



Doc. 14666

19 November 2018

Discrimination in access to employment

Report¹

Committee on Equality and Non-Discrimination

Rapporteur: Mr Damien THIÉRY, Belgium, Alliance of Liberals and Democrats for Europe

Summary

The right to work is a fundamental right. The Council of Europe has repeatedly shown its commitment to respect for this right and for the principle of non-discrimination in this area. Yet discrimination in access to employment remains a real problem in member States, whatever the ground of discrimination at issue.

States should take general measures to help to create the conditions in which unemployed people can compete on an equal footing in the labour market. They should ensure that anti-discrimination laws fully cover the field of employment and all grounds of discrimination, and provide for easily accessible remedies for victims of discrimination in this field. They should also adopt and implement integrated policies designed to promote access to employment for disadvantaged groups.

States must also respond to discriminatory behaviour by employers. It is recommended that they legislate and implement policies to promote the use of direct tools such as anonymous CVs, unconscious bias training and diversity audits in companies; that they use indirect means such as recruitment grants, employment intermediaries or diversity labels; and that they support initiatives of public and private companies aimed at promoting diversity and conveying positive messages about diversity in society.

1. Reference to committee: [Doc. 14134](#), Reference 4244 of 14 October 2016.



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A. Draft resolution²

1. The right to work is a fundamental right, guaranteed by many international fundamental rights instruments, including the European Social Charter (revised) (ETS No. 163). Access to the labour market can, moreover, be a very powerful factor of integration and social cohesion.
2. The Parliamentary Assembly notes with concern that in a large number of European countries, developments in the labour market and the rise in job insecurity are making it increasingly difficult for individuals to have access to long-term employment. As a result, many people find themselves seeking a job more and more often and for longer and longer periods of time.
3. The Assembly is also concerned that for some people these problems are compounded by discrimination based on grounds such as the individual's sex, sexual orientation, gender identity, age, national, ethnic or social origin, belonging to a national or ethnic minority, colour, language, family name, religion, political opinions, trade union activities, pregnancy, disability, state of health or physical appearance or any other real or supposed situation.
4. Discrimination can have dramatic consequences and irreversibly impact the victims' career path, prompting them to give up on an occupation linked to their qualifications or to leave their country to find a better job abroad. For States, this represents not only a waste of human resources but also an economic burden and highlights the urgent need to take action to step up the fight against discrimination in access to employment.
5. The Assembly has already made a number of recommendations to member States of the Council of Europe aimed at remedying the structural inequalities affecting certain groups within our societies who find it harder than others to access employment or who are more subject to discrimination in this field. Several recent resolutions address these issues, such as [Resolution 2235 \(2018\)](#) on empowering women in the economy, [Resolution 2153 \(2017\)](#) on promoting the inclusion of Roma and Travellers, [Resolution 2039 \(2015\)](#) on equality and inclusion for people with disabilities, [Resolution 1958 \(2013\)](#) on combating discrimination against older persons on the labour market, [Resolution 2014 \(2014\)](#) on raising the status of vocational education and training, and [Resolution 1993 \(2014\)](#) on decent work for all.
6. In order to combat effectively discrimination in access to employment, States must take both general measures to promote access to employment for groups that are disadvantaged in this field and measures to encourage employers, both public and private, to eliminate all forms of discrimination in their recruitment procedures. These measures must also take account of the increasing role played by artificial intelligence, based on algorithms, in the shortlisting of applicants used in large and medium-sized enterprises and in the civil service.
7. In the light of the foregoing, the Assembly calls on Council of Europe member and observer States and States whose parliaments enjoy observer or partner for democracy status with the Parliamentary Assembly to:
 - 7.1. in order to identify the most urgent measures, collect data regularly on access to employment, broken down according to as wide a range of grounds of discrimination as possible and at least according to all the grounds recognised at national level;
 - 7.2. ensure that anti-discrimination law is complete, covering all grounds of discrimination, and includes accessible and effective legal remedies for people who are victims of discrimination in access to employment;
 - 7.3. adopt an integrated policy designed to promote access to employment for disadvantaged groups in this area, and in this context to:
 - 7.3.1. promote access to education and training for members of disadvantaged groups in the field of employment;
 - 7.3.2. take effective measures to help long-term unemployed people to return to work;
 - 7.3.3. help people learn the official language or languages of the country or region in which they reside;
 - 7.3.4. bearing in mind that employers have the same prejudices as the general public, combat these prejudices and the stereotypes that prevail among the population;

2. Draft resolution adopted unanimously by the committee on 11 October 2018.

- 7.4. take measures actively to encourage employers to identify and bring to a halt all discrimination in their recruitment procedures and, to this end, to:
 - 7.4.1. make it compulsory for large and medium-sized enterprises to use anonymous CVs, and encourage them to use standardised application forms and design all algorithms used in these procedures in such a way as to eliminate the risks of discrimination;
 - 7.4.2. promote optional unconscious bias training and the establishment of standardised interviews;
 - 7.4.3. promote the introduction by public and private companies of diversity auditing;
 - 7.4.4. support various measures liable to have an indirect positive impact on access to employment for people who are disadvantaged in this field, such as recruitment grants, employment intermediaries or diversity labels, and carry out regular evaluations of the effectiveness of these measures;
 - 7.4.5. introduce a legal obligation for public sector employers to promote diversity;
 - 7.4.6. support voluntary initiatives by public and private companies to promote diversity and convey positive messages about diversity in society, placing particular emphasis on initiatives which incorporate regular reporting on the results obtained.
- 7.5. with regard to the Council of Europe member States, ratify the European Social Charter (revised) and the Additional Protocol to the European Social Charter providing for a system of collective complaints (ETS No. 158), if they have not already done so.

