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Sexual Orientation Discrimination in the European Union: National Laws and the Employment Equality Directive

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Chapter 6

OVERVIEW OF THE STATE OF IMPLEMENTATION OF THE DIRECTIVE¹

6.1 INTRODUCTION

The main purpose of this book has been to assess the extent to which *Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation* (hereafter the Directive) has been properly implemented – with respect to sexual orientation discrimination – in the 25 Member States and in the two countries set to join the European Union in 2007 or 2008, Bulgaria and Romania.²

According to the case law of the Court of Justice of the European Communities, the provisions of a directive must be implemented with ‘the specificity, precision and clarity necessary to satisfy the requirements of legal certainty’.³ This means that all elements of the Directive must be explicitly implemented, if not already explicitly covered in existing law. Therefore the adoption of the Directive has meant that all old, new and future Member States either had to amend existing laws or to introduce new ones, or to do both.

This chapter will give an overview of the implementation situation in the 27 countries.⁴ The main basis for this comparative overview is the national legislation that has been enacted in most of these Member States, and that has been summarised, compared and analysed in the two previous chapters.

In all Member States, legislation to implement the Directive is required at national level. In the United Kingdom separate (national) implementing legislation has been adopted for Great Britain (that is Scotland, England and Wales), for Northern Ireland and for Gibraltar.⁵ In most countries, implementation of

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² The full text of the Directive is reproduced as an annex in this book.

³ See case law cited in 2.2.1 above.

⁴ For an analysis of the Directive’s requirements see Bell 2002, and chapters 2 and 4 above. See also Bell et al. 2004.

⁵ See Wintemute 2004, para. 17.1.3, 17.1.5 and 17.2.1.

the Directive must be accomplished by primary parliamentary legislation. In some countries (including Italy, Romania, Malta and the United Kingdom) implementation can wholly or partly be done by governmental decree.

In addition to national legislation, regional implementing measures are required in some countries: for example in Austria (primarily with respect to public employees and agricultural workers), in Belgium (with respect to public employment and vocational guidance and vocational training), in Germany (with respect to public employment), and in Finland (in the province formed by the islands of Åland).⁶

6.2 THE TIMELINESS OF IMPLEMENTATION

Before the Directive was adopted in 2000, eight of the then fifteen Member States, plus the Czech Republic, Slovenia and Romania, did already have some national legislation prohibiting sexual orientation discrimination in employment, but the others did not.⁷

The then fifteen Member States had until 2 December 2003 to implement the Directive (either through pre-existing legislation or by enacting new legislation). Only in Belgium, France, Italy, Portugal, Sweden, and the United Kingdom had the legislation to implement the Directive been more or less completed before that date. In Austria, Denmark, Finland, Ireland, the Netherlands and Spain implementation measures came into force in 2004 (as did supplementary legislation in Portugal) and in Greece an implementing law came into force early 2005. By the summer of 2005 proposals to implement the Directive had not yet been adopted in Luxembourg and Germany.⁸

The ten new Member States that joined the European Union on 1 May 2004, had until that date to implement the Directive. Only in Cyprus, Estonia and Hungary had legislation aimed at implementing the Directive been more or less completed by then. In Malta, Poland, Slovenia and Slovakia implementing measures came into force later in 2004, in Lithuania in 2005, and in the Czech Republic in 2004 and 2006. By the summer of 2005 legislation completing the implementation in Latvia still needed parliamentary approval.⁹

The two countries that are set to join the European Union in 2007 or 2008, Romania and Bulgaria, had already more or less completed the implementation of the Directive by 2004.¹⁰

⁶ See 4.1 above.

⁷ See 3.3 above.

⁸ See 4.1 and 4.2.1 above.

⁹ See 5.1 above.

¹⁰ Idem.

On 20 December 2004 the European Commission announced that it was referring Germany and Luxembourg to the Court of Justice of the European Communities, for failure to implement the Directive *in time*,¹¹ and on 20 October 2005 the Court of Justice ruled that Luxembourg has indeed failed to fulfil its obligations under the Directive.¹² This does not mean that the Commission approves of the quality of the implementation in the other Member States. The Commission is still examining whether the Directive has been implemented *properly* by the Member States that have enacted implementing legislation.¹³ In doing this the Commission might find this book (and especially the overview in the next paragraph), together with the reports on which it is based, helpful.

