, have gone beyond the scope of EU acts and prohibited discrimination in some areas, such as education, for all of the grounds of discrimination protected by their law (not just the grounds provided for by EU acts).¹⁸⁰ Thirdly, some Member States, such as Croatia, have implemented practices such as the specific problem of Roma children being educated in general schools, but in separate classes reserved for them.¹⁸¹ Against this background, *good practice* can be defined as meeting, on the one hand, the thematic scope of EU acts (as is the main *trend*¹⁸²), and on the other hand, going beyond this and, moreover, taking additional measures in specifically problematic areas, since in this way, the combat against discrimination would be more effective in a wider area.

4.4. Exceptions to the Non-Discrimination Principle and Beyond (Positive Action and Reasonable Support)

The following table details the comparison of France, Ireland and Croatia in terms of *exceptions to the principle of non-discrimination* regarding anti-discrimination.

Table 3: Exceptions to the Non-Discrimination Principle

	France	Ireland	Croatia
Are there any exceptions to genuine and determining occupational requirements?	Yes	Yes	Yes
Are there any exceptions for employers with an ethos based on religion or belief?	No	Yes	Yes
Are there any exceptions for the armed forces and other specific professions in terms of age or disability?	Yes	Yes	No (but it is required by <i>lex specialis</i>)
Are there any exceptions regarding disability and health and safety?	No	Yes	No
Are there specific exceptions or justification for discrimination on the ground of age?	Yes	Yes	Yes
Are there any exceptions regarding public security, public order, criminal offences, protection of health, and protection of the rights and freedoms of others?	No	Yes	Yes

While France is the state with the fewest exceptions in terms of anti-discrimination legislation, Ireland uses all exceptions and Croatia uses all exceptions except for one. In this respect, *good practice* can be defined as keeping the exceptions to a minimum, which are allowed but not required by EU acts, as done by France as an example for other Member States,¹⁸³ since in this way, the combat against discrimination can be carried out in an area as wide as possible.

The following statements can be made regarding the comparison of France, Ireland and Croatia in terms of *positive action* regarding anti-discrimination. While Ireland and Croatia have introduced a general regulation regarding positive action, France has only introduced specific regulations regarding disability in the absence of such a general regulation. Positive action means taking specific measures to prevent or eliminate disadvantages associated with protected grounds of discrimination. Against this background, *good practice*, as well as the practice in most States, can be defined as enabling positive action on all (although specific scope and requirements vary) or some (predominantly on the ground of disability) of the protected grounds,¹⁸⁴ since in this

179 See *Ibid*, p. 56–57.

180 See *Ibid*, p. 59.

181 See *Ibid*, p. 61–64.

182 See *Ibid*, p. 55.

183 See *Ibid*, p. 69–79.

184 See *Ibid*, p. 79–81.

way, an important step can be taken towards ensuring not only formal equality but also material equality¹⁸⁵.

The following statements can be made regarding the comparison of France, Ireland and Croatia in terms of *reasonable support* regarding anti-discrimination. Each State has established rules regarding reasonable support, and consider failure to comply with them as a form of discrimination. As a reminder, reasonable support means providing reasonable support for persons with disabilities in employment. More specifically, two statements can be made regarding reasonable support:¹⁸⁶ First, some Member States, such as France, have kept the scope of the obligation to provide reasonable support narrower than EU acts. Second, the definition of the obligation to provide reasonable support varies among Member States, and while some States, such as Croatia, have been content to impose a basic obligation, other States, such as the Netherlands, have prepared more detailed guidelines on the implementation of this obligation. Against this background, *good practice* can be defined as meeting the requirements of EU acts, on the one hand, and materialising its contents through guidelines related to reasonable support, on the other hand, since in this way, an important step can be taken towards ensuring not only formal equality but also material equality in terms of prohibition of discrimination on the ground of disability¹⁸⁷.

4.5. Remedies and National Bodies / Equality Bodies

The following table details the comparison of France, Ireland and Croatia in terms of *remedies and national bodies / equality bodies* regarding anti-discrimination.