B. Explanatory memorandum by Mr Damien Thiéry, rapporteur

1. Introduction

1. It is in our societies' interest for everyone to be able to contribute to them and be an active member, including in the field of employment. Access to the labour market can be a very powerful factor of integration and social cohesion. Having a job usually makes it easier for employees to meet their own needs and those of their family, to have access to a source of income considered legitimate by others, to strengthen their social networks and to enjoy a degree of social recognition. Conversely, being barred from the labour market tends to reinforce exclusion and lead to a vicious cycle of isolation, rejection and poverty.

2. However, changes in the labour market and the rise in job insecurity are making it increasingly difficult for individuals to have access to long-term employment in Europe. The growing variety of insecure contracts such as fixed-term, temporary and "zero hour" contracts and unpaid or low-paid traineeships, and the increasing use of such contracts by employers, are exacerbating the situation. As a result, many people find themselves seeking a job more and more often and for longer and longer periods of time.

3. For some, these problems are compounded by discrimination. The various national bodies in charge of promoting equality and combating discrimination report large numbers of complaints linked to discrimination in the field of employment. For example, in Germany, most of the requests for advice and personalised assistance made to the Federal Anti-Discrimination Agency concern the field of employment, particularly the recruitment stage.³

4. Several other reasons have prompted my decision not to deal with all forms of occupational inequality in this report but to focus specifically on the initial problem of access to employment. Discrimination in hiring is often very difficult to prove and the candidates who have not been recruited rarely have the means to take action against an employer. In addition, even when discrimination has been established, the remedies proposed seldom include hiring the victim, who receives damages, but remains without work. This makes it all the more important to eliminate discrimination in hiring.

5. Some groups within our societies have less easy access to employment and are more frequently unemployed than others due to unfavourable structural factors. For example, a region's socio-economic situation or the level of access to education can have adverse effects in this area. However, the Parliamentary Assembly has already considered this type of problem in several reports and resolutions, and made recommendations to States aimed at remedying the situation.⁴ Similarly, the Assembly recently made detailed recommendations to States regarding gender equality in employment⁵ and will soon debate a report entitled "For a disability-inclusive workforce".⁶ Therefore, I have chosen to examine these – important – matters only insofar as they raise issues of multiple or intersectional discrimination.

6. In this report, I have also chosen to focus on a specific but important aspect of the fight against discrimination in access to employment, namely the role of employers' attitudes, prejudices and discriminatory behaviour in the recruitment and hiring process. Regardless of the general measures taken by States to remedy structural discrimination and promote access to employment for disadvantaged groups, employers' attitudes, prejudices and behaviour play a key role in each decision to recruit or reject a job application. This is not purely a personal matter: States have many means of influencing employers' behaviour and when it comes to eliminating discrimination, States are under an obligation to take action. This is made all the more important by the fact that States often invest in large-scale programmes to eliminate structural inequalities. These investments will not bear fruit however if nothing is done at the same time to encourage and help employers change their discriminatory behaviour.

3. Bundesagentur für Arbeit (2014), "Analyse des Arbeitsmarktes für Schwerbehinderte Menschen", Nürnberg.

4. See for example [Resolution 2153 \(2017\)](#) on promoting the inclusion of Roma and Travellers, [Resolution 2039 \(2015\)](#) on equality and inclusion for people with disabilities, [Resolution 1958 \(2013\)](#) on combating discrimination against older persons on the labour market, [Resolution 2014 \(2014\)](#) on raising the status of vocational education and training, and [Resolution 1993 \(2014\)](#) on decent work for all.

5. [Resolution 2235 \(2018\)](#) on empowering women in the economy.

6. [Doc. 14665](#) (rapporteur: Mr Adão Silva, Portugal, EPP/CD).

2. Discrimination in access to employment, a reality

7. There may be countless grounds giving rise to discrimination in access to employment. In France, for example, the law explicitly prohibits direct discrimination based on an individual's origin, sex, family situation, pregnancy, physical appearance, particular vulnerability on account of their economic situation, whether apparent or known to the person committing the discrimination, family name, place of residence or location of their bank, state of health, loss of autonomy, disability, genetic characteristics, moral standards, sexual orientation, gender identity, age, political opinions, trade union activities or ability to express themselves in a language other than French, or their real or supposed belonging or not belonging to an ethnic group, nation, presumed race or particular religion.⁷

8. Whatever the ground for discrimination, it is clear from many sources that discrimination in access to employment is a reality.