6.3 THE QUALITY OF IMPLEMENTATION

This paragraph brings together the main conclusions about the quality of the implementation of the Directive, with respect to sexual orientation, at national level by the summer of 2005. These conclusions are based on the comparative analysis in chapters 4 and 5. There, as well as in the various country reports on the basis of which they have been written,¹⁴ more detailed information and criticism, more arguments and nuances, and more good practices can be found. This paragraph concentrates on *major* shortcomings in the implementation. It is also important to note that these often critical conclusions only provide a tentative analysis of the implementation of the Directive. After all, not all national implementing legislation is in place,¹⁵ and there has only been a short period of time in which the enacted laws could start to face reality. Little is known as of yet about the practical problems that may arise in their application. Moreover, the Court of Justice of the EC has not had a chance to specify the meaning of many

¹¹ Simultaneously, the Commission is also referring Austria (because of non-implementation in some regions) and Finland (because of non-implementation in the province formed by the islands of Åland) to the Court of Justice. See 4.1 above, and the Commission's press release of 20 December 2004, IP/04/1512 (online at http://europa.eu.int/comm/employment_social/fundamental_rights/legis/lginfringe_en.htm).

¹² ECJ 20 October 2005, Case C-70/05, *Commission v. Luxembourg*. The case against Germany is still pending.

¹³ See the Commission's press release of 20 December 2004, mentioned above.

¹⁴ Especially the national chapters in the report *Combating sexual orientation discrimination in employment 2004*, and the summaries on the implementation of the Directive with respect to sexual orientation, written at the request of the authors of this book, by experts from most of the new Member States and from Bulgaria and Romania. See also the *Report on measures to combat discrimination 2004/2005*, and the 2005 issues of the *European Anti-Discrimination Law Review*.

¹⁵ Legislative proposals are still being discussed not only in Germany, Luxembourg and Latvia (see above), but also in the Czech Republic and some other countries.

words and phrases in the Directive, and it remains to be seen how national courts will interpret the various implementing laws and regulations.

The following conclusions have been formulated quite strictly. This is because EC law demands a strict implementation wherever a directive contains clear and specific requirements. Wherever its wording is vague or leaves scope for national variations, a narrow reading would be less justifiable and thus different interpretations of the Directive can co-exist. Many of the implementation shortcomings highlighted here can, and indeed should, be solved by national courts giving an interpretation to the national legislation that is in conformity with the Directive. To remove other shortcomings, further legislation – and perhaps judgements of the Court of Justice – will be required.

Due to the absence of implementing legislation, the legal situation in Germany and Luxembourg is not covered in the remainder of this chapter. And because less detailed information was available on developments in Greece, Bulgaria, Romania and the ten new Member States, these countries are covered in a somewhat limited way. Regional measures (and Gibraltar) are not covered in this overview either.¹⁶

6.3.1 *Prohibition of different forms of sexual orientation discrimination in employment*

All Member States of the European Union (plus Bulgaria and Romania) now have some national legislation in force against at least some forms of sexual orientation discrimination in employment. This is also true, albeit in a very limited way, for the two countries that have not yet implemented the Directive at all: Luxembourg and Germany.¹⁷ There is, however, one country that still does not explicitly mention sexual orientation discrimination, namely Latvia; but there an open-ended anti-discrimination clause applies, which has been interpreted in case law as also prohibiting sexual orientation discrimination.¹⁸ Nevertheless, all three countries still clearly fall short of the requirements of the Directive.¹⁹ The same can perhaps be said of Malta and Finland, where sexual orientation discrimination is not explicitly mentioned in some of the implementing measures, and about Belgium, where the Court of Constitutional Arbitration in 2004 declared the closed list of grounds (including sexual orientation) unconstitutional.²⁰

¹⁶ See 6.1 above.

¹⁷ See 4.1 above.

¹⁸ See 5.5 and the beginning of 5.2 above.

¹⁹ See 6.1 above.

²⁰ See 5.2.1 and 4.2.2 above.

Existing legislation, in all countries that have implemented the Directive, covers both direct and indirect sexual orientation discrimination, as required by article 2(2) of the Directive. However, the wording of the prohibition of *direct discrimination* in the implementing legislation in some Member States falls short of the minimum requirements of the Directive: the definitions of direct discrimination in Hungary, Portugal and Spain do not allow for comparison with how another 'would' be treated; in Hungary a general possibility for justifying direct discrimination is provided; and in Romania the prohibition is limited to discrimination with respect to rights stipulated in legislation.²¹ Contrary to the Directive, a definition of *indirect discrimination* is missing in France; moreover the wording of such a definition in Belgium, Hungary, Latvia, Netherlands, Poland, Romania and the United Kingdom seems too narrow.²²