Table 4: Remedies and National Bodies / Equality Bodies

	France	Ireland	Croatia
Are both judicial and non-judicial remedies available?	Yes	Yes	Yes
Can associations, organisations and trade unions act on behalf of victims of discrimination?	Yes	Yes	No (only trade unions)
Can associations, organisations and trade unions act to support victims of discrimination?	Yes	Yes	Yes
Can an <i>actio popularis</i> lawsuit be filed?	Yes	No	Yes
Can a collective lawsuit be filed?	Yes	No	No
Is the transfer of the burden of proof from the claimant to the respondent regulated?	Yes	Yes	Yes
Is protection against victimisation provided?	Yes	Yes	Yes
Are there sanctions (e.g. compensation, etc.)?	Yes	Yes	Yes
Is there a national body / equality body as regards anti-discrimination?	Yes: Defender of Rights (<i>Défenseur des droits</i>)	Yes: Human Rights and Equality Commission + <i>Ombudsman</i>	Yes: Ombudsman (<i>Pučka Pravobraniteljica</i>)

185 See Ellis & Watson, fn. 175, p. 3–4.

186 See Chopin & Germaine fn. 39, p. 24–31.

187 See Ellis & Watson, fn. 175, p. 3–4.

Based on this table, the following four statements can be made. First, each State provides both judicial and non-judicial remedies related to anti-discrimination. More specifically, all Member States have introduced both judicial (which may concern civil law, criminal law, labour law or administrative law) and extra-judicial (which may be general or discrimination-specific) remedies regarding anti-discrimination.¹⁸⁸ On the other hand, in general, the main obstacles to access to justice can be summarised as follows:¹⁸⁹ (i) the complexity of discrimination law, (ii) lack of sufficient financial means (for example Croatia); (iii) short time frames for bringing the dispute to court / seeking non-judicial resolution (for example Ireland); (iv) the length and complexity of the procedures involved (for example Croatia); and (v) low frequency of trials. Against this background, *good practice* can be defined as using a combination of judicial and non-judicial remedies regarding anti-discrimination in the EU, on the one hand, and to eliminate as much as possible the main obstacles to access to justice, on the other hand, since without effective remedies, combat against discrimination may not be possible at the desired level in practice.

Second, there are four issues regarding the filing of a lawsuit. Firstly, only trade unions in Croatia, and associations, organisations and trade unions in France and Ireland can act *on behalf of victims of discrimination*. Secondly, in each State, associations, organisations and trade unions can act *to support victims of discrimination*. At this point, some Member States, such as France, expect the relevant association, organisation or trade union to meet certain requirements (for example, having existed for a certain period of time or including the purpose of anti-discrimination in its statute), while other Member States, for example Croatia, do not seek such specific requirements and consider it sufficient to have a legitimate interest in the relevant dispute.¹⁹⁰ Thirdly, *actio popularis* (in the public interest, without a specific victim) cases can be filed in France and Croatia, but not in Ireland. Fourthly, *collective action* (on behalf of multiple victims in the same incident) can be filed in France, but not in Ireland and Croatia. Against this background, *good practice*, which is also the practice in most States, can be defined as allowing associations, organisations and trade unions to act both on behalf of and in support of victims of discrimination, and to allow *actio popularis* and collective actions,¹⁹¹ since in this way, on the one hand, victims of discrimination would not be left alone, and on the other hand, more systemic problems can be brought to trial.

Third, each State has introduced some regulations regarding the transfer of the burden of proof from the claimant to the respondent, protection against victimisation and sanctions (for example compensation, etc.). More specifically, three statements can be made regarding these issues: Firstly, most Member States have regulated the burden of proof as required by EU acts.¹⁹² Secondly, while most Member States, such as France, have kept the scope of protection against victimisation as wide as possible, some, such as Ireland, have kept the scope limited.¹⁹³ Thirdly, each Member State has its own network of sanctions in its own legal order, and in general, most of them are established to be individual and restorative rather than preventive.¹⁹⁴ Against this background, *good practice* can be defined as shifting the burden of proof from the claimant to the respondent, providing full protection against victimisation and offering a regime of not only individual and restorative but also preventive sanctions, since in this way, a position can be created in favour of actual or potential victims in the combat against discrimination.

Fourthly, as a requirement of the EU acquis, each Member State has established equality bodies with different terms of reference, powers, structures, resources and operational functioning.¹⁹⁵ In this respect, *good practice* can be defined as having at least one such national body / equality body¹⁹⁶ and ideally having a national body / equality body that is 'independent, effective and highly effective' with A status with GANHRI,¹⁹⁷ since in this way, the combat against discrimination can be strengthened through a body specific to the issue.