9. Regarding racial discrimination specifically, the reports of the fourth and fifth monitoring cycles of the European Commission against Racism and Intolerance (ECRI) reveal discrimination in the field of employment affecting the following groups in particular: Roma and Travellers;⁸ people belonging to a national or ethnic minority and/or a minority whose kin-State is party to a recent conflict;⁹ immigrants and people from an immigrant background or perceived as such because of their name;¹⁰ people whose mother tongue is not the official or majority language of the country or region in which they live;¹¹ and discrimination on grounds of religion.¹²

10. Many studies carried out at national level provide telling information in this regard. In the United Kingdom, in April-June 2018, the unemployment rate was 4% for the general population, but 6.3% overall for ethnic minorities and 9% for Black/African/Caribbean/Black British people and Pakistanis, and even 12% for Bangladeshis.¹³ In 2016, although the unemployment rate was 5.4% for the general population in the United Kingdom, it was 12.8% for Muslims; moreover, 41% of Muslims (and 65% of Muslim women) were economically inactive, compared with 21.8% for the general population.¹⁴

11. In France, the annual report of the Defender of Rights (*Défenseur des droits*) for 2016 reveals that 50.8% of the discrimination complaints received concerned employment, i.e. discrimination in access to employment and the lack of equal opportunities at work. The main grounds for discrimination mentioned in these complaints are those of national origin or ethnic affiliation.¹⁵ Testing using CVs also showed that there was a high level of discrimination on grounds of religion in France. Of all those who practise their religion, people who say that they are Catholics have 30% more chance of being contacted for a job interview than people who are practising Jews and 50% more than people who are practising Muslims.¹⁶

12. The German Federal Anti-Discrimination Agency recently drew attention to discrimination during recruitment procedures against persons with disabilities, elderly people, women and people whose name suggests that they are of foreign origin.¹⁷ In Germany, there is also discrimination in access to employment based on religious affiliation, in particular affiliation to the Muslim religion.¹⁸ In Liechtenstein, while the unemployment rate is relatively low and dropped overall between 2007 and 2015, it nonetheless remained consistently higher for non-nationals than for Liechtenstein nationals: in 2015, it was twice as high for non-nationals (3.4%) as for nationals (1.7%).¹⁹

7. Section 1 of Law No. 2008-496 of 27 May 2008 on miscellaneous provisions to adapt French law to Community law in the fight against discrimination, modified by Section 70 of Law No. 2017-256 of 28 February 2017.

8. Reports on Albania, Bulgaria, Croatia, the Czech Republic, Finland, Germany, Greece, Hungary, Montenegro, Portugal, Romania, Serbia, the Slovak Republic, Slovenia, "the former Yugoslav Republic of Macedonia", Ukraine and the United Kingdom.

9. Reports on Azerbaijan, Bosnia and Herzegovina, Estonia, Georgia, Serbia and Ukraine.

10. Reports on Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Liechtenstein, Luxembourg, Malta, the Netherlands, Sweden and Switzerland.

11. Reports on Belgium, Estonia, Georgia, Germany, Liechtenstein and Luxembourg.

12. Reports on Finland, France, Germany, Greece, Liechtenstein and the Netherlands.

13. McGuinness F. (2018), Unemployment by ethnic background, Briefing Paper No. 6385, House of Commons Library.

14. House of Commons Women and Equalities Committee (2016), Employment opportunities for Muslims in the UK: Second report of session 2016-17, p. 5.

15. Annual report 2016, *Défenseur des droits*, February 2016, p. 106.

16. Valfort M.-A. (2015), "Discriminations religieuses à l'embauche: une réalité", Institut Montaigne, p. 18.

17. Antidiskriminierungsstelle des Bundes (2017), Diskriminierung in Deutschland, p. 15.

18. *Ibid.*, p. 238.

19. Regierung des Fürstentums Liechtenstein (2017), Menschenrechte in Liechtenstein: Zahlen und Fakten 2016, Vaduz, pp. 57-58.

13. In Belgium, of the 357 cases of employment-related discrimination opened in 2013, 128 concerned discrimination based on “racial” criteria, 66 on grounds of disability, 64 on grounds of religious affiliation and 56 on grounds of age.²⁰ In 2016, the number of complaints concerning discrimination in the field of employment rose by 48% compared with 2015. 35% of these cases concerned recruitment.²¹ In Brussels, 72% of the population are of foreign origin. Nevertheless, the employment rate of Belgian workers is 71% whereas that of people of foreign origin is only 35% (2012 figures).²²

14. Lesbian, gay, bisexual, transgender and intersex (LGBTI) people living in the European Union who were interviewed about the discrimination they face in all areas of life most often mentioned employment. 13% of the LGBTI people surveyed who had been seeking a job in the year prior to the survey considered that they were discriminated against in this process because of their sexual orientation or gender identity, and the percentage reached 30% for transgender people.²³ The World Bank is currently carrying out a similar study of the situation of LGBTI people in the south-eastern European countries.²⁴