Contrary to article 2(4) of the Directive, *instruction to discriminate* is not (or not always or not as a form of discrimination) prohibited by the legislation of Cyprus, France, Portugal, Romania, Sweden and the United Kingdom.²³

An important feature of the Directive is its requirement to prohibit *harassment* related to sexual orientation as a form of sexual orientation discrimination. A prohibition of harassment has been enacted in all countries that have implemented the Directive, but in Cyprus, France, Romania and the United Kingdom this is not done *as a form of discrimination*. At least eight countries have adopted a definition of harassment that in some respects is slightly more limited than that of the Directive (Austria, Estonia, France, Greece, Poland, Romania, Sweden and United Kingdom).²⁴ It remains to be seen, whether the Court of Justice of the EC would find these limitations to be acceptable or not under the second sentence of article 2(3) of the Directive (which states that 'the concept of harassment may be defined in accordance with national laws and practice'). For the practical relevance of the prohibition of harassment, however, much will depend on the attitude of employers, managers, co-workers, national courts, etc. towards common forms of anti-homosexual behaviour (such as verbal abuse, or revealing someone's sexual orientation against her or his will).²⁵

The words used in existing legislation to refer to 'sexual orientation' in most countries correctly cover *homosexual, heterosexual and bisexual* orientations (although in the Netherlands only the first two are explicitly mentioned). However, the wording used in France (with a possessive pronoun in front of the words

²¹ See 4.2.3 and 5.2.1 above.

²² See 4.2.4 and 5.2.1 above. For a serious problem concerning indirect discrimination against same-sex partners in at least Ireland and Italy, see below.

²³ See 4.2.6 and 5.2.2 above.

²⁴ See 4.1, 4.2.5 and 5.2.2 above.

²⁵ See 4.3.8 above.

‘sexual orientation’) does not clearly extend the prohibition of sexual orientation discrimination to discrimination on grounds of a *mistaken assumption* about someone’s sexual orientation, which is contrary to articles 1 and 2 of the Directive.²⁶

At least in most of the old Member States, the implementing legislation not only covers discrimination on grounds of a person’s heterosexual, homosexual or bisexual *preference*, but also discrimination on grounds of a person’s heterosexual, homosexual or bisexual *behaviour* or on grounds of a person’s *coming out*.²⁷ This is in line with the case law of the European Court of Human Rights,²⁸ and helps to achieve one of the main goals of the prohibition of sexual orientation discrimination: to give lesbian women, gay men and bisexuals a chance to be as open about their sexual orientation as heterosexuals can be. On the other hand, lesbian women, gay men and bisexuals should also have a right to keep their sexual orientation secret. Therefore it is a good practice in most of the old Member States that it is almost always considered it irrelevant and/or discriminatory to ask a job applicant about his or her sexual orientation. In Denmark this is even explicitly prohibited in the Act on Discrimination.²⁹

Whether *direct discrimination between same-sex and different-sex (cohabiting) partners* in employment will or will not be covered by the prohibition of sexual orientation discrimination is not completely certain in several Member States (including France, Greece, Italy and Spain), although the Directive clearly requires that.³⁰ With respect to the Directive’s requirement to also prohibit *indirect discrimination against same-sex partners*, there appears to be a problem in at least two Member States. This concerns the most common form of indirect sexual orientation discrimination in employment: discrimination against unmarried employees and their partners. In Ireland and Italy a specific exception in the implementing legislation seeks to prevent the national courts from assessing whether such indirect discrimination is unjustified. In the other Member States it remains to be seen, whether or not, in a concrete case, such indirect discrimination would be considered objectively justified, appropriate and necessary in the sense of article 2(1) of the Directive (for example because of the aim not to prejudice national laws on marital status, as indicated in recital 22 of the Directive).³¹

²⁶ See 4.2.2 and 4.3.1 above.

²⁷ See 4.3.1 and 4.3.2 above.

²⁸ See 3.2 above.

²⁹ See 4.3.6 above.

³⁰ See 4.1 and 4.3.3 above. For a study of the form and extent of such direct discrimination with respect to partner benefits provided by employers, see Littler 2004.

³¹ See 4.3.3 above.