188 See Chopin & Germaine fn. 39, p. 82.

189 See *Ibid.*, p. 84–86.

190 See *Ibid.*, p. 87–88.

191 See *Ibid.*, p. 88–95.

192 See *Ibid.*, p. 95–97.

193 See *Ibid.*, p. 97–100.

194 See *Ibid.*, p. 100–101.

195 Chopin & Germaine fn. 39, p. 106.

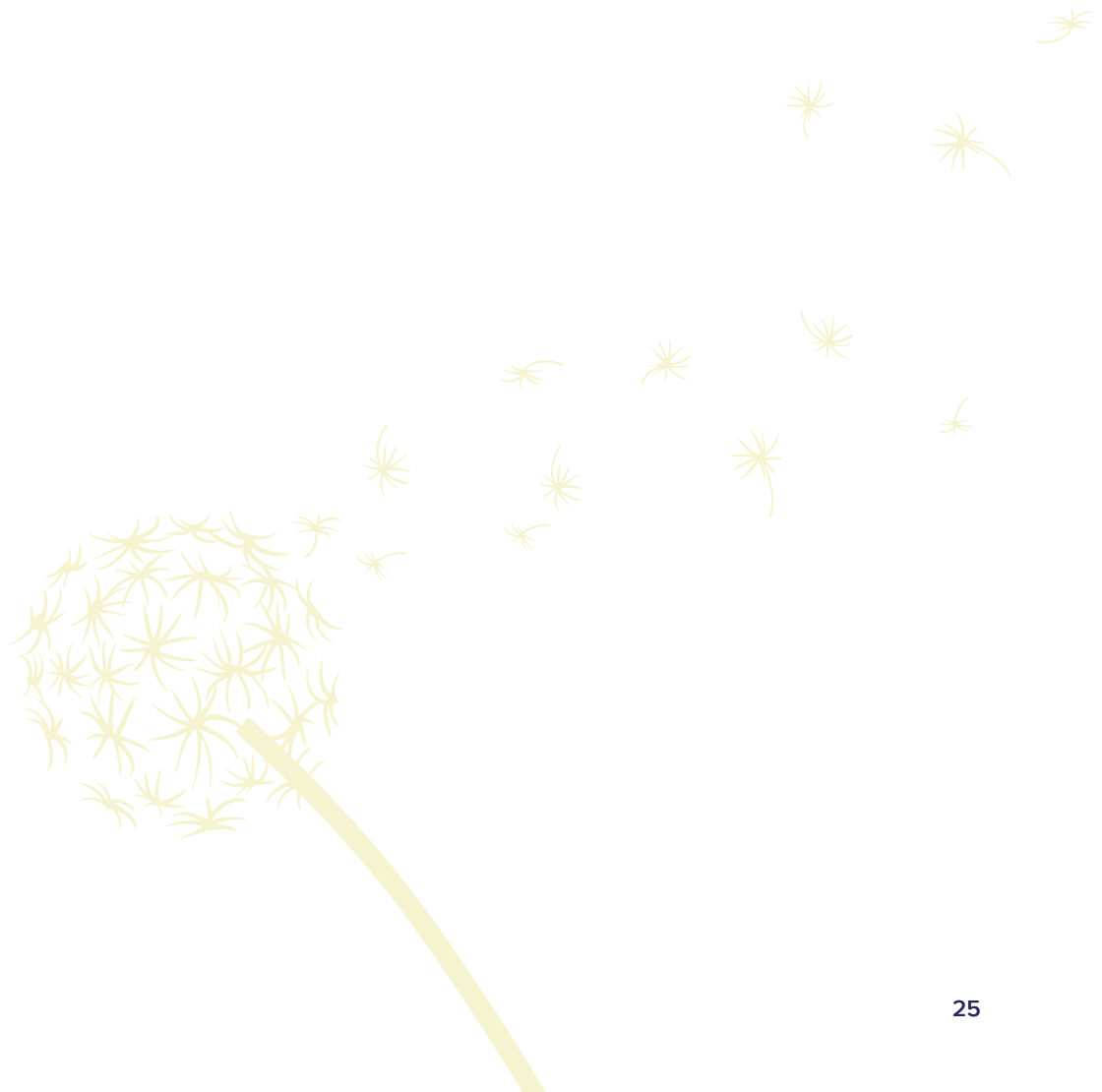
196 See *Ibid.*, p. 105–121.

197 See European Union Agency for Fundamental Rights, *Strong and Effective National Human Rights Institutions – Challenges, Promising Practices and Opportunities*, Publications Office of the European Union, Luxembourg, 2020, p. 12.

Conclusion



This study comparatively examines three Member States (France, Ireland and Croatia) of the EU in the area of 'Anti-Discrimination' under the 'Technical Assistance for Strengthening Fundamental Rights Sector Coordination Project'. In this regard, it can be stated that the legislations and practices of the three selected States overlap with and differ from each other in some respects while they can set an example for each other (or other Member States) or take an example from each other (or other Member States). Finally, it should be reminded that the legislations and practices of these Member States may change over time, including sometimes to meet the requirements of CJEU or national court decisions.



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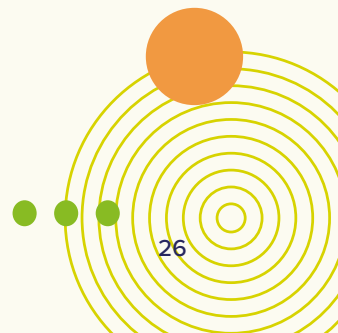
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