15. As stressed by Kimberley McIntosh, our guest at the hearing held on 26 June 2018 by the Sub-Committee on Disability, Multiple and Intersectional Discrimination, it is also essential to gauge the intersectional discrimination which comes into play in this field. For example, despite improvements in their academic results, the proportion of equally qualified women belonging to an ethnic minority who are unemployed is at least twice as high as that of white women.²⁵ The situation is particularly difficult for Muslim women, who face threefold discrimination, on account of their sex, religion and membership of an ethnic minority. Although their situation (for example, the proportion of economically inactive women) may vary strongly in accordance with their background, religion is the most important factor affecting access to employment, and Islamophobia plays a considerable role.²⁶ Moreover, in a recent case against France concerning the dismissal of a childcare worker who wore a headscarf covering her hair, the United Nations Human Rights Committee found that there had been intersectional discrimination on grounds of gender and religion.²⁷

16. Finally, I think it is important to point out that discrimination in access to employment does not relate only to the private sector. In the Netherlands and Spain,²⁸ detailed studies show that there are risks of discrimination in the public sector. In France, where a large number of public-sector posts are filled by means of competitions, it has been shown that women, people born outside metropolitan France, or those who live in a town or city with a large number of Sensitive Urban Areas (ZUS) have fewer chances of passing the written exams and then the interviews. There is also discrimination in public hospitals and local government between female candidates whose family name sounds French and those whose family name suggests that they are of North African origin, or based on their place of residence.²⁹

17. For those affected, these forms of discrimination frequently have significant consequences, not only on a human level, but also on their career path, as noted in a recent study by the French Defender of Rights. For example, years of unsuccessful job-seeking can give rise to a feeling of having reached a dead end. Skilled applicants who are repeatedly rejected end up feeling a sense of fatalism, or even give up a career in a profession for which they are qualified, or look for employment abroad.³⁰ All of these outcomes have an impact on their country’s economy and represent a regrettable waste of resources. Once again, this highlights the urgent need for States to take action to step up the fight against discrimination in access to employment.

20. Centre Interfédéral pour l'égalité des chances et la lutte contre le racisme et les discriminations (2014), “Discrimination, Diversité, Rapport annuel 2013”, Brussels, May 2014, p. 93.

21. “Rapport annuel chiffres”, UNIA, 2016, p. 15. It should however be noted that an increase in the number of complaints can be due to various causes and does not necessarily imply that there has been an increase in discrimination.

22. Colleyn M., “Bruxelles valide l’usage de faux CV contre la discrimination à l’embauche”, Lalibre.be, 6 July 2017. www.lalibre.be/actu/belgique/bruxelles-valide-l-usage-de-faux-cv-contre-la-discrimination-a-l-emploi-595e57e8cd70d65d249c16e6.

23. European Union Agency for Fundamental Rights (FRA) (2013), EU LGBT survey, European Union lesbian, gay, bisexual and transgender survey: Main results.

24. Koehler D. (2017), “What do we know about the development outcomes of LGBTI people?”, World Bank Blogs.

25. Women’s Budget Group and Runnymede Trust (2017), *Intersecting inequalities: The impact of austerity on Black and Minority Ethnic women in the UK*, p. 11.

26. House of Commons Women and Equalities Committee (2016), *Employment opportunities for Muslims in the UK: Second report of session 2016-17*, chapter 2 and sources cited therein.

27. *F.A. v. France*, views of 16 July 2018, advance unedited version 10 August 2018, CCPR/C/123/D/2662/2015.

28. Defensor del Pueblo, Informe anual 2015, pp. 616-648, “Función y empleo públicos”.

29. L’Horty Y. (2016), “Les discriminations dans l’accès à l’emploi public”, Report to the Prime Minister, June 2016.

30. Défenseur des droits, *Études et résultats: Résultats de l’appel à témoignages: Accès à l’emploi et discriminations liées à l’origine*, September 2016, p. 1. www.defenseurdesdroits.fr/sites/default/files/atoms/files/etudesresultats-acces_a_emploi_et_discriminations_liees_aux_origines-20160919.pdf (French only).

3. International standards

18. Many international instruments recognise that the right to work is a fundamental right and establish that the principle of non-discrimination is applicable in the field of access to employment. The vast majority of Council of Europe member States are Parties to such treaties.

3.1. International treaties

19. The International Covenant on Economic, Social and Cultural Rights, which has been ratified by all Council of Europe member States except Andorra, refers in Article 6 to the right to freely chosen or accepted work – and the right not to be unjustly deprived of such work – and refers in Article 7 to the right of everyone to the enjoyment of just and favourable conditions of work (also covering recruitment). The prohibition, in the exercise of all the rights guaranteed by the Covenant, of any discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status is established by Article 2.2 of this instrument, while Article 3 points to the equal right of men and women to enjoy all the rights set out therein.³¹

20. The members of the International Labour Organization (ILO) to whom the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) applies undertake to implement a national policy whose aim is to promote equal opportunities and treatment in the field of employment and occupation so as to eliminate all discrimination in this sphere; the word “employment” as used here also covers access to employment (Article 2). The grounds of discrimination covered by this text are race, colour, sex, religion, political opinion, national extraction or social origin, along with any other criterion established in the domestic law of the State Party concerned (Article 1). 175 States have ratified this convention, 44 of which are Council of Europe member States.³²

21. As to the Council of Europe conventions, the European Social Charter (revised) guarantees the right to earn a living in an occupation freely entered upon (Article 1) and the right to non-discrimination on the ground of sex, including in matters of employment (Article 20). These two articles are among the nine articles of which six must be accepted by the Parties to the treaty, and all the Parties to the treaty have accepted them. Furthermore, Article E, which applies to all the provisions accepted by the States Parties, guarantees the enjoyment of the rights concerned without discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status. Thirty-four Council of Europe member States have ratified the European Social Charter (revised) and 11 have signed it.