The implementation of article 3 of the Directive seems to be particularly problematic for Member States. This may be blamed in part on the less than clear formulation, in article 3, of some aspects of the material and personal scope of the Directive. The main national shortcomings with respect to *material scope* appear to be the following:³²

- *Vocational guidance and training* are not or at least not fully covered in several countries, including Austria, France and Spain.
- *Access to employment* is not fully covered in Estonia, Slovenia and Romania.
- *Employment conditions* (including pay and dismissal) are covered in almost all Member States, but *working conditions* (in the sense of working environment) for employees are not explicitly covered in several countries, including France, Latvia and Sweden.
- *Self-employment* is not or at least not fully covered in Bulgaria, Estonia, Czech Republic, Latvia, Lithuania, Malta, Poland, Portugal, Slovenia, Romania and the United Kingdom. Even if access to self-employment is covered, sometimes the working conditions of the self-employed are not covered (as seems to be the case in several countries, including Austria, France, Italy, Spain, Sweden and the United Kingdom).
- *Public employment* is not yet fully covered in Estonia, Latvia and Malta (and not at all in the legislation proposed in Luxembourg).
- With respect to *forms of occupation* other than employment or self-employment (such as voluntary work, or compulsory military service), there seem to be problems in several countries (including Austria, Czech Republic, Estonia, Finland and Sweden).

On the other hand it should be noted that a majority of the 27 countries have gone beyond the minimum scope of the Directive, by also prohibiting sexual orientation discrimination in the provision of goods and/or services.³³

As regards the *personal scope* of the implementing legislation, at least Denmark, Ireland, Hungary, Sweden and the United Kingdom seem to fall short of the minimum requirements of the Directive. This would be so because in their legislation co-workers – unlike employers and their representatives (such as managers, and job or training agencies) – are not subjected to the prohibition of harassment and other forms of discrimination (although the employer may be liable for their actions). This would appear to be incompatible with article 3(1)

³² See 4.2.7 and 5.2.3 above.

³³ See 3.6 above.

of the Directive, which speaks of 'all persons', and with article 2(1), which does not limit the personal scope either.³⁴

6.3.2 *Exceptions to the prohibition of discrimination*

The Directive *allows* for a variety of exceptions to the prohibition of sexual orientation discrimination. Not every permitted exception has been incorporated into all national legislation.

Nine countries have enacted specific exceptions that are based on article 2(5) of the Directive (measures necessary for *public security*, for the protection of *rights of others*, etc.). The wording of such exceptions in Ireland, Italy, the Netherlands and the United Kingdom is probably not limited enough to be justified by article 2(5), and this may also be the case for Belgium, Cyprus, Greece, Malta and Slovakia.³⁵

All countries except Estonia, France, the Netherlands and Slovenia have enacted exceptions for sexual orientation as an *occupational requirement*. Of these, the legislation in Denmark, Finland, Hungary, Italy, Latvia, Poland, Portugal and the United Kingdom falls short of the objectivity and proportionality conditions set by article 4(1).³⁶ In Hungary there is an additional general exception for unequal treatment based on 'a reasonable ground directly related to the relevant legal relation'. This goes beyond what the Directive allows.³⁷

In addition, article 4(2) of the Directive allows for specific exceptions for employers with an *ethos based on religion or belief*, but only as regards discrimination on grounds of religion or belief. Such specific exceptions for religion based employers have been enacted in Austria, Bulgaria, Denmark, Greece, Hungary, Ireland, Italy, Malta, Netherlands, Slovakia and the United Kingdom. Most of these exceptions are not fully compatible with the requirements of article 4(2). The main problem is that in Hungary, Ireland, Netherlands, Slovakia and the United Kingdom this exception also extends to discrimination on grounds other than religion or belief, including sexual orientation. Another problem may be that in several countries (including Bulgaria, Denmark, Greece, Italy and Malta) it is not made explicit that the exception for the grounds of religion and belief should not be used to justify discrimination on grounds of sexual orientation.³⁸

Many, though not all, countries have enacted exceptions for *positive action* with respect to sexual orientation (Austria, Belgium, Bulgaria, Czech Republic,

³⁴ See 4.2.8 and 5.2.3 above.

³⁵ See 4.1, 4.4.2 and 5.3.1 above.

³⁶ See 4.1, 4.4.4 and 5.3.3 above.

³⁷ See 5.2.1 above.

³⁸ See 4.1, 4.4.5 and 5.3.3 above.

Greece, Finland, Ireland, Lithuania, Malta, Poland, Portugal, Spain, Romania and the United Kingdom). These provisions seem to be compatible with the wording of article 7(1) of the Directive.³⁹

6.3.3 *Enforcement of the prohibition of discrimination*

In addition to the content of the prohibitions of sexual orientation discrimination, questions relating to their enforcement are of course central to the implementation of the Directive.