3.2. Other Council of Europe instruments

22. The Committee of Ministers has repeatedly highlighted the importance of access to employment in its recommendations to member States, often emphasising the need to take specific measures to promote access to employment for various categories of people. Particular mention should be made of recommendations calling for improved access to employment for women, young people,³³ the elderly,³⁴ persons with disabilities,³⁵ migrants, refugees and asylum seekers,³⁶ along with people discriminated against on the grounds of their ethnic origin,³⁷ sexual orientation or gender identity,³⁸ state of health³⁹ or social background.⁴⁰

31. See also Committee on Economic, Social and Cultural Rights, General Comment No. 18, adopted on 24 November 2005, on Article 6 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/GC/18; General Comment No. 20, adopted in May 2009, on Article 2.2 of the Covenant, E/C.12/GC/20; General Comment No. 23 (2016) on Article 7 of the Covenant, E/C.12/GC/23.

32. The three member States of the Council of Europe which have not ratified it – Andorra, Liechtenstein and Monaco – are not members of the ILO.

33. [Recommendation CM/Rec\(2016\)7](#) on young people’s access to rights (adopted on 28 September 2016); [Recommendation CM/Rec\(2015\)3](#) on the access of young people from disadvantaged neighbourhoods to social rights (adopted on 21 January 2015); [Recommendation Rec\(2004\)13](#) on the participation of young people in local and regional life (adopted on 17 November 2004); [Recommendation Rec\(92\)11](#) on social and vocational integration of young people; [Recommendation Rec\(79\)3](#) concerning the integration of young people into the world of work.

34. [Recommendation CM/Rec\(2014\)2](#) on the promotion of human rights of older persons (adopted on 19 February 2014).

35. [Recommendation CM/Rec\(2013\)2](#) on ensuring full inclusion of children and young persons with disabilities into society to member States (adopted on 16 October 2013); [Recommendation CM/Rec\(2012\)6](#) on the protection and promotion of the rights of women and girls with disabilities (adopted on 13 June 2012); [Recommendation Rec\(2006\)5](#) on

23. In General Policy Recommendation No. 14, the European Commission against Racism and Intolerance (ECRI) lists a whole series of measures which States should take to step up the fight against racism and racial discrimination in employment. Some of these measures relate specifically to recruitment.

3.3. European Union directives

24. The 28 member States of the European Union are also covered by directives establishing a general framework for equal treatment in employment and occupation ([Directive 2000/78/EC](#)) and on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) ([Directive 2006/54/EC](#)).

4. General measures to promote access to employment for disadvantaged groups in this area

25. To promote equal access to employment effectively, measures to encourage employers to eliminate any discrimination from their recruitment procedures must be incorporated into an overall framework. The instruments cited above call on States to take a series of general measures to promote access to employment for disadvantaged groups in this area. These measures can be divided into three main categories.

26. The first goal is to map out the situation precisely so that we can identify those measures which are most capable of meeting the specific challenges of the country concerned. For this purpose, it is recommended that data be collected on access to employment and on unemployment, broken down according to criteria such as ethnic origin or membership of a national or ethnic minority, real or presumed religion, age, sex, gender, social background, place of residence, sexual orientation or gender identity, disability, physical appearance or other features.

27. Second, measures to deter employers from engaging in improper practices and to provide remedies for victims of discrimination in the sphere of employment are also essential. Accordingly States are invited to adopt anti-discrimination laws applying to areas including employment and covering all grounds of discrimination. These laws must provide for easily accessible remedies for victims so that they can uphold their rights.

28. The third category of measures comprises integrated policies whose aim is to promote access to employment for various disadvantaged groups. In this connection particular mention can be made of measures designed to promote access to education and training for people belonging to disadvantaged groups, to help long-term unemployed people to return to work, to facilitate language learning or to combat prejudice and stereotypes among the general public.

29. The components cited above help to create the conditions in which jobseekers can compete in the labour market on an equal footing. Measures aimed specifically at employers must be regarded as an integral part of these components.

the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015 (adopted on 5 April 2006); Recommendation [Rec\(92\)6](#) on a coherent policy for people with disabilities (adopted on 9 April 1992).

36. Recommendation [CM/Rec\(2011\)2](#) on validating migrants' skills (adopted on 19 January 2011); Recommendation [CM/Rec\(2008\)10](#) on improving access of migrants and persons of immigrant background to employment (adopted on 10 July 2008); Recommendation [CM/Rec\(2008\)4](#) on strengthening the integration of children of migrants and children of immigrant background (adopted on 20 February 2008); Recommendation [Rec\(2004\)2](#) on access of non-nationals to employment in the public sector (adopted on 24 March 2004).

37. Recommendation [CM/Rec\(2012\)9](#) on mediation as an effective tool for promoting respect for human rights and social inclusion of Roma (adopted on 12 September 2012); Recommendation [CM/Rec\(2008\)5](#) on policies for Roma and/or Travellers in Europe (adopted on 20 February 2008); Recommendation [Rec\(2001\)17](#) on improving the economic and employment situation of Roma/Gypsies and Travellers in Europe (adopted on 27 November 2001).

38. Recommendation [CM/Rec\(2010\)5](#) on measures to combat discrimination on grounds of sexual orientation or gender identity (adopted on 31 March 2010).

39. Recommendation [Rec\(89\)14](#) on the ethical issues of HIV infection in the health care and social settings.

40. Recommendation [CM/Rec\(2011\)9](#) on fostering social mobility as a contribution to social cohesion (adopted on 21 September 2011).

5. Eliminating discrimination by employers

30. While it goes without saying that employers play a decisive role in access to employment for every candidate who applies for the jobs offered by their company, the overall, long-term effect of employers' conduct is not always easy to gauge. A recent study by the Organisation for Economic Co-operation and Development (OECD) reveals nonetheless just how much discrimination is likely to arise as a result of candidates' origins as soon as their application is examined. For instance, in France, candidates whose parents are from North or Sub-Saharan Africa have to send their curriculum vitae to twice as many potential employers as other candidates to be invited for interview; in Sweden, young people from Middle-Eastern backgrounds have to send two and a half times more CVs; and in the German-speaking provinces of Switzerland, an Albanian speaker both of whose parents come from the former Yugoslavia also has to send two and a half-times more CVs than any other candidate.⁴¹

31. Various methods make it possible, directly or indirectly, to make the recruitment process objective, in other words to ensure that candidates are selected according to the skills required for a post, and not on the basis of information that has nothing to do with these skills. Some of these methods, set out below, can be considered good practices which should be implemented more widely in our member States.

5.1. "Direct" methods

32. A first series of practices is intended to directly modify the way in which employers sort CVs and select candidates. It should be noted from the outset that the methods described below are more applicable to large and medium-sized enterprises than to small ones.

33. The anonymous CV, in other words a CV from which information that may give rise to discrimination (particularly the candidate's name, photograph, age and address) is excluded, is the leading practice in this field. It guarantees that recruiters will examine applications objectively basing themselves solely on the candidates' skills. For employers, anonymous CVs also have the merit of preventing risks of breaching anti-discrimination laws and helping to improve their company's image.⁴²

34. In France, anonymous CVs became a legal requirement for companies with more than 50 employees in 2006. However, no implementing decree making it possible to determine the conditions under which this obligation would apply and to make it effective was adopted. In 2013, it was estimated that only 4% of the companies concerned used anonymous CVs and in 2015 the law was amended, making the practice optional again.⁴³ A large-scale study had, however, shown how effective anonymous CVs were where it came to eliminating discrimination on the ground of sex and preventing any tendency by employers to select, knowingly or unknowingly, candidates resembling them. Nor were these effects confined to the stage at which candidates were to be called to interview. Greater diversity was also noted among the people ultimately recruited.⁴⁴ However, according to another study, the use of anonymous CVs had penalised candidates from foreign backgrounds or disadvantaged neighbourhoods; some researchers believed that this result could be due to shortcomings in the design of the CVs used.⁴⁵

35. Several other large-scale surveys conducted in Europe have shown that the use of anonymous CVs makes for more equal opportunities and invitations to interviews of formerly under-represented groups.⁴⁶ According to the German Federal Anti-Discrimination Agency, the optimum tool in the transition to anonymous CVs is the establishment of standardised application forms. It is widely considered that anonymous CVs are an essential tool to combat discrimination in access to employment.

41. OECD (2014), *International migration outlook 2014, Special theme: Mobilizing Migrants' Skills for Economic Success*, OECD Publishing, 2014, p. 68, Table 2.1, Labour market integration of immigrants and their children: Results from situation testing in 17 OECD countries.

42. Antidiskriminierungsstelle des Bundes (2012), *Leitfaden für Arbeitgebende: Anonymisierte Bewerbungsverfahren*, p. 9.

43. Martin-Lacroux C. (2017), "Le CV anonyme, une bonne idée trop vite enterrée", *The Conversation*, 15 November 2017.

44. Behaghel L. et al. (2012), "Do anonymous resumes make the field more even? Evidence from a randomized field experiment"; Krause A. et al. (2012), "Anonymous job applications in Europe", *IZA Journal of European Labor Studies*, 2012, 1:5.

45. Martin-Lacroux C. (2017), "Le CV anonyme, une bonne idée trop vite enterrée", op. cit.

46. In particular in the Netherlands, Germany and Sweden. See Krause A. et al. (2012), "Anonymous job applications in Europe", *IZA Journal of European Labor Studies*, 2012, 1:5, Part 2, Recent experiments in European countries.

36. In short, the use of anonymous CVs can reduce discrimination if it is present in recruitment procedures, as applicants are assessed solely on the basis of their abilities. However, it can have unwanted side effects insofar as, by eliminating the possibility of identifying applicants belonging to discriminated groups, it prevents employers from implementing positive discrimination policies. This is why this measure is not sufficient in itself.