Article 9(1) of the Directive requires the availability of judicial and/or administrative procedures, but in contrast with the Racial Equality Directive (2000/43/EC), the setting up of *specialised bodies* for the application of the principle of equal treatment is not required with respect to sexual orientation discrimination. Nevertheless, twelve countries have chosen to partly entrust the enforcement of the prohibition of sexual orientation discrimination in employment to a specialised *equality* body. Eleven of these countries have established bodies covering a multitude of grounds (Austria, Belgium, Bulgaria, France, Hungary, Ireland, Lithuania, Netherlands, Romania, Slovenia, and the United Kingdom, but only in relation to Northern Ireland); only Sweden has established an enforcement body that deals exclusively with issues of sexual orientation discrimination. In addition, six Member States have partly entrusted the enforcement of the prohibition of sexual orientation discrimination to more *general* specialised bodies: either a human rights body (as in Latvia, Poland and Slovakia) or a general ‘ombudsperson’ (Cyprus, Estonia and Greece).⁴⁰

The existence of all these specialised bodies allows for specific *non-judicial procedures* for the enforcement of the prohibition of discrimination. Conciliation in discrimination cases is also available in several countries. Judicial procedures, and in particular *civil judicial procedures*, are available in all Member States; *criminal judicial procedures* are available in a few new Member States (Lithuania, Malta and Slovenia) and in most old Member States (all except Austria, Denmark, Portugal and the United Kingdom).⁴¹

It would appear that article 9(2) of the Directive requires that *interest groups* can play an officially recognised role in enforcement procedures, in support or on behalf of complainants. In light of the text of article 9(2) it would seem reasonable to let the interest groups and complainants make the choice for themselves between ‘in support of’ and ‘on behalf of’. It remains to be seen if the

³⁹ See 4.4.6 and 5.3.4 above.

⁴⁰ See 4.1, 4.5.2 and 5.4.2 above.

⁴¹ See 4.5.3, 5.4.1 and 5.4.3 above. In Ireland and Sweden penal procedures are only available in very specific circumstances.

Court of Justice will opt for that interpretation. If so, the implementation in Austria, Denmark, Finland and the United Kingdom (where interest groups can only act in support of complainants), and also in the Czech Republic, Estonia, Greece, Ireland, Slovakia, Spain and Sweden (where interest groups cannot themselves be party in an enforcement procedure for the benefit of a complainant) would probably be insufficient. The limitation in Italy, Lithuania, Portugal, Spain and Sweden to trade unions, excluding other interest groups, is more certainly incompatible with the Directive. Also incompatible is the limitation in Austria to one particular non-governmental organisation (which can only intervene in private employment cases), and the rule in Latvia that interest groups can only defend the rights of their own members.⁴²

The Directive's important requirement of a shift in the *burden of proof* in discrimination cases (article 10), appears to have not been fully implemented in many countries (Austria, Czech Republic, Estonia, France, Hungary, Italy, Latvia, Lithuania, Malta, Poland, Portugal, Romania and perhaps the United Kingdom). Furthermore, in France and the United Kingdom (and possibly in Hungary) the victim of sexual orientation discrimination may sometimes have to allege (or even prove) his or her sexual orientation; this is not compatible with articles 1 and 2 of the Directive, which also protect against discrimination on grounds of a mistaken assumption regarding someone's sexual orientation.⁴³

Adequate protection against *victimisation*, as required by article 11 of the Directive, is not provided in Austria, Estonia, Italy, Poland and Romania.⁴⁴

Article 17 of the Directive requires that the available *sanctions* must be 'effective, proportionate and dissuasive'. It is doubtful whether many Member States already fulfil this important requirement:

- Austria, Finland, Ireland and Sweden can be criticised because of the upper limits imposed by them on compensatory damages, Austria also for not providing compensatory damages in case of discriminatory termination of employment, and Lithuania and Malta for excluding compensation of non-pecuniary damages.⁴⁵
- At least Denmark, Finland, Spain and the United Kingdom could be criticised for only having included employers (and their 'accomplices') in the circle of persons to whom sanctions may be applied.⁴⁶

⁴² See 4.1, 4.5.7 and 5.4.4 above.

⁴³ See 4.3.1, 4.5.8, 4.5.9 and 5.4.3 above.

⁴⁴ See 4.5.10 and 5.4.3 above.

⁴⁵ See 4.5.4 and 5.4.1 above.

⁴⁶ See 4.5.5 above.