37. The establishment of a register of applications makes it possible to recruit candidates without CVs. All applications are registered per job vacancy and suitable candidates are selected by means of a computerised analysis based on objective criteria set out in the vacancy notice. This is an objective method of screening CVs, which helps to prevent recruiters from referring, knowingly or unknowingly, to stereotypes. However, like anonymous CVs, this method only defers the risk of discrimination to the job interview.⁴⁷ Furthermore, as computer filters are designed by humans, there is a real risk that they will reflect any prejudices held by those who programme them.

38. As these two examples show, employers are increasingly using new technologies, in particular artificial intelligence, to help them select applications. It is essential in this context to ensure that any algorithm used to process data gathered in the recruitment procedure does not increase the impact of discrimination. For example, in the case of anonymous CVs, by masking the characteristics on which direct discrimination is based, algorithms can help to exclude such discrimination. However, decision-making algorithms can also have the effect of exacerbating indirect discrimination: for example, taking into account pensionable years may penalise women who have had a career break following one or more pregnancies. Furthermore, unlike people, algorithms are unable to counteract bias consciously. For these reasons, it is imperative that the algorithms used in recruitment procedures are designed in such a way as to eliminate the risks of discrimination.⁴⁸ These questions warrant greater attention from our member States, the Assembly and the intergovernmental sectors of the Council of Europe.

39. Unconscious bias training, designed to alert for employers or recruiters to the unconscious biases which can affect their recruitment decisions, is also available. While the representative of the Runnymede Trust argued at the hearing on 26 June 2018 that legislation should be enacted which made such training obligatory – a position which is often championed by non-governmental organisations representing minorities – many studies raise doubts about the effectiveness of such a measure. Making training compulsory in order to prompt trainees to alter their conduct may have the opposite effect to that sought, increasing their desire to remain “independent” and continue to behave in the same way. Optional training on the other hand is considered to have a positive effect, setting up a virtuous circle among participants who have already shown their willingness to promote diversity by asking for training.⁴⁹ Other measures aimed at neutralising the role of unconscious bias should be implemented in parallel with optional training, such as standard interviews (in which the same questions are put in the same order to each candidate) and the assessment of candidates on the basis of predetermined scales that have also been standardised.⁵⁰

40. Diversity monitoring or auditing, designed to promote diversity in professional organisations by shedding light on the situation in a public or private company and forcing it to account for its activities, may also be an effective means of prevention. This is the method proposed by “Equally Professional”, a network supported by the Equality and Human Rights Committee in England, Scotland and Wales. Instead of making an alternative method of recruitment binding for employers, it is suggested that they gather information on diversity in their company. Such data can be analysed and used to improve their methods of recruitment. In order to assess effectively whether the organisation is open to diversity or not, employees must answer a questionnaire. They must know and understand why they are filling out this questionnaire and how the information will subsequently be used. They must also have the guarantee that the information will never be used against them. The parameters relating to the confidentiality of the information gathered must be very strict and extra precautions must be taken to maintain anonymity if the number of employees is low. The outcome of the collection of information can then be compared with national and/or regional demographic statistics and those of the industry in general. The company will then know whether it meets diversity objectives and, if not, it may review its diversity policy, in particular by undertaking to recruit more employees from an under-represented group.⁵¹

47. Valfort M.-A. (2015), “Discriminations religieuses à l'embauche: une réalité”, Institut Montaigne, pp. 78-79.

48. See Committee of Experts on Internet Intermediaries (MSI-NET), Algorithms and human rights: Study on the human rights dimensions of automated data processing techniques and possible regulatory implications, Council of Europe Study, DGI(2017)12, pp. 27-28.

49. Dobbin F. and Kalev A. (2016), “Why Diversity Programs Fail”, *Harvard Business Review*, 94 (7/8), pp. 52-60.

50. Davidson S. and Likki T. (2018), “New for employers: the latest evidence on what works to close the gender pay gap”, Behavioural Insights Team in partnership with the United Kingdom Cabinet Office.

5.2. "Indirect" methods

41. Making use of employment intermediaries can help to reduce the risks of discrimination in access to employment. Their role is to identify people who are being discriminated against, to help them to draft their CV and to prepare them for their job interview. Applicants would be allocated a mentor in a management post, who would put them in contact with employers.⁵²

42. Another means of prevention is that of introducing recruitment grants to encourage employers to improve their recruitment methods, namely by exempting them from a number of employer contributions or by granting them lump sum subsidies in certain cases and under certain conditions.⁵³ For example, in Canada, the employment integration programme for immigrants and visible minorities (PRIIME) provides for payment of a subsidy for the recruitment of people who have held a residence permit for less than five years or of people who belong to a visible minority, irrespective of whether they were born in Canada or elsewhere. In France, the single integration contract (CUI) combines training and financial assistance to facilitate the employment of people whose job applications are habitually rejected.

43. In the United Kingdom, the public authorities are subject to a legal obligation to promote equality and to combat discrimination, including in their role as employers. This obligation applies to all public authorities, at both national and local levels, including the armed forces and public media, as well as to all other entities providing a public service, in the performance of their duties. Pursuant to this obligation, the public authorities are obliged to eliminate any form of conduct that is prohibited by the 2010 Equality Act and to promote equal opportunities between people with a characteristic protected by the law and those who do not have such a characteristic. For example, a police force might be required to change its recruitment procedures to ensure that it does not intentionally or unintentionally dissuade people belonging to ethnic minorities from applying for a job in the force.⁵⁴

44. Another means of encouraging employers to verify and, where necessary, improve their human resources procedures by preventing and remedying discrimination is to introduce a government-supported label. This is designed to recognise the efforts made by employers who introduce binding measures to prevent discrimination. France has had such a system since 2008, when the "Diversity Label" was introduced. This certification draws attention to good recruitment and professional development practices enhancing diversity in access to employment. The label can be awarded to all types of employers (businesses, administrations, local and regional authorities, public establishments, associations, etc.). It is, however, a purely voluntary step on the part of companies.

45. The introduction of quotas can prove effective in certain fields. In France for example, a 6% quota of persons with disabilities has been compulsory since 1987 in both public and private establishments with at least 20 posts. If the establishment fails to comply with this obligation, they may have to pay an annual contribution to the AGEFIPH, an association responsible for promoting the professional integration of persons with disabilities and for ensuring they are kept in employment.⁵⁵ Nevertheless, it should be noted that numerous business enterprises prefer to pay an annual contribution rather than recruit persons with disabilities. The quota system has not been successful, except in the case of businesses seeking to improve their image. Our committee deals with such issues in the above-mentioned report "For a disability-inclusive workforce".

5.3. Support for voluntary measures by companies

46. Some companies have long been committed to respecting diversity and have understood the commercial benefits of having a public profile as active promoters of diversity. Whatever the reasons for their commitment this is a key means of combating discrimination in access to employment.

51. Equality and Human Rights Commission (2011), *Equally Professional: Diversity monitoring in professional bodies*.

52. Valfort M.-A. (2015), "Discriminations religieuses à l'embauche: une réalité", Institut Montaigne, pp. 82-83.

53. *Ibid.*, pp. 85-87.

54. Equality Act 2010, chapter 15, section 149 and Schedule 19 and relevant parts of the explanatory notes.

55. Since the entry into force of Law No. 87-517 of 10 July 1987 on promoting the employment of workers with disabilities, there is an obligation to employ persons with disabilities: at least 6% of personnel in companies with 20 or more employees must be persons with disabilities. To meet this requirement, companies have five options: recruit persons with disabilities, hire interns with disabilities, subcontract to the relevant protected sector, conclude an agreement on employment and disability or pay a contribution to the AGEFIPH (Article L.5212-1 to 5 of the Labour Code).

47. We had the opportunity, at the hearing on 26 June 2018, to hear more about Germany's major initiative in this area, namely its Charta der Vielfalt (Diversity Charter). It was launched in 2006 by four companies employing about 500 000 employees, and now brings together 2 950 public and private companies and associations, ranging from the largest to the smallest, covering about 10 million employees. Signatories undertake in particular to recognise both the diversity at the core of German society and the potential this holds for employers; to promote a culture of respect for all employees; to implement a diversity management policy and to audit their human resources management processes; to notify their employees about such activities and involve them in those activities; and to publish information about their activities in this field once a year. The main aim of this initiative is to raise awareness among employers about the importance of promoting and managing diversity within their companies or institutions and to influence the strategies devised in this sphere. This implies exchanging good practices and organising awareness-raising events (annual conference, annual diversity day, inclusion prize, etc.). Although the Charter does not itself publish figures on the tangible impact of the activities put in place, every signatory company or body is required to make its own results public. The Charter, which has the financial backing of 25 large companies, also receives major political support: the German Chancellor has been its patron for several years, and the Federal Commissioner for Migrants, Refugees and Integration is a member of its governing board. This is a further means for the authorities to give impetus to efforts to eliminate discrimination in access to employment.

6. Conclusions

48. The right to work is a fundamental right. Over the years, the Council of Europe has shown its commitment to respect for this right and for the principle of non-discrimination in this area through a large number of instruments. Despite these principles however, discrimination in access to employment clearly remains a real problem in our member States and this is the case regardless of the ground of discrimination in question – ethnic origin or membership of a national or ethnic minority, real or presumed religion, age, sex, social background, place of residence, sexual orientation or gender identity, disability, physical appearance or other grounds. This is not just a violation of the rights of the people excluded from the labour market but is a significant waste of potential for our societies.

49. To promote equal access to employment effectively, a whole series of general measures must be taken. The collection of data broken down according to the criteria referred to above, the adoption of powerful anti-discrimination legislation comprising accessible and effective remedies and the introduction of integrated policies designed to promote access to employment for various disadvantaged groups are essential and help to create the conditions in which jobseekers can compete on an equal footing in the labour market.

50. However, it is also crucial to eliminate discrimination by employers as, if this is not done, the effectiveness of other general measures adopted by States will be seriously undermined.

51. All of these efforts should, moreover, continue in the long term, as part of the ongoing fight against discrimination.