Without a further elaboration of sanctions, in legislation or in case law, the implementation of the Directive cannot be considered complete. To be effective, sanctions must be suited to the particular situations in which discrimination normally takes place. Therefore the availability of the following sanctions should at the very least be seen as good practices:⁴⁷

- nullity, voidability or automatic conversion of discriminatory contracts or clauses (many Member States);
- nullity or voidability of discriminatory dismissal (France, Italy, Malta, Netherlands, Slovenia and Sweden);
- judicial order to reinstate a discriminatorily dismissed employee (Austria, Bulgaria, Cyprus, Estonia, France, Hungary, Italy, Ireland, Poland, Portugal and Spain);
- removal of the negative consequences of discrimination (Czech Republic, Latvia, Poland, Romania and Slovakia);
- judicial order to start a new selection procedure or to offer the job to a discriminated job applicant (some Member States);
- judicial order to structurally change recruitment procedures (Ireland);
- exclusion from public procurement contract(s) or public subsidies (Austria and Italy);
- publication in national newspapers of judicial decisions (Italy);
- binding or non-binding opinion of a specialised enforcement body (all eighteen countries with specialised bodies, except Belgium and Northern Ireland);
- administrative fine (most new and some old Member States);
- penal fine (most old and some new Member States).

6.4 CONCLUDING REMARKS

In conclusion it can be said that – with respect to sexual orientation discrimination – the implementation of the Directive at national level is less than perfect in all 27 countries. By the summer of 2005 no implementing legislation had been enacted in Luxembourg and Germany, and the implementation at national level was still incomplete in Latvia. In several of the other countries the entry into force of the implementing measures was many months late, in Greece more than a year. And in all countries that have implemented the Directive, major shortcomings in the quality of the implementation can be found.

⁴⁷ See 4.5.4 and 5.4.1 above.

The reader may have noticed that in the preceding paragraphs most points of criticism are aimed at Germany, Luxembourg, Latvia, the United Kingdom, France and Austria.⁴⁸ The countries which receive the lowest number of critical remarks in these paragraphs are Bulgaria, Slovenia, Cyprus, Slovakia and Belgium.⁴⁹ It is difficult to find any pattern here that correlates to the different national levels of public opinion attitudes towards homosexuals and/or homosexuality.⁵⁰ This would suggest that anti-homosexual opinions of the national populations have generally not played a major role in the political decisions regarding the implementation of the Directive with respect to sexual orientation. It should not be ruled out, however, that such attitudes could still be a major (disturbing) factor in the observance and enforcement of the various laws against sexual orientation discrimination.

With respect to the following topics the enacted implementing legislation is problematic in more than a third of the 25 countries that have implemented the Directive:

- indirect discrimination;
- material scope of the prohibition of discrimination;
- exceptions for occupational requirements and religion based employers;
- role of interest groups in enforcement procedures;
- burden of proof;
- sanctions.

At the same time in a number of old, new and future Member States various good practices were found that could serve as inspiration for further improvement of the implementation of the Directive with respect to sexual orientation discrimination in other Member States. In combination with a full implementation of all requirements of the Directive, such good practices can help to increase the legal certainty for lesbian women, gay men, bisexuals and heterosexuals.⁵¹ This is especially true for:

⁴⁸ Followed by Italy, Romania, Sweden, Hungary and Estonia. For minor shortcomings, not counted here, see chapters 4 and 5 above.

⁴⁹ Followed by the Czech Republic, Lithuania and the Netherlands. It should be remembered however that the new and future Member States have been subjected to a less detailed analysis in chapter 5 than most of the old Member States in chapter 4 of this book. See both chapters for minor shortcomings, not counted here.

⁵⁰ See 3.1 above (especially tables 1 and 2).

⁵¹ See chapter 7 below.

- the countries that went beyond employment and occupation and also legislated against sexual orientation discrimination in other fields;⁵²
- the various specialised bodies – covering sexual orientation discrimination – set up or proposed by some old and most new and future Member States;⁵³
- the important role in the enforcement of the anti-discrimination laws, that several Member States have given to interest groups;⁵⁴
- the range of specific sanctions that can help ensure that the principle of equal treatment will actually work.⁵⁵

⁵² Which according to EC law is only required with respect to racial discrimination.

⁵³ This is also only required with respect to racial discrimination.

⁵⁴ As indicated above, the Directive is not completely clear as to how big a role that should at least be.

⁵⁵ The Directive sets the ambitious but abstract minimum standard, that sanctions should be ‘effective, proportionate and dissuasive